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IMPLEMENTATION OF THE NATIONAL STRATEGY FOR THE PROTECTION OF HUMAN RIGHTS IN GEORGIA, 2014-2020

PROGRESS, CHALLENGES AND RECOMMENDATIONS AS TO FUTURE APPROACHES

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Prepared by: Maggie Nicholson*
in collaboration with
Giorgi Chkheidze and Tamar Kaldani**
Independent Human Rights Consultants

* Formerly with the UN Office of the High Commissioner for Human Rights, Council of Europe, Human Rights First and Amnesty International

** Independent national consultants invited by the Office of the United Nations High Commissioner for Human Rights

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EXECUTIVE SUMMARY

The National Strategy for the Protection of Human Rights 2014-2020 was adopted by the Georgian Parliament in 2014. With just a year of its course remaining, and parliamentary elections foreseen in the coming year, it was considered an appropriate moment to take stock of progress achieved over the last six years in implementation of the National Strategy and associated National Human Rights Action Plans. This exercise would build on a mid-term assessment conducted in 2016-2017 and presented to the Georgian Parliament in April 2017.¹

Together with two distinguished national experts, I was asked by UNDP in Georgia, under the EU/UN joint project “Human Rights for All,” and supported by the UN Office of the High Commissioner for Human Rights, to collect and analyse recent reports on the issues addressed in the National Strategy and Action Plans, from the widest range of sources, and was invited back to Tbilisi from 8-14 September to meet with key actors in the Government, Parliament, the Public Defender’s Office, non-governmental organisations, representatives from business, from the donor community and international organisations, for further details. Based on the information so gathered, the current report presents a broad picture of the status of implementation of the National Strategy and Action Plans, identifying progress achieved, any remaining or newly emerging challenges.

The report covers the period from the adoption of the National Strategy in 2014 up until the end of September 2019 and addresses a substantial number of the 23 specific subject areas prioritised in the Strategy. It does not focus on the institutional machinery established to coordinate work under the National Strategy, on which separate studies were prepared in November 2015² and January 2019³, and discussions are continuing.

Findings and Recommendations are both General and Specific. Primary among these is that this landmark text remains one of the Government’s top strategic documents and, together with the Constitution of Georgia, continues to serve as a valuable and enduring reference point as concerns the national protection of human rights.

Much of the focus of work undertaken under the National Strategy and related Action Plans to date has been on legislative and policy reform. Substantial strides have been made in this respect, most notably in significant amendments to the Constitution, and new laws with regard to anti-discrimination, juvenile justice, occupational safety, child rights, and the protection of migrants and asylum seekers. In the next period, emphasis needs to be increasingly placed on **monitoring the sustained implementation in practice of these laws and policies and assessing their impact on the protection and enjoyment of human rights**. While the role of the Public Defender is central in this process, Parliament has a critically important responsibility for oversight, both in general and in specific instances, as indicated in this report.

Considerable effort has been invested over the past six years in translating the National Strategy into concrete action through the development of Actions Plans, often highly detailed and technical in nature. In order to keep to the original vision of the National Strategy, it would be useful for Parliament, Government and all other authorities, at every level, **to reaffirm their commitment to applying a human rights-based approach in the formulation, implementation, monitoring and**

¹ US AID/UNDP, Report on Progress in the Implementation of the National Strategy for the Protection of Human Rights in Georgia, 2014-2020, and Recommendations as to Future Approaches, prepared by Maggie Nicholson, March 2017.

² Marc Limon, Institutional strengthening and organizational development of the Human Rights Council of Georgia, November 2015.

³ Professor Dr Jeremy Sarkin, Reinvigorating and Transforming the Rule of the Human Rights Council in Georgia into a National Mechanism for Reporting and Follow-up in line with Global Practice, January 2019.

assessment of policies and programmes. A certain number of training courses, guidelines and other initiatives have taken place, but this is something that will take time, concerted effort and leadership.

A **culture of human rights** has still to take firm root throughout the country. Parliamentarians, government and religious leaders should be at the forefront, speaking out on the need for **tolerance**, equality and non-discrimination. Their voices have a direct influence on society. All leading figures should be persistently vocal on the point that all human rights are for all, and this is a message that should percolate down to all levels of public service, in the city and out in the regions.

Given the important challenges in terms of securing economic development for Georgia, representatives of the **business community** still need to become a meaningful stakeholder in the National Strategy, especially in the many areas directly relevant to the work environment.

Among other **general findings and recommendations** in the report:

- The development of a **culture of transparent, democratic law-making**, involving consultations with stakeholders, in particular the Public Defender and representatives of civil society, should continue and be strengthened. Delays in putting forward draft legislation need to be clearly communicated to stakeholders and efforts joined to surmount any obstacles.
- The **independence of judges and prosecutors** in practice needs to continue to be addressed vigorously.
- In the spirit of institutional democracy as set out in the National Strategy, all efforts should be made to protect **media pluralism** in the country and to maintain Georgia's rise in the ranks of world press freedom.
- Incentives towards respecting human rights should be built into the **professional career systems of public servants**, at recruitment and promotion stages.
- Further consideration should be given to the role to be played by **local government** in giving effect to different elements in the National Strategy.
- Additional creative and innovative **information programmes**, especially in the regions, should be developed under future Action Plans in relation to many of the specific areas discussed below.

The report welcomes the significant progress made, to greater and lesser degrees, in almost all of the specific subject areas addressed in the Strategy. It goes on to identify priorities for further action.

In respect of the **justice system, penitentiaries and the prevention of torture and ill-treatment**, a number of highly positive changes were noted.

Most notable among these was the establishment in 2019 of the **State Inspector Service** as the long-awaited independent investigation mechanism to look into alleged cases of misconduct by law enforcement officers. A welcome indication of the Government's resolve to fight impunity, the State Inspector must be provided with the resources necessary to function effectively from the outset, and the Prosecutor's Office and the courts to lend their essential support.

Universally welcomed was the establishment in 2018 in the Ministry of Internal Affairs of the **Human Rights Protection and Quality Monitoring Department** to tackle in particular cases of domestic violence, non-discrimination and hate-motivated crimes, developing guidelines for effective investigation of such crimes and building the capacity of its officers in these respects.

Among the areas highlighted for further attention:

- Significant improvements were noted in resolving **prison** overcrowding in Georgia; however, concern remains as regards health care, in particular psychiatric needs and drug abuse, as well as

rehabilitation among higher risk categories of prisoners; disquiet has risen as regards the pervasive control of “watchers” in many institutions.

- It is difficult to understand why the revised **Code of Administrative Offences**, drafted some five years ago, has still not been presented in Parliament.
- For public trust in the judiciary to be restored, there must be concrete evidence that **judicial appointments** will be made fairly, based on objective criteria, and that any interference with the independence of individual judges, from within as well as outside of the system, or in the conduct of the courts, will be dealt with appropriately.
- It will be important to see the revised Strategy and Action Plan of the **Prosecutor’s Office** in light of the substantial changes that have taken place pursuant to the constitutional reforms.
- There is a need for continuing enhancement of the **professional qualifications** of all involved in the justice system; coordinated training programmes involving all branches of law enforcement as well as defence lawyers would be most useful. Respect for human rights should figure prominently in criteria for recruitment and promotion of judges, prosecutors and law enforcement agents.
- Consideration should be given in future Plans to human rights protection responsibilities among agents of the **State Security Service and Ministry of Finance**.

A major human rights advance early after the launch of the National Strategy was undoubtedly the adoption in June 2015 of the **Juvenile Justice Code**, designed to address the best interests of the child and focusing on alternatives to criminal prosecution. A cause for concern, however, remains the capacity of those responsible for its implementation; in this regard, the specialization of all agencies involved in the administration of juvenile justice, especially the police, needs to be strengthened and institutionalized and necessary priority assigned to this age group. More attention needs to be directed to discouraging juvenile delinquency and deterring children from becoming street children.

The **right to privacy** remains a critical issue in Georgia. The introduction of the **Law on Personal Data Protection** and appointment of a **Personal Data Protection Inspector** went a considerable way towards addressing concerns. It is to be hoped that the State Inspector, who has taken over the functions of the Personal Data Protection Inspector, will continue to have the wherewithal to maintain further forward movement on these issues.

As recent events have shown, Georgian law with regard to **freedom of assembly**, and in particular demonstrations, still needs to be harmonized with international standards. In the meantime, statistics need to be collected and made public on the investigation and criminal prosecution of violations of the right to peaceful assembly and demonstration. A bill on the **Freedom of Information**, in preparation since 2014, is still eagerly awaited.

The **State Agency for Religious Affairs**, which in 2014 was designated the main actor responsible for freedom of religion, enjoys little confidence in this role and its status needs to be revisited. In the meantime, judgments of the Constitutional and Supreme Court in 2017 and 2018 have gone some way towards redressing the discriminatory treatment facing religions other than the Georgian Orthodox Church concerning tax and property.

The adoption in 2014 of the **Law on the Elimination of All Forms of Discrimination** represented a **major achievement**, providing the possibility for any person to defend his or her right to equality. **Hate-motivated crimes**, in the opinion of many commentators, are one of the key challenges in Georgia, and there remains concern that the State has not done enough to respond to the activities and messages of ultra-right extremist and nationalist groups that target minorities. It is to be hoped that developments within the Prosecutor’s Office and within the Ministry of Internal Affairs will produce more effective and timely investigations and prosecutions of such cases. But effecting change in this area begins with leaders speaking out publicly to defend tolerance and non-discrimination,

especially as regards LGBTQI representatives. A specific strategy and guidelines, accompanied by sanctions, should be drawn up on the protection of the rights of LGBTQI persons.

In September 2019, the Georgian Parliament adopted the **Code on the Rights of the Child**, which is seen as an umbrella text that will guide all state agencies, local government, judiciary, public and private organisations when working with and making decision about children. The Code is a welcome addition, and efforts must now focus on its implementation in practice if it is to have a long-lasting effect on the lives of children in Georgia. The success of many initiatives to protect children will depend to a great extent on provisions in the national budget aimed at alleviating poverty, in which so many of the problems that children face have their roots.

In respect of **gender equality**, stronger mechanisms need to be introduced to promote greater involvement of women in political life at national and local level. Legislative amendments were adopted by Parliament in February 2019 prohibiting harassment, including sexual harassment, and it will be interesting to follow how these measures are observed in practice. The increased attention paid to **measures to combat violence against women and domestic violence and awareness of this issue** is most welcome, in particular, the work of the Human Rights Protection and Quality Monitoring Department in the Ministry of Internal Affairs, the enforcement of stricter penalties and use of restraining orders.

The ratification by Georgia in 2013 of the **UN Convention on the Rights of Persons with Disabilities** was a most welcome step, as was the introduction in 2018 into the revised Constitution article on the Right to Equality (article 11) of a positive obligation on the part of the State to create special conditions for the realisation of the rights and interests of persons with disabilities. National legislation, however, still requires further review as to its compatibility with the Convention. Efforts should continue to be intensified in terms of adequate housing, employment and educational opportunities, as well as in relation to public perceptions of persons with disabilities. There still needs to be an effective focal point clearly designated to coordinate the action of all public bodies in relation to the rights under the Convention.

A number of programmes have been under way since 2013 to provide **durable housing for Internally Displaced Persons (IDPs)**. While priority is given to those living in deteriorating conditions, suitable pre-assessments need to be made to ensure that the needs of all IDPs in urban and rural areas are progressively and appropriately met. A concept for the move to **needs-based assistance** to IDPs has recently been finalised and needs to be adopted soon, together with an effective implementation and communications strategy.

Efforts to resolve particular difficulties of **those living near the dividing line**, in particular issues of land and property ownership, as well as education and health care, must continue. Thought also needs to be given to better ways to ensure their personal safety.

In an effort to address the large-scale violation of **property and land rights** that had taken place under former governments, a special law was introduced in 2016 to facilitate the registration of lands. The law is due to expire in 2020, and at that point a thorough assessment will need to be made as to whether it is in the public interest to extend its application or make other legislative changes. Introduced in Parliament in April 2017, draft legislation on **eminent domain**, clarifying issues of exigency and compensation for expropriation, still needs to be finalised.

In 2018 and 2019 new laws on **Occupational Safety** were adopted, aiming to ensure the timely detection and prevention of occupational illnesses and accidents in the workplace, and broadening the mandate of the Labour Conditions Inspection Department to cover all sectors of economic activity

and allowing it to enter premises with or without prior notification. Work is under way aimed at creating a stronger, fully independent inspection system. Legislative amendments addressing issues of **discrimination, harassment, and sexual harassment** were introduced in the Labour Code of Georgia in February and May 2019; their application in practice will be closely followed.

Substantial efforts made since 2015 were successful in reducing the backlog in the handling of **asylum cases**. A new **Law on International Protection** was adopted in December 2016 and came into force on 1 February 2017, bringing national legislation further into line with international standards in relation to asylum-seekers, refugees, humanitarian status holders and persons under temporary protection. Both of these are most welcome developments, while of course calling for continuing vigilance, in particular as regards a genuine right of appeal in case of a failed asylum claim.

Of remaining concern is the distressing situation of **eco-migrants**, whose numbers appear to continue to increase. Discussions as to whether to draft a new law to afford them protection or have them included under existing legislation should be completed as soon as possible.

While Georgia has been congratulated for serious and sustained efforts to combat **human trafficking**, the number of traffickers investigated, prosecuted and convicted remains relatively low and few victims are identified. The recommendations of the Group of Experts on Action against Trafficking in Human Beings (GRETA) provide a useful road map as to further action to be taken for greater effectiveness in this area.

In 2017, the provision in the Constitution of Georgia in relation to the **right to environmental protection** (article 29) was updated, setting down the right of everyone to live in a healthy environment, to receive full information about the state of the environment in a timely manner and to participate in the adoption of decision related to the environment. In practice, public participation still needs to be made a reality and further work in this area needs to continue, with strong and meaningful cooperation between state institutions and civil society.

Further findings and recommendations can be found in the full text of the report which follows. It is hoped that these might assist the respective state agencies in assessing their own progress and refocusing on how to achieve the central goals of mainstreaming human rights in all government policies and promoting a human rights culture in the country as a whole. It is further hoped that this report might serve as a useful basis for the adoption of a National Strategy for the Protection of Human Rights beyond 2020.

INTRODUCTION

Since the revolution of November 2003, Georgia has undertaken an impressive range of reforms aimed at establishing a fair and democratic society respectful of human rights. After some harsh setbacks experienced under the previous government, in 2012 the Georgian Dream party and its coalition partners came to power pledging to give a new impetus to such efforts. The following year, the new government set up an Interagency Council for Human Rights and tasked it with developing a national human rights strategy.

The National Strategy for the Protection of Human Rights for 2014-2020 was adopted by the Georgian Parliament in April 2014. This landmark text envisaged “a systematic approach to the realization of human rights by all Georgian citizens and the timely rendering of the duties related to these rights by state authorities.” Particular attention had been given to formulating a strategy that would allow “the consistent and effective application of appropriate measures, independent of external forces, such as changes in government administration and order.” 23 priority areas were identified for action – legislative, institutional and practical.

To give effect to the objectives of the Strategy, the Government adopted a first National Human Rights Action Plan for 2014-2015, detailing concrete actions, timeframes, indicators and bodies responsible for implementation. This was followed by a second plan covering the period 2016-2017 and then a third, covering the years 2018-2020.

The (Inter-agency) Human Rights Council, chaired by the Prime Minister, was charged with coordinating and monitoring implementation of the Strategy and Action Plans. In this work, the Council is supported by a six-person Human Rights Secretariat, which is part of the Government Administration and funded by the State budget. The line ministries and other bodies responsible for the different elements in the Plan prepare annual reports on progress made in implementation. On the basis of these, the Human Rights Secretariat draws up a report for consideration by the Georgian Parliament.

After parliamentary elections in October 2016 returned the Georgian Dream to power with a constitutional majority, it was judged to be a good moment to call for a “mid-term” external assessment of the status of implementation of the Human Rights Strategy since its adoption. Such assessment would identify progress to date, along with any shortcomings, and recommend approaches for improving the implementation process. In this context, I was invited by the USAID-supported activity Promoting Rule of Law in Georgia and the United Nations Development Programme, as part of the EU-supported project “Human Rights for All,” to visit Tbilisi from 29 October to 7 November 2016, to consult with the Human Rights Secretariat and other stakeholders before developing a *Report on Progress in the Implementation of the National Strategy for the Protection of Human Rights in Georgia, 2014-2020, and Recommendations as to Future Approaches*. That report, measuring progress up until March 2017, was presented to the Government and to the Parliament’s Human Rights Committee in April 2017.

Implementation of the current National Human Rights Strategy is planned up to the end of 2020. With just a year remaining, and parliamentary elections foreseen in the intervening period, it was considered timely to take a further measurement of progress, to identify any additional steps that might most urgently need to be taken to fill critical gaps, and to develop a solid basis on which a next National Strategy, beyond 2020, can be built.

Together with two distinguished national experts, Ms Tamar Kaldani and Mr Giorgi Chkheidze, I was asked to collect and analyse recent reports on the issues addressed in the National Strategy and Action

Plans, from state agencies, international organisations, the Public Defender's Office and non-governmental organisations, and was invited back to Tbilisi from 8 to 14 September 2019 to meet with a range of actors in Parliament, ministries and the Public Defender's Office, and among international and national organisations, including business, to acquire further up to date information. On this basis, the current report has been drawn up, presenting a broad picture of the status of implementation of the National Strategy and Action Plans, identifying progress achieved, any remaining as well as newly emerging challenges, together with recommendations for further action.

I would like to take this opportunity to express my appreciation to all the key government officer holders, parliamentarians, representatives of the Public Defender's Office and other public entities, non-governmental organisations, business, representatives of the donor community and international organisations, for the time and attention they granted to me and my colleagues in carrying out this exercise and preparing this report.

The report covers the period from the adoption of the National Human Rights Strategy in 2014 up until the end of September 2019. It follows largely the direction set out in the National Human Rights Strategy, while addressing some issues through the prism of others. It does not address directly the situation within the territories of Abkhazia and South Ossetia, on which it would not have been possible to report first-hand.

I. GENERAL FINDINGS AND RECOMMENDATIONS

The State acknowledges and protects 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 applicable law. The Constitution shall not deny other universally recognised human rights and freedoms that are not explicitly referred to herein, but that inherently derive from the principles of the Constitution.
Article 4(2), Constitution of Georgia

The purpose of the National Human Rights Strategy 2014-2020 was to present a systematic approach to the strengthening of the protection of human rights and better governance in the country as a whole, with the consolidation of institutional democracy as a top priority. It is a worthy and ambitious document, whose implementation might at times seem a Herculean task, but, as the Strategy itself points out, the strengthening of human rights protection is a continuous process. It is therefore extremely encouraging to see the considerable effort that has been invested over the past six years in translating the National Strategy into concrete action through the development of Action Plans, both the global National Action Plans and subject-specific plans formulated in the different spheres of government, and the attention paid to implementation of those plans, with continual adjustments and refinements being made along the way. At the same time, it is valuable when addressing the Action Plans, to turn back to the ambition of the National Strategy from time to time for a reminder of how the many different, often technical, activities contribute to the greater realisation of human rights. Together with the Constitution of Georgia, the National Strategy serves as an invaluable reference point which ensures that sight is not lost of the primary goals.

The mid-term evaluation report of April 2017 suggested that, in order to keep to the original vision of the National Strategy, it would be useful for the Government at every level, as well as the Parliament, to recommit to applying a “human rights-based approach in the formulation, implementation, monitoring and assessment of its various policies and programmes.” It was therefore reassuring that the Prime Minister in his presentation to Parliament on 3 September 2019, reaffirmed the integration of the human rights-based approach into the process of state policy-making and law-making as a priority of the new Government. It is equally important for human rights in themselves to be considered as an essential component of government policy, independent of other considerations.

As the National Strategy points out, this approach should filter down through all ministries, agencies and institutions so that they too “gradually introduce a human rights-based approach in their working practices, especially in the planning and provision of public services.” A number of specific initiatives have been undertaken in recent years – training programmes conducted, guidelines drawn up and a model of professional development established for civil servants. What remains of critical importance are the messages that are passed down from leaders, as much in actions as in words. At the most fundamental level, for example, genuine consultation and participation in decision-making, at national and local level, still need to be secured. The Georgian Parliament has made substantial strides in this respect, but, as non-governmental organisations and the Public Defender have pointed out, this principle is not always observed in practice and examples are seen of laws drafted in consultation with a range of stakeholders, only in the last stages to be held back or amended for reasons that are unclear.

Nowhere has the need for leading by example been more marked of late than in relation to issues of tolerance. Statements of parliamentarians, government and religious leaders have considerable impact on society and these figures bear a heavy responsibility for how society behaves towards minorities and the LGBTQI community, as well as towards civil society organisations working on sensitive issues. The Code of Ethics adopted by the Parliament in February 2019 is a welcome

development in this sense, albeit regrettable that it proved necessary. A culture of respect for human rights is still to take firm root throughout the country and parliamentarians, government and religious leaders should be at the forefront, speaking out on the need for tolerance, equality and non-discrimination.

The Georgian Government faces important challenges in terms of securing economic development for the country. Without economic prosperity, it cannot hope to tackle poverty and related problems, still widespread. Yet without respect for the rule of law, an independent judiciary, and a decent and safe working environment, investment is put at risk. More constructive dialogue appears to be needed with representatives of the business community while laws and policies aimed to protect human rights are being developed, so that common ground can be found. The last two National Human Rights Action Plans have attempted to address the issue of business and human rights under a separate rubric, and conducted a comprehensive National Baseline Study on Business and Human Rights,⁴ providing an assessment of the current level of implementation of the UN Guiding Principles in this area.⁵ Members of the UN Working Group on Business and Human Rights visited Georgia from 3 to 12 April 2019 and will be reporting to the Human Rights Council in 2020 on their recommendations for action by Georgia in this field. It is certainly an area that is deserving of greater attention in a future National Strategy, while at the same time, representatives of the business community must be included in consultations on legislative and policy initiatives where they can have impact and which will have impact on them.

The year 2020 approaches, yet it would be impossible to say that the National Human Rights Strategy draws near to completion. As it was mentioned earlier, the strengthening of human rights protection is a continuous process. Congratulations should be extended at this point for the vast amount of legislative changes that have been achieved over the last six years and that lay a firm basis for the better protection of human rights. At the centre are the constitutional changes which introduced significant advances, including, for example, as regards introducing a positive obligation on the State to create special conditions for the realisation of the rights of persons with disabilities (article 11), and updating the provisions in relation to environmental protection (article 29). What needs to be seen in the coming period is the enforcement and the implementation in practice, of these new laws and policies. The Public Defender is of course tasked with supervising the protection of human rights in Georgia (article 35 of the Constitution). But it is also the responsibility of the Parliament to exercise close oversight over the actions of the government and to ensure that reforms are fully implemented, including that adequate resources are allocated from the national budget.

One recurring theme in the report is that of delays in the adoption of reforms long judged urgent – among them revisions to the Code of Administrative Offences, introduced in 2014, but still in August 2019 not completed; and a bill on Freedom of Information, again under preparation since 2014, but not yet submitted to Parliament. Years have gone by during which outdated laws, recognised not to be in compliance with international standards and best practice, have continued to be applied. Further, delays in the adoption of the third wave of judicial reforms were seen to have provided the opportunity for additional amendments to be introduced in a non-transparent manner. The National Strategy emphasised the importance of ensuring an overall more transparent and accountable state administration system.

In addition, as the report shows, there are still many areas requiring attention, some longstanding, some more recent. To this end, the National Human Rights Strategy should be revised over the coming months to reflect these issues so that it can continue to serve as an invaluable and enduring

⁴ <https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2018/04/georgia-national-baselines-assessment-english.pdf>

⁵ UN Human Rights Council, UN Guiding Principles on Business and Human Rights, resolution 17/4, 16 June 2011.

reference tool for the years ahead. The cooperation of the Public Defender, as the institution mandated by the Constitution to supervise the protection of human rights in Georgia, will be central to this process.

II. STRATEGIC PATHS

The National Human Rights Strategy envisaged legislative, institutional and practical changes in relation to a number of areas prioritised for the period 2014-2020. The progress achieved in each of these specific areas, and the challenges remaining, are analysed below.

1. Improvement of criminal legislation and promotion of the principle of ‘equality of arms’

The drafting of criminal legislation which complies with international human rights standards and guarantees the genuine equality of both parties to proceedings is the first specific objective set out in the National Strategy for 2014-2020. Further *changes to the Criminal Code and Criminal Procedure Code, taking into account international standards and best practices*, were envisaged, to be accompanied by *enhancement of the professional qualifications of advocates, judges and investigative personnel. Ensuring adequacy and proportionality of proposed sanctions in response to criminal actions* was also called for.

