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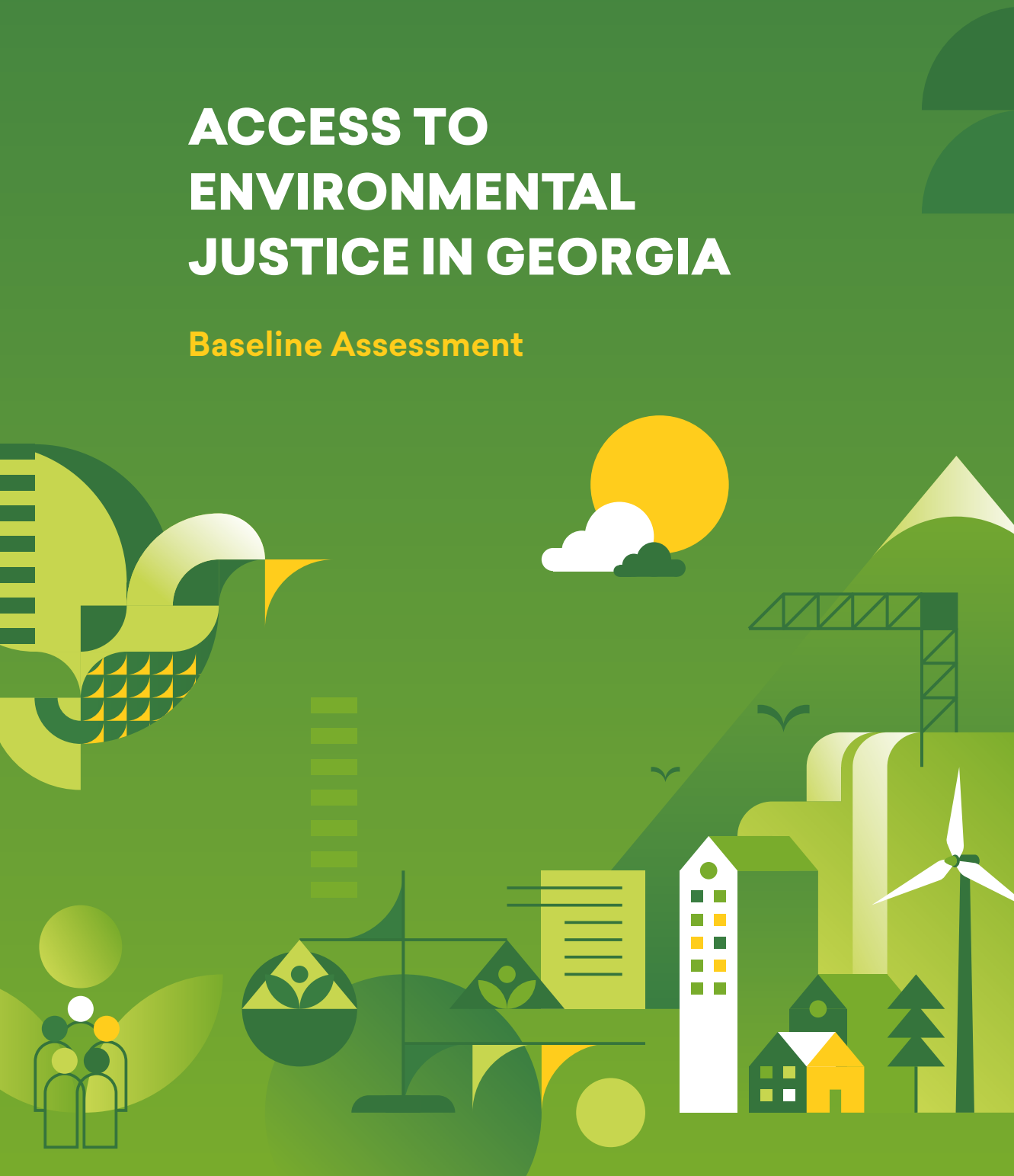
ACCESS TO ENVIRONMENTAL JUSTICE IN GEORGIA

Baseline Assessment



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October 2023

EXECUTIVE SUMMARY

The right to a clean, healthy and sustainable environment is a human right recognized by the United Nations General Assembly in its landmark resolution in 2022, which followed the UN Human Rights Council resolution which acknowledged the right in October 2021. This recognition underscores the importance of access to environmental justice, an instrumental mechanism to realising and ensuring this right, and strengthening the connection between human rights and environmental protection and justice. This study has been inspired by these resolutions and seeks to shed light on the situation in law and practice, establish the baseline, and identify the pressing barriers and needs as well as recommendations for increasing access to environmental justice, and in turn advancing the wider environmental justice agenda, in Georgia.

