

To the Prime Minister of Georgia

Mr. Giorgi Gakharia

Mr. Giorgi,

As you are aware, in 2011 the UN Human Rights Council unanimously approved the Guiding Principles on Business and Human Rights (UNGPs), which create a basic framework in the area of business and human rights and aim to eliminate human rights abuses by businesses. The Guiding Principles unite 31 principles, recognizing:

- States' duty to respect, protect and implement human rights and fundamental freedoms. The above includes protecting third parties, including from human rights abuses by businesses;
- the role of business in terms of complying with applicable laws and respecting human rights; and
- the need to have appropriate and effective mechanisms to address the violated rights.

In order to ensure the implementation of the mentioned guiding principles at the national level, in 2014 the UN Human Rights Council called on the States to develop national action plans.

The situation of business and human rights in Georgia was assessed within the framework of a visit paid to the country by the Working Group on the issue of human rights and transnational corporations and other business enterprises in April 2019. In the report, the Working Group emphasized challenges relating to the right to live in a healthy environment and freedom of labour, to which the Public Defender has been referring for years. The low degree of implementation of the Environmental Assessment Code and the weak indicator of the involvement of relevant persons in the process of making environmental decisions were named among the problems; From the point of view of safety at work, the high rate of injuries and deaths as a result of accidents in the workplace, the low awareness of the private sector (especially the construction and infrastructure sector) about the legislation regulating the above issue, and the insufficient mandate of the Labour Conditions Inspection Department were highlighted. In addition, the Working Group paid special attention to the situation in the hydropower and mining sectors, which create increased threats of human rights violations.

As you are aware, the Government of Georgia, by the Human Rights Action Plan (2016-2017), undertook to develop a comprehensive action plan on business and human rights and to conduct a national baseline study for this purpose. In 2017, the Administration of the Government of Georgia, in cooperation with the Public Defender's Office of Georgia, as well as the non-governmental organization Civil Development Agency (CiDA), and in consultation with experts from the Danish Institute for Human Rights, prepared a national baseline study on business and human rights, in which a number of practical and legislative issues relating to business and human rights, including the challenges discussed above, were assessed. The findings of the study formed the basis for the three-year action plan on business and human rights, which is part of the broader governmental Human Rights Action Plan (2018-2020) (Chapter 25).

The Public Defender of Georgia welcomes the measures taken so far by the State in the area of business and human rights, including the adoption of the relevant action plan. The Public Defender

believes that the implementation of the activities laid down in the mentioned document has a special role in ensuring the protection of human rights in the private sector. Considering this, the Public Defender got interested in the measures taken by the State to fulfill some of the goals of the action plan, as a result of which it was revealed that, unfortunately, for the given stage, the degree of implementation of the mentioned political document is quite low.

According to the information received from various agencies,<sup>1</sup> active measures are being taken to fulfill the important tasks provided for in the action plan on business and human rights, such as, for example, ensuring the compliance with the human rights standards of the construction legislation (including the standards of provision of an environment adapted for persons with disabilities) (Task 25.1.9), increasing the enforcement mechanism for construction supervision (Task 25.1.10) and developing a concept for establishing an incentive mechanism for women's empowerment and environmental protection in the business sector (Task 25.1.11). However, according to the Public Defender's assessment, apart from the regulation, it is important to ensure the implementation of these standards in practice. The challenges and problems existing in practice are also reviewed in the document prepared by the UN Working Group.

Despite a number of measures implemented, the answers received from the relevant agencies do not indicate that effective measures have been taken to fulfill the most important tasks laid down in the action plan on business and human rights, such as, for example, developing the packages of legislative changes relating to corporate social responsibility (Task 25.1.6), as well as regarding the issues relating to the impact on human rights when concluding medium and large investment agreements (Task 26.1.7); creating/improving whistleblower protection guarantees in the private sector (Task 25.1.13); developing guidance documents for state-owned companies relating to the protection of human rights (Task 25.1.14); determining relevant human rights issues for the companies providing public services and training the relevant personnel (Task 25.1.15); ensuring that human rights issues are taken into account at both the incentive and mandatory levels in the process of state procurement (Task 15.1.16); ensuring the promotion, support and implementation of the UN Guiding Principles on Business and Human Rights in policy/practice (Tasks 25.1.21, 15.1.22 and 15.1.23); and ensuring the strengthening of non-judicial grievance mechanisms relating to matters involving high standards (Task 25.1.28).