Since 2014, a number of positive changes can be noted, including re-introduction of trial by jury, regular judicial review of any continued use of preventive measures, improvements in the procedural protection of victims of crime - including through the creation of witness and victim coordinators -, and revisions in the legislation regarding plea-bargaining. Still more remains to be completed in relation to these developments, as well as in their application in practice.

The territorial jurisdiction of **jury trials** was extended by amendments to the Criminal Procedural Code that came into force in January 2017, and additional guarantees were introduced to improve the practice of informing jurors of the legal and factual elements of a case in order to ensure that the principle of reasoned decision, as required by international standards, is observed. A broader analysis of how the jury trial system works in practice, and what further improvements might be needed, should be considered a priority in the development of any future strategy and action plans. Equally, it will be important to monitor the effectiveness of judicial control over the continued use of specific preventive measures and to assess the effectiveness of the new procedural guarantees for victims. Additional legislative and policy changes should be considered to ensure the effective application of diverse **non-custodial preventive measures** and additional procedural protection for **victims** of secondary or repeat victimization as well as special procedural protection measures for victims of domestic violence.⁶

Another important reform initiative introduced during the period under review concerns the new **witness interrogation rules** that came into force in January 2016. A little over two years of operation of the new rules has shown that direct interrogation of witnesses in front of a judge does in principle work in the Georgian legal system. Notwithstanding, some aspects of the rules, the subject of much protracted debate, have been challenged in the Constitutional Court. The Court has already declared unconstitutional the provisions which do not provide to the defence an equal right in relation to accessing electronic data; legislative changes currently pending as a consequence of this judgment need to be adopted by the Parliament and put swiftly into practice. Further challenges have been brought arguing that the law as it stands still provides greater possibilities for the prosecution than for the defence and thus does not attain the stated aim of securing equality of arms. Ensuring the application of the rules in practice is equally important – for example, making clear to citizens that coming forward as a witness is voluntary, unless it is before a judge - and local and international actors

⁶ See Progress Report of the Government of Georgia on implementation of the National Human Rights Strategy Action Plan for 2016-2017 years, p. 6. See also Results of Monitoring of Human Rights-related Strategies and Action Plans (2016-2017), Georgian Democracy Initiative (GDI) and Institute for Democracy and Safety Development (IDSD), 2018, pp. 16-18, available at: [http://ewmi-prolog.org/images/files/7944HumanRightsActionPlanMonitoringReport\(2016-2017\)GDI.pdf](http://ewmi-prolog.org/images/files/7944HumanRightsActionPlanMonitoringReport(2016-2017)GDI.pdf)

have pointed to the need to continue to analyse and monitor this aspect and, if necessary, introduce further amendments.⁷ Another pending reform in this area relates to enforcement of the Constitutional Court decision in relation to ‘hearsay’ evidence, regarding which new legislative rules have been drafted with broad engagement from national and international experts.⁸ These legislative changes should be introduced in Parliament, adopted without delay and brought into operation in order to ensure effective prosecution and observance of equality of arms.

In 2018, the Ministry of Internal Affairs initiated a process of reform of the Criminal Procedure Code aimed at increasing the **autonomy of the investigative authorities vis-à-vis the prosecutors**. Aiming to enhance the quality of investigation and strengthen prosecutorial supervision, the initiative met with general approval among national actors. The European Commission for Democracy through Law (Venice Commission) acknowledged the importance of the proposed reform, stressing the need for careful preparation in the transfer of powers from the prosecution to the investigators, and for the whole reform to be introduced incrementally.⁹ As this reform goes forward, it will be important to assess its possible impact on due process rights and equality of arms, and ensure their full observance in accordance with national and international standards.

Amendments to the long-discredited **Code of Administrative Offences, a carry-over from the Soviet period**, were introduced in 2014 to ensure that an individual facing administrative detention would have many of the same guarantees as a defendant in criminal proceedings (right to be represented by a lawyer, right to inform next of kin, and so on), as well as decreasing the maximum length of administrative detention from 90 to 15 days and making clear that detention should be considered an “exceptional” measure. These changes were very welcome. Yet by August 2019 no comprehensive reform of the Code of Administrative Offences had been completed. Prompt completion and effective implementation of this reform in light of internationally recognized due process guarantees should be seen as a priority for the country.

Reform of the **Criminal Code of Georgia** is a primary objective in the National Human Rights Strategy and action plans. While during the years under review, specific changes have been carried out piecemeal – not least the introduction of discrimination as an aggravating circumstance, a comprehensive reform package is still under consideration. Draft changes, for example, aiming to widen judicial discretion and liberalize relevant provisions of the Code, have been developed by the Ministry of Justice with the active engagement of local and international experts and stakeholders¹⁰, but are still waiting to be introduced in Parliament.

However, many positive legislative changes are made, meaningful reform of the justice system will ultimately depend on the actions of advocates, judges and investigative personnel. The need to enhance the **professional qualifications** of each of these is also identified in the Strategy. Judges and investigative personnel have been addressed in recent Action Plans. Advocates have not. As their role has become more important in the context of recent reforms, more training and capacity building programmes – for example, on issues such as plea-bargaining and the conduct of jury trials - need to be made available for advocates too. Overall, if the reforms are to take root, more systemic trainings

⁷ Ibid., p. 9. See also specific suggestions provided in the OSCE Office for Democratic Institutions and Human Rights (ODIHR) 2014 Report on Trial Monitoring in Georgia, para 171.

⁸ See Progress Report of the Government of Georgia on Implementation of the National Human Rights Strategy Action Plan for 2016-2017, p. 6. See also GDI and IDSD, op. cit., pp.12-14.

⁹ European Commission for Democracy Through Law (Venice Commission), Georgia - Opinion on the Concept of the legislative amendments to the Criminal Procedure Code concerning the relationship between the prosecution and the investigators, 18 March 2019, CDL-AD(2019)006, paras 57-58.

¹⁰ See Progress Report of the Government of Georgia on Implementation of the National Human Rights Strategy Action Plan for 2016-2017, p. 6.

and a system for coordination of such training efforts between the Ministry of Internal Affairs, prosecutors, judges and members of the Bar will be needed.

The Inter-Agency Council for Criminal Justice Reform, chaired by the Ministry of Justice, leads the work in this area, developing its own Criminal Justice Reform Strategy and Action Plans, which are informed by the considerable amount of expert research and analysis into criminal justice issues that is carried out in Georgia. That Strategy and those Action Plans could be more clearly reflected in the National Human Rights Action Plans and put into action by all the different agencies involved. A criminal justice system in full compliance with due process standards is fundamental to the orderly conduct of life in Georgia, from the individual citizen to big business.

2. Improved protection of the right of fair trial through support of continued reform of the judiciary.

In order to ensure greater *protection of the right to fair trial*, the National Human Rights Strategy envisaged a *complete overhaul of the judiciary*, aimed at *guaranteeing its independence and ensuring the impartiality of individual judges*. Specifically, it called for a *revision of the rules relating to the appointment and promotion of judges and the allocation of cases; ensuring greater transparency and accountability of the judiciary through the protection of its independence*. It stressed that *the reforms of the judicial system should be conducted in an effective and transparent manner, with the active participation of the judiciary and civil society*.

First steps had been taken in May 2013, when representatives of civil society and academia replaced members of Parliament on the High Council of Justice (HCJ) and cameras were allowed into courtrooms. A second wave of reform followed in 2014, introducing life tenure for judges after a probationary period. Concern was expressed at the time by local and international actors that introduction of a probationary period could potentially impinge on the individual independence of judges.¹¹

The **third phase of reforms**, launched in 2015, and regarded as critical to ensuring a genuinely impartial justice system, was unfortunately stalled for more than a year, but was finally adopted by Parliament at the end of December 2016. The reforms introduced included: clear selection criteria for judges, as well as changes in the disciplinary system to make it more transparent and predictable; random, electronic allocation of cases; publication of court judgments and a broadening of the admissibility criteria for appeals to the Supreme Court, including non-conformity with the case law of the European Court of Human Rights. The delays in adoption of this third set of reforms provided the opportunity for further amendments to be made to the package. These included the exclusion of incumbent and former members of Constitutional and Supreme Courts from the requirement of a three-year probationary period before life tenure is given. Questions were raised in Parliament in this regard, but no answer was given, prompting concerns about the reasons for the lack of transparency, on which the Strategy places so much emphasis. The President of Georgia returned the third wave package to Parliament with comments, but Parliament overrode the presidential veto without amending the legislation. Although further reforms remained necessary, the third set of reforms nonetheless represented a considerable advance in efforts to strengthen judicial independence.

¹¹ See Statement on the Appointment of judges for a Probationary Period, the Coalition for an Independent and Transparent Judiciary, September 30, 2013, available at: http://coalition.ge/index.php?article_id=105&clang=1. See also Joint opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Law on Amendments to the Organic Law on General Courts, October 14, 2014, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)031-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)031-e)

Acknowledging the need to continue reforming the judicial system, in 2018 Parliament initiated a **fourth wave** of discussions, creating a special working group comprising representatives of all three branches of power, international and non-governmental organizations. The final working group sessions, led by the Speaker, in June 2019 produced a number of critical draft legislative changes: a well-defined list of judicial disciplinary violations, accompanied by improved disciplinary procedures; improved operational rules for the High Council of Justice, amongst which clearer provisions as regards substantiating its decisions, including on the appointment of judges; reforms in relation to the institution of the High School of Justice and its admissions system.¹² The proposed draft changes were generally positively assessed by local and international stakeholders¹³ and their adoption by Parliament is highly anticipated before the end of 2019.

In parallel, in 2017 the High Council of Justice, with the engagement of other branches, civil society and international experts, elaborated and approved a **five-year Judicial Reform Strategy (2017-2021) and a two-year Action Plan (2017-2018)**. The Strategy represents a solid assessment of challenges faced by the judiciary and covers all the major elements presented in the National Human Rights Strategy, under five key strategic directions: (1) independence and impartiality; (2) ensuring accountable justice; (3) ensuring quality justice and professionalism; (4) ensuring effectiveness of the judiciary; and (5) ensuring accessibility of justice.¹⁴

The 2017 Judicial Reform Strategy (as well as other assessments of the sector) indicates a need for further legislative and policy changes even after the fourth wave of judicial reform is adopted and implemented. These include: a more effective system for judicial promotion with clear criteria, a fair periodic appraisal system for judges and courts, and a more efficient system of access to court decisions (as a result of a 2019 Constitutional Court decision).¹⁵ Work also began on updating the **Code of Judicial Ethics**, which should be finalized and approved by judges and then, most importantly, implemented in practice.¹⁶

The quality of the Strategy and Action Plan, and the way in which they were developed, were considered positively. On the other hand, the follow-up implementation process is seen to be a challenge, requiring a more inclusive and collaborative approach from the HCJ, with civil society actors in particular.¹⁷

While judicial reforms continue, no **systemic analyses** have yet been made on the impact of those introduced to date. Such post-legislative analyses would be highly valuable for future policy development in the area. For example, is the random electronic allocation of cases working as it should? Are court judgments made publicly available in a timely manner? Are appeals on the basis of non-conformity with the case law of the European Court of Human Rights being heard by the Supreme Court?

¹² UN UPR Mid-Term Report – Georgia (2019), in relation to Recommendations 117.76-77.

¹³ See, for example, Statement on the Fourth Wave of Judicial Reform, The U.S. Embassy and the Delegation of the European Union to Georgia, June 13, 2019, available at <https://ge.usembassy.gov/statement-on-the-fourth-wave-of-judicial-reform-june-13/>

¹⁴ See Progress Report of the Government of Georgia on implementation of the National Human Rights Strategy Action Plan for 2016-2017 years, p. 14; also see GDI and IDSD, 2018, op. cit., pp. 47-48.

¹⁵ See GDI and IDSD, 2018, op. cit., p. 48. For a report on the decision of the Constitutional Court, see <https://idfi.ge/en/constitutional-court-decision-on-idfi-case-about-access-to-court-decisions?fbclid=IwAR0qQKWxIAuUzBnHXqbQ5Acrle8khCKEYWI45hHWVVMly3mTI2zUBFGCi4k8>

¹⁶ See GRECO, Fourth Evaluation Round, Corruption Prevention in respect of members of Parliament, judges and prosecutors, Compliance Report, Georgia, July 2, 2019, GrecoRC4(2019)9, paras 37-40.

¹⁷ See Implementation of the Judicial Strategy and the 2017-2018 Action Plan, March 12, 2019, EMC, available at: <https://emc.org.ge/en/products/sasamartlo-sistemis-strategiisa-da-2017-2018-tslebis-samokmedo-gegmis-shesrulebis-mdgomareoba>

Following the 2018 Constitutional Reform, the HCJ was given the authority to nominate candidates for the **Supreme Court**; their names would then go forward to Parliament for approval. In December 2018, the HCJ unexpectedly forwarded the names of 10 candidates to the Parliament without a formal selection process having been conducted, a move that met with strong public criticism.¹⁸ Consequently, Parliament decided not to review candidates before the legislation was amended and a selection procedure determined. Albeit with some delay, in May 2019 Parliament adopted comprehensive rules regarding the nomination and approval of future Supreme Court judges, with the Venice Commission, OSCE/ODIHR, the Public Defender and other non-state actors contributing their suggestions and observations.¹⁹ Over the Summer of 2019 a comprehensive process of nomination of candidates to fill 20 vacancies²⁰ was under way at the HCJ, to be continued in Parliament during the Fall session. This is the subject of intense public scrutiny. Ending a visit to Tbilisi, on 25 September 2019, the co-rapporteurs of the Parliamentary Assembly of the Council of Europe for the monitoring of Georgia noted that the Parliament “now has a unique opportunity – and responsibility – to rectify [these] shortcomings. The Parliament should hold open and transparent interviews with the candidates, based on uniform criteria, and come to a well-reasoned decision. In addition, given the questions that have been raised over the quality of the candidate list, it is important that Parliament only appoints the minimum number of judges needed to ensure the proper functioning of the Supreme Court. The remaining positions should be filled on the basis of a new list of candidates, properly established by the High Council of Justice and preferably after the 2020 parliamentary elections, in line with Venice Commission recommendations.”²¹

Despite some recent polls indicating progress in this area, there still remains significant scepticism in society as to the **independence and impartiality of the judiciary**. In May 2016 the hasty and non-transparent adoption by the Parliament of amendments to the laws governing the functioning of the Constitutional Court had also been a source of dismay, largely perceived as an undisguised attempt by the Government to interfere with the independence of the court. The appointments made by the High Council of Justice of judges for life did little to allay concern, but rather cast doubts on the effective independence of that body, despite the reforms that had been put in place. All the more reason why, especially when these appointments will be for life, it will be critically important to approach the process of nominations to the Supreme Court in good faith and appoint future judges of the Supreme Court of the country with the highest levels of professionalism and integrity.²²

Parallel to the reforms process, the Strategy identifies the need to enhance the **professional qualifications of judges**. With strong support from the international community, extensive training has been conducted and in-service training programmes developed by the High School of Justice in which different elements of human rights figure prominently. These should certainly continue and, wherever possible and appropriate, be coordinated with programmes for others responsible for the proper functioning of the justice system: prosecutors, law enforcement officers, and members of the Bar.

¹⁸ See Address to Parliament of the Coalition for an Independent and Transparent Judiciary, December 27, 2018, available at: http://coalition.ge/index.php?article_id=197&clang=1

¹⁹ See Urgent Opinion on the selection and appointment of Supreme Court judges, Georgia, endorsed by the Venice Commission at its 119th Plenary (Venice, 21-22 June 2019), available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)009-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)009-e). See also Opinion on Draft Amendments relating to the Appointment of Supreme Court Judges of Georgia, OSCE ODIHR, April 14, 2019, available at: <https://www.osce.org/odihr/417599?download=true>

²⁰ The number of sitting judges in the Supreme Court as of September 2019 was eight.

²¹ <http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=7626>

²² See Statement of the Public Defender of Georgia Relating to the Process of Selection of Supreme Court Judges, July 31, 2019, available at: <http://ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtsvelis-gantskhadeba-uzenaesi-sasamartlos-mosamartleebis-sherchevis-protsestan-dakavshirebit>

For a fully human rights-oriented judiciary will take time and concerted effort. Key to this is for clear messages to be sent out that the courts, judges and judicial appointments will be free from interference – whether from outside or within the system - and that any instances of unlawful interference with the work of judges will be dealt with appropriately.

3. Reform of the Prosecutor’s Office, aimed at ensuring fair, effective, transparent and independent criminal prosecution procedures

With the objective of developing a *criminal prosecution that is independent, objective, effective and transparent, as well as oriented on human rights protection*, the National Strategy first called for an *improved control mechanism of the prosecution service in accordance with international standards*. It also focused on the need to ensure *independence of criminal prosecutions*.

Initial legislation was adopted in 2015 aimed at developing greater independence of the prosecution service. A Prosecutorial Council was created, and in November 2015 the Chief Prosecutor was elected for the first time, rather than appointed, with his authority more clearly defined. Further major reforms of the Prosecutor’s Office were introduced as a result of the 2017-2018 Constitutional Reform, with the purpose of ensuring the independence and political neutrality of the system. The Chief Prosecutor was transformed into the General Prosecutor and the Constitution entrusted the Prosecutorial Council with the role of ensuring the independence, transparency and efficiency of the Prosecutor’s Office.

New legislative changes were adopted in November 2018 with the aim of aligning the law with the new constitutional principles. Among the changes introduced by the new **Law on the Prosecution Service**, which came into force in December 2018, the General Prosecutor is now elected by a majority of the full composition of the Parliament following nomination by the Prosecutorial Council. The Minister of Justice is no longer *ex officio* chair of the Prosecutorial Council, nor an *ex officio* member of the Council; the chairperson is now elected by the Council itself. While this should be considered a step forward towards transforming the service into an independent institution, with less political involvement from the Executive and the Parliament, various national and international actors involved in the process have voiced the need to make still further unambiguous changes in this direction.²³

Both the Venice Commission and GRECO welcomed the 2018 legislative changes. The Venice Commission stressed that in the new spirit and mandate coming from the Constitution, the objective of the Prosecutorial Council is no longer simply one of achieving professional representation and expertise with a majority of prosecutors elected by their peers, but now is called on to enhance public credibility in its independence, and, it suggested, “an enhanced representation from civil society could achieve this purpose”.²⁴ This would also contribute towards fulfilling the goal of the National Human Rights Strategy to ensure transparency of the prosecution service and its accountability vis-à-vis society. In addition, both the Venice Commission and a coalition of local NGOs have suggested that further consideration should be given to achieving a balance between hierarchical control over and the independence of prosecutors, and that competences should be shared between the Prosecutor General and the Prosecutorial Council over the careers of prosecutors.

²³ See the Coalition for an Independent and Transparent Judiciary Assesses the Prosecution Reform Results, statement by the Coalition for an Independent and Transparent Judiciary, 7 December 2018, available at: http://www.coalition.ge/index.php?article_id=196&clang=1; see also, Venice Commission, Opinion on the provisions on the Prosecutorial Council in the draft Organic Law on the Prosecutor’s Office and on the provisions on the High Council of Justice in the existing Organic Law on General Courts, adopted by the Venice Commission at its 117th Plenary Session (Venice, 14-15 December 2018); see also GRECO, Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors, Compliance Report, Georgia, GrecoRC4(2019)9, 2 July 2019.

²⁴ Venice Commission, op. cit., p.12.

The Strategy identifies ensuring **independence of criminal prosecution** as a priority. The creation and effective enforcement of mechanisms for institutional and individual independence of prosecutors in their work is central to this purpose. First of all, legislation should provide for a merit-based professional recruitment system for prosecutors. The new Law on the Prosecution Service provides for a new system of **recruitment and promotion** of individual prosecutors. GRECO declared the new procedures an improvement, but at the same time called on the Government to further refine a system to make sure that the General Prosecutor does not have discretionary power to recruit prosecutors without competition or internship and to have recruitment decisions reasoned not only formally, but effectively in practice.²⁵

Secondly, clear and effective rules protecting individual prosecutors from unlawful intervention of a superior in prosecutorial decisions constitute an important guarantee for the independence of the individual prosecutor. The Government reported in 2017 that a working group had been created within the Prosecution Service to review the existing criteria and practices for assigning and withdrawing cases to/from prosecutors and to analyse the regulations and existing practices regarding instructions given by prosecutors. Based on the recommendations of this working group, on 28 February 2019 the Chief Prosecutor issued an **Order defining fundamental principles for case distribution to prosecutors**; these provide that a superior prosecutor is to ensure a fair and transparent distribution of cases in the unit under his/her supervision, taking into consideration the number of cases, their difficulty and volume, as well as the specialization, competences, experience and skills required to prosecute and/or investigate the case. The aforementioned Order furthermore lists the circumstances in which a superior prosecutor can remove a case from a subordinate prosecutor and provides that any such decisions are to be reasoned. GRECO welcomed these new regulations²⁶ and the Venice Commission further encouraged the Government to increase the role of the Prosecutorial Council in monitoring this area and ensuring protection of the individual prosecutor against any unlawful interference from a superior.

Over the last two years significant reforms were also carried out to establish a more effective **disciplinary mechanism**.

A **Code of Ethics** for employees of the Prosecutor's Office was adopted by Order of the Minister of Justice on 25 May 2017, following extensive consultations with national and international experts. The Code also includes details of disciplinary offences; it was suggested at the time that a model should be developed for decisions of the Ethics Council concerning the disciplining of prosecutors, and these should be effectively supervised by the Prosecutorial Council.²⁷ Repeated training sessions on the contents and application of the Code were conducted in 2017, 2018 and 2019 for prosecutors, investigators, advisers, specialists, witness and victims coordinators, as well as interns. A commentary on the Code has been drafted by the General Inspection within the Prosecutor's Office, providing detailed, practical information about potential violations. It would be helpful for the effective enforcement of the Code for this commentary to be finalized and distributed soon, and for training and awareness-raising activities to continue.²⁸

Disciplinary misconduct was categorized as either minor, medium or serious, with corresponding sanctions ranging from reprimand to dismissal. In April 2019, a special body, the **Career Management**,

²⁵ GRECO, op. cit., p.11.

²⁶ See GRECO, op. cit., p.11; Venice Commission op. cit., p.12.

²⁷ Venice Commission, op. cit., p.12.; see also the Coalition for an Independent and Transparent Judiciary Assesses the Prosecution Reform Results, statement by the Coalition for an Independent and Transparent Judiciary, 7 December 2018.

²⁸ See Progress Report of the Government of Georgia on implementation of the National Human Rights Strategy Action Plan for 2016-2017 years, p. 10.; See also GRECO, op. cit., p.11.

Ethics and Incentives Council, chaired by the General Prosecutor, and composed of eight prosecutor members of the Prosecutorial Council, was established to review disciplinary cases, as well as to decide on promotions. Both the Venice Commission and GRECO acknowledged that the newly adopted system represents a distinct improvement; at the same time, they had additional suggestions to improve system at the level of law and practice - the Venice Commission as regards the review mechanism (including that the Career Management, Ethics and Incentives Council be subordinated to the Prosecutorial Council) and GRECO as regards a clear definition of offences and proportionality of sanctions²⁹.

Parliament has a central role to play in ensuring the independence and efficiency of the Prosecutor's Office. The revised legislation obliges the General Prosecutor to present an annual report to the legislative body and the first such report was submitted in May 2019. It would be useful if Parliament could take the opportunity presented by the report to analyse the effectiveness of the new legislation and consider what, if any, additional legislative changes might be necessary.

In February 2017, the Chief Prosecutor approved the **Strategy and Action Plan** of the Prosecution Service of Georgia for 2017-2021 and a system of Evaluation of Prosecutors. This aimed, inter alia, to create a transparent system of recruitment and promotion of prosecutors, improve the quality of the prosecution service and investigation processes, and raise the qualifications of employees and society's trust in the service. Criteria began to be introduced for the evaluation of prosecutors with promotion henceforth based on evaluation results. In light of the substantial changes that have taken place pursuant to the constitutional reform, the Prosecutor's Office is currently discussing how the Strategy and Action Plan need to be updated. It will be important to see the revised Strategy and Action Plan soon, and then to follow their implementation in practice.