In Georgia, like in the rest of the world, environmental challenges are evident and on the rise, in particular those as framed through the triple planetary crisis of climate change, biodiversity loss and pollution. As our understanding of these crises deepens, so does our understanding of how these challenges impact the lives of people, helping us to understand them more as challenges of justice and human rights, and not simply as challenges needing technical or scientific solutions. Furthermore, these crises affect certain people disproportionately, and special emphasis has to be placed on those worst affected, including marginalised and vulnerable groups.

This research was conducted from July to September 2023 using a human rights-based approach. Desk research and 27 in-depth semi-structured interviews were conducted with various state and non-state representatives in Georgia to collect background material, statistics and practical insights.

Georgia has a strong and clear national legal framework for ensuring access to environmental justice. The Aarhus Convention applies directly, and the Constitution enshrines the right to a healthy environment, emphasising the importance of access to information and public participation in environmental decision-making. Georgia offers a wide legal standing with procedural guarantees and *actio popularis,* allowing anyone to seek judicial remedies against violations of environmental laws. The country has functioning administrative agencies and judicial bodies with responsibilities for hearing complaints on environmental issues. In addition, Georgia has adopted several new pieces of legislation and policy, to a great extent in light of its obligations under the EU-Georgia Association Agreement, that further enhance access to environmental justice.

While many aspects of access to environmental justice regulation in Georgia are satisfactory and some even qualify as progressive, several barriers have been identified. This creates a situation where there is adequate but often ineffective access to justice in environmental matters.

Such barriers include general and systemic gaps, such as timelines of judicial review which are often unreasonably long that could qualify as denial of justice. Other barriers refer to problems more specific to environmental cases, such as the lack of injunction use for urgent issues, often irreparable in nature, and the lack of special knowledge of judges in environmental matters, as well as narrow and formalistic interpretation of national legislation when ruling on environmental appeals. These challenges create a sense among some rightsholders that they are unable to attain effective legal remedies in environmental matters in Georgia through conventional routes. In addition, when it comes to administrative and judicial reviews of environmental decisions, only a small minority of such claims are granted, while the majority are decided as unfounded, thus perpetuating this sense of environmental justice being inaccessible.

Concerns on the lack of inclusive and accessible public hearings of development projects affecting the environment were also noted, as well as the instances of access to information requests being ignored or inadequately answered. The latter mostly pertains to ministries outside the environmental administration, which, along with local municipalities, are believed to have low awareness on environmental matters in Georgia. The research revealed that local municipalities in Georgia often view environmental complaints as an unnecessary burden rather than a legitimate grievance.

Expert and attorney fees when filing a lawsuit can easily mount up and it is challenging to find qualified experts and lawyers on environmental matters in Georgia. The State Legal Aid Service provides limited services in environmental cases and its lawyers require capacity development in the fields of the environment and environmental law. A small number of NGOs provide project-based free legal aid on environmental matters. However, NGO lawyers are overworked, under-resourced and lack funding, and despite the high demand, many NGOs only choose strategic environment litigation, which overall hinders access to environmental justice.

There is a low level of awareness of environmental matters in Georgian society and the public is relatively less engaged in environmental issues or discourse. Many Georgians are unaware that they can access the courts for the protection of their environmental rights and interests. The environment for exercising access to environmental justice in Georgia is relatively neutral, however, some signs of a negative trend already appeared when those

exercising their rights such as communities protesting against large-scale development projects and heavy industries became targets of threats or intimidation.

There are a number of interventions open to Georgia to overcome these barriers and close the gap between Georgia's international commitments and ensure protection for its people from environmental harm. The interviews with judges, lawyers, prosecutors, and the officials of environmental administration left a strong impression that they are determined to address any shortcomings in access to environmental justice in Georgia. In light of this and the pressing need to enhance such access in Georgia, this study suggests a few actionable recommendations to key stakeholders for enhanced access to environmental justice in Georgia. The recommendations include improved enforcement of environmental legislation, timely judicial reviews and procedures, capacity-building of rule of law institutions, public agencies and local self-government, public awareness raising, the availability of quality legal aid, and support for civil society and environmental NGOs, among others.

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ABBREVIATIONS AND ACRONYMS

Aarhus Convention	UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters
ACCC	Aarhus Convention Compliance Committee
Art.	Article
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EIA	Environmental Impact Assessment
EIEC	Legal Entity of Public Law Environmental Information and Education Center
GEL	Georgian Currency Lari
HPP	Hydro Power Plant
MEPA	Ministry of Environmental Protection and Agriculture of Georgia
MESD	Ministry of Economy and Sustainable Development of Georgia
SEA	Strategic Environmental Assessment
UNECE	United Nations Economic Commission for Europe

GLOSSARY

Environmental Democracy refers to a governance approach that emphasises public participation, transparency, and accountability in environmental decision-making. It ensures that individuals and communities have the right to access environmental information, participate in environmental matters, and seek justice regarding environmental issues.[1]