The information received by the Public Defender's Office makes it clear that, in certain cases, the non-fulfillment of tasks laid down in the action plan on business and human rights by the relevant agencies is related to the fact that the issue is beyond the scope of their competence, while regarding a number of tasks, the agencies explain that their implementation is planned to be completed by the end of this year.

It should be noted that by Decree No. 143 of the Government of Georgia of March 2, 2020, an interagency working group was set up for the development of a national human rights strategy and action plan, the purpose of which, inter alia, was to develop the future governmental human rights

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<sup>1</sup> Letters Nos. 11/9385 and 11/3434 of the Ministry of Economy and Sustainable Development of Georgia of November 28, 2019 and June 3, 2020; Letters Nos. G8897 and G4132 of the Civil Service Bureau of November 22, 2019 and June 30, 2020; Letter No. 6209 of the Ministry of Justice of Georgia of May 20, 2020; Letter No. 4214/2-8/20 of the Parliament of Georgia of May 18, 2020; Letter No. 26197 of the Administration of the Government of Georgia of July 7, 2020.

action plan. According to the Administration of the Government of Georgia, the tasks and activities provided for by the current action plan on business and human rights, which may not be fully implemented for various reasons, will be reflected in the future policy document with appropriate modifications.

For the purposes of the ongoing process of development of a future strategy and governmental action plan, the above-described unfulfilled activities and their significance, the Public Defender is presenting the relevant opinions/recommendations:

- It is important for the relevant responsible agencies to implement the relevant measures before the expiry of the current action plan;
- In the process of developing the future plan, the working group should take into account that the current governmental plan does not fully cover all the issues addressed by the UN Guiding Principles on Business and Human Rights or the national baseline study.

Inter alia, it should be noted that no effective measures are provided in terms of the companies' duty of due diligence for the prevention of human rights abuses, and in this direction, the document only refers to the obligation of raising awareness (Task 25.1.27). It is noteworthy that this type of assessment involves researching the existing and potential impact on human rights and helps businesses to respond appropriately to the rights-related, as well as economic and reputational risks, which may be caused by human rights violations.

In addition, the plan does not define the business sectors/activities or specific tasks related to them, where, considering the gaps in the applicable legislation and practice, the protection of human rights requires a special effort from the State (for example, the hydropower and extractive industry sector). Nor does the action plan focus on all the vulnerable groups (e.g. children, minorities, etc.) who need special support in the area under consideration.

Taking into account all of the above, the Public Defender considers it important that for the next years, the action plan should take into account all the relevant issues addressed by the UN Guiding Principles on Business and Human Rights and the national baseline study. In addition, it is necessary to develop an action plan with close and effective communication with all the relevant actors in order to avoid delays in the implementation of the document due to the inappropriate authority of the agency responsible for the performance of a specific task.

In addition, the Public Defender considers it important to improve and strengthen the performance evaluation mechanism relating to the action plan on business and human rights. It should be noted that in connection with the action plan, similar recommendations were also reflected in the report developed by the Working Group on the issue of human rights and transnational corporations and other business enterprises following its visit to Georgia in 2019.

The Public Defender of Georgia continues to study the challenges in the area of business and human rights, as well as problems related to the implementation of the relevant legislation in practice. Inter alia, the Office is currently working on a special report, which reviews the effectiveness of the legislation regulating environmental impact assessment and its compliance with international standards.

In addition, the Public Defender expresses her readiness to be involved in the development of the next action plan relating to the business and human rights issues and to submit relevant recommendations/proposals to the interagency working group set to for the development of the national human rights strategy and governmental action plan.

Sincerely,

Nino Lomjaria

Public Defender of Georgia