One specific cause for concern has been the tendency of prosecutors to call for imprisonment of suspects **awaiting trial**, rather than a presumption that they be released except in cases where there are compelling factors against this. The courts themselves began to apply greater caution in this regard, not acceding to the prosecution's demands quite so readily, and more recently the Prosecutor's Office also began to address the issue. Guidelines have been prepared on the use of pre-trial detention in a manner consistent with the European Convention on Human Rights and alternatives to imprisonment have been introduced, yet trial monitoring has shown them to be little used. Further training on alternative preventive measures is clearly needed to encourage prosecutors to have greater recourse to them.

An additional cause for particular concern has been the apparent reluctance of the prosecution service to pursue **hate crimes** as such, which both underestimates their gravity and serves against preventing them in future. In the mid-term review, it was stressed that Prosecutors must make clear when offences constitute hate crimes and the Prosecutor's Office and the courts should keep statistics on their incidence. It is now understood that new recommendations have recently been introduced in this regard, and, with the support of the Council of Europe, the Prosecutor's Office is working with the Ministry of Internal Affairs and the courts to develop a statistical database for launch in 2020. Training on all these matters, as well as on investigative techniques, has been intensive and is continuing. The new transparency of the Prosecutor's Office should enable a close monitoring of the impact of such training in future.

In the immediate future, there are great expectations for an effective cooperation of the Prosecutor's Office with the newly established State Inspector on cases of alleged ill-treatment by law enforcement officials, a problem that has been seriously sidestepped in past years.

²⁹ See Progress Report of the Government of Georgia on implementation of the National Human Rights Strategy Action Plan for 2016-2017 years, p. 37.; see also Venice Commission op. cit., p.12; GRECO, op. cit., p.11.

4. Improved standards of crime prevention, investigations and human rights protection by law enforcement agencies, in accordance with international standards.

The first major objective outlined in the National Human Rights Strategy in relation to law enforcement agencies focused on *stamping out cases of misconduct* and to this end, *creating a control mechanism that would ensure the imposition of effective and impartial regulatory measures upon the activities of law enforcement agents*. It also called for the *compliance of all activities with international standards and best practices, ensuring the utmost respect for human rights*.

Disciplinary proceedings for law enforcement officers are centralized in the respective ministries and services, by the respective General Inspections, which, while nominally independent, report directly to the Minister/chief of service. Where the General Inspection finds a possible offence, it can refer the case to the Prosecutor's Office. As indicated in the foregoing chapter, in those select cases where this has happened, such referral has thus far not provided effective resolution. In the opinion of civil society organizations, the General Inspection needs to enjoy greater independence, have more clear, concrete and proper procedures for the consideration of complaints received, with pre-established time-frames and rules for the collection and examination of evidence. Also of concern is the fact that no procedure is provided for notification of complainants on the status of inquiries or any other form of engagement with them, and regret that the judiciary does not provide effective oversight over the process.³⁰

Since called for by successive UN Special Rapporteurs, Thomas Hammarberg in his 2013 report, and the UN High Commissioner for Human Rights, among others, the establishment of an **independent investigation mechanism** to look into cases of misconduct by law enforcement officers was the subject of extensive, protracted debate in the country, and expert opinions were sought and different models proposed. Finally, in July 2018 Parliament adopted special legislative changes in this regard and created the State Inspector Service (reported in the prevention of torture and ill treatment section of this report). It remains to be seen how the General Inspections might in future, where necessary, cooperate with the State Inspector.

Of greatest significance, in January 2018 the Ministry of Internal Affairs created a new **Human Rights Protection Department** (later renamed the Human Rights Protection and Quality Monitoring Department³¹), with responsibility for monitoring investigations and administrative proceedings in cases of domestic violence, violence against women, crimes committed with discrimination and/or hate motives, trafficking in human beings and juvenile crimes. Due to the daily monitoring work conducted by the Department, according to the Government, annual cases in which investigations were initiated on discrimination-motivated crimes, for example, rose substantially in 2018 and again further in 2019. The Department developed guidelines for the effective investigation of discrimination-related crimes, for distribution among all law enforcement officers, and, in cooperation with the UN High Commissioner for Human Rights and Council of Europe, organized a series of human rights trainings and other capacity building programmes for staff of the Department and instructors from the Police Academy, as well as senior police offices from outside Tbilisi. The new department has more recently led the creation of victim and witness support coordinator officers within the Ministry.³²

³⁰ See System of Disciplinary Responsibility at the Law Enforcement Agencies (overview of the work of general inspections), 2017, EMC.

³¹ to reflect its extended function of monitoring the quality of investigations into crimes against human life and health.

³² See Progress Report on the Criminal Justice Reform, 10th Report (January – December 2018), Inter-Agency Council for the Coordination of the Criminal Justice Reform, Ministry of Justice of Georgia, pp 17-19.

The work of the Human Rights Protection and Quality Monitoring Department has been warmly welcomed by all actors, governmental and non-governmental, in particular in relation to its tackling of cases of domestic violence, as well as its approach to issues of discrimination and hate-motivated crimes. Essential to the positive changes in practice have been the messages passed down from senior officials in the Ministry of Internal Affairs. The events of June 2019 in Tbilisi brought to the fore the need for such approaches to become more firmly rooted and reflected in the words and actions of all responsible authorities.

In parallel, the Ministry has made several other efforts to increase the transparency³³ of the police service, and is enthusiastically pursuing the idea of community policing.

A further task set out in the National Human Rights Strategy was that of *ensuring the full protection, in accordance with international standards, of the human rights of individuals taken into custody, especially by law enforcement agents.*

In 2018, the Government reported on important regulatory changes made in relation to the operation of **Temporary Detention Isolators** (TDI) under the MIA, where it was felt detainees could be particularly vulnerable. Among the changes brought in were: video recording in TDIs was extended from 24 to 120 hours; important legal definitions regarding the treatment of detainees were clarified in accordance with the recommendations of the Public Defender; a minimal number of detainees per cell was established; and functions and responsibilities of the relevant staff of TDIs were clarified.³⁴ In 2019, the European Committee for the Prevention of Torture (CPT) conveyed a “generally positive impression” as regards treatment of persons detained by the police in Georgia and overall a very positive impression of the sustained efforts of the MIA aimed at combating ill treatment.³⁵ The Public Defender in her 2018 report evaluated positively improvements in infrastructural and living conditions in TDIs while continuing to express concern about conditions for individuals arrested for up to 15 days for administrative violations.³⁶ Both the CPT and the Public Defender positively noted improved conditions for detained persons with regard to access to medical assistance, notification of their rights and legal aid.³⁷ Further efforts with regard to providing doctors and nurses in all TDIs are encouraged.³⁸

The Public Defender in her 2018 report indicates that in comparison to 2017 complaints on alleged excessive use of force by police officers decreased. However, the number of cases of detainees being transferred to TDIs with visible injuries doubled in comparison with the previous year (with a large percentage of the complaints emanating from Adjara). The Public Defender has called on the MIA to ensure proper monitoring of the activity of its officers and, in case of violation, to take effective disciplinary action. Further, the Public Defender has expressed the need for the MIA to introduce video surveillance in all parts of police stations where detainees are held, to equip with special body-cameras more police officers with powers to detain, and to ensure that these cameras are effectively used.³⁹

³³ On this matter see Assessment of Level of Transparency of the Ministry of Internal Affairs, April 25, 2017, EMC.

³⁴ See Progress Report on the Criminal Justice reform, 10th Report (January – December 2018), Inter-Agency Council for the Coordination of the Criminal Justice Reform, Ministry of Justice of Georgia, pp17-18.

³⁵ See Report to the Georgian Government on the Visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, p. 18.

³⁶ See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2018, p. 56.

³⁷ Ibid.; see CPT op. cit, p. 18.

³⁸ See also Report to the Georgian Government on the Visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, p. 18

³⁹ See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2018, p. 56.

The National Strategy calls for continual **enhancement of the professional qualifications** of law enforcement agents. As indicated above, since the creation of the Human Rights Protection and Quality Monitoring Department at the MIA in 2018, increased attention has been given to the professional development of law enforcement agents. With support from donors, a special course was developed on the observance of international human rights standards during investigations. During 2018 up to 17,000 listeners went through online courses.⁴⁰ It is important that such efforts are sustained and encouraged and, in order to be effective, should be linked to career advancement for both new recruits and existing employees.

In 2015 the **State Security Service** was separated from the Ministry of Internal Affairs and developed as a distinct institution. Although to date no Parliamentary or Government assessment has been carried out to evaluate the effectiveness of the 2015 reforms, local civil society organizations, with support from the Geneva Center for Security Sector Governance (DCAF), produced their own assessment in 2018.⁴¹ The authors conclude that the splitting of the Ministry of Internal Affairs and Security Service represented a positive development. At the same time, they noted that the reform itself and follow-up steps did not manage to create strong guarantees of democratic governance, accountability and control mechanisms of the law enforcement bodies.⁴² Given their central role, it would therefore be important to include the State Security Service in an future discussions of the National Human Rights Strategy. Meanwhile, parliamentary assessments and dialogue with civil society and the expert community in this field should be encouraged and supported.

5. Establishment of a high-class penitentiary and probationary system; development of mechanisms for dealing with former prisoners.

The National Strategy envisaged a number of steps needing to be taken for the *establishment of a penitentiary and probationary system in line with international standards* as well as the development *of rehabilitative programmes for probationers and former prisoners.*

The significant progress made since 2012 toward solving the problem of overcrowding and unacceptable living conditions in Georgia's prisons has been noted by many. In the report of its 5th periodic visit, the European Committee for the Prevention of Torture (CPT) congratulated the Georgian authorities for having succeeded in maintaining the prison population at the level dramatically reduced following the large-scale amnesty and series of Presidential pardons at the end of 2012 (from 24,000 in 2012 to 10,372 in 2014). In the report of its 6th periodic visit (10-21 September 2018), the CPT again concluded that overcrowding was no longer a problem in the prisons it visited.⁴³ Through legislative amendments, investment in new and better prisons, liberalisation of sentencing policy and more efficient work of the parole boards, the sustainable number of prisoners has been maintained (9,407 in 2019). Nonetheless, the latest EU Association Implementation Report for Georgia still considers the national imprisonment rate (257 per 100,000 inhabitants) to be high.⁴⁴ Local NGOs are therefore advising the government on elaboration of a more comprehensive policy for

⁴⁰ See Progress Report on the Criminal Justice reform, 10th Report (January – December 2018), Inter-Agency Council for the Coordination of the Criminal Justice Reform, Ministry of Justice of Georgia, pp17-18.

⁴¹ See Reform of the Security Service in Georgia, Results and Challenges, 2018, Transparency International-Georgia, EMC with the expert assistance from Geneva Center for Security Sector Governance (DCAF), available at: <https://www.dcaf.ch/reform-security-service-georgia-results-and-best-practices>

⁴² See Reform of the Security Service in Georgia, Results and Challenges, 2018, Transparency International-Georgia, EMC with the expert assistance from Geneva Center for Security Sector Governance (DCAF), executive summary, p. 9.

⁴³ See Report to the Georgian Government on the Visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, p.44.

⁴⁴ See European Commission Joint Staff Working Document – Association Implementation Report on Georgia, January 30, 2019, SWD (2019) 16 Final, p.6.

avoiding future overcrowding, addressing not only measures for within the penitentiary system, but also within the justice system as a whole.⁴⁵

While **prison overcrowding is no longer a systemic problem in Georgia**, and the reduced population has resulted in a significant improvement in living conditions, including meeting the European standard as regards minimum space for convicts, there is still room for more improvement. For example, in the report of its last visit, the CPT called on the national authorities to ensure that the same minimum living space is provided for prisoners on remand.⁴⁶ Concern has been repeatedly expressed by both the CPT and the National Preventive Mechanism (NPM) about deficiencies in the legal framework for placing prisoners in solitary confinement and in de-escalation or safe rooms, sometimes for long periods of time⁴⁷. With staffing a challenge in a number of prisons, “influential prisoners” or so-called “**watchers**” (individuals connected to organised crime who exercise control within prisons) represent a troubling phenomenon that must be dealt with⁴⁸.

Following initial steps for reform of the **prison health care system 2013-2014**, a new strategy and action plan was developed for 2015-2017 and the budget for this was increased substantially. Primary health care units, renovated and equipped, now operate in every penitentiary establishment; and medical personnel have been retrained. The results in relation to the treatment of tuberculosis and hepatitis C have been impressive, and consultation, testing and treatment for HIV/AIDS is accessible to all prisoners. A suicide prevention programme was developed and the prison mortality rate at first decreased, but sadly rose again in 2018. The NPM reported that a substantial number of deaths were due to somatic health problems and they underlined the importance of screening for non-contagious diseases, so that adequate medical care might be provided in a timely manner⁴⁹.

The Public Defender stresses the importance of continuing efforts to improve the health care system in prisons even further, ensuring the number of doctors and nurses is adequate and their professional qualifications improved, medical services are provided in private, medical-related documentation is produced and kept efficiently and treated with due respect for the rights of patients.⁵⁰ The CPT goes further in insisting on the transfer of responsibility for prison health care services to the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs in order to improve the quality of health care through its better integration with the public health system and to strengthen the professional independence of health care staff working in prisons⁵¹. The health needs of female prisoners⁵² have been especially highlighted by civil society. The area of psychiatric treatment is singled out as being in need of urgent attention.⁵³ Drug addiction in prison continues to be a challenge acknowledged by the Government, requiring a comprehensive strategy for the provision of assistance to prisoners with drug-related problems, including harm reduction measures.⁵⁴

⁴⁵ See Results of Monitoring of Human Rights-related Strategies and Action Plans (2016-2017), Georgian Democracy Initiative (GDI) and Institute for Democracy and Safety Development (IDSD), 2018, pp.107, 112, available at: [http://ewmi-prolog.org/images/files/7944HumanRightsActionPlanMonitoringReport\(2016-2017\)GDI.pdf](http://ewmi-prolog.org/images/files/7944HumanRightsActionPlanMonitoringReport(2016-2017)GDI.pdf)

⁴⁶ See CPT, op. cit., p.44.

⁴⁷ CPT, op. cit., Executive Summary, pp.2, 4; 2018 Report of the National Preventive Mechanism (NPM), Office of the Public Defender of Georgia, p.20.

⁴⁸ CPT, op. cit., p. 2;

⁴⁹ See NPM, op. cit., p. 50.

⁵⁰ See NPM, op. cit., pp. 45-47.; see also CPT op. cit., p.3.

⁵¹ CPT, op. cit., p.3.

⁵² For more on the special needs of women prisoners and people with disability, see Results of Monitoring of Human Rights-related Strategies and Action Plans (2016-2017), Georgian Democracy Initiative (GDI) and Institute for Democracy and Safety Development (IDSD), 2018, p. 108.

⁵³ On continuing challenges regarding mental health in prisons, see CPT, op. cit., p.3.

⁵⁴ Ibid.

A **system of classification of prisoners**, according to an assessment of individual risks and needs, became operational in 2016. On this basis a prisoner is assigned to one of four levels of institution: low risk, semi-open, closed or high risk. The assessment, conducted by a multi-disciplinary team, had to take place at least once a year. In addition to facilitating prison management, including addressing problems associated with the so-called “watchers”, mentioned earlier, the intention was to allow a more goal-oriented approach to imprisonment. As of 1 January 2018, around 23% of convicts had been involved in the individual planning of their sentences, including all women and juvenile defendants, as well as all convicts assigned to the low risk penitentiary establishment #16, participate in the planning of their sentences.⁵⁵ Regrettably, this planning process appears more recently to be hindered by a lack of social workers working in prisons. The CPT and local NGOs commended the government for introducing this individual risk assessment system, but expressed concern as regards prisoners classified as “high-risk”.⁵⁶ The CPT argues that there is an urgent need to completely rethink the philosophy and approach to this category of prisoner, to ensure that any restriction on organized activities, association, privacy and contact with the outside world are only imposed based on a genuine and frequently reviewed individual risk and needs assessment and no blanket restriction is used.

In August 2018 the Ministry of Corrections was merged with the Ministry of Justice, where the penitentiary department was transformed into a **Special Penitentiary Service**. While the longer term outcomes of this reform still need to be seen and analysed, such institutional changes create the opportunity for a new legal framework to be developed and institutional reform priorities with more emphasis on resocialization put forward.⁵⁷ As a result of the merger, a new Penitentiary Reform Strategy and Action Plan for 2019-2020 was elaborated. Prior to the merger, comprehensive legislative changes were elaborated in the **Law on Imprisonment** (and related acts) and enforced in late 2017/early 2018. These changes are largely seen as a positive development, bringing the national legal framework closer to European and international standards and taking due consideration of the rights of prisoners, an early release system, appeal mechanism, and the special needs of mothers serving prison sentences.⁵⁸ Their effective implementation in practice, as well as possible further legislative reform, should be considered a continuing priority in order to meet the objectives of the National Strategy.⁵⁹

The vision of the Ministry of Corrections (now Ministry of Justice Special Penitentiary Service) for the rehabilitation of prisoners is beginning to take shape, offering specialized training and education programmes as well as limited employment opportunities, but is thus far centred on semi-open and low-risk establishments. It would be important now to look further into the possibilities for those in higher risk categories, who are often in greater need of rehabilitation⁶⁰. Further actions regarding psycho-social rehabilitation of prisoners is a priority. The Government has adopted a Strategy and Action Plan for the development of psycho-social direction in prisons and reports that in 2017 a total of 1,764 convicts (among them 263 juveniles and 248 women) were involved in psycho-social information and rehabilitation programs.⁶¹

⁵⁵ See Progress Report of the Government of Georgia on implementation of the National Human Rights Strategy Action Plan for 2016-2017 years, p. 11.

⁵⁶ See CPT, *op. cit.*, p.2; see also Results of Monitoring of Human Rights-related Strategies and Action Plans (2016-2017), Georgian Democracy Initiative (GDI) and Institute for Democracy and Safety Development (IDSD), 2018, pp.107, 115,

⁵⁷ See European Commission Joint Staff Working Document – Association Implementation Report on Georgia, January 30, 2019, SWD (2019) 16 Final, p.6.

⁵⁸ See Progress Report of the Government of Georgia on implementation of the National Human Rights Strategy Action Plan for 2016-2017 years, p. 10;

⁵⁹ See also additional legislative reform suggestions from NGOs: Results of Monitoring of Human Rights-related Strategies and Action Plans (2016-2017), Georgian Democracy Initiative (GDI) and Institute for Democracy and Safety Development (IDSD), 2018, p.150.

⁶⁰ Regarding challenges faced by high-risk category prisoners, see NPM, *op. cit.*, p.42-43.; see also CPT, *op. cit.*, p.2.

⁶¹ See Progress Report of the Government of Georgia on implementation of the National Human Rights Strategy Action Plan for 2016-2017 years, p. 10.

Mandatory trainings for **prison staff** regularly address human rights issues and staff are required to pass tests every three years, on which their continuing employment depends. As with the staff of the Ministry of Interior and the Prosecutor's Office, respect for human rights in their daily work should figure prominently in the criteria for promotion of prison officers.

External monitoring of prisons is ensured by the Public Defender and the members of the National Preventive Mechanism/Special Preventive Group. Amendments made to the Imprisonment Code of May 2015, which came into effect in September 2016, gave them the right to take photos of prisoners and their conditions of detention. The Public Defender still regrets that her representatives are not given the possibility to consult surveillance videos, nor have access to certain medical documentation of prisoners⁶² and that the prison administration retains the right to observe (though not listen to) meetings between prisoners and the Special Preventive Group.

The National Strategy included a call for an effective public monitoring mechanism. This would be in addition to the external monitoring carried out by the National Preventive Mechanism. A Systemic Monitoring Unit was set up within the General Inspection Department to review complaints filed by inmates. It would still be useful to revisit the question of whether there is a need for an additional public monitoring mechanism, in consultation with the Public Defender/National Preventive Mechanism and local and international organisations.

Future strategies and plans should also take a much closer look at the protection of human rights of those confined in **mental health institutions**, which are for the most part private entities. The Public Defender and the CPT have identified a substantial number of concerns with respect to treatment in these institutions. It is understood that the Ministry of Health, with support from international organisations, has just begun discussion on this issue with civil society organisations.

6. Implementation of effective measures against torture and ill-treatment, including the conduct of transparent and independent investigations.

The National Strategy calls for the *development of a system of defence against torture and ill-treatment, the conduct of effective investigations into any reported cases of such treatment, as well as the protection and rehabilitation of victims.*

Following his visit to Georgia in March 2015, the United Nations Special Rapporteur on Torture expressed himself "greatly encouraged by the visible and quantifiable effects of the implementation of reforms made to prevent and to punish torture." The Public Defender was able to report in 2015 that "cases of torture and ill-treatment is no longer the major challenge."

In January 2017, the "Procedure for the Registration of Injuries sustained by Convicts/Accused Persons in Penitentiary Facilities as a Result of Possible Torture and Other Cruel, Inhuman or Degrading Treatment," was introduced by the Ministry of Corrections, in line with the provisions of the **Istanbul Protocol** on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment. Medical personnel in penitentiary institutions were being trained in its application. Such training should continue so that the procedure takes root and becomes regular practice.

Notwithstanding, impunity remained a serious problem in Georgia, and there continued to be a lack of effective investigation of alleged ill-treatment committed in police stations and penitentiary

⁶² See NPM, op. cit., pp. 6-7;

facilities⁶³. When cases were referred to the Prosecutor's Office, there were delays or failures in gathering evidence and a general reluctance to initiate prosecutions, as well as a tendency to initiate investigations on the basis of the lesser offence of abuse of official power. Initial investigations were almost always carried out within the respective ministries, raising questions as to their impartiality. Little appeared to have been done in respect of the rehabilitation or compensation of victims of torture.

This lack of effectiveness in investigating cases of ill-treatment was continually emphasized in the annual reports to Parliament of the Public Defender⁶⁴. According to the 2019 Special Report of the Public Defender on Effectiveness of Investigation on Criminal Law Cases of Ill-treatment, during the years 2015-2018, the Office received approximately 1,200 complaints related to ill-treatment allegedly committed by officials of law enforcement and/or penitentiary bodies. In 276 of these cases, the Public Defender addressed the Prosecutor's Office with a request to take further action, whereas in 42 cases⁶⁵ the Prosecutor's Office was addressed with a proposal. Notably, in *none* of those 42 cases did the investigation identify the perpetrator; no guilt was established.

In the report of its 6th Periodic Visit to Georgia, the European Committee for the Prevention of Torture (CPT) highlighted current deficiencies, not least that the initial investigation actions are carried out by the investigation units of those ministries in which the alleged perpetrator is employed, while the Prosecutor's Office only becomes involved at a later stage, once the case is subject to a high level of public interest or disseminated via the media. The CPT further referred to delays in obtaining evidence, problems with qualifying the acts (the investigation commences under Article 333 of the Criminal Code and not under Articles 144¹-144³), the short period for maintaining prison video recordings (five days)⁶⁶ and the necessity of protecting significant evidence. Meanwhile, alleged perpetrators are not removed or suspended from their office and no measures are implemented in order to protect victims from coercion or pressure to change their testimony. The Report goes on to note that, irrespective of the referrals made by the Public Defender and non-governmental organizations, none of the law enforcement officials or prison employees complained about has been subject to sanctions.⁶⁷

It is in fact difficult to follow with any certainty what happens to cases referred to the **Prosecutor's Office**. The National Strategy identifies the need to keep the public fully informed about ongoing measures to prohibit, prevent and investigate acts of torture and other forms of ill-treatment in the country. With regard to the Prosecutor's Office, the National Strategy calls for transparency of the prosecution service and its accountability vis-à-vis society. In this spirit, the Prosecutor's Office should be publishing statistics in relation to the investigation and prosecution of all such cases brought to its attention.

⁶³ For a brief description of a number of emblematic cases heard by the European Court of Human Rights, see UN OHCHR Background paper, Georgia's Road to Creating an Institution to Investigate Allegations of Human Rights Violations by Law Enforcement, pp. 14-16.

⁶⁴ 2015 Parliamentary Report of the Public Defender, pp. 402-426; 2016 Parliamentary Report, pp. 364-376; 2017 Parliamentary Report, pp. 81-90; 2018 Parliamentary Report, pp. 98-108.

⁶⁵ The Public Defender may address the Prosecutor only where the analysis of information and documents raises justified doubt that a specific person was subject to ill-treatment. In cases where there is not sufficient material evidence, yet there is information about possible ill-treatment, the Public Defender addresses the Prosecutor's Office for further action to be taken.

⁶⁶ Under Order No. 403 of the Minister of Justice of Georgia, dated 13 May 2019, the period for keeping video recordings made in penitentiary institutions has since been extended to 30 days; however, this rule will only come into effect step by step: from 1 July 2019 to 1 January 2021.