Environmental Rule of Law holds all entities equally accountable to publicly promulgated, independently adjudicated and well-designed laws that are consistent with international norms and standards for sustaining the planet. Environmental rule of law integrates critical environmental needs with the elements of the rule of law, thus creating a foundation for environmental governance that protects rights and enforces fundamental obligations.[2]

Environmental Justice is conceptualised by UNDP as the goal of promoting justice and accountability in environmental matters, focusing on the respect, protection and fulfilment of environmental rights, and the promotion of the environmental rule of law.[3] Access to environmental justice is construed as the right of the members (both individuals and their organisations) of the public to access remedies in environmental matters.[4]

Triple Planetary Crisis refers to the three main interlinked issues that humanity currently faces: climate change, pollution and biodiversity loss. Climate change refers to long-term shifts in temperatures and weather patterns that, in the long run, will completely alter the ecosystems that support life on the planet. Air pollution is the largest cause of disease and premature death in the world, and nine out of ten people worldwide breathe air that contains levels of pollutants that exceed the World Health Organisation guidelines. Biodiversity loss refers to the decline or disappearance of biological diversity, which includes animals, plants and ecosystems.[5]

Sustainable Development - In its report Our Common Future of 1987, the World Commission on Environment and Development, the so-called Brundtland Commission, understood "sustainable development" as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". In 2015 UN declared 17 Sustainable Development Goals and committed to working tirelessly for their full implementation by 2030.

1 UNECE, Aarhus Convention Implementation Guide, 2014, https://bit.ly/3RWSjME

2 UNEP, Environmental Rule of Law: First Global Report, 2019, https://bit.ly/3PRRJgy

3 UNDP, Technical Paper on Environmental Justice, 2022, https://bit.ly/3twXMzH

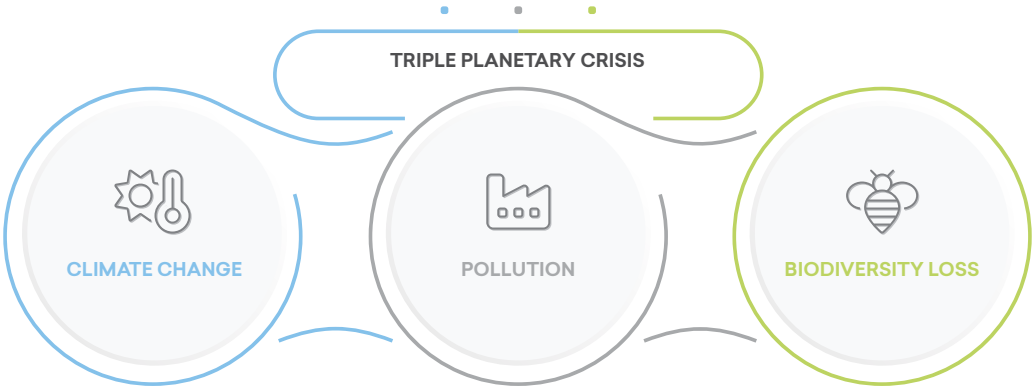
4 UNECE, Aarhus Convention Implementation Guide, 2014, https://bit.ly/3RWSjME

5 UNFCCC, What is the Triple Planetary Crisis?, 2022, https://bit.ly/3ZWwl94

I. INTRODUCTION

In the pursuit of sustainable development and the protection of the right to a healthy environment, access to environmental justice stands as a fundamental pillar. It allows individuals to articulate their concerns and exercise their legal rights derived from both international and national legal frameworks. Access to environmental justice is critical in establishing and maintaining the environmental rule of law, especially in a time of a triple planetary crisis. According to the UN Secretary-General António Guterres:

> *Our world faces a triple planetary crisis of climate change, nature loss and pollution. This triple crisis is our number one existential threat. We need an urgent, all-out effort to turn things around.*[6]



The intricate interplay of these crises has underscored the critical need for an inclusive human-rights and justice approach towards addressing environmental issues, with stringent environmental legal and policy frameworks, capacitated institutions to implement and enforce such frameworks, and access to environmental justice and the empowerment of rights holders affected by environmental harms. Contemporary climate and environmental concerns require a greater focus on the national implementation of the right to a healthy environment as they undermine the enjoyment and protection of human rights and exacerbate environmental injustices.[7] The need for this shift in focus is affirmed by the

6 António Guterres, Opening remarks at press encounter on the Appointment of the Secretary-General of the United Nations to a Second Term of Office, 2021, https://bit.ly/3tv2sWS

7 UNDP, Technical Paper on Environmental Justice, 2022, https://bit.ly/3twXMzH

historic recognition of the human right to a clean, healthy and sustainable environment by the United Nations General Assembly in 2022.[8]

Despite some positive developments in policy and law, Georgia faces environmental and climate challenges that are expected to intensify.[9] These challenges encompass air and water pollution, resource depletion, land degradation, and increased floods and landslides among others. Georgia is particularly vulnerable to climate change due to its location, unique biodiversity, diverse landscapes, coastal location, high dependence on agriculture, and limited financial resources and development level, as highlighted in the Fourth National Communication of Georgia.