⁶⁷ Report of the European Committee for the Prevention of Torture (CPT), published in May 2019, regarding the outcome of the visit of September 2018, paras. 13-15. <https://rm.coe.int/1680945eca>

In order to address the above-mentioned long-standing challenges, after much protracted debate in the country, in July 2018 the Georgian Parliament adopted a law on the **State Inspector Service**. The mandate of the State Inspector would be to investigate specific allegations of torture, ill-treatment and misconduct on the part of representatives of law enforcement bodies⁶⁸. Rather than locate the Service in the Prosecutor's Office, or create a second prosecution service, the decision was taken to transform the Personal Data Protection Inspector's Office into the State Inspector's Service. The new Office would now not only be responsible for overseeing the legality of the processing of personal data and overseeing covert investigative activities (secret surveillance and tapping of telephones and other types of communication) but in addition would be responsible for investigating allegations made against representatives of law enforcement authorities of torture, inhuman or degrading treatment, abuse of power with violence, unlawful coercion and crimes endangering life when a person is held under the effective control of a law enforcement agency representative or another public official.

The State Inspector's Office will have the mandate to conduct full-scale investigative actions foreseen under the Criminal Procedural Code of Georgia, including carrying out searches and using physical force or special equipment and firearms whenever necessary. Oversight of the criminal investigation and related proceedings will be the responsibility of the Prosecutor's Office of Georgia. The State Inspector will submit to Parliament an annual report, containing general and statistical information of investigative functions, general tendencies and observations. A majority of members of Parliament could also invite the Inspector to submit *ad hoc* information.

The law defines the State Inspector Service as an independent state body as well as issues related to the election and termination of authority for the State Inspector. Originally intended for 1 January 2019, its entry into force was postponed until 10 May 2019 so that adequate budgetary provision could be made. On 11 June 2019, the new State Inspector was elected by Parliament for a non-renewable term of six years. Despite the fact that the law foresaw an obligation on the part of the Government to ensure that the State Inspector Service and the Prosecutor's Office are provided with the adequate material-technical base and financial resources, Parliament had yet again to postpone the coming into operation of the Law until 1 November 2019. The Public Defender expressed concern over this further postponement, which she considered might be seen as an artificial hindrance to the functioning of one of the most important state institutions⁶⁹.

Some concerns have been voiced about specific provisions within the Law governing the State Inspector. Before finalisation of the draft law, the UN OHCHR, for example, called for the removal of the immunity granted to the Minister of Internal Affairs, the head of State Security, and the Chief Prosecutor from investigations by the State Inspector; and for investigators of the State Inspector's Office to be able to apply to domestic courts directly, without the prior consent of the prosecutor, and to request the court's permission on implementing investigative actions. The authorities justified not incorporating these recommendations by referring to the existence of separate rules governing issues of criminal responsibility of members of the Cabinet of Ministers of Georgia⁷⁰.

A final element in the Strategy concerns the protection and rehabilitation of **victims of ill-treatment**. The Law on the State Inspector makes clear that victims will have the right to information about the

⁶⁸ Under articles 144¹-144³, Article 332 paras 3(b) and (c), Article 333 (b) and (c), Article 335 and/or Article 37, para 2, of the Criminal Code of Georgia and other offences, committed by a representative of the law enforcement body, a civil servant, or a person equal to him, which caused a person's death, and at the time of committing of the offence the person was in the temporary detention center or penitentiary facility, or any other location, where a representative of a law enforcement body, a civil servant or a person equal to him against the will of such person had restricted his ability to leave the location, or the person was in any other manner under effective control of the state.

⁶⁹ <http://www.ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtsveli-ekhmianeba-sakhelmtsifo-inspektoris-samsakhuris-sagamodziebo-funktsiis-amokmedebis-gadavadebis-shesakheb-kanonproekts>

⁷⁰ UN OHCHR, op. cit.

course of an investigation, access to case materials and the right to challenge decisions on termination of investigations. They will also have the right to request the status of victim, appeal against a negative decision, as well as against a decision not to prosecute.

Throughout the period covered by this National Strategy, the proper functioning of an independent investigation mechanism to look into cases of misconduct by law enforcement officers has been spoken of as a matter of the highest priority. The timely provision of adequate resources to the Office – financial and human resources as well as suitable permanent premises – will be critical to its ability swiftly to become a trusted institution, able to balance the two important roles it exercises. The successful functioning of the Office will serve as a strong indicator of the Government’s earnest commitment to fighting impunity.

7. Development of an effective juvenile justice system, which is compliant with international standards and takes into account the best interests of all children, especially those in conflict with the law, victims and witnesses, as well as those involved in civil and administrative proceedings.

Without doubt one of the most important human rights advances in Georgia since the launch of the National Strategy was the adoption in June 2015 of the **Juvenile Justice Code**. Designed to address the best interests of the child and incorporating principles enshrined in the Convention on the Rights of the Child and other international instruments, the Code focuses on alternatives to criminal prosecution, such as diversion and mediation, with detention and imprisonment used only as a last resort. The diversion and mediation programme is generally considered to be a model of its kind.

While all agencies involved in the administration of juvenile justice have specialized professionals to handle children’s cases and relevant trainings are provided, complaints examined by the Public Defender’s Office in 2017 revealed significant shortcomings in practice and a number of cases of infringement of the best interests of the child in legal proceedings. Specialization and capacity need to be further strengthened and institutionalized, not only among social workers, but especially within the police service, and general recognition of the need to give priority consideration to juveniles. In this context, training programmes such as that organised by the Human Rights Academy of the Public Defender for staff from Tbilisi and regional offices of the Social Service Agency⁷¹ are to be encouraged.

The alternative of house arrest was also introduced in 2016, accompanied by electronic monitoring overseen by the National Probation Agency. As of 1 October 2019, 28 convicted male juveniles and 31 pre-trial detainees (including one female) were held in penitentiary establishments, compared with a figure for 2014 of 83. Work has begun on a new building as well as the modernization of existing establishments to house juveniles and young offenders. Meanwhile, it would be important to implement a comprehensive conceptual vision as to the functioning of the new establishment, with consideration being given in particular to access to education and rehabilitation programmes.

Preventive measures have not met with so much success. There is little evidence of measures taken to discourage juvenile delinquency or to deter children from becoming street children. (See further on this, later.) Problems persist in relation to the enrolment of juvenile delinquents in school⁷² and the availability of special teachers. For the rehabilitation and resocialization of minors, the Public Defender has pointed out, it is especially important to work on increasing the motivation of young people. Unfortunately, activities available to them are not diverse and it is not clear how tailored they are to the minors’ interests and needs. Meanwhile, initiatives to develop an Integrated Data Collection and Analysis System on Crime Prevention and Juvenile Justice as well as a referral mechanism for

⁷¹ Training of Human Rights Academy of Public Defender on Protection of Child’s Best Interests, 8-10 November 2017.

⁷² See the Report of the Public Defender, 2018, p. 282.

children below the minimum age and children at risk of offending, underway at the Ministry of Justice, with support from the EU and UNICEF, are most welcome and will hopefully contribute further to noticeable improvements.

8. Establishment of high standards of protection of the right to privacy.

The National Strategy here sets down the objective of *guaranteeing the right to privacy and the protection of personal data in accordance with international principles*. Among the tasks necessary to achieve this, it identifies the *creation of an effective monitoring/supervisory mechanism to guarantee a high standard of protection of the personal data of all citizens by all relevant institutions, raising public awareness on privacy rights, and bringing Georgian legislation into line with international and European standards* in this area.

Despite the right to privacy being enshrined in the Constitution, illegal surveillance was a systematic practice in Georgia in recent years, with video recordings being made of politicians, journalists and activists for the purposes of blackmail. A Law on Personal Data Protection, adopted in 2011, was not accompanied by any related implementing regulations and remained ineffectual. Following particularly shocking revelations in 2013⁷³, a Special Commission was set up to guide the authorities and monitor compliance with the Law. That same year, the first **Data Protection Inspector** was appointed and the National Data Protection Authority established to deal with citizens' complaints and monitor the lawfulness of data collecting and processing by public organizations, reporting annually to Parliament.

The Law on Personal Data Protection was amended in 2014 to expand its remit to the private sphere and to the area of law enforcement. Only with a court order, with a clearly identified scope, method and timeframe, and limited to certain kinds of crimes, could law enforcement officers intercept telecommunications. However, the two-key system introduced to ensure this (requiring prior approval of the Personal Data Protection Inspector) was considered by many to be an inadequate safeguard.⁷⁴ The Constitutional Court agreed and called for a new system to be adopted by the end of March 2017.

Following the Constitutional Court's decision, Parliament adopted a package of legislative amendments providing for the creation of an Operative Technical Agency of Georgia, with exclusive authority to conduct certain covert surveillance activities, including eavesdropping, and powers to inspect e-communications companies and define specification of their technical equipment. The Agency is a legal entity of public law that falls under the control of the State Security Services. While in principle its role is a technical one, and oversight continues to be exercised by the Personal Data Protection Inspector⁷⁵ (in criminal cases) and a supervisory judge of the Supreme Court (in counter-intelligence related cases), the revised legislation has raised serious concerns among members of civil society, who doubted that it conforms to the judgment of the Constitutional Court in terms of providing adequate "safeguards" called for by the National Strategy and in fact to their minds has reduced the oversight power⁷⁶ of the Inspector⁷⁷. Consequently, civil society organizations brought

⁷³ On this issue, see the September 2013 report of Thomas Hammarberg, op. cit., at page 21.

⁷⁴ Access to communication data was initially managed by the Operative Technical Department of the Ministry of Internal Affairs (they held the "first key"); from August 2015, this department became a part of the State Security Service.

⁷⁵ Now the State Inspector – see later in text.

⁷⁶Statement of Members of the campaign - This Affects You, 23 March 2017

https://www.transparency.ge/en/post/general-announcement/new-legislation-regulating-secret-surveillance-violates-georgian-constitution/?custom_searched_keyword=constitutional+court

⁷⁷ After the legislative amendments, the Inspector was given the authority to suspend the interception of a telephone communication if the Office was not provided with a court ruling or a prosecutor's resolution in electronic or original form,

a new case before the Constitutional Court, as to the conformity of the revised legislation with the Court's judgment.

Meanwhile, recent years witnessed a significant increase in the number of covert activities by investigative bodies. In 2018 the Personal Data Protection Inspector's office received 1,397⁷⁸ court rulings allowing interception of telephone communications, whereas this figure in 2017 had been 699⁷⁹. In 2018, the Inspector resorted to the suspension mechanism in respect of 96 rulings/resolutions, while the same mechanism in 2017 (April-December) was applied in just 21 cases⁸⁰. In 2018 one case concerning interception of telephone communication was transferred to the Prosecutor's Office in light of elements of criminal conduct.

Monitoring conducted by the Georgian Young Lawyers' Association (GYLA) in 2016 also revealed an overwhelming number of searches and seizures carried out by the Prosecutor's Office on the ground of "urgent necessity" to be later validated by the courts⁸¹, indicating a lack of understanding of respect for the right to privacy. This indicated the need for further practical training for both prosecutors and judges in the legitimacy of search and seizure.

The unlawful obtaining, storage, use, dissemination of or otherwise making available information on private life or personal data, which results in considerable damage, is a crime and punishable, but the effectiveness of investigations and prevention of such crimes remains problematic. During 2015 and in the 2016 pre-election period, **audio and video recordings** of the private lives and communications of opposition figures were widely publicized. The Public Defender in December 2016⁸² reported an "abundance" of violations of the right to respect for private and family life in the course of the year. In early 2019, video footage showing the private life of a female politician (recorded some years ago) was shared extensively via messenger apps. The Public Defender described this as a gender-motivated crime and urged the authorities along with prompt investigation to apply a range of measures (a mechanism of swift reporting, ways for speedily blocking the footage, awareness-raising) against such blackmailing⁸³. In her Parliamentary Report of 2018, the Public Defender reminds the relevant public authorities that the right to respect for private life does not merely compel the state to abstain from such interference, but there are also positive obligations inherent in effective respect for private life. Therefore, the state should take positive measures to reduce misconduct and ensure effective investigation of crimes that might have been committed.

Given these continuing gross abuses, it is imperative to secure greater accountability in this area and to ensure that such offences are effectively investigated and prosecuted, as provided for in amendments to the Criminal Code in 2014. It would be important for future Action Plans to incorporate indicators for action taken in this respect.

On 21 July 2018, as reported in the previous chapter, the Parliament of Georgia adopted the law on the **State Inspector Service**. According to the law, from 10 May 2019 the State Inspector Service absorbed the functions of the Personal Data Protection Inspector, and, along with the competencies

or if the data in a prosecutor's electronic and original resolutions are inconsistent, or they contain an ambiguity/inaccuracy.

⁷⁸ 2018 Annual report of Personal Data Protection Inspector page 63. <https://personaldata.ge/cdn/2019/07/Report-on-the-state-of-personal-data-protection-in-Georgia-2018.pdf>

⁷⁹ 2017 2018 Annual report of Personal Data Protection Inspector page 45. https://personaldata.ge/cdn/2019/01/Annual-report_2017_ENG.pdf

⁸⁰ Thus far in 2019 (as of 10 September 2019) there have been 85 cases of suspension.

⁸¹ GYLA, Monitoring Criminal Trials in Tbilisi and Kutaisi City and Appellate Court, Monitoring Report No. 9.

⁸² Report of 10 December 2016.

⁸³ <http://www.ombudsman.ge/eng/akhali-ambebi/190416115758sakhalkho-damtsvelis-gantskhadeba-piradi-tskhovrebis-amsakhveli-kadrebis-gavrtselebis-shesakheb>

of the Data Protection Authority (including supervision over lawfulness of data processing and oversight of covert investigative actions), from 1 November 2019 it will carry out investigation of certain categories of offences such as torture, degrading or inhuman treatment committed by representatives of law-enforcement authorities. As successor to the Personal Data Protection Inspector, the new State Inspector⁸⁴, with a staff of 53⁸⁵, continues to work with different ministries, the Prosecutor's Office, the High School of Justice, private sector and academia to spread understanding about personal data protection, what it implies and what it does not imply, and ultimately to change practices.

Having in mind EU data protection reform and the modernization of Convention 108⁸⁶, in April 2019 the Personal Data Protection Inspector's office finalized a **new draft of the Personal Data Protection Act** to replace the current law. The new law, it is hoped, will contribute to the harmonization of Georgian legislation with the EU General Data Protection Regulation (GDPR), fulfilment of obligations laid down in the Association Agreement and improvement of the standards of personal data protection in the country. The draft law is already initiated for further legislative procedures. Along with increased accountability of data controllers and other novelties, the draft envisages the appointment of local data protection officers in each ministry and public entity, as well as in private companies handling substantial amounts of sensitive data.

Given the increased number of complaints received by the Data Protection Inspector, **public awareness** levels on privacy rights appear to have been growing, but they need to be raised still further – on issues from reading the small print in contracts to the use by young people of social media.

This is clearly an area that requires continuing and intensified vigilance and should continue to figure prominently in future strategies and plans – not least to ensure that the State Inspector is provided with adequate resources to maintain the further forward movement in this area.

9. Ensuring a high level of protection for the freedoms of expression, association and peaceful assembly

The National Strategy set down the objectives of *ensuring the freedom and independence of the media and limiting any interference in the professional activities of journalists, ensuring the protection of all persons exercising their freedoms of peaceful assembly and association, and the fulfilment of the positive and negative duties of the government in this respect.*

In the 2019 World **Press Freedom** Index⁸⁷ produced by Reporters without Borders, Georgia was placed 60th out of 180 countries, representing a significant rise from its 100th position in 2013. Recent reforms, including media ownership transparency, satellite TV pluralism, the overhaul of the broadcasting regulatory authority and a reduction in violence against journalists were cited as contributing to this improved ranking. However, the survey pointed out, the media in Georgia continue to be extremely polarized and, despite some progress, media owners often dictate editorial content. The country's rise in the Index has slowed considerably in recent years.

⁸⁴ The State Inspector was elected on 3 July 2019 for a term of six years. <https://personaldata.ge/en/about-us>

⁸⁵ In 2019. Further staff are being sought to carry out the investigation of offences alleged to have been committed by law enforcement officials.

⁸⁶ The 1981 (European) Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data.

⁸⁷ <https://rsf.org/en/ranking#>

The battle for ownership of the main TV channels has been a source of concern about the future of **media pluralism** in the country. At the heart of misgivings since 2015 has been the dispute over the legitimate ownership of the leading opposition media outlet, the television station Rustavi 2. The conduct of court proceedings in this case were the subject of much criticism, especially insofar as they interfered with the management and editorial policy of the broadcaster. They were also accompanied by numerous allegations of pressures brought to bear by supporters of the ruling coalition on actors involved in the case at all stages of the proceedings, including by the release of secret video and audio recordings.

On 2 March 2017 the Supreme Court finally awarded ownership of the channel back to its previous co-owner. The following day, the European Court of Human Rights issued an interim measure directing that the enforcement of the Supreme Court's decision should be suspended, and that the authorities should abstain from interfering with the applicant company's editorial policy in any manner. Initially granted temporarily until 8 March, on 7 March this interim measure was confirmed "until further notice" and the case placed on the list for priority consideration by the Court.

The European Court of Human Rights rendered its judgment on 18 July 2019⁸⁸. The Fifth Chamber declared there had been no breach in fair trial guarantees in the Rustavi 2 ownership dispute. The Court also declared inadmissible the complaints brought by the former owners concerning the freedom of expression, limitation on use of restriction of rights and protection of property, and found that there had been no violation of independence and impartiality of the judges who decided on the dispute. Regarding the latter, the Court found that "the television channel did not have standing to bring a complaint about the main proceedings, namely the ownership row over Rustavi 2 shares." The Court unanimously rejected as inadmissible the remaining complaints including the allegations that "the proceedings had been a State-led campaign to silence the television channel." As a result of this judgement, the decision of the Georgian court system was enforced, and a change was made to the ownership of Rustavi 2.

Many international as well as national observers have raised serious questions about the Rustavi 2 case and there is profound concern as to its implications for media diversity in Georgia. On 24 July 2019 nineteen Georgian NGOs issued a joint statement stressing the importance of preserving the broadcaster's critical editorial policy and of preventing any violation of the labour rights of its journalists, calling on international organizations to follow developments around Rustavi 2 TV.⁸⁹ Although the (reinstated) owner of Rustavi 2 promised not to intervene in the TV channel's editorial policies, by late August 2019, the head of the news department and other key hosts had been dismissed while several other staff members were leaving the channel, indicating clear changes in editorial policy.

Reporters Without Borders (RSF) called for media owners and political parties to have much less influence over the leading media. "In the run-up to the 2020 parliamentary elections," the organisation's spokesperson said, "it is essential to preserve the Georgian media landscape's pluralism and to reduce the influence that media owners and political parties exercise over editorial policies."⁹⁰

Threats against journalists and illegal interference with their professional activity are often reported. The Public Defender reported in 2018 that the Ministry of Internal Affairs had launched investigations into 12 cases of illegal interference with journalistic activity and the Chief Prosecutor's

⁸⁸ European Court of Human Rights, Case of Rustavi 2 Broadcasting Company Ltd and Others v Georgia (Application No. 16812/17), Judgment of 18 July 2019 – available on <https://hudoc.echr.coe.int>

⁸⁹ <https://osgf.ge/en/calling-on-international-organizations-to-follow-the-developments-around-rustavi-2/>

⁹⁰ <https://rsf.org/en/news/media-pluralism-must-be-preserved-georgia-rsf-says>

Office had instituted criminal proceedings against two persons for interference with journalists' activity and against 10 individuals for other offences against journalists⁹¹. The investigation into the 2017 abduction in Tbilisi of Azerbaijani dissident journalist Afgan Mukhtarly, and his subsequent appearance in police custody in Azerbaijan, has yet to produce any convincing results. In the course of clashes between police and protesters, on the night of 20 June 2019⁹² in front of the Georgian Parliament building up to 40 journalists were injured⁹³, mostly by rubber bullets fired by police, two of them needing emergency surgery.

More accurate accounting of actions taken in response to such incidents is called for as a concrete indicator of the effective protection of the right to freedom of expression. Of greatest immediate concern, the Georgian authorities must effectively and promptly investigate any violence against journalists and prevent the use of disproportionate force against journalists in the future. The progress of investigations in the Ministry of Internal Affairs and Prosecutor's Office will be critically important in this respect.

Access to and freedom of information is also highlighted in the National Strategy. This is also a commitment of the Georgian Government in the framework of the EU Association Agreement with Georgia. A bill on freedom of information, under preparation since 2014, is still eagerly awaited. In 2017, the Ministry of Justice shared a final draft with members of the Anti-Corruption Council for wider consultations. The draft law is scheduled to be submitted to Parliament in 2019. For the legislation to be meaningful, it must foresee an independent supervisory mechanism and appropriate sanctions that would ensure its effectiveness. As it is currently drafted, the Public Defender would be tasked with overseeing the accessibility of public information and, in case of non-compliance with the law, would have the authority to issue a protocol on administrative offences for submission to a court.⁹⁴ This, of course, would have further major implications in terms of the workload and demand on the resources of the Office of the Public Defender, which need to be taken into account.

A number of training courses have been conducted for law enforcement officers on **freedom of assembly and association**, a basic course introduced at the Police Academy, and Standard Operating Procedures drawn up. Yet, as recent events have shown only too clearly, Georgian legislation with respect to freedom of assembly and, in particular demonstrations, still needs to be harmonized with international standards. This objective was set down in the National Action Plan for 2014-2015, again in that for 2016-2017 and yet again in that for 2018-2020. Meanwhile, there continue to be reports of interference with the right of peaceful assembly and demonstration, particularly where the opposition is concerned and in relation to LGBT events.

Commemoration of the International Day Against Homophobia (IDAHO), has been a grave source of tension since particularly violent attacks against members of the LGBTQI community and their supporters in 2013. The designation by the Georgian Orthodox Church, since 2014, of 17 May as Family Purity Day, has meant that "counter demonstrations" have been taking place in Tbilisi annually on that day, hampering the ability of the LGBTQI community to celebrate. In 2017, members of the community were able to hold a commemorative event, albeit in a restricted area and subject to time limitations, and in 2018 a modest, restricted demonstration, attended by the Deputy Minister of

⁹¹ Report of the Public Defender 2018, p. 169.

⁹² Protests outside the Parliament building on the evening of 20 June 2019 began when a Russian legislator took the Speaker's chair in a forum being held in Tbilisi for parliamentarians from Orthodox Christian countries. The situation degenerated at around midnight when some of the protesters tried to storm the Parliament building and the police responded by firing rubber bullets, teargas and a water cannon at the crowd. According to the Ministry of Health, at least 160 protesters and 80 police officers were injured in the clashes.

⁹³ <https://www.qartia.ge/en/news/article/73297>

⁹⁴ 2019 Mid-term Report on the Implementation of Recommendations under the Universal Periodic Review of the United Nations, section 117.95.

Internal Affairs, was possible. However, in 2019 LGBTQI community organizations in Georgia unanimously refused to go ahead with their “march of dignity” amidst serious concerns about safety and security. The Georgian Orthodox Patriarchate had issued a statement calling Tbilisi Pride “absolutely unacceptable” and called on the government not to allow it to go ahead. Discussions had been under way with the Ministry of Internal Affairs about the safe conduct of the Pride events, but eventually foundered when the state failed to guarantee a risk-free environment for the exercise of their rights to free expression and assembly and a small demonstration was held outside of the city centre by the building of the Ministry of Internal Affairs.

Generally, according to the Public Defender, monitoring of the realization of this right in 2018 revealed problems vis-à-vis the law enforcement authorities in particular as regards restrictions on erecting temporary constructions, improper and inefficient management of counter-demonstrations and legislative gaps related to the ability to inhibit the movement of traffic during spontaneous demonstrations. In addition, restrictions against demonstrations to mark the international day against homophobia and transphobia on 17 May are still noteworthy.⁹⁵

In 2018 the Public Defender addressed a number of incidences of **verbal attacks on human rights defenders**, from leading figures, accompanied by a large-scale negative campaign against chairpersons of non-governmental organizations (Georgian Young Lawyers Association, Fair Elections, Transparency International – Georgia).⁹⁶ Such attacks are not a sign of progress in this area and can have a serious impact on society as a whole.

On 20 June 2019, several hours after the start of the demonstrations against the presence of a delegation from the Russian Duma in the Inter-Parliamentary Assembly on Orthodoxy (IAO), a number of protesters tried to enter the Parliament building, leading to a sharp confrontation with the riot police. Law enforcers used tear gas, rubber bullets and water cannons, as a result of which more than 200 people, including journalists and police officers, were injured. According to the Public Defender, the protesters had not been clearly warned before the use of special force and the police did not allow a reasonable time for protesters to leave the scene. Video recordings released by the media indicated clearly a use of disproportionate force by law enforcers, who pursued protesters through the night. 121 people were arrested during the night of 20/21 June and sentenced to administrative imprisonment of various terms. Representatives of the Public Defender attended their trials and reported that cases were reviewed in an accelerated manner, limiting detainees the right to a fair trial or an important procedure, such as submission of evidence, the right to effective defence, or consideration of a case within reasonable terms.⁹⁷ Problems identified by the Public Defender were mainly due to Georgia’s Code of Administrative Offences, which still fails to meet the requirements of due process. As has been repeatedly stated, and reflected in Action Plans, a fundamental revision of the Code of Administrative Offences to meet international standards is long overdue.

A criminal investigation has been launched into the persons who led and participated in the group violence with the purpose of entering the premises of the Parliament on that night. The General Prosecutor's Office launched an investigation into the possible exceeding of authority by law enforcement personnel against certain participants in the demonstration and expressed its readiness to cooperate with the Public Defender.⁹⁸ Responding positively to the Prosecutor General's

⁹⁵ See chapter on Gender Equality of this Report for more information on the international Day on Homophobia and Transphobia of 17 May 2018.

⁹⁶ <http://www.ombudsman.ge/geo/akhali-ambebi/sakhalkho-damtsveli-sakhelmtsifo-tanamdebobis-pirebs-arasamtavrobo-organizatsiebtan-mimartebit-saertashoriso-demokratiuli-standartebis-datsvisken-moutsodebs>; see also <https://www.transparency.ge/en/post/governments-coordinated-attack-civil-society-harms-democracy-georgia>

⁹⁷ <http://www.ombudsman.ge/eng/akhali-ambebi/sakartvelos-sakhalkho-damtsveli-rustavelis-gamzirze-2019-tslis-20-21-ivniss-ganvitarebul-movlenebs-ekhmianebs>

⁹⁸ <http://pog.gov.ge/en/news/brifingi-sagarTvelos-prokuraturashi>

initiative,⁹⁹ and to ensure that her involvement will be as transparent as possible, the Public Defender set up a Consultative Council on the matter. Members of the Council, as well as the Public Defender, believe that the investigation should not be limited to the abuse of power by individual employees of the Ministry of Internal Affairs and that the interests of the investigation should also be to determine the systematic nature of alleged criminal acts.¹⁰⁰ Progress in the Prosecutor's Office investigations will be anxiously followed.

Repeated Action Plans have called for **statistics** to be collected and made public on the investigation and criminal prosecution of violations of the rights to peaceful assembly and demonstration. These are still awaited. The National Human Rights Strategy in 2014 set out the task of ensuring "appropriate legal response and prevention of any violations of the freedoms of peaceful assembly and association." This is one particular area that events show still requires serious work.

10. Guarantee the right to freedom of religion and belief.

The National Human Rights Strategy identifies the need to *implement effective measures to prevent discrimination on grounds of faith and religious belief, ensure the unrestricted operation of the activities of all religious associations and implement effective measures to prevent and conduct meaningful investigations into all crimes committed on the basis of religious hatred and intolerance.*

The article of the **Georgian Constitution** guaranteeing freedom of belief, religion and conscience was revised in the context of the 2017-2018 constitutional reforms. An initial draft of the new article was considered by the Venice Commission¹⁰¹ and local non-governmental organisations as more restrictive than the previous version and potentially in contradiction with the European Convention on Human Rights. Following further consideration, Parliament adopted a new article (article 16),¹⁰² which is assessed by the Public Defender and other stakeholders to be in greater conformity with international standards.¹⁰³

In addition to constitutional changes, in 2018-2019 the **Constitutional Court and the Supreme Court** issued a number of decisions which have a direct impact on the more effective enforcement of freedom of religion in the country.

On 3 July 2018 the Constitutional Court declared unconstitutional provisions in the Tax Code and the Law on State Property, which accorded privileged treatment to the Georgian Orthodox Church (GOC). The Court declared unconstitutional an article of the Tax Code according to which, building, restoration and painting of temples and churches ordered by the GOC were exempt from value-added tax. The disputed article placed the GOC in a position of privilege in terms of purchasing services, and created a discriminatory environment for other religious associations. The Court outlined that such discrimination could be eliminated by a complete abolition of the privileges in question, or by their equal application to all religious organizations. The Constitutional Court further upheld the complaint

⁹⁹ <http://www.ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtsvelis-gantskhadeba-20-21-ivnisis-aktsiis-dashlis-dros-dzalis-gadametebis-faktebis-gamodziebastan-dakavshirebit>

¹⁰⁰ <http://www.ombudsman.ge/eng/akhali-ambebi/2019-tslis-20-21-ivniss-shinagan-sakmeta-saministros-tanamshromlebis-mier-samsakhurebrivi-uflebamosilebis-savaraudo-gadametebis-faktze-mimdinare-siskhlis-samartlis-sakmis-shestsavlis-protsesshi-shekmnili-sakhalkho-damtsvelis-sakonsultatsio-sabchos-skhdome>

¹⁰¹ See European Commission for Democracy Through Law (Venice Commission), Opinion on the Draft Revised Constitution as Adopted by The Parliament of Georgia at The Second Reading on June 23, 2017, 9-10.

¹⁰² See Article 16 of the Constitution in official translation of the current text of the Constitution, available at: <https://matsne.gov.ge/en/document/view/30346?publication=35>

¹⁰³ See the Report of the Public Defender of Georgia on the Situation of the Protection of Human Rights and Freedoms in Georgia, 2018, p. 157.

of five religious organizations on discriminatory provisions in the Law on State Property. The Court declared unconstitutional the legal provision that provides for the GOC exclusively to receive state property free of charge, while other religious organizations do not enjoy similar treatment. The Court again outlined that this discrimination could be eliminated by a complete abolition of these privileges the GOC was enjoying, or by their equal application to all religious organizations. Parliament should consider what measures need to be taken to see the courts' judgments given legislative force.

In December 2017 the Supreme Court of Georgia took the decision to eliminate the practice of requiring a recommendation from the State Agency for Religious Issues on building permits for houses of worship. This case has a strategic importance for religious organizations insofar as the practice of demanding non-mandatory documents from applicants had been allegedly used by the State as a tool to create artificial impediments for religious minority organizations.

Further legislative regulations to ensure the effective enforcement of the above-mentioned Constitutional Court and Supreme Court decisions should, if it proves necessary, be considered as a priority. Meanwhile, a most recent encouraging development concerns the decision in September 2019 of the Batumi City Court, which found discrimination on religious grounds in Batumi City Hall's denial to the Muslim community for a building permit for a house of worship in the city. The Court annulled the decision of Batumi City Hall and returned the case to it for reconsideration.

The **State Agency for Religious Affairs** is generally assigned responsibility for tasks related to the freedom of religion under the National Human Rights Action Plan. This Agency was established in 2014 as the main actor responsible for freedom of religion, but enjoys little confidence in this role among the populace. Its disbursement of funds to a select few religious groups and restitution of religious building confiscated during the Soviet period, is viewed with mistrust and considered discriminatory¹⁰⁴. Rather than being seen to protect freedom of religion, the Agency is considered to serve the purpose of controlling religious organisations¹⁰⁵. This has been pointed out on numerous occasions by a variety of commentators.

The European Commission against Racism and Intolerance recommended in its report on Georgia (5th monitoring cycle) in March 2016 that the State Agency be tasked to cooperate with the **Council of Religions**, which operates under the auspices of the Public Defender's Tolerance Centre, considering it could utilise the Council's expertise in order to tackle the problem of religious intolerance. On the basis of follow-up communications with the Government, in December 2018, ECRI reported that the situation that had originally given rise to this priority recommendation still persisted and the State Agency had not taken any serious steps to cooperate with the Council of Religions¹⁰⁶.

Unfortunately, during the course of implementation of Strategy and Action Plans, the mandate and operation of the State Agency of Religious Affairs has not been re-considered. The need to carry out reform in this area is a pressing priority.¹⁰⁷ It was encouraging to see that a number of initiatives in the Action Plan for 2018-2020 involve the State Agency, Council of Religions, Civil Service Bureau and

¹⁰⁴ See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2018, pp. 145-145.; see also See LGBTI Rights, Freedom of Speech, Freedom of Assembly and Association, Protection of Religious Minorities, Report on the monitoring of the implementation of human rights strategies and action plans for 2016-2017, WISG/GYLA/EMC, pp. 64-68.

¹⁰⁵ As reported by the Public Defender in her Communication to the Committee of Ministers of the Council of Europe on the *Identoba* group cases, 19 August 2019, p. 4; see also ECRI, Conclusions on the Implementation of the Recommendations in respect of Georgia subject to interim follow-up, adopted 5 December 2018, CRI(2019)4, p. 6.

¹⁰⁶ ECRI, op. cit., p. 6..

¹⁰⁷ See WISG/GYLA/EMC, LGBTI Rights, Freedom of Speech, Freedom of Assembly and Association, Protection of Religious Minorities, Report on the monitoring of the implementation of human rights strategies and action plans for 2016-2017, pp. 51, 55.

Human Rights Secretariat working in cooperation on efforts to strengthen secularism and religious neutrality.

In her 2018 Report, the Public Defender concludes that “Despite significant changes, the situation existing in terms of religious freedom still can be considered to be systemic discrimination and intolerance.”¹⁰⁸ The third largest number (18%) of complaints about discrimination considered by the Public Defender between 1 September 2017 and 31 August 2018 involved **discrimination on grounds of religion**, representing an increase of 8% over the previous year. Intolerant rhetoric is widely, publicly used against persons with different or no religious convictions. A number of politicians are among those who constantly stir up hatred towards different religious and ethnic groups in the media, in public demonstrations or through social networks. In 2017, the Public Defender felt compelled to address the Parliament of Georgia with a recommendation to elaborate regulations in order to prevent parliamentarians from making such statements.¹⁰⁹ This led to the adoption by the Parliament in February 2019 of a Code of Ethics, which calls for tolerance and respect.

Violation of the principle of secularism obtaining in some schools is generally overlooked. As NGOs indicate, despite having provided appropriate material guarantees to protect religious neutrality and equality in public schools under the **Law on General Education**, Government policy in this regard remains ineffective, and facts of indoctrination, proselytism and discrimination are of a systematic nature.¹¹⁰ Teachers should be regularly reminded of the principle of secularism and action taken in cases where it is flouted. This issue was raised in earlier years, but there appears to have been little progress made. Greater vigilance is called for by all State officials, including at the local level, and disciplinary sanctions considered for serious violation of this principle.

11. Guarantee equal rights and the protection of the rights of minorities.

With the aim of establishing *high standards of tolerance in society*, the National Strategy calls for the *prevention and condemnation of all forms of discrimination, effective investigations into all reported cases of discrimination and ensuring greater participation and integration of minorities in civil society and public administration*. It foresees a range of tasks, from prohibiting all forms of discrimination, in the public and private sphere, through effective measures to promote the study of Georgian language for ethnic/national minorities, to conducting awareness-raising campaigns relating to equality and tolerance issues.

Undoubtedly, the adoption in 2014 of the **Law on the Elimination of All Forms of Discrimination** represented a major achievement in this area, providing the possibility for any person to defend his or her right to equality against public as well as private persons. While the list of grounds for possible discrimination is not exhaustive, the Law explicitly specifies disability, sexual orientation and gender identity, grounds for protection that could not at that time be found in any other laws¹¹¹. The Civil Procedure Code was amended in order to provide access to court in discrimination-related cases. Initial drafts of the Law had envisaged a powerful Equality Inspector to monitor compliance; in the event, this task was assigned to the Public Defender.

¹⁰⁸ See the Report of the Public Defender of Georgia on the Situation of the Protection of Human Rights and Freedoms in Georgia, 2018, p. 158.

¹⁰⁹ As reported by the Public Defender in her Communication to the Committee of Ministers of the Council of Europe on the *Identoba* group cases, 19 August 2019, p. 4

¹¹⁰ See LGBTI Rights, Freedom of Speech, Freedom of Assembly and Association, Protection of Religious Minorities, Report on the monitoring of the implementation of human rights strategies and action plans for 2016-2017, WISG/GYLA/EMC, p. 72.

¹¹¹ See later, for example, revised Labour Code of Georgia 2019 (Article 2).

In its Concluding Observations on the 6th-8th periodic reports of Georgia in May 2016, the UN Committee on the Elimination of Racial Discrimination expressed concern at the low number of court cases invoking the provisions of the Law. The Public Defender's Special Report of September 2016 documented a continuing low level of complaints, with discrimination being found in only two cases. In order for it to be possible to assess the impact of the legislation, it was said at the time, all courts would have to collect data on cases of discrimination. According to the Public Defender's Special Report of 2018, this remains a problem; no specific statistics about the number of cases discussed by the courts in 2017-2018 are publicly available.¹¹²

The Public Defender can also receive complaints in relation to discrimination and mediate a dispute, make a recommendation or take the matter to court. On 3 May 2019, on an initiative from members of the Parliament's Gender Equality Council, legislative amendments were adopted to regulate sexual harassment (as a form of discrimination) in the workplace and public spaces. The Public Defender's Office is now responsible for the examination of cases of sexual harassment in the workplace and enforcement of any decisions thereon, while the Ministry of Internal Affairs has responsibility for cases occurring in public spaces. These amendments significantly expand the Public Defender's authority for effective enforcement of anti-discrimination legislation.

The Public Defender's Office now has the right to receive within 10 days all necessary materials regarding cases related to discrimination from public institutions, as well as from natural persons and legal entities. State authorities, other state and non-state actors who receive recommendations or proposals regarding discrimination from the Public Defender's Office will be obliged to inform the Office in writing within 20 days about the results of their review. If there is sufficient evidence of discrimination, and the entity does not respond to or adopt the recommendation made, the Public Defender's Office will be authorized to apply to the court to pursue compliance. The time limit for submission of complaints was also extended.

These legislative changes have significant importance for advancing national efforts to combat discrimination. The Public Defender, state and non-state actors should continue their active cooperation to ensure effective application of these provisions in practice.

Meanwhile, the number of complaints received by the Public Defender's Equality Department is relatively high, and knowledge of the Law is spreading. Since the adoption of the law, the Public Defender has examined 201 incidents of alleged discrimination. In 2018 the Office found discrimination in 21 cases and incitement of discrimination in nine; issued recommendations and general proposals to public agencies in 22 cases and to private persons in eight cases. On three occasions, the Public Defender submitted *amicus curiae* briefs on issues pertaining to equality and made six public statements on discrimination issues.¹¹³ The growing number of successful cases wherein public authorities have enforced the Public Defender's recommendations in turn encourages others. The adoption of general anti-discriminatory policies within each public body serves as another useful indicator of the effectiveness of the Law. This requirement is further enforced by the May 2019 legislative changes regarding harassment.

Hate-motivated crimes, in the opinion of a number of civil society organisations, are one of the key challenges in Georgia. There remains concern that the State has not done enough to respond to the activities and messages of ultra-right extremist and nationalist groups that target minorities. A related cause for concern in recent years was the reluctance of prosecutors to take the motive of hate into

¹¹² Office of the Public Defender of Georgia, Special Report on the Fight Against Discrimination, its Prevention, and the Situation of Equality, 2018, p.5, available at <http://ombudsman.ge/res/docs/2019042317142950340.pdf>

¹¹³ See Special Report on the Fight Against Discrimination, its Prevention, and the Situation of Equality, Office of the Public Defender of Georgia, 2018, p28.

consideration in the investigation of crimes. There is no doubt that doing so could serve as the most effective deterrent against crimes committed on the basis of religious, ethnic, or sexual orientation hatred. Although the Public Defender in her 2018 Parliamentary report indicates improvements in this regard, she still sees the effective and timely investigation and prosecution of all such cases as a challenge.¹¹⁴ The case of the murder of human rights defender, Vitali Safarov, of Jewish background, provides a tragic illustration¹¹⁵. It is to be hoped that the new Guiding Principles and a new training programme for prosecutors (PAHCT) and the role of the Ministry of Internal Affairs' Human Rights Protection and Quality Monitoring Department in investigating hate crimes will have a positive impact in this regard.

Regrettably, the generally **homophobic environment** within the country persists. Leading political and religious figures, and all those in a position of authority, including law enforcement officers, need to be making it clear that they oppose any form of violence against LGBTQI persons. In addition, as reported by NGOs working in this area, LGBTQI representatives face stigma and discriminatory attitudes towards them; transgender people face challenges with legal gender recognition.¹¹⁶ The UN Independent Expert on Violence against Discrimination Based on Sexual Orientation and Gender Identity, following a visit to Georgia in 2018, reported that "beatings were commonplace, harassment and bullying constant, and exclusion from family, education, work and health settings appear to be commonplace."¹¹⁷ As reported in the section regarding the freedoms of expression, association and Peaceful Assembly, LGBTQI community representatives still face problems in freely assembling. Since 2012, the UN Independent Expert notes in his report, the International Day against Homophobia, Transphobia and Biphobia "has marked a widening in the rift in Georgian society." A strategy from the Government in this respect, with guidelines and accompanied by sanctions, would be a welcome initiative. Most immediately, public messages of tolerance from leading figures are critically important.

Efforts have been made in terms of promoting the **study of the Georgian language for members of national and ethnic minorities** and the 1+4 system (a Georgian language preparation programme for members of ethnic minorities wishing to pursue studies at university level) gives a more equal opportunity to access higher education. The national curriculum has been translated into minority languages and, following a recommendation by the Public Defender, since 2015 it is also possible to teach minority languages in certain schools.

A new National Strategy for **Civil Equality and Integration** was adopted in August 2015 and an Action Plan drawn up for the period 2015-2020. To facilitate implementation of the Strategy and Action Plan, a State Inter-Agency Commission was established, coordinated by the Office for the State Minister for Reconciliation and Civic Equality.¹¹⁸ Various programmes have been conducted, aimed at informing members of minorities of their rights, supporting language learning and cultural heritage. In her most recent annual report, the Public Defender noted that while numerous important programmes were implemented, no efficient or large-scale measures are being taken to address the problems that exist – and this despite the fact that some state authorities identify and acknowledge the depth of such

¹¹⁴ See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2018, p. 145.

¹¹⁵ See Human Rights Centre, Murder of Human Rights Defender Vitali Safarov – Case Details and Legal Assessment, 2019.

¹¹⁶ See Implementation of EU-Georgia Association Agenda 2017-2020, Assessment by Civil Society, OSGF, December 2018, p. 31, available at: https://osgf.ge/wp-content/uploads/2019/02/ENG_WEB.pdf; See also, e European Commission Joint Staff Working Document – Association Implementation Report on Georgia, January 30, 2019, SWD (2019) 16 Final, p.4.

¹¹⁷ Visit to Georgia, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, 25 September-5 October 2018, A/HRC/41/45/Add.1 and "Time to end invisibility of LGBT people in Georgia", 5 October 2018, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx>.

¹¹⁸ See UN UPR Mid-Term Report – Georgia (2019), p.36.

problems. “Ethnic and racial intolerance remains to be an acute problem in the country”¹¹⁹. Now as the Action Plan approaches its term, it would be useful to examine the impact of the initiatives taken and draw appropriate lessons.

The Anti-Discrimination Law also tasks the Public Defender, not least, with **raising public awareness** on matters of equality, and training programmes have been conducted with schools and teachers, among others. In the words of the Public Defender, “Changing of societal attitudes towards vulnerable groups remains a long-term perspective achievement.”¹²⁰ Considerably more work needs to be done here by a range of actors – government, parliament, political, religious and community leaders, media and civil society – in order to secure a society based on tolerance and embracing its diversity.

12. Focus on the rights of children.

The focus on the rights of children in the National Strategy centres on *improvements to the system of child protection and assistance, especially social services, reduction of child poverty and mortality, and the provision of a high level of education for all children.*

On 20 September 2019, the Georgian Parliament adopted the **Code on the Rights of the Child** which had been developed by the Parliament’s Human Rights and Civil Integration Committee with the technical support of UNICEF Georgia. Following a recommendation from the UN Committee on the Rights of the Child, the Code aims to cover all rights and freedoms of the child, providing stronger mechanisms for their protection and realisation. This includes a special focus on rights to family, protection from all forms of violence, access to inclusive education and healthcare, social protection and access to justice. It foresees an enhanced system for child rights support and protection which considers the needs and individual circumstances of the child and their family, and introduces stronger mechanisms for state accountability, with multidisciplinary cooperation and specialization of professionals working with and for children. The Code also creates greater guarantees to promote and ensure the participation of children in decision-making on all matters that concern them, inter alia, through child-friendly access to justice institutions and mechanisms. The Code is seen as an umbrella document, that will guide all state agencies, local governments, judiciary, public and private organizations, and individuals, when working with and making decisions about children. It, moreover, reinforces the State’s obligation to align, interpret, and enforce national legislation in compliance with the Constitution of Georgia, the UN Convention on the Rights of the Child and its Optional Protocols, and other international and regional treaties as recognized by Georgia. The Code is a welcome addition to the national body of law, and efforts must now focus on its implementation in practice if it is to have a long-lasting effect on the lives of children in Georgia.

The Public Defender in 2015 had voiced concern about the high level of violence, including sexual violence, against children. Studies carried out by UNICEF between 2013 and 2017 confirmed that violence against children is a serious challenge, with 45% of the population considering that violence against children is acceptable, 60% that using strict methods of upbringing in a family is more efficient. In September 2016 a new Child Protection Referral Mechanism (CPRM)¹²¹ was introduced, obliging all government bodies and related agencies, schools, kindergartens, medical institutions and local authorities to refer suspected cases of child violence to the Social Service Agency as well as to the police. The Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs, the Ministry of Internal Affairs and the Prosecutor’s Office took on the task of developing

¹¹⁹ See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2018, p.288;

¹²⁰ Communication from the Public Defender of Georgia to the Committee of Ministers of the Council of Europe concerning *Identoba* group cases, 19 August 2019, p. 4.

¹²¹ an enhanced version of a mechanism originally introduced in 2010, it extends engagement to all relevant institutions.

a unified database for child victims of violence. In 2017, records show that 519 cases of violence against children were confirmed out of a total of 840 cases reported. Based on three months of data in 2018, the Social Service Agency received a total of 847 reports, out of which 169 were confirmed cases of violence. UNICEF is working with the Government and other partners to prevent and respond to cases of violence against, and abuse and neglect of children. This work includes, inter alia, development of a prevention strategy and awareness-raising on violence and its consequences, and changing social norms that support it. Between 2015 and 2017, all 1,300 resource officers¹²² and 1,576 representatives of public schools were retrained in how to prevent child abuse, identify cases of violence and react to them. This training continues.

Reporting to Parliament in 2017, the Public Defender had recommended that the Government set up a **rehabilitation** mechanism for children who have been the victims of sexual violence. A Working Group established in the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs is currently planning to set up in 2020 at least two centres for child victims of sexual violence, one in Tbilisi and the other in Kutaisi. In both cities, integrated service models are currently being piloted with the support of UNICEF, with rehabilitation from an early stage, special multidisciplinary groups working with a child from the initial stage of investigation, and a friendly environment in which all procedures (questioning, forensics and so on) will be carried out, in order to avoid stigma and revictimization of the child.

In 2018, the Government approved amendments to the Criminal Code imposing criminal liability for 'pimping,' and criminal sanctions for engaging juveniles in prostitution were made stricter. In September 2019, the Ministry of Internal Affairs detained 11 members of an organized criminal group accused of illegal production and distribution of pornographic materials and trafficking of minors, often with the involvement of the parents. Such crimes carry sentences of from 17 years to life imprisonment. It has been suggested that the Government consider harmonizing domestic legislation with the provisions of the Lanzarote Convention¹²³ in relation to preventing sexual violence against children.¹²⁴

The Public Defender reported in 2015 on the urgent problem of **child poverty and mortality**. The United Nations interagency team for child mortality assessment estimated a rate of under-five mortality of 10.8 per 1,000 live births in 2017, with infant mortality at 9.6 in 2017. An important step forward was taken in 2015 with the initiation of a perinatal regionalization process aimed at reducing maternal and child mortality and complications. Home visits to rural families with children under the age of three, for early detection of developmental delays, were piloted in a limited number of areas; these need to be extended throughout the country. Maternal mortality rates have fluctuated widely over the past decade but, according to official statistics, fell significantly from 32.2 per 100,000 in 2015 to 13.1 per 100,000 in 2017. In the past there had been a wide gap between reported infant, under-five and particularly maternal mortality rates and United Nations estimates. Significant improvements in the systems for registering deaths of women of reproductive age have reduced this gap. Now 98% of such deaths are identified and differences between the reported and estimated rates are minimal.