The Georgian public is concerned about different environmental problems, however, they lack environmental awareness and education, as evidenced by various opinion polls.[10] The vulnerable communities, often residing in environmentally sensitive areas, lack the resources and influence to effectively protect their rights and interests. Access to justice becomes a critical necessity for them as it offers a pathway to address grievances, voice concerns, and seek legal remedies. Even though it is positively assessed that legal standing is broadly understood and applied in Georgia, access to environmental justice still has challenges that require particular attention of stakeholders.

The primary objective of this study is to assess the current state of access to environmental justice in Georgia, identify the key barriers and propose recommendations for relevant national and international stakeholders. This study is the first attempt at deep dive into access to environmental justice in Georgia. It presents the specific legislative background and practical implementation of access to environmental justice while being aware of the broader rule of law context of the country.

8 UNGA, Resolution A/76/L.75, 2022, https://bit.ly/3rQ6gBk

9 MEPA, Fourth National Communication, 2021, https://bit.ly/3MaL3ZT; MEPA, National Statement on the State of Environment 2018-2021, 2022, https://bit.ly/3S6nyoL; IPCC, Climate Change 2023 Summary for Policy Makers, 2023, https://bit.ly/3rRbe0X

10 See for example the EIEC and ISSA opinion poll conducted with the support of UNDP and Sweden "Assessing the level of environmental education and awareness in Georgia", 2022, https://bit.ly/492Kfjt

II. METHODOLOGY

The study is based on desk research and in-depth interviews on the state of environmental justice within the Georgian context with the focus on establishing a baseline, identifying existing barriers as well as elaborating recommendations. Access to environmental justice and access to justice in environmental matters are used interchangeably to refer to the same concept, and the concept is understood as defined by the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). Due to the horizontal nature of environmental justice, the study did not delve into any environmental subcategory, such as air pollution, water contamination, or waste management.

This research was conducted from July to September 2023. It was a collaborative effort involving national and international experts. The research employs a human rights based approach, however, it is focused on legal dimensions that shape the dynamics of environmental justice in Georgia and not on the wider social, cultural or political aspects.

Comprehensive desk research was undertaken, encompassing a review of Georgia's international obligations, national legislation, and policies related to access to environmental justice. Governmental and NGO reports related to environmental laws, access to justice, and environmental issues in Georgia were also analysed, including the latest Aarhus Convention National Implementation Report of Georgia, and two alternative reports on the implementation of the Aarhus Convention in Georgia submitted by the Public Defender (2021) and NGO Green Alternative (2014). Desk research also included a review of the court practice in Georgia to identify key patterns and gaps, mostly focusing on the most recent cases.

In addition to the desk research, 27 in-depth semi-structured interviews were conducted to engage up to 35 key stakeholders, including legal experts, government officials, judiciary, civil society, media representatives, and rightsholders. The interviewees were selected based on their expertise, involvement, and relevance to the study's objectives. Statistical data was requested from the Prosecutor's Office, the Ministry of Internal Affairs of Georgia, the Supreme Court of Georgia and Tbilisi City Court. With limited statistical data available, and with every effort to find such data, including on the number and nature of certain cases related to environmental matters, the study relies heavily on the insights provided by the interviewees, which in turn can limit the statistical robustness of certain findings made below.

The success of this report is attributed to the thoughtful contributions of every interviewee. Their openness to the interviews and willingness to share their expertise and experiences has been instrumental in shaping the conclusions and recommendations of this study. The research team conducted extensive work; however, due to the constraints of this report, only the key findings and essential aspects are included.

III. INTERNATIONAL LEGAL FRAMEWORK

a. Right to a Clean, Healthy and Sustainable Environment

In the last two decades, it has become increasingly evident that human rights and environmental protection have a fundamental interdependence: A healthy environment is necessary for the full enjoyment of human rights, and the exercise of rights (including rights to information, participation, and access to justice) is critical to environmental protection and democracy. The UN human rights treaties do not explicitly endorse the stand-alone right to a clean and safe environment, but it is implicit in several of them.[11] This can be explained by the fact that most UN human rights treaties were adopted before environmental protection became critical and gained the attention of societies and states. The right to a healthy environment (in different variations) is, however, unequivocally safeguarded in some of the human rights treaties,[12] and domestic constitutions of certain countries.

> On 28 July 2022, the UN General Assembly adopted a landmark resolution recognizing the human right to a clean, healthy, and sustainable environment.[13] It was an unprecedented decision backdropped by long, extensive, and collaborative work among key stakeholders. The resolution followed the recognition of the respective right by the UN Human Rights Council on 18 October 2021.[14] Although these resolutions are not legally binding, they can catalyse changes in national and international law. It also sends a powerful message that there is widespread, worldwide support for this right and for its translation into regional and national frameworks to ensure its protection.

The UN resolutions do not define the content of the right to a healthy environment. However, the right is generally understood to include substantive and procedural elements as well as corresponding obligations, especially obligations relating to the protection of those

11 It is mentioned by the UN Human Rights Council and several treaty bodies (Human Rights, Economic, Social and Cultural Rights, Children's Rights Committees) in the general comments/recommendations. However, the noteworthy is one of the first reports done by John H. Knox, Independent Expert on the issue of Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 2013, https://bit.ly/3tyD2rr

12 Aarhus Convention 1998, African Charter on Human and Peoples' Rights 1991, Arab Charter of Human Rights 2004, Protocol of San Salvador 1969

13 UNGA, Resolution A/76/L.75, 2022, https://bit.ly/3rQ6gBk

14 UN Human Rights Council, Resolution A/HRC/RES/48/13, 2021, https://bit.ly/3Qg6SJQ

who are particularly vulnerable to environmental harm. The substantive elements generally encompass the fundamental components necessary to ensure individuals and communities live in a clean, safe, and ecologically balanced environment.[15] The procedural elements include access to information, the right to participate in decision-making, and access to justice and effective remedies. An Information Note on What is the Right to a Healthy Environment? (2023), co-authored by UNDP, the UN Office of the High Commissioner for Human Rights and the United Nations Environment Programme unpacks these key elements of the right to a clean and healthy environment and outlines how diverse stakeholders can play an active role in making the right a reality for all.

The Aarhus Convention, which is one of the prominent and leading international agreements on environmental democracy, guarantees three key procedural rights on environmental issues: access to environmental information (Art. 4, Art. 5), public participation in environmental decision-making (Art. 6, Art. 7, Art. 8) and access to justice in environmental matters (Art. 9).[16] These rights depend on each other for the full implementation of the Convention's objective, which is to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.[17]

Even though the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) does not enshrine any right to a healthy environment as such, the European Court of Human Rights (ECtHR) has been requested to develop its case law in environmental matters on the account of the fact that the exercise of certain Convention rights may be infringed by the existence of harm or risk of harm to the environment and exposure to environmental risks.[18] The ECtHR has so far ruled on more than 300 environment-related cases and in most cases, these requests affected Art. 2 (right to life) and Art. 8 (right to respect for private and family life), followed by Art. 10 (freedom of expression/freedom to receive and impart information) and Art. 1 of Protocol No. 1 (protection of property).[19]

15 David Boyd, UN Special Rapporteur on Human Rights and Environment, "Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment", defines "the vital elements of the right to a healthy and sustainable environment" such as the right to breathe clean air, clean water and adequate sanitation, healthy and sustainable food, a safe climate, and healthy biodiversity and ecosystems, 2019, https://bit.ly/3Fhrknv

16 The Aarhus Convention stands on three "pillars" — access to information, public participation, and access to justice — that depend on each other for full implementation of the Convention's objective.

17 Art. 1, Aarhus Convention

18 ECtHR, Fact Sheet on Environment and the European Convention on Human Rights, 2023, https://bit.ly/3QgRFIw

19 Ibid.

b. Georgia's International Obligations

According to Art. 4.5 of the Constitution of Georgia, an international treaty of Georgia shall take precedence over domestic normative acts unless it comes into conflict with the Constitution or a Constitutional Agreement of Georgia.[20] The Georgian Law on Environmental Protection ascertains for environmental matters that "the international treaty or agreement of Georgia if it does not conflict with the Constitution of Georgia, has a superior legal force over domestic normative acts".[21]

Georgia is a party to leading international human rights treaties as well as environmental agreements. Two of them specifically cover access to environmental justice: the Aarhus Convention and the Association Agreement between the EU and Georgia.

Georgia ratified the Aarhus Convention in 2000, which entered into force on 30 October 2001. The Aarhus Convention provides a set of minimum standards. Consequently, Georgia is encouraged to exceed these standards, demonstrating its commitment to a higher level of environmental democracy. The table below shows the access to justice obligations Georgia has under Art. 9 of the Convention.

TABLE 1. *Article 9, "Access to Justice", Extracted from the Aarhus Implementation Guide*

PROVISION	OBLIGATION	IMPLEMENTATION ELEMENTS
Art. 9, para. 1	Requires access to review procedures relating to environmental information	▸ Available to any person that has requested information ▸ Judicial or other independent and impartial review ▸ Additional expeditious and inexpensive reconsideration or review procedure ▸ Binding final decisions ▸ Reasons for decision in writing

20 The hierarchy of legislative acts is stated in the Organic Law on Normative Acts and prescribes that international agreements and treaties of Georgia shall take precedence over domestic normative acts unless they contradict the Constitution, a Constitutional Law or a Constitutional Agreement of Georgia.

21 Art. 56, Law on Environmental Protection

Art. 9, para. 2	Requires access to review procedures relating to public participation	▸ Judicial or other independent and impartial review of substantive or procedural legality ▸ Standing requirements to be determined in accordance with national law and the objective of wide access to justice ▸ Possibility for preliminary administrative review procedure
Art. 9, para. 3	Requires access to review procedures for public review of acts and omissions of private persons and public authorities concerning national law relating to the environment	▸ Administrative review procedures ▸ Judicial review procedures ▸ Criteria for access, if any, to be laid down in national law
Art. 9, para. 4	Sets general minimum standards that apply to all relevant review procedures, decisions and remedies	▸ Adequate and effective remedies, including injunctive relief as appropriate ▸ Fair ▸ Equitable ▸ Timely ▸ Not prohibitively expensive ▸ Decisions given in writing ▸ Decisions publicly accessible
Art. 9, para. 5	Requires parties to facilitate effective access to justice	▸ Information on access to administrative and judicial review procedures ▸ Appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice

Art. 302 of the EU-Georgia Association Agreement obliges Georgia to take steps that are relevant for ensuring access to environmental justice. Art. 302 outlines the cooperation between Georgia and the EU on environmental matters:

> *Cooperation shall aim at preserving, protecting, improving and rehabilitating the quality of the environment, protecting human health, sustainable utilisation of natural resources and promoting measures at international level to deal with regional or global environmental problems, including in the areas of: (a) environmental governance and horizontal issues, including strategic planning, environmental impact assessment and strategic environmental assessment, education and training, monitoring and environmental information systems, inspection and enforcement, environmental liability, combating environmental crime, transboundary cooperation, public access to environmental information, decision-making processes and effective administrative and judicial review procedures.*

IV. DOMESTIC FRAMEWORK

a. Constitution and Legislation

The Constitution of Georgia explicitly affirms the right to a healthy environment. According to Art. 29 "Everyone has the right to live in a healthy environment and enjoy the natural environment and public space." The provision also enshrines two procedural rights, such as the right to receive full information about the state of the environment in a timely manner and the right to participate in the adoption of decisions related to the environment, which shall be ensured by law.

The Constitution of Georgia recognises other rights that directly or indirectly pertain to environmental protection and access to justice in environmental matters. Art. 18 acknowledges everyone's right to a fair hearing of their case by an administrative body within a reasonable time and enshrines a right to public information. The provision also entitles everyone to full compensation, through a court, for damage unlawfully inflicted by the authorities.

The Law of Georgia on Environmental Protection is a framework law that lays down foundational legal relations in the fields of environmental protection and natural resources. Among the objectives of the law are the protection and maintenance of a safe environment for human health, providing a legal framework for the protection of the environment from adverse impacts, ensuring the maintenance or the improvement of environmental quality, and ensuring an optimum balance between (or a harmonious combination of) the environmental, economic and social interests of society.

Georgia has several other laws and by-laws related to various aspects of access to environmental justice listed below. Nevertheless, the particular normative acts are further elaborated in the relevant chapters.

TABLE 2. *The list of Georgian laws and by-laws pertaining to access to environmental justice*

ACCESS TO ENVIRONMENTAL INFORMATION	▸ Constitution of Georgia ▸ General Administrative Code ▸ Law of Georgia on Environmental Protection ▸ Order N°12 (2017) issued by the Minister of Environmental Protection and Agriculture on the Rule for Proactively Publishing Public Information, the Standard for Requesting Public Information in Electronic Form, and the Rule for Access to Environmental Information
PARTICIPATION IN ENVIRONMENTAL DECISION-MAKING	▸ Constitution of Georgia ▸ General Administrative Code ▸ Law of Georgia on Environmental Protection ▸ Law of Georgia on Environmental Assessment Code ▸ Governmental Ordinance N°629 (2019) on Policy Document Development, Monitoring and Evaluation Procedure ▸ Order N°2-94 (2018) issued by the Minister of Environmental Protection and Agriculture on Public Hearing Rules
ENVIRONMENTAL LEGISLATION	▸ Constitution of Georgia ▸ Local Self-Government Code ▸ Law of Georgia on Environmental Protection ▸ Law of Georgia on Environmental Assessment Code ▸ Law of Georgia on Licences and Permits ▸ Law of Georgia on Environmental Liability ▸ Laws safeguarding the environmental protection areas: Air, Waste, Biodiversity and Forestry, Natural Resources, Soil, Health, etc.
CRIMINAL AND ADMINISTRATIVE ENVIRONMENTAL OFFENCES	▸ Criminal Code ▸ Administrative Offences Code

b. Institutional Framework

The effective realisation of access to justice in environmental matters necessitates a robust institutional framework that facilitates a fair and accessible process for all stakeholders.