The success of many initiatives to protect children will depend to a great extent on the development of programmes and provision of adequate resources in the national budget aimed at alleviating poverty. Progress in the provision of free health care is one contribution toward this.

¹²² Resource Officers of Educational Institutions work in public schools to ensure security and a violent-free environment in school. Before appointment, they undergo a two-month training course at the Police Academy; this is followed by regular trainings in communication and conflict management skills.

¹²³ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

¹²⁴ Partnership for Human Rights, in OSGF, Implementation of EU-Georgia Association Agenda 2017-2020, Assessment by Civil Society, December 2018, p. 39, available at: https://osgf.ge/wp-content/uploads/2019/02/ENG_WEB.pdf.

Since 2015, civil society organizations and the Ministry of Education and the Ministry of Internal Affairs, along with local social workers and law enforcement agents, have been conducting an information campaign to deter **child marriage**. Following a change in the Civil Code, since 1 January 2017 a person is now able to register a marriage only from the age of 18. Moreover, the Criminal Code of Georgia foresees criminal liability for forced marriage (including both registered and unregistered marriages). The working group on the prevention of early marriage, created within the Inter-agency Commission on gender equality, violence against women and domestic violence, in March 2019 broadened its mandate to include prevention of the harmful practices of early marriage and female genital mutilation.¹²⁵

According to the Public Defender, **child labour** is a pressing issue. Due to the grave socio-economic conditions, children are performing age-inappropriate jobs in dangerous environments. A particularly tragic accident occurred early in 2019, when a 12-year-old minor died while collecting scrap metal. It is to be hoped that the greatly enhanced role of the Labour Conditions Inspection Department¹²⁶ can help to avoid future such tragedies.

A Welfare Monitoring Survey conducted in 2017 showed that 4.3% of all households in Georgia are extremely poor. Targeted social assistance (TSA) is the main cash benefit for families experiencing financial and material hardship. Early in 2014, the Government began a technical assessment of the TSA that subsequently led, in 2017, to the introduction of a Child Benefits Programme (CBP). Together, the TSA and CBP cover around 12% of families in Georgia. Without TSA and CBP income, extreme poverty among children would rise from 6.8% to 13.1%. In 2019 the Government announced a fivefold increase in child benefits in the TSA programme, to respond to increasing **child poverty**. As of February 2019, 17% of all children under 16 years of age and their families were receiving TSA cash benefits and increased child benefits, in the form of either vouchers or cash.¹²⁷

In 2017 a new Law on Adoption and Foster care was adopted. In 2016, 386 children were placed in foster care services, in 2017 the figure was 282 and in 2018, as many as 259 new cases of foster care were registered while the total number of beneficiaries of the state subprogramme comprised 1,440.¹²⁸ The main causes of removal of minors from their biological families into state care are, again, poverty and inappropriate living conditions, neglect and violence.

Although the number of children in large-scale state institutions was reduced from 4,100 (2005) to 80 (2017), concerns remain regarding the continued use of these institutions for children with disabilities. In addition, there are still more than 30 unregulated institutions with residential components for 924 children and managed by various non-governmental organizations, local governments, as well as faith-based groups including the Georgian Orthodox Church and the Muslim Community.

New legislation in relation to **children living on the streets** came into force in August 2016. This foresaw issuing children with temporary identification documents, which would enable them to benefit from health care and education services. There are six-day centres and six round-the-clock shelters for homeless children operating in Tbilisi, Rustavi and Kutaisi¹²⁹. In 2018, a total of 280 children benefited from that service, which indicates that the needs of only a small segment of

¹²⁵ United Nations Universal Periodic Review Mid Term Report 2019, page 24-27, sections 117.14-117.15-117.16

¹²⁶ See below, section on labour legislation.

¹²⁷ Figures received from UNICEF, October 2019.

¹²⁸ Correspondence №04/1516, 16/01/2019 of the LEPL Social Service Agency. Source: Public Defender 2018 Report.

¹²⁹ The Social Protection Department of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs regretted that it had not been able to extend such services to Batumi, although the budget for this is available.

children are being met. According to information provided by the LEPL Social Service Agency,¹³⁰ between 2014 and 2018, mobile groups established contact with 1,409 homeless children. In 2018, social workers discovered 34 new-borns abandoned on the streets.

Social workers are identified in the National Strategy as a key element in protecting the rights of the child and the sustainability of many programmes depends to a large extent on social workers, who are small in number and overburdened by paperwork. The Public Defender has continually recommended to the Government of Georgia that the number of social workers/psychologists, as well as the financial component for logistical/technical provision of services, be increased. In June 2018 a new Law on Social Work was adopted, strengthening the authority of social workers, defining their functions, rights, obligations and social guarantees as well as the respective competences of different state and local authorities. While the Government has committed to increasing the number of social workers, vacancies remain and are difficult to fill when the two social work colleges in Tbilisi generate only 40 graduates per year, a number of whom do not pursue that career. It would be helpful if discussions currently underway could soon see the opening of new social work faculties in Batumi and Kutaisi. It is also to be hoped that an increase in salary for social workers could be forthcoming as from 2020.

A special report by the Public Defender in 2015 identified a number of challenges existing in the **pre-school** sector: violence against children, low qualifications and skills of educators, inappropriate curriculum and teaching methodology not focused on children's individual needs and limited access to pre-school especially in rural areas and among ethnic minorities. In response to the existing gaps, a new Law on Early and Pre-School Education and Care was adopted in June 2016. The Law guarantees free pre-school education for all children from age 2 to 6 years. However, implementation of the Law will require increasing investment, in particular as regards the current lack of infrastructure and inequities in access to pre-school education.

The **Child's Rights Centre**, part of the Office of the Public Defender since 2001, monitors national implementation of the UN Convention on the Rights of the Child, receives complaints on alleged violations of children's rights, draws up recommendations and proposals for legislative and administrative bodies and conducts educational and public awareness activities for the promotion of child rights. The Committee on the Rights of the Child, in its Concluding Observations on the 4th periodic report of Georgia¹³¹, called for sufficient human, technical and financial resources to be allocated to the Centre to enable it to execute its mandate throughout the country adequately.

13. Promotion of gender equality, protection of women's rights and prevention of domestic violence

The first task identified in the National Human Rights Strategy under this rubric called for the *implementation of effective measures across all spheres to ensure and promote the concept of gender equality; in particular, to encourage the greater involvement of women in political life, as well as decision making process.*

While in 2019 the representation of women in Government improved, with 5 out of 11 ministers now women, the **representation of women in political and economic life** remains low in Georgia. According to the Global Gender Gap Report 2018¹³², which seeks to measure the relative gaps between women and men across four key areas, Georgia's global rank is 99th out of 149 countries.

¹³⁰ Public Defender 2018 Report.

¹³¹ UN document CRC/C/GEO/CO/4, 9 March 2017

¹³² World Economic Forum, The Global Gender Gap Report 2018, p. 11, and p.105. Available at: http://www3.weforum.org/docs/WEF_GGGR_2018.pdf

Whereas it comes in 60th place in terms of educational attainment, this position falls to 119th when it comes to political empowerment. Statistics show that although women's representation in the Georgian Parliament has increased following every Parliamentary election, this increase has been very slow. Two separate initiatives were put before Parliament before the 2016 general election, aimed at imposing mandatory quotas for women candidates, but no agreement could be reached. In 2018, the Parliament of Georgia again did not support amendments to the Elections Code regarding gender quotas.¹³³ Financial incentives offered to political parties to include women on party lists¹³⁴ have not proved effective. Of 150 members of parliament elected in October 2016, only 24 are women. The situation in respect of local government, especially in municipalities settled by ethnic minorities, is even poorer – with one notable exception (in Ninotsminda).

Within the Georgian Parliament, the Gender Equality Council is a Standing Body which helps to define the main directions of state policy on gender issues, develop legislation and oversee the activities of agencies accountable to Parliament. An important aspect of the Council's activity is that of promoting public awareness on gender equality. By 2019 gender equality councils had been created in all municipalities and a person responsible for gender equality issues assigned in certain areas. However, meetings organised in the regions by the Public Defender's Office have shown that genuine participation of women in decision-making there remains a challenge and there is still a need for greater sensitisation among local councils.

Further efforts are therefore needed, with stronger enforcement mechanisms, to promote the greater involvement of women in political life, at national and local level, as called for by the National Strategy. In 2017, in cooperation with donors, the Gender Equality Council commissioned a research study to identify gaps in the legislative framework and barriers in policy implementation that were hindering the achievement of gender equality. The results were published in 2018 in *Gender Equality in Georgia: Barriers and Recommendations*¹³⁵. It will be important to keep a close watch on the implementation of this study's recommendations.

An additional Action Plan on the Implementation of UN Security Council Resolution 1325 on Women, Peace and Security addresses the particular difficulties that women living near occupied villages and IDP settlements have to overcome. (See further on this in the section below on Internally Displaced Persons and people living near the dividing lines of occupied territories.) For the purposes of this section, it deserves noting that among the challenges identified in the study *Gender Equality in Georgia: Barriers and Recommendations*, women's participation remains low within the official negotiation process concerning the conflict: the Geneva International Discussions (GID) and the Incident Prevention and Response Mechanism (IPRM), which have been underway since 2008. Special measures, the study points out, are needed to foster women's participation in reconciliation processes and confidence-building measures between Georgian-Abkhaz-South Ossetian communities. At the High-Level Commitments Event (23 April 2019, New York) in preparation for the 20th anniversary of UNSC Resolution 1325, the Georgian representative presented a commitment by the Government to increase women's participation in the GID up to 50% before October 2020, to continue regular dialogue with women's organisations around GID and IPRMs, to ensure that IDP and conflict-affected women's needs, priorities and recommendations are reflected in the official negotiation process and active engagement in the development and implementation of relevant policies. Detailed studies of other conflict areas have highlighted the critical contribution that women can make to devising peace

¹³³ The draft law on gender quotas was submitted to Parliament for the first time in 2003, for a second time in 2008 and for a third time in 2017, when it had 37,000 signatures.

¹³⁴ Law on Political Associations of Citizens, Article 30 (7¹)

¹³⁵ https://www.undp.org/content/dam/georgia/docs/publications/DG/UNDP_GE_DG_Gender_Equality_in_Georgia_VOL1_ENG.pdf

strategies. It would therefore be extremely valuable to ensure the timely implementation of the Government's commitments.

Despite progressive legislative amendments introduced in 2018 and 2019, one central area where there is substantial scope to improve gender equality is the Gender Equality Law, originally adopted in 2010. The above-mentioned study of gender equality in Georgia¹³⁶ proposes a comprehensive redrafting of the scope and content of the law and inclusion of clear references to the procedures and mechanisms for enforcement.

The second task identified in the National Strategy was that of ensuring prompt and effective response to all reported cases of **gender discrimination**. The Law on the Elimination of all Forms of Discrimination, adopted in 2014, marked an important milestone in this regard, giving to the Public Defender the authority to receive, examine and act on complaints of acts of discrimination.

Discrimination against women in the workplace, according to the Public Defender and NGOs, remains widespread, though underreported, with women earning on average just 63% of what men earn¹³⁷ and gender stereotyping rife. An improvement in the situation might be hoped for with a more rigorous application of the Anti-Discrimination Law and the adoption of codes of conduct in places of work. The Parliament's Gender Equality Council, which has been coordinating a working group on labour rights since 2017, has made the issue of equal pay for equal work one of its main priorities and under its 2018-2020 Action Plan is discussing with the National Statistics Office of Georgia development of a Pay Gap calculation methodology.¹³⁸

Although significant amendments were made to the Labour Code in 2013, maternity protection, especially the right to return to work after maternity leave, and the issue of **parental leave**, remain of concern. The Tripartite Social Partnership Commission – made up of the Government, employers' and employees' associations – should speedily address these and related issues. The ILO Convention No 183 on Protection of Maternity should be ratified without delay.

Sexual harassment is a sensitive issue in the country and one about which there has been relatively little understanding, a lack of clear regulations and an absence of sanctions. Based on legal amendments adopted by the Parliament in February 2019, harassment, including sexual harassment, is now prohibited under the law, the Public Defender was given a mandate to examine alleged offences and administrative penalties were introduced in the Code of Administrative Offences. It will be important to follow how these measures are observed in practice.

Discrimination on account of sexual orientation and gender identity remains a significant challenge. Pervading homophobic attitudes often lead to discrimination against representatives of the LGBTIQ community. Despite the deep systemic problems such people face in Georgia, issues relating to sexual orientation and gender identity have not been included in national human rights action plans.

Women's economic empowerment has been directly linked to the achievement of not only gender equality but equally the reduction of violence against women. Women who lack financial independence cannot escape from violent families. Matters examined by the Public Defender provide plenty of evidence that women continue to suffer from the violence committed by their spouses primarily because of the lack of appropriate material resources.¹³⁹ A third task set forth in the National Human Rights Strategy concerned ensuring full compliance of existing mechanisms with international

¹³⁶ Ibid.

¹³⁷ Geostat (National Statistics Office of Georgia), 2015

¹³⁸ United Nations Universal Periodic Review Mid Term Report 2019, page 21. 27, section 117.11.

¹³⁹ Public Defender of Georgia, Women's Rights and Gender Equality, 2016, p. 33

standards for the protection and assistance of victims of **domestic violence**. In this respect, the UN Special Rapporteur on violence against women visited Georgia in February 2016¹⁴⁰, and put forward a range of recommendations with regard to gaps she had observed, and called for the comprehensive incorporation of these recommendations into Action Plans.

In June 2017, an Inter-agency Commission on Gender Equality, Violence against Women and Domestic Violence was formed, its main function to develop state policy on gender equality, violence against women and domestic violence, and to promote gender mainstreaming. Several ministries have recently designated persons or departments in charge of gender equality issues.¹⁴¹ NGOs and members of the international community participate in discussions of the Commission and would like to see its institutional strengthening so that it can support further progress. The Inter-agency Commission also acts as a monitoring body for implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)¹⁴². In preparation for ratification in 2017, Georgia amended 30 normative acts to align domestic law with the Convention and adopted a plan of action for the period 2018–2020.

In November 2016 the Public Defender pointed to an increased rate of detention and response to domestic violence cases from state agencies but insisted that more efforts were needed to react appropriately to each case of gender-based violence “due to the size and severity of the issue.” NGOs considered that too much discretion was given to the police in dealing with cases of violence against women, and they were critical of the Law on Domestic Violence as being insufficiently sensitive to the victim. Unduly lenient preventive measures and sentences were being imposed by the courts, which did not serve to deter further violence.

Stricter penalties began to be imposed for those found guilty of domestic violence and the rate of seeking detention as a restrictive measure increased dramatically, from 14% in 2014 to 90% in 2018. Significant changes were introduced in respect of restrictive and protective orders, making them applicable to all acts of violence against women. In 2018, 205 restraining orders¹⁴³ and 130 protective orders were issued in cases of violence against women, and investigations were initiated in 126 criminal cases under Article 151 of the Criminal Code of Georgia (stalking). Enforcing mandatory courses addressing violent behaviour by offenders, however, remained a challenge.¹⁴⁴

In 2018, the Prosecutor’s Office designated specialized prosecutors and prosecutor-investigators to carry out the investigation of domestic violence-based crimes and provide effective support to state prosecution. These prosecutors have completed specialized training course on domestic violence. As of 1 May 2018, only specialized prosecutors and investigators handle the cases of domestic violence in Georgia.

Also in 2018, the Human Rights Protection Department was set up in the Ministry of Internal Affairs in 2018 principally to monitor the investigation of domestic violence, hate crime and crimes committed by minors and against them. Following a recommendation from the Public Defender – who had identified that law-enforcement authorities did not have the guidelines for interviewing victims/affected persons of sexual violence that would be tailored to the specific situations of such

¹⁴⁰ Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia, A/HRC/32/42/Add.3

¹⁴¹ See UN UPR Mid-Term Report – Georgia (2019), in relation to recommendation 117.32.

¹⁴² CETS No. 210.

¹⁴³ Letter no. MIA 6 19 00258547 of the Ministry of Internal Affairs of Georgia, dated 31 January 2019.

¹⁴⁴ The LEPL of the Ministry of Justice – the National Agency of Enforcement of Non-Custodial Sentence and Probation, (Letter no. 2/16371, dated 19 February 2019); The Special Penitentiary Service of the Ministry of Justice of Georgia (Letter no. 46141/01, dated 19 February 2019).

victims/affected persons.¹⁴⁵, a witness and victim coordinator's service was also established and a procedure for risk assessment put into practice, as a crucial safeguard for victims' security and prevention of reoffending.¹⁴⁶ Statistics on violence against women and domestic violence are now collected and published periodically.

In 2017-2018 a high incidence of **femicide** and attempted femicide also continued to present a significant challenge. A study released in January 2017¹⁴⁷ showed that 75% of women murdered in Georgia were stalked by the murderer for 12 months prior to their death and 40% of femicides take place after a divorce. In April 2017, it was announced that the Public Defender's Office would be taking on responsibility for monitoring gender-based killings of women in Georgia. As part of the monitoring process, the Office analyses relevant court decisions in detail to evaluate the scale of the problem of femicide, the measures of protection and prevention applied and obstacles to addressing the issue. Statistical data and information on investigations and criminal prosecutions conducted by law enforcement agencies are also studied. The Prosecutor's Office reports that it applies strict criminal law policies in the cases of murder of women which present signs of domestic violence. There has been no single case of a plea agreement entered in cases of femicide for the last two years.

The National Strategy further called for the conduct of **awareness-raising campaigns**, especially for civil servants, on issues of gender equality and domestic violence. One innovative e-learning course for the prevention of sexual harassment in the workplace was launched in Autumn 2017 by the Civil Service Bureau of Georgia and the Public Defender's Office. It would be important to study the impact of such trainings.

There has in fact been a significant increase in the percentage of women who have reported to the police an act of violence committed by an intimate partner: 18% in 2017, compared to 1.5% in 2009. Also, the percentage of women who believe that domestic violence is a private matter in which no one should interfere has decreased from 78% in 2009 to 33% in 2017.¹⁴⁸

A related strand in this section of the National Strategy concerned ensuring access to legal protection, psycho/social rehabilitative facilities and shelters for **victims of domestic violence**. In 2018, five state shelters for victims of violence and four crisis centres were operational. This marks a significant step forward.¹⁴⁹ Monitoring carried out by the Public Defender in 2018 in shelters and crisis centres identified that these facilities offer a supportive and reassuring atmosphere to beneficiaries and they are safe there. However, according to her 2018 report, the Public Defender pointed out that the effective involvement of social workers in the process of examining domestic violence is still problematic; a lack of social workers and their consequent workloads, prevents them from adequately performing their duties.¹⁵⁰ In addition, still only limited psychosocial rehabilitation, education and employment programmes are available. UN Women have underlined the importance of post-shelter

¹⁴⁵ The Public Defender's recommendation to the Ministry of Internal Affairs (no. 08/15654, 24/12/2018).

¹⁴⁶ On 1 September 2018, the instrument for assessing risks of violence against women and domestic violence and the mechanism for monitoring restraining orders became operational; available at: <https://bit.ly/2TPJ5F5>.

¹⁴⁷ by women's rights group Sapari – available at: dfwatch.net

¹⁴⁸ <https://georgia.unwomen.org/en/news/stories/2018/03/one-in-seven-women-in-georgia-experiences-domestic-violence-new-national-study-finds>

¹⁴⁹ According to Letter no. 07/131 from the State Fund for the Protection and Assistance of the Victims of Human Trafficking, dated 29 January 2019, 415 individuals sought refuge in the shelters for victims of violence, while 224 individuals visited the crisis centres for victims of domestic violence - 166 in Tbilisi, 10 in Kutaisi, 46 in Gori and 2 in Ozurgeti.

¹⁵⁰ In meetings organised by the Public Defender's Gender Department in the regions, social workers pointed out that inadequate working conditions prevented them from properly performing duties - namely, overwork, inadequate pay, problems related to infrastructure and transportation, and the impossibility of professional development.

services and economic empowerment of victims and have pointed to the need for local government to play a more active role.

A continuing cause for concern has been the incidence of **child marriage** in certain regions. Following a change in the Civil Code, since 1 January 2017, a person can register a marriage only from the age of 18. Moreover, the Criminal Code of Georgia foresees criminal liability for forced marriage (including both registered and unregistered marriages). Since 2015, civil society organizations and the Ministry of Education and the Ministry of Internal Affairs, along with local social workers and law enforcement agents, have been conducting an information campaign to deter child marriage. The effects of such a campaign still have to be measured.

14. Access to equal rights for persons with disabilities and application of the principle of ‘reasonable adjustment’

The National Strategy envisages the *provision of equal opportunities to persons with disabilities and promotion of their full and active participation in all social spheres*. Specific focuses for action include encouraging the full participation of persons with disabilities in political life, greater support for their employment and full access to public services and transport. A general task is that of raising public awareness on issues related to disability.

Georgia ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) in December 2013, and it entered into force in April 2014, providing the country with a comprehensive framework for action. The Coordinating Council on the Rights of Persons with Disabilities, established in 2009 and chaired by the Prime Minister, was designated the body responsible for overseeing implementation of the provisions of the Convention, in accordance with article 33.1. However, the Council is generally considered to be neither an efficient nor effective mechanism for this purpose.¹⁵¹ In many States parties this focal role is given to the ministry with greatest responsibility in the area of persons with disabilities – in the case of Georgia, this would be the Ministry of Internally Displaced Persons from Occupied Territories, Labour, Health and Social Affairs. However, some consider such association might risk aggravating the stigma that attaches to disability and thus, five years on, no State agency has yet been assigned such responsibility in Georgia. Whatever is decided, there needs to be a clearly designated and effective focal point to coordinate the action of all public bodies in relation to the rights of persons with disabilities; this matter now needs to be resolved without delay.

Meanwhile, in 2015 the Public Defender’s Office created a department, advisory board and monitoring group to provide the independent monitoring mechanism required under article 33.2 of the Convention and has produced a number of reports reflecting different aspects of the level of protection of the rights of persons with disabilities.

Following ratification, and in accordance with the rights-based approach of the Convention, the definition of persons with disabilities in Georgian law was changed to one based on a social, rather than medical, model. Then in 2015 the Civil Code of Georgia and a further 67 respective laws were amended¹⁵², and a significant reform of the system in relation to legal capacity enacted, introducing court-determined support for a “person with psychosocial needs”. Notwithstanding these amendments, as the Government acknowledged in its 2018 report to the UN Committee on the Rights

¹⁵¹ See, for example, John Wadham: Recommendations for the reorganization of the Coordination Council on the Rights of Persons with Disabilities, 2016, at p. 4. Available at: <http://myrights.gov.ge/uploads/files/docs/8873ImplementationandMonitoringoftheNationalHRSandAP.Eng.pdf>.

¹⁵² See UN Committee of the Rights of Persons with Disabilities, Initial report submitted by Georgia under Article 35 of the Convention, due in 2016, 29 November 2018, CRPD/C/GEO/1, p. 12.

of Persons with Disabilities¹⁵³, Georgian legislation still needs to be thoroughly reviewed as to its compatibility with the Convention, in particular as regards the notion of “reasonable accommodation”.

A new (March 2018) **constitutional article on the Right to Equality** (article 11) represents one significant step forward, as it stipulates a positive obligation on the part of the state to create special conditions for the realization of rights and interests of persons with disabilities. Furthermore, through the inter-agency working group coordinated by the Human Rights Secretariat in the Government Administration and involving state and non-state actors¹⁵⁴, the Ministry of Justice undertook the drafting of a new law on the Rights of Persons with Disabilities, which is expected to follow Convention standards. It is to be hoped that a new draft law that will enjoy the active support of the community, will soon be put before Parliament, as many agree that the current law, dating back to 1995, is no longer fit for purpose. In parallel, the preparation of a joint package of amendments aimed at harmonizing national legislation with the standards set by the Convention is also planned. The Government reported to the UN in 2019 that the process of ratification of the Optional Protocol to the CRPD, which it signed in 2009, has been initiated,¹⁵⁵ which would allow individuals to bring complaints about the violation of their rights under the Convention.

The Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs drafted a model of how to assess persons with disabilities. To date, **records** have been held on children with severe or moderate disabilities on the basis of the family’s application for cash benefits. No records are kept of those with mild disabilities, nor is there a database indicating types of disability. It was pointed out that in order that future strategies and plans can be tailored to meet their needs, disaggregated statistical data needs to be collected on persons with disabilities in Georgia. Work on a new system of assessment and assigning status to children and other persons with different disabilities has now been initiated on a pilot basis (in Adjara) but this, it is warned, will necessarily take time.