Primarily, courts are the key institutions in terms of ensuring access to environmental justice. The Constitution of Georgia specifies that the judicial power shall be independent and is exercised by the Constitutional Court of Georgia and the common courts of Georgia.[22] Among others, the Constitutional Court is authorised, on the basis of a constitutional claim, to consider and make decisions on the issue of the constitutionality of normative acts adopted in relation to fundamental human rights, including the right to a healthy environment. Justice is administered by the common courts. The mandate and procedures are prescribed in the Organic Law on Common Courts of Georgia.

Other institutions also play an important role in the process of ensuring access to environmental justice, such as the Parliament of Georgia as a supreme legislative body, and the Government of Georgia as a supreme executive body. The Ministries of Environmental Protection and Agriculture of Georgia (MEPA), and Economy and Sustainable Development of Georgia (MESD), as well as their legal entities, enforce the legislation and review administrative complaints. The Prosecutor's Office supervises investigation and prosecutes environmental crimes, while the Ministry of Internal Affairs conducts the investigation of such crimes. The Public Defender's Office, which is an "A status" National Human Rights Institution reviews human rights complaints including those related to environmental matters.[23]

Local self-governments fulfil an essential function in environmental matters as they issue and monitor the implementation of construction permits, implement environment-related "own" competencies as well as review administrative complaints. Noteworthy that self-governments regulate the affairs of local importance in Georgia, which also include competences related to environmental matters. The separation of the powers of state authority and self-governing units is based on the principle of subsidiarity.

The Environmental Information and Education Center (EIEC), which is a legal entity under MEPA promotes environmental education, raises public awareness and supports public participation in decision-making processes.

22 Art. 59, Constitution of Georgia

23 Public Defender of Georgia is a Category A National Human Rights Institution according to the Global Alliance of National Human Rights Institutions, 2023, https://bit.ly/3M3hVUl

The State Sub-Agency Department of Environmental Supervision ensures the state control in the field of environmental protection and use of natural resources (except for the control of the licences on conditions of the mineral resources extraction or use) in the entire territory of Georgia, including its territorial waters, continental shelf and special economic zone.

The National Agency of Mineral Resources issues licences for the use of mineral resources (except oil and gas) and directs and coordinates the activities for this purpose.

c. Relevant Policy Documents

Georgia has no specific policy document on access to environmental justice. However, the National Human Rights Strategy of Georgia (2022-2030) covers the right to environmental protection and aims to improve its implementation, including by ensuring access to justice in environmental matters. Among its key objectives are ensuring timely access of the general public to environmental information, improving the publicity of the environmental impact assessment and strategic environmental assessment processes as well as the participation mechanisms of interested persons in the decision-making processes. The strategy also aims for continuous improvement of access to clean air and quality drinking water, managing waste to create a safe environment for human life, and raising public awareness on environmental issues.

The highest decision-making body of the Georgian judiciary, the High Council of Justice has not updated its strategy and action plan since the previous strategy, which ran from 2017 until 2021. The 2017-2021 strategy and the two-year action plan of the judicial system did not cover specific thematic areas. However, the strategy addresses systemic challenges that are relevant for access to environmental justice, including increased litigation times, less efficient model of case distribution and management, progressively increased workload of the judges, a lack of unified database of court decisions, lack of free legal aid in civil and administrative cases, less adapted infrastructure and environment to the needs of vulnerable persons, and a lack of awareness of society about rights on accessing the court.

The Prosecutor's Office of Georgia in its current strategy (2022-2027) for the first time pays special attention to environmental crimes. Under Strategic Goal 2, Objective 2.11 aims to increase the effectiveness of the fight against environmental crimes.

V. ACCESS TO ENVIRONMENTAL JUSTICE

The chapter below follows the structure of the Aarhus Convention on access to environmental justice, focusing on access to environmental information, participation in environmental decision-making, and proper implementation of national environmental laws.

a. Access to Justice Regarding Access to Information

Applicable Legislation

The regulation of access to information, especially the sectoral regulation of access to environmental information, is satisfactory in Georgia and even qualifies it as a progressive country in terms of freedom of information. While Georgia has no separate Freedom of Information Act in force, this, to some extent, is remedied by the strong constitutional recognition of the right of everyone to receive full information about the state of the environment,[24] as well as by the legal regime that allows the courts to directly apply international treaties, including the Aarhus Convention, to the domestic legal order.[25] The Aarhus Convention itself contains multiple provisions guaranteeing access to environmental information.[26]

Access to information in terms of the applicable procedure is regulated by the General Administrative Code of Georgia. It recognises everyone's right to access public information available at the administrative body "unless the information contains a state, professional or commercial secret, or personal data."[27] In line with the Aarhus Convention, the Code contains Art. 42 which specifically states that "information about the environment, as well as data about dangers that threaten … life or health" cannot be made confidential.

The Law on Environmental Protection defines environmental information as all types of information presented in written, visual, electronic, oral or any material form on a number of environmentally relevant issues and lists the rights of citizens in the field of environmental

24 Art. 29.1, Constitution of Georgia. See also Art. 17.2 on a general right to receive and impart information and Art. 18.2 on the right to be familiarised with information that exists in public institutions.

25 The courts in Georgia have directly applied the Aarhus Convention in cases involving access to environmental information. See, for example, the judgement made by Tbilisi City Court in Case 3/6055-17.

26 Art. 4-5, Aarhus Convention

27 Art. 10.1, General Administrative Code

protection, amongst others, "to receive complete, objective and timely information about the state of his working and living environment."[28]

The General Administrative Code obliges public institutions to provide public information upon request immediately or no later than 10 days.[29] In case a request for information is refused, a formal administrative decision (an individual administrative-legal act) is to be made and the administrative body refusing the request for information must inform the requester about the available remedies.[30]

Consequently, the system of remedies that is applicable in general administrative matters also prevails here: an ordinary complaint can be submitted to the superior administrative body for review and if unsuccessful, a lawsuit can be filed at the competent court. In case such a superior body does not exist, a lawsuit can be filed to the court directly. No fee whatsoever may be imposed on an administrative complaint filed to the administrative body.[31]

Public information in Georgia is free of charge. However, charging for making copies for issuing public information is permitted.[32] The Law on the Public Information Photocopying Fee regulates the fees and they are largely nominal.

Practice Analysis and Stakeholder Opinion

According to the Global Right to Information Rating, Georgia scored 91 points from the maximum 150 points, which shows a relatively developed system of access to public information.[33] However, the country's ranking out of 123 countries (44 in 2018, 37 in 2017, 35 in 2016)[34] shows that there is still room for improvement.

The EU Commission in its 2022 report highlighted that "Access to public information [in Georgia] is ensured by a legal framework, but the administrative capacity for its effective implementation needs to be further enhanced".[35] According to the Institute for Development of Freedom of Information in 2022 overall access to public information in Georgia worsened

28 Art. 4.d[2] and 6, Law on Environmental Protection

29 Art. 40.1, General Administrative Code

30 Art. 41.2, General Administrative Code

31 Art. 204.1, General Administrative Code

32 Art. 38, General Administrative Code

33 RTI Rating, Right to Information Rating Georgia, 2018, https://bit.ly/3M0UefA

34 RTI Rating, Transparency Rating Georgia, 2018, https://bit.ly/3M0oo2o

35 EU Commission, Commission Opinion on Georgia's application for membership of the European Union, 2022, https://bit.ly/3twrSTP

across all ministries, including MEPA.[36] Various legal entities under the supervision of MEPA are labelled as "less accountable" as they all left the Institute's requests unanswered.

MEPA maintains an online portal[37] for receiving information requests, and EIEC, which is primarily responsible for proactive dissemination of environmental information in Georgia, operates the environmental information portal.[38] EIEC told the research team that they have not refused any environmental information requests. This apparently shows a positive picture on how access to environmental information is practised in relevant state agencies, even though there are challenges in obtaining public information as a whole in Georgia.

Noteworthy that due to its diverse nature, environmental information is processed and stored in different institutions. While EIEC, a special body within MEPA, is in charge of releasing environmental information to the public, its work cannot cover all possible areas of information disclosure, and it is limited to information held by MEPA and its subordinated bodies.

Primary users of environmental information, e.g., members of the public (NGOs) mentioned a couple of cases when MEPA and its subordinates did not disclose environmental information fully or timely, including on air quality in 2022 and 2023. However, the interviewees agreed that MEPA mostly applies the law in a progressive manner when it comes to access to environmental information. On the other hand, other ministries that also process environmental information are much more reluctant to share it. Instances of MESD refusing information requests affecting hydropower plants (HPP) and extractive industry licences were mentioned.

While the orderly satisfaction of a request for public information does not bring up questions of access to justice, a request ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of law certainly raises this issue.[39]

As regards the practice of access to justice against refusals of environmental information, the stakeholders interviewed unequivocally confirmed that there is a sequence of remedies to apply: first an appeal to the superior administrative body and then, or in case there is no such body, a lawsuit to be filed to the administrative chamber of the court.

36 Institute for Development of Freedom of Information, Access to Public Information in Georgia, 2022, https://bit.ly/3rSS0la

37 MEPA Public Information Request Form, https://bit.ly/46Tbxaq

38 EIEC Environmental Information Portal