A Special Report by the Public Defender’s Office¹⁵⁶, following monitoring visits carried out in March 2016 under the Office’s responsibilities in relation to the CRPD and as the National Preventive Mechanism, found that some **residential institutions** for persons with disabilities were still not equipped to deliver needs-based services to their residents, lacked adequate professional staff and too often violated the rights of the residents. The Public Defender also identified violence against disabled persons, especially sexual violence, as a serious problem, within public institutions and within the home, and one that is not adequately addressed. The recommendations of the Public Defender in these respects should be taken on board in future Action Plans.

The Government has continued to pursue a programme of **deinstitutionalization** of children with disabilities, replacing large institutions with smaller, family-type settings, encouraging fostering and providing support to ensure a child stays within the family. Some 40 institutions have been closed. The state also contributes to the development of rehabilitation services, day care centres, early intervention programs. The service is free for that part of the population, whose rating score is below the level officially defined based on socio-economic status. For others, services are available on co-financing basis.

¹⁵³ See UN Committee on the Rights of Persons with Disabilities, op. cit., at para. 18.

¹⁵⁴ See the Implementation Report of the Action Plan of the Government of Georgia on the Protection of Human Rights 2016-2017 (Short version), p. 26.

¹⁵⁵ United Nations Universal Periodic Review Mid Term Report 2019, page 10, section 117.5

¹⁵⁶ Public Defender of Georgia, Legal Situation of Persons with Disabilities in State Care Institutions, 2016

The **right to adequate housing** for persons with disabilities remains an important challenge. This is particularly critical for those leaving state care at the age of 18, without accommodation or employment. Work is under way on providing small community homes for the over 18s, although these are unable to cater for persons with severe or mental disabilities. Managed by non-governmental organizations, they put in place a development program for each individual, including work and/or study. It will be important to track the success of such initiatives and the numbers who are able to benefit from them.

In 2018-2019 legal amendments as well as infrastructural and technical solutions were introduced to ensure **voting rights** of persons with disabilities. Nonetheless, in her latest report, the Public Defender noted that for the 2018 presidential elections, despite efforts by the Central Electoral Commission, only 35% of polling stations could be deemed accessible.

The National Human Rights Action Plan for 2018-2020 provides for making operational councils working at **regional and local levels** on issues concerning persons with disabilities, and facilitating their effective functioning. As of 2018, councils had been set up in 50 self-government units, but according to the Public Defender in her 2018 Report, the effective functioning of consultative bodies and the participation of persons with disabilities or organisations representing them in the decision-making process locally, remain largely formalistic. A lack of information about programmes and services available continues to be particularly acute in the regions. Efforts need to be intensified in this respect.

Efforts to support **employment for persons with disabilities** have not yet met with substantial success. The Public Defender's most recent report on the implementation of state employment programmes intended for persons with disabilities¹⁵⁷ confirmed that despite the existence of a number of programmes (including the subsidising of 15% of salaries for up to four months), the right to work cannot be properly realized for persons with disabilities. The number of job seekers with disabilities involved in the programmes is far higher than the actual number of the employed. According to the Ministry of Labour, Health and Social Affairs, out of 3,535 persons with disabilities registered in the labour market management information system, in 2016-2017 only 161 were employed¹⁵⁸. Of 53,109 people employed by the public sector in 2015, 122 were people with a disability. Problems related to accessibility of physical environment, transport and working space – none of which have seen substantial improvement in recent years -, as well as the low level and quality of inclusive education, remain significant barriers for persons with disabilities, and economic profit received as a result of working is very low. A legislative framework is now needed to foster inclusion.

Amendments to the Law of Georgia on Secondary Education in 2018, making it a duty to create conditions for **inclusive education**, and giving to special educators the status of teacher, were a welcome development. The situation with regard to preschools is not so, with serious problems of accessibility,¹⁵⁹ shortage of education specialists and social stigma,¹⁶⁰ which the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs readily acknowledges, especially in the regions. The field of mental health care remains a serious challenge. The increase in the budget allocated for the state programme in this area¹⁶¹ is most welcome and will hopefully contribute to some noticeable improvements.

¹⁵⁷ <http://www.ombudsman.ge/eng/190308061623angarishebi/monitoring-report-on-state-employment-programs-for-persons-with-disabilities>

¹⁵⁸ <http://www.ombudsman.ge/res/docs/2019041016375173305.pdf>

¹⁵⁹ The Report of the Public Defender of Georgia, 2018, p. 296.

¹⁶⁰ See UNICEF Study on quality of early childhood education and care in Georgia, 2018, p. 7.

¹⁶¹ The programme budget for 2019 is GEL 24,000.0, in 2018 -GEL 20,550.7; in 2017 – GEL 15,803.9.

Still more needs to be done to challenge **public perceptions** of people with disabilities. A UNICEF-supported national campaign launched in January 2017, led by children and young adults with disabilities, aimed to raise awareness and understanding of disability in order to combat the widespread stigmatization that persists. According to a survey commissioned by UNICEF in 2017¹⁶², 28.3 per cent of the general population stigmatized disability in some way, a significant drop from the 41 per cent figure in 2015. Non-governmental organizations of persons with disabilities could usefully monitor the media and public statements by leading political figures, which are of critical importance in shaping perceptions. Effective implementation of the Anti-Discrimination Law is another way to tackle this.

15. Protection of the rights of Internally displaced persons (IDPs) and of people living near the dividing lines of occupied territories.

The National Strategy aims at *improvements in the living conditions, social provisions and integration of IDPs and residents living near borders of occupied territories, and the application of all possible measures to return IDPs to their permanent places of residence.*

In 2018, there were over 282,485 IDPs registered in Georgia¹⁶³, and while negotiations to enable their return to their permanent place of residence continue, this number has continued to rise. Before IDPs can return, the priority for the Government remains the provision of durable housing and assistance to integration of IDPs into socio-economic life, and these aspects have been the main focus of successive National Action Plans.¹⁶⁴

Under a procedure adopted by the (then) Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia (MRA) in 2013, a number of programmes were set up aimed at providing **durable housing** for IDPs: rehabilitation of collective centres, rehabilitation of buildings in carcass condition, newly constructed buildings, purchase of individual houses in rural areas, or of flats in new constructions, monetary assistance for purchase of housing, granting of property title to IDPs for the living spaces in which they are currently living via privatization process, and a mortgage loans payment programme. The Study Commission on IDP Issues, which reviews and decides on applications, met 232 times between 2016 and 2017.¹⁶⁵ In 2016, 39% of IDPs were recorded as having been accorded durable housing solutions. In 2017 a special database of IDPs in need of a housing solution was established by the MRA and registered IDPs are given the opportunity of being sent updates via SMS and other electronic means.¹⁶⁶ Government agencies are committed to taking into account the special needs of IDPs with disabilities and according them priority in respect of housing solutions.¹⁶⁷

The number of IDPs is so considerable that, despite these programmes, and with donor funds possibly coming to an end, in 2015 almost half of IDPs still lived in collective centres, in very often wretched conditions. It was clear that priority needed to be given to the urgent relocation of IDPs still living in those centres. In her 2018 report, the Public Defender notes that from 2017, durable solutions for housing IDPs in Tbilisi were provided only for those whose temporary residence conditions were deteriorating rapidly, while others remain in need of long-term solutions. The Government reports

¹⁶² This report presents the results of the Welfare Monitoring Survey (WMS) conducted from July to August 2017.

¹⁶³ See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2018, p. 357.

¹⁶⁴ See, e.g., Government Action Plan on Human Rights (2018-2020), section 21.

¹⁶⁵ Progress Report of the Government of Georgia on implementation of the National Human Rights Strategy Action Plan for 2016-2017 years, p. 277.

¹⁶⁶ See Progress Report of the Government of Georgia, op. cit., p. 283.

¹⁶⁷ See Progress Report of the Government of Georgia, op. cit., p. 285.

that plans for 2019-2020 have been made in this light. The Public Defender recommends that more financial allocations are provided and housing allocation planned on the basis of an appropriate pre-assessment in order to ensure that the needs of all IDPs in urban and rural areas are progressively and aptly met.¹⁶⁸

Access to sources of **livelihood** has improved little for IDPs and government allowances remain their main source of income. An IDP Livelihood Strategy was adopted in February 2014, to provide an opportunity for IDPs and their host communities to fulfil their potential by gaining independence from the State, and Action Plans thereunder are updated annually. Informed by continuing consultations with stakeholders and beneficiaries, Action Plans typically aim to ensure better access of IDPs to the labour market, and include programmes of support towards employment, vocational training, agriculture and self-employment, accompanied by revisions of the legislative framework where appropriate. Responsibility for implementation of the Livelihood Action Plan is shouldered by a number of line ministries, with input from local authorities and non-governmental organisations, and is monitored by the Livelihood Inter-Ministerial Committee.

IDPs are not always informed adequately, or in a timely manner, of the choices available to them with respect to accommodation and the selection criteria pertaining thereto, or to the Livelihood Support programmes. It would be important to assess how far implementation of the Communication Strategy and Action Plan of the Ministry has gone towards resolving such problems. In February 2017 an Action Plan was adopted for the 2017-2018 State Strategy for IDPs, which includes elements of participation of IDPs in decision-making on the issues which concern social and other government programmes directed towards them.¹⁶⁹ Again, it would be useful to reflect on progress made in this respect.

Women IDPs are seen as especially vulnerable and for this reason, a Gender Equality Strategy and Action Plan was adopted in October 2016, intended to support Government efforts inter alia to combat violence against women and domestic violence and implementation of Security Council resolution 1325. Still, concrete actions needed to be specified in order to translate provisions in the Strategy into tangible results. In addition, future reports under the Action Plan should also indicate how gender equality has been mainstreamed into the MRA Livelihood policy document, procedure and guidelines addressing the social and economic needs of IDPs.

On a follow-up visit in October 2016, the UN Special Rapporteur on the Human Rights of Displaced Persons commended the Georgian Government for its on-going commitment and the considerable progress it has made to address the situation of IDPs. At the same time, he highlighted a number of issues that still need to be addressed. Chief among these, he stressed that while important first steps had been taken on this path, there was a need to intensify efforts to move to a **needs-based approach** and away from the compensation regime and assistance based solely on IDP status. During 2016 and 2017 a concept for such reform was elaborated with the engagement of various government agencies, non-state actors and experts. The concept was finalized by the Ministry and needs to be reviewed and adopted by the Government with an effective implementation strategy.¹⁷⁰ Formal launch of the reform will depend on the allocation of appropriate human and financial resources, along with an information campaign for IDPs planned to minimize misinterpretation of the concept and clarifying its consequences.

¹⁶⁸ See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2018, pp. 319-320.

¹⁶⁹ See Progress Report of the Government of Georgia on implementation of the National Human Rights Strategy Action Plan for 2016-2017 years, p. 285.

¹⁷⁰ See Progress Report of the Government of Georgi, op cit., p. 290.

As political deadlock on **Abkhazia and South Ossetia** continued, concern as to the living conditions and socio-economic status of those living near the dividing line has presented undiminishing challenges. A programme of supplying gas, electricity, irrigation wells and drinking water reservoirs and improving roads was conducted in 2015. Between 2016 and 2017, 62 villages and 13,913 beneficiaries were provided with natural gas and additional works were carried out to provide clean water.¹⁷¹ However, the installation of barbed wire fences across people's lands, in particular in the Tskhinvali Region/South Ossetia, has hampered access to parts of their land and their ability to continue agricultural activity. The issue of land and property ownership in rural villages near the dividing line is particularly problematic. Between 2016 and 2017, the National Agency of State Property carried out an inventory in villages near the border line, with the goal of creating a unified, accurate, transparent and accessible information database of immovable property in the possession of the Agency. Since this initiative, a considerable number of agricultural lands in the area were registered.¹⁷² This process should continue in future, as well as that of assistance with damaged homes.

In addition to the threats posed by continuing military operations, instances of persons being arrested for crossing the dividing line have persisted, even in places where it is difficult to see where the line is.¹⁷³ Such movements can be for such simple reasons as recovering wandering cattle (one of the main sources of income in the area) or visiting family graves. Particularly troubling have been reports of women and children detained and released late at night to find their way back alone, and of fines being extorted. Inhabitants of the area near the dividing line with South Ossetia have said they are less subject to capture by Russian and Ossetian border guards when the Georgian police conduct patrols in the area. Calls have been made for more regular patrols and surveillance, and police posts to be established in such territories, in order to deter illegal detentions.¹⁷⁴

Georgia continues its participation in the Incident Prevention and Response Mechanism (IPRM), as the EUMM continues to monitor the situation. Through the "Geneva talks" (Geneva International Discussions and IPRM), the Government constantly raises issues related physical security, socio-economic challenges faced by the people living near the dividing lines and calls on all parties to ensure the protection of the fundamental rights of those concerned as provided by international standards.¹⁷⁵

In March 2017, the Abkhazian de facto authorities closed all checkpoints except one, resulting in persons residing in adjacent areas facing even more serious problems in accessing their basic rights to health, education and freedom of movement.

Education is a major challenge in the affected areas as several schools are located on the other side of the dividing line and since 2005, teaching there has been restricted to the Russian language. Through a special programme of the Ministry of Education, schools and kindergartens were opened and over 13 schools began to offer teaching in Abkhaz and Ossetian languages. A special commission created by the Government on issues related to people living near the dividing line decided to ensure continued funding for the education of students from these areas. Following decisions of the Commission between 2015 and 2017, 2,893 students were in receipt of scholarships to study at various universities.¹⁷⁶

¹⁷¹ See Progress Report of the Government of Georgia on implementation of the National Human Rights Strategy Action Plan for 2016-2017 years (Executive Summary in English), p. 35.

¹⁷² Ibid.

¹⁷³ A number of examples are given in the Human Rights Centre (HRIDC) report, Zone of Barbed Wires, Mass Human Rights Violations along the Dividing Lines of Abkhazia and South Ossetia, 2019.

¹⁷⁴ HRIDC, op. cit., p.21.

¹⁷⁵ See Progress Report of the Government of Georgia on implementation of the National Human Rights Strategy Action Plan for 2016-2017 years, p. 315.

¹⁷⁶ See Progress Report of the Government of Georgia, op. cit., pp. 321-322.

Health care has been a further major issue. Ambulance and paediatric services have been developed near settlements and a new hospital built on the dividing line with Abkhazia. Special services are available for the treatment of Hepatitis C, HIV and tuberculosis. A considerable number of people in these areas now take advantage of the free medical services.

16. Introduction of higher standards of protection for the right to property.

Given the large-scale violation of property and land rights that had taken place under former governments,¹⁷⁷ the National Human Rights Strategy aimed to *improve national legislation and institutional mechanisms for the effective protection of property rights*. Special attention was given to the *observance of international best standards in cases of expropriation of land by the State for reasons of public necessity* and to *ensuring the just resolution of ownership registration in relation to existing plots of privately-owned land*. In the spirit of the Strategy, both the 2014-2016 and the 2018-2020 Action Plans focus attention on resolving matters related to land registration.¹⁷⁸ Undoubtedly, improvement of cadastral data and effective, non-discriminatory state registration of privately-owned land - agricultural or not, in urban centres or in rural areas, including near the dividing lines - is an essential element in the protection of property rights in Georgia.

Basic land registration legislation was in force at the time that the National Strategy and related Action Plans were drawn up, but in order to further facilitate the process and reinforce legal guarantees, a special **Law of Georgia on the Improvement of Cadastral Data and Procedure for Systematic and Sporadic Registration of Rights of Plots of Land** within the Framework of the State Project was developed and adopted in June 2016. This law introduced a special, simplified procedure for individuals, as well as a pilot project involving the pro-active registration of lands in 12 pre-defined settlements in the country. The special law – which is in operation until 1 January 2020 – provides for: the legalization of deficient registration documents; unhindered registration in the event of inconsistency in a person's identification data; registration of ownership rights on the basis of an agreement made without the required form; mediation as an alternative means of resolving disputes; completion of registration work without service fees; certification of survey activities, and so on.

While the special law was generally assessed by local civil society actors at the time of its adoption as a step forward, some possible challenges in implementation were identified. These included concerns as to the lack of resources available for the intense work involved as well as fears as to overlapping claims, and a more systemic registration of land parcels was called for.¹⁷⁹ By January 2020, when the operation of the special law is due to expire, it will be advisable to make a thorough assessment of the efficacy of the law and whether it might be in the public interest to extend its application or make other legislative changes.¹⁸⁰

¹⁷⁷ See, for example, Georgia in Transition, Report on the human rights dimension: background, steps taken and remaining challenges, Assessment and recommendations by Thomas Hammarberg in his capacity as EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia, September 2013, section 7.7, p.40, available at: http://gov.ge/files/38298_38298_595238_georgia_in_transition-hammarberg1.pdf.

¹⁷⁸ See Action Plan of the Government of Georgia on the Protection of Human Rights 2014-2016, Section 21; Action Plan of the Government of Georgia on the Protection of Human Rights 2018-2020, Section 10.

¹⁷⁹ See Transparency International – Georgia, The Draft Law on Land Registration is not Going to Ensure the Implementation of a Meaningful Land Reform, 22 June 2016, available at: <https://www.transparency.ge/en/blog/draft-law-land-registration-not-going-ensure-implementation-meaningful-land-reform>

¹⁸⁰ The Public Registry website indicates that up to 700,000 land registration applications had been submitted in the years 2016-2019. https://napr.gov.ge/p/1871?fbclid=IwAR07uN401iLV0xQv28s6jISEo_xvM7DzW12eLQAXd-WyfvTmoQm9SaYdvcM.

Government reports on implementation of Human Rights Action Plans provide detailed information on activities carried out by state agencies with regard to improving cadastral data and registration of land plots before and after the special law was adopted. According to the 2015 report, in 2014 the Public Registry transferred into electronic format paper-based documents for up to 6,508 land plots, with another 528 for mountainous regions. Similar work was carried out for 6,966 land plots and a further 10,234 for mountainous regions in 2015.¹⁸¹ This process has continued in subsequent years. In addition, the Government carried out pilot projects in a number of mountainous regions and settlements near Abkhazia and South Ossetia.¹⁸² It is clear that considerable efforts have been taken to date and further effective implementation of the 2018-2020 Action Plan activities in this regard is encouraged in order to complete the process as far as possible.

One problematic issue that arose during the course of implementation of the National Human Right Strategy concerned **ownership of agricultural land by non-Georgian citizens**. The constitutionality of the restriction on non-Georgian citizens having property rights to agricultural land was disputed several times in the Constitutional Court. The Court first in 2012¹⁸³ declared provisions of the law prohibiting *permanent* ownership of agricultural land by non-citizens unconstitutional. In later judgments of 2014¹⁸⁴ and 2018¹⁸⁵ the Court further declared unconstitutional and void the prohibition of *temporary* ownership of agricultural land by non-citizens. In the constitutional reforms of 2017-2018 a new article (Article 19) on Property Rights was introduced and came into force on 16 December 2018, prohibiting the ownership of agricultural land by foreign citizens, except in special cases decided by a two-thirds majority in Parliament.¹⁸⁶ Following this, on 25 June 25 2019, a special Organic Law On Property Rights on Agricultural Land was adopted, providing the possibility for a non-Georgian citizen to own agricultural land if this is received through inheritance or is part of an investment project agreed to by the Government of Georgia. It will be important to ensure implementation of the newly adopted constitutional provisions and the Organic Law adheres to international standards, without discrimination and having due regard to the public interest.

As envisaged by the Human Rights Strategy, the Government in 2017 drafted changes in the legislation regarding **eminent domain**. Introduced in Parliament in April 2017,¹⁸⁷ the draft provided *inter alia*: a complete list of instances in which 'necessary public purpose' permitting the taking of property exists; rules for mutually agreed and involuntary relocation (the latter case requiring an order of the court); the agency implementing the work and/or project necessitating the expropriation registers the property ownership and gives time to the former owner to vacate the premises; the right of owners to litigate the fairness of compensation in accordance with the Civil Code of Georgia¹⁸⁸. The draft was assessed positively by civil society representatives insofar as it aimed to simplify procedures for eminent domain measures. At the same time, caution was voiced as regards ensuring a fair balance

¹⁸¹ See Progress Report (mid-term) on Implementation of Government Action Plan on the Protection of Human Rights for 2014-2016, p.88.

¹⁸² Ibid.

¹⁸³ *Citizen of Kingdom of Denmark Heike Cronquist v. Parliament of Georgia*

¹⁸⁴ See Official Statement of the Constitutional Court of Georgia, 9 July 2014, available at <https://www.constcourt.ge/en/news/statement-1413.page>; See also Transparency International – Georgia, The new moratorium on the sale of agricultural land to foreign citizens is also unconstitutional, 28 June 2017, available at: <https://www.transparency.ge/en/blog/new-moratorium-sale-agricultural-land-foreign-citizens-also-unconstitutional>.

¹⁸⁵ See Official Statement of the Constitutional Court of Georgia, 7 December 2018, available at <http://www.constcourt.ge/en/news/decision-of-the-constitutional-court-of-georgia-on-the-cases-n1267-and-n1268-filed-by-the-citizens-of-the-hellenic-republic.page>

¹⁸⁶ See also the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2018, p. 212.

¹⁸⁷ See draft legislative initiative and associated materials at: <https://info.parliament.ge/#law-drafting/13732>

¹⁸⁸ The Public Defender has also called for the effective compensation of citizens for property they have lost and that this should be taken into account as part of the state internal debt. See Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2018, at p. 212.

between public and private interests (*inter alia* the speedy and effective consideration of disputes on fair compensation, and clarification of rules on unusable property after expropriation).¹⁸⁹ Although the draft legislative changes were adopted in first hearing (on 1 June 2017), no second or third hearing has followed and legislative changes have not become law.¹⁹⁰ Future action plans should re-visit this matter and the government should proceed with finalization of the legislative changes regarding eminent domain to ensure strategic objective of improving national legislation vis a vis international best practices.

The Public Defender, who continually monitors the effective protection of property rights, has additionally highlighted the need to revise the Criminal Procedure Code to ensure the effective protection of the property rights and to introduce stricter procedures for obtaining **building permits** that will protect the rights of neighbours.¹⁹¹ These matters require further attention – in terms of policy, practice and possible legislative reform - and will be important to be included in future human rights action plans.

17. Ensure compliance of national labour legislation with international guarantees of the right to work.

With regard to the right to work, the National Strategy envisages *full compliance of existing labour legislation with international standards, effective implementation of that legislation in practice and creation of special institutional mechanisms for the protection of labour rights.*

The **new Labour Code of 2013** introduced substantial changes in terms of labour regulation, including in relation to grounds for dismissal, and the right of appeal against unfair dismissal, the right to organize and collective bargaining. However, the amended Code failed to address a number of significant issues – for example, in respect of minimum wage, parental leave and pay differentials and in relation to the application of certain other provisions. The commitment to ratify relevant international documents in this area has been enshrined in the EU-Georgia Association Agreement since September 2014.

A package of draft **amendments** was submitted to Parliament in December 2017, addressing issues of discrimination, harassment and sexual harassment, with the aim of ensuring that the principle of equal treatment is also applied in the workplace. These amendments, which included a definition of what constitutes **sexual harassment** at work and afforded protection to a person filing a complaint of discrimination, were adopted and introduced in the Labour Code of Georgia (article 2) in February and May 2019. Their application in practice will be closely followed. It is to be hoped that in the coming period, the Tripartite Social Partnership Commission (TSPC)¹⁹² will focus on further draft legislative amendments securing other related labour rights.

The Public Defender and others had identified the situation of **civil servants** as being a source of particular concern. This was addressed when significant steps were taken in the framework of the

¹⁸⁹ See Transparency International – Georgia, Bill on Eminent Domain Fails to Strike Balance Between Public and Private Interests, 8 June 2017, available at: <https://www.transparency.ge/en/blog/bill-eminant-domain-fails-strike-balance-between-public-and-private-interests>.

¹⁹⁰ In 2018 the law was amended in accordance with constitutional changes; these changes concerned only terminology and other technical matters. See amendments available at: <https://info.parliament.ge/#law-drafting/15617>

¹⁹¹ See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2018, p. 213.

¹⁹² Led by the Ministry of IDPs from the Occupied Territories, Labour, Health and Social Affairs, the Tripartite Social Partnership Commission (TSPC) is made up of representatives of the Government of Georgia, employers' and employees' organizations.

Civil Service Reform, and the new Law of Georgia on Public Service entered into force on 1 July 2017, determining the status of a public servant, recruitment and dismissal procedures and a performance-based evaluation system. In December 2017, the Parliament of Georgia adopted the Law of Georgia "On Labour Remuneration in Public Institutions" which established a transparent and foreseeable remuneration system in the public sector. Protections provided by the general Labour Code also apply to public servants.

A major source of worry has been the lack of regulations and effective supervision mechanism in respect of **safety in the workplace**, especially the construction and mining industries, where injuries and deaths have for many years been all too common. In response, the Labour Conditions Inspection Department had been created in 2015 within the Ministry of Labour, Health and Social Affairs¹⁹³. However, the department was only able to carry out inspections with the prior approval of the employer and its authority was limited to issuing non-binding recommendations. The numbers of people injured and killed at work did not diminish. According to information from the Ministry of Internal Affairs, published in the Public Defender's 2018 report, accidents occurring in industries in 2018 resulted in the deaths of 59 and injury of 199 individuals respectively,¹⁹⁴ a significant increase over the previous year.¹⁹⁵ A report by the international NGO Human Rights Watch in August 2019 documented how the safety of workers in Georgia's mines in particular remains at serious risk due to insufficient government regulation and resulting mining practices that prioritize production quotas and put workers' safety in jeopardy.¹⁹⁶

In 2018 the **Labour Conditions Inspecting Department** inspected occupational safety compliance at 87 enterprises with hazardous, strenuous, and injurious jobs, and within the Annual Inspection Program a further 224 facilities belonging to 109 companies. The most significant violations found were lack of risk assessment, failure to use personal protection equipment, failure to observe preventive fire-fighting regulations, lack of emergency plans, failure to report injuries and provision of primary medical care.¹⁹⁷

In 2018 224 criminal investigations were launched into casualties in the workplace, a number exceeding significantly that for the 2017 reporting period (128 incidents).¹⁹⁸ Of these 224 investigations, criminal prosecutions were launched in only 19 cases. Courts have heard 35 cases relating to industrial accidents occurring during 2018 and only in two cases was a prison sentence imposed for those found guilty. Conviction sentences were delivered in 7 more cases following the main hearing.¹⁹⁹ Approximately 69% of the cases ended without a substantive review after a plea bargain agreement was reached.²⁰⁰

On 7 March 2018, the Parliament of Georgia passed the **Law of Georgia On Occupational Safety**, defining the basic requirements and preventive measures pertaining to occupational safety for employees and other persons, and aiming to ensure the timely detection and prevention of

¹⁹³ Now Ministry of IDPs from the Occupied Territories, Labour, Health and Social Affairs.

¹⁹⁴ The Report of the Public Defender of Georgia On The Situation of Protection of Human Rights and Freedoms in Georgia (2018), sub-chapter 15.1 - Safe Working Environment.

¹⁹⁵ 47 individuals died and 106 individuals were injured in 2017. See the Report of the Public Defender on the Situation of Protection of Human Rights and Freedoms in Georgia (2017), p. 194.

¹⁹⁶ "No Year without Deaths: A Decade of Deregulation Puts Georgian Miners at Risk," Human Rights Watch, August 2019.

¹⁹⁷ <https://www.moh.gov.ge/uploads/files/2019/Failebi/27.06.2019-13.pdf>

¹⁹⁸ See the Report of the Public Defender on the Protection of Human Rights and Fundamental Freedoms in Georgia (2017); p.198

¹⁹⁹ According to the report of the Public Defender, detention, as a form of the sanction, has been imposed in three cases, which were counted in the conditional sentence (in one case along with deprivation of the right to occupy a position, and with a monetary sanction in another case).

²⁰⁰ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia (2017), p. 198.

occupational illnesses and accidents in the workplace. The Law was applicable only to hazardous, strenuous, injurious, and dangerous jobs; the list of such jobs was determined by the Government of Georgia, in consultation with the social partners and approved by Government Decree No. 381. In addition, several bylaws were approved on the use of a selective control system during verification of safety: scope and implementation rules, investigation procedures, reporting applicable to workplace accidents and occupational illnesses and administrative offences statement forms. The Law came fully into force in January 2019.

In February 2019 the law was extended when the Georgian Parliament approved a **new Organic Law on Occupational Safety** broadening the mandate of the Labour Conditions Inspection Department to cover all sectors of economic activity and allowing it to enter company premises day or night with or without notification or consent of the employer. This law came into effect on 1 September 2019, when the Inspection Department became a special entity, although still located within the Ministry. The current team of 40 inspectors will increase to 100 in 2020; a budget has already been adopted for the coming period. Meetings are being organised with businesses and local government to inform them of the changes, information spots are being launched on TV, social media and billboards and a special web site is being created.

The Labour Conditions Inspecting Department continues to be responsible for monitoring implementation of other labour-related legislation, including the Anti-Discrimination Law as it applies in the workplace, and prevention of forced labour and exploitation. Supervision is carried out through planned and ad hoc inspections. When infractions are found, the company is issued with a warning and given a certain time to make changes; if this is not forthcoming, they can be closed down. Over 700 companies were inspected in this way thus far in 2019. Still, it is recognised that the system could be more effective, and work is underway aimed at creating a stronger, fully independent inspection system.

On 2 November 2017, Georgia ratified ILO Convention No. 144 concerning Tripartite Consultations to Promote the Implementation of International Labour Standards. The **Tripartite Social Partnership Commission** in Georgia represents a valuable opportunity for dialogue between employers, employees and Government. In the context of its Strategic Plan for 2018-20, it will be important for the TSPC to give due consideration to gradual approximation between Georgian legislation on labour safety and EU laws as well as ratification/acceptance of corresponding Conventions of the ILO and articles/paragraphs in the European Social Charter. Georgia should also prepare and submit a report to the Committee on Economic, Social and Cultural Rights, the last discussion with the Committee having taken place in 2002. With assistance from the ILO, Parliament produced a road map to meet its commitments in the field of labour, which was presented at the high-level conference "Agenda for Change" on 9 November 2017.²⁰¹

19. Ensuring the rights of migrants and those in need of shelter.

The National Strategy aims to *ensure the legal and social protection of migrants through guaranteeing the right to work, ensuring protection from discrimination and trafficking, as well as improvement migrant services and reintegration programmes; and to protect the rights guaranteed under the 1951 Geneva Convention in relation to the Status of Refugees.*

²⁰¹ https://www.ilo.org/labadmin/projects/WCMS_537483/lang--en/index.htm

As of December 2018, there were 1,382 refugees and humanitarian status holders in Georgia,²⁰² with a further 959 asylum seekers. In November 2015, there had been 1,273 refugees and humanitarian status holders and a further 1,449 asylum seekers.²⁰³ The legislative framework was amended to include asylum seekers as a category of persons who could qualify for a visa on humanitarian grounds. Considerable efforts were made in 2015 to reduce the backlog in the handling of asylum cases, with a contingency plan put in place to deal with any massive new influx of asylum seekers.

In December 2016 a new **Law on International Protection** was adopted. This came into effect on 1 February 2017, bringing the national legislation further into line with international standards, including a clear legal guarantee of *non-refoulement*.²⁰⁴ By way of follow-up, by-laws were adopted regarding asylum procedure and personal data collection (including fingerprints) of asylum seekers and other migrants, as well as rules for the accommodation of asylum-seekers and the provision of identity cards and other travel documents.²⁰⁵

In order to address the high number of rejections of asylum applications based on undisclosed security concerns, the refugee legislation was amended to oblige the State Security Agency to provide the Ministry of Internal Affairs²⁰⁶ with minimum information about the asylum seeker's potential threat to state security. The time limit for each court instance to deliver judgment was shortened to two months, while the deadline for appealing a negative decision was extended from 10 days to one month. At the same time, the overall time frame for the first instance administrative authority to issue a decision was extended to a maximum period of 21 months (under specified circumstances). The national system of free legal aid was also extended to asylum seekers as of January 2016 to ensure that the right to appeal against a negative decision could be effectively used. It remains to be seen whether these amendments, in both the short-term and the long-term, have in fact assisted in ensuring the rights of those seeking asylum.

In the period under review, the Public Defender indicates, out of 86% of refusals for asylum status, 32% have cited national security concerns.²⁰⁷ The Public Defender insists that individual considerations must be taken into account when considering applications and refusals reasoned in a way which would allow for a genuine appeal – rather than a formality. Monitoring of such cases by the Office of the Public Defender has indicated that, following cancellation of a refusal decision by the court, a second decision from the State Agency in the greatest number of cases is still a refusal of asylum. Further efforts need to be made to ensure that international standards are met in practice and applicants afforded an effective right of appeal.²⁰⁸

²⁰² See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2018, pp. 319-327. (Humanitarian status is granted to an alien or stateless person who does not qualify as a refugee but in respect of whom there are reasons to believe that upon return to the country of origin he/she will face a risk of suffering serious harm. State Commission on Migration Issues, Refugees and Asylum, http://migration.commission.ge/index.php?article_id=19&clang=1)xsz

²⁰³ UNHCR, Study on the Socio-Economic Situation of Refugees, Humanitarian Status Holder and Asylum-Seekers in Georgia, 2016, p. 5.

²⁰⁴ UN UPR Mid-Term Report – Georgia (2019), p. 30.

²⁰⁵ UN UPR Mid-Term Report – Georgia (2019), pp. 30-31. See, further, State Commission on Migration Issues, op. cit.

²⁰⁶ Following reform of the ministries in 2018, decisions on asylum, refugee status and other international humanitarian status are taken by the Ministry of Internal Affairs, while the Ministry of IDPs retains responsibility for support to these individuals, including social protection and health support and for facilitating their integration.

²⁰⁷ See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2018, pp. 319-329.

²⁰⁸ See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2018, pp. 319-329.; See also European Commission Joint Staff Working Document – Association Implementation Report on Georgia, January 30, 2019, SWD (2019) 16 Final, p.7.

Two areas that may need careful attention in the coming period are the conduct of border guards and their treatment of arriving migrants, and the mechanisms and procedures for monitoring the protection of the rights of persons placed in the **Temporary Accommodation Centre**. The inclusion in the Migration Action Plan 2016-17 of the latter, as well as human rights based approaches to victims of trafficking, is most welcome. The National Preventive Mechanism (NPM) periodically monitors the protection of human rights at the Temporary Accommodation Centre where migrants are held with restriction of their freedom of movement.²⁰⁹ Both the NPM and the European Committee for the Prevention of Torture CPT have referred to a number of challenges faced by migrants at the centre, including access to legal aid, proper access to healthcare, clear legal regulations regarding search and other physical checks of migrants, a proper system of activities in which migrants can be engaged while their freedom of movement is restricted, and more.²¹⁰ A further exists regarding the issuing of resident permits to migrants: decisions on refusal of the permit require better reasoning to avoid possible discriminatory treatment and the ability of the individual to appeal the decision through the court system.²¹¹

The Government's 2016-2020 **Migration Strategy** has set ambitious objectives in respect of integrating foreign citizens, including intensive programmes in Georgian language and culture, vocational and professional training, and so on. A considerable number of refugees have indicated a wish to remain in Georgia and a special educational programme has been developed for refugees to help them to access the naturalisation procedure in practice.

The protection of persons subject to forced displacement as a result of natural or technological disasters – referred to as “**eco-migrants**” – has long been a source of concern. While there is still no legal definition of such persons, NGOs estimate that up to 35,000 people within Georgia are affected. In 2015, the (then) Ministry of Refugees and Accommodation created a department to deal with the issue and began to compile an eco-migrants database. In 2018, the Public Defender noted that the number of eco-migrants is continuing to increase annually and 5,457 families were now registered in this database.²¹²

In November 2015 the Council of Europe Commissioner for Human Rights visited a semi-formal settlement on the outskirts of Batumi, reportedly inhabited by 90 families who moved there from the high mountainous areas of Adjara because of poverty, difficult living conditions and natural disasters. He described substandard conditions with no running water or sewage and lack of adequate health care, social assistance, and children's access to education.

Despite recommendations from national and international organisations, including UNHCR, eco-migrants do not benefit from laws protecting IDPs and, due to budgetary constraints, there are still families needing accommodation in a safer place and access to social assistance. The Georgian Government has, however, begun transfer of ownership of houses provided to eco-migrant families following their relocation from the regions affected by natural disasters.²¹³ However, as the Public Defender noted in her 2018 report, a large number of eco-migrants who were given housing between

²⁰⁹ See 2018 Report of the National Preventive Mechanism (NPM), Office of the Public Defender of Georgia.

²¹⁰ See 2018 Report of the National Preventive Mechanism (NPM), Office of the Public Defender of Georgia, p. 87; See also See Report to the Georgian Government on the Visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, p. 22.

²¹¹ See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2018, pp. 319-331.

²¹² See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2018, pp. 319-324. See also Progress Report of the Government of Georgia on implementation of the National Human Rights Strategy Action Plan for 2016-2017 years, p. 311.; and UN UPR Mid-Term Report – Georgia (2019), p.154.

²¹³ See Progress Report of the Government of Georgia on implementation of the National Human Rights Strategy Action Plan for 2016-2017 years, p. 311. See also UN UPR Mid-Term Report – Georgia (2019), p.154.

2004 and 2012 are still awaiting the transfer of ownership to them.²¹⁴ In addition, as natural disasters are increasingly frequent and eco-migration a continually increasing phenomenon, the Public Defender has called on the Government to allocate more resources in this regard and elaborate more robust regulatory mechanism to protect the legal interests of eco-migrants.²¹⁵ Discussions as to whether to draft a new law to afford protection to eco-migrants or have them included under existing legislation should be speeded up and completed as soon as possible.

A series of procedures developed following adoption of the Law on **Repatriation** of Persons forcefully sent into exile from the Soviet Socialist Republic of Georgia by the former USSR in the 1940s initially did little to encourage their return. In June 2013, procedures were simplified and conditions, such as the obligatory use of Georgian or English, were relaxed. In September 2014 a State Strategy was adopted and an Action Plan drawn up. By March 2017, 1,988 had been granted repatriate status. The number granted citizenship – which involves renouncing current citizenship – is 494, all former citizens of Azerbaijan. Currently, 5,841 applications, covering 8,900 persons (3,059 of whom are minors) have been submitted, the majority from Azerbaijan. In June 2017, the co-rapporteurs of the Council of Europe Parliamentary Assembly's (PACE) welcomed the progress achieved and the efforts made to settle the issue of the repatriation of the exiled Meskhetian population. Although applications are still pending, the PACE representatives acknowledged that certain practical barriers hindering *de facto* repatriation lie beyond the Georgian authorities' competence, not least complications in rescinding Azeri citizenship. In these circumstances, in their report, they did not consider it reasonable to wait for each successful applicant to be repatriated to Georgia before the Assembly could consider that Georgia had fully honoured this accession commitment.²¹⁶

The prevention and effective identification of victims of **trafficking** remains a key priority for the Government of Georgia. An Inter-Agency Council on Combatting Trafficking in Human Beings, chaired by the Minister of Justice, and consisting of relevant governmental agencies, local NGOs and international organizations, is the main policy development and coordinating body. Among those centrally involved in the issues are the Ministry of IDPs from the Occupied Territories, Labour, Health and Social Affairs, and its Labour Conditions Inspection Department, which has the power to conduct unannounced inspections of workplaces; and the Human Rights Protection and Quality Monitoring Department established within the Ministry of Internal Affairs, which monitors ongoing investigations, inter alia, on trafficking in human beings.

The country cooperates actively with the International Organization of Migration (IOM) to ensure the secure and voluntary return of victims of trafficking to their homelands. In 2016-2017 with IOM's support, five victims (three Uzbeks and two Ukrainians) were so returned. The state agencies are also actively engaged in organizing thematic information meetings and awareness-raising campaigns, including in schools.

Since March 2017, an advice hotline, supported by the State Fund for the Protection and Assistance of (Statutory) Victims of Human Trafficking (ATIP Fund), has been available in seven foreign languages on the issues of human trafficking and sexual abuse. Also provided under the ATIP Fund are five State shelters and five crisis centres, which are available for victims, statutory or alleged victims of

²¹⁴ See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2018, pp. 319-324. Just under 1,800 of the 5,457 families on the database had been provided with shelter/housing by international organizations and the Georgian Government, with the remainder still requiring a durable solution.

²¹⁵ See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2018, pp. 319-324.

²¹⁶ See Council of Europe (Monitoring Committee), Honouring of obligations and commitments by Georgia, Information note by the co-rapporteurs on their fact-finding visit to Tbilisi (28 to 30 March 2017), AS/Mon(2017) 16 June 2017, available at: <http://website-pace.net/documents/19887/3136217/AS-MON-2017-16-EN.pdf>; see also UN UPR Mid-Term Report – Georgia (2019), p.203.

trafficking, as well as violence against women and domestic violence. More than 95% of victims are women and children. A memorandum between the Legal Aid Service and the ATIP Fund regulates the referral and provision of legal aid to victims, and victim witness coordinators are provided from the initial stage of investigations through to the end of court proceedings.

In 2018 a total of 21 criminal investigations on grounds of human trafficking were initiated, 10 of them involving sex trafficking, seven forced labour and two concerning both. Prosecutions were brought against five defendants, three for sex trafficking and two for forced labour. The Courts convicted four sex traffickers, handing down sentences from six years and six months to 15 years of imprisonment.

While in 2016 Georgia moved to “Tier 1” in the rankings of the US State Department²¹⁷ for its “serious and sustained efforts” to fight against human trafficking, and the same status was maintained in 2017-2019, the report considered that identification efforts for forced labour and street children remained inadequate, the Interagency Council continued to lack transparency, the number of traffickers investigated, prosecuted, and convicted was relatively low and fewer victims identified. The latter two aspects had also been raised by the (Council of Europe) Group of Experts on Action against Trafficking in Human Beings (GRETA)²¹⁸ in its 2016 consideration of the second implementation report of Georgia: while giving a largely positive assessment of the measures taken by the Georgian Government, the Committee of the Parties to the Convention elaborated a set of recommendations for ensuring, inter alia, the timely identification of victims of trafficking; improving the identification of and assistance to child victims of trafficking; facilitating access to compensation for victims; and ensuring that trafficking cases are investigated proactively, prosecuted successfully and result in effective, proportionate and dissuasive convictions.

20. Strengthening domestic legal guarantees on environmental human rights.

The priority tasks identified by the National Human Rights Strategy in this area, and accordingly reflected in the 2016-2018 and 2018-2020 National Human Rights Action Plans, take their lead from international law and best standards, backed up by the 2015 UN Sustainable Development Goals (SDG).²¹⁹ These tasks include providing *greater access to information on international standards of environmental protection; improving state mechanisms so as to ensure greater transparency and public involvement in decision-making processes relating to environmental protection; guaranteeing that domestic legislation conforms with international norms, and providing access to justice on these issues; and raising public awareness on environmental issues.* In 2017, the provision in the Constitution of Georgia in relation to the right to environmental protection was updated, setting down the right of everyone to live in a healthy environment, to receive full information about the state of the environment in a timely manner and to participate in the adoption of decisions related to the environment.²²⁰

Access to environmental information is a critical element in environmental rights. In 2013 the Environmental Information and Education Center had been established as a Legal Entity of Public Law (LEPL).²²¹ The centre created special online platforms²²² providing information about state and non-state organizations working in the area of the environment and enabling the public to receive pro-

²¹⁷ <https://www.state.gov/reports/2019-trafficking-in-persons-report/>

²¹⁸ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680654cd9>

²¹⁹ Available at: <https://sustainabledevelopment.un.org/sdgs>

²²⁰ See Article 29 of the Constitution of Georgia, available at:

<https://matsne.gov.ge/en/document/view/30346?publication=35>

²²¹ Ibid.

²²² See Environmental Information and Knowledge Management System platform, available at: <https://eims.eiec.gov.ge/>; Also see web-platform of the Center, available at: <http://eiec.gov.ge/Home.aspx>; see also OSGF, op. cit., p. 41.

actively important information about environmental legislation, policy and practice. In 2016, legislative changes were made to the Law on Environmental Protection, followed in March 2017 by a Decree of the Ministry of Environment and Natural Resources, regarding the pro-active publication of and access to environmental information.²²³ Special training courses were conducted for public officials engaged in pro-active publication or issuing responses on Freedom of Information requests.²²⁴

Improvement of public and expert participation in the process of environmental policy development and decision-making was also addressed during the reporting period. A new Environmental Assessment Code, elaborated in line with relevant EU directives, was adopted and entered into force on 1 January 2018. The Code established procedures for Environmental Impact Assessment (EIA) processes for certain public and private projects that entail significant environmental and human health risks.²²⁵

As a follow-up to the adoption of the Code, the **Strategic Environmental Assessment** (SIA) was enforced from 1 July 2018. Strategies on tourism, agriculture, road infrastructure, business development and sustainable development of mountainous areas were for the first time submitted for screening under this SIA.²²⁶ The government re-introduced public participation in the environmental impact assessment with the adoption of relevant bylaws.²²⁷ In its Progress Report on Implementation of the National Human Rights Strategy Action Plan for 2016-2017, the government reported that, together with relevant state agencies, it had been conducting a series of public discussions of draft regulations and assessment reports, on topics ranging from regulation of fishing and of waste management to effective enforcement of the Aarhus Convention.²²⁸ In 2017 the Environment Ministry conducted up to 115 public discussions regarding legislative changes in the area.²²⁹

Yet it appears that in practice, public participation is not always working as it should, with the Public Defender and environmental groups, such as Green Alternative, pointing to cases of obstruction. A key instance in this respect concerned the failure to consult the public on the restructuring of the environment governance system in Georgia, which led in Spring 2018 to the merging of the Ministry of Environment and Natural Resources Protection with the Ministry of Agriculture Development, to form the Ministry of Environment Protection and Agriculture (MoEPA).²³⁰ Concerns were raised that not only had the government fallen down on its commitment to public participation, but that such a merger risked to weaken the national authority responsible for environmental protection and might also provide fertile ground for possible corruption. Other instances cited by the Public Defender include specific projects such as hydroelectric dam construction, and changing the status of recreational areas.

²²³ See Progress Report of the Government of Georgia on implementation of the National Human Rights Strategy Action Plan for 2016-2017 years, p. 379; see also OSGF, Implementation of EU-Georgia Association Agenda 2017-2020, Assessment by Civil Society, December 2018, p. 41, available at: https://osgf.ge/wp-content/uploads/2019/02/ENG_WEB.pdf.

²²⁴ See Progress Report of the Government of Georgia on implementation of the National Human Rights Strategy Action Plan for 2016-2017 years, p. 379.

²²⁵ See Progress Report of the Government of Georgia on implementation of the National Human Rights Strategy Action Plan for 2016-2017 years, p. 379; see also Implementation of EU-Georgia Association Agenda 2017-2020, Assessment by Civil Society, OSGF, December 2018, p. 42.

²²⁶ See also OSGF, op. cit., p. 42.

²²⁷ Ibid.

²²⁸ See Progress Report of the Government of Georgia on implementation of the National Human Rights Strategy Action Plan for 2016-2017 years, p. 380.

²²⁹ Ibid.

²³⁰ See, for example, statement of Green Alternative, 28 March 2018, available at: http://greenalt.org/news/statement_on_moepa_restructuring/; see also OSGF, op. cit., p 43.

The Public Defender has also expressed disquiet in terms of the application of the proportionality test in development projects, such as in the hydroelectric dam construction project, and has highlighted the lack of effectiveness of compensation of damage to environment due to violation of environmental regulations, as well as challenges regarding the regulation of building construction materials fire safety legislation and natural gas usage safety at the consumer level.²³¹ In February 2019, the Public Defender produced a Special Report on the Right to Clean Air (Atmosphere Air Quality in Georgia)²³², proposing possible solutions, and once again pointing to a lack of information in the country about the impact of air pollution on human health.

Raising public awareness on environmental human rights and protection is important, not only to ensure informed public participation in policy making, but ultimately for the effective protection of human rights in this field. The Environmental Information and Education Center has developed and been delivering a series of training modules for various state and non-state actors. In addition, information meetings have been conducted for representative of the local community.²³³ Further work in this area needs to continue with strong and meaningful cooperation between state institutions and civil society.

²³¹ See Progress Report of the Government of Georgia on implementation of the National Human Rights Strategy Action Plan for 2016-2017 years, pp. 369-375;

²³² available at: <http://ombudsman.ge/res/docs/2019040113594483544.pdf> (Georgian only); English news release: <http://www.ombudsman.ge/eng/akhali-ambebi/spetsialuri-angarishi-ufleba-sufta-haerze-atmosferuli-haeris-khariskhi-sakartveloshi>

²³³ See Progress Report of the Government of Georgia on implementation of the National Human Rights Strategy Action Plan for 2016-2017 years, p. 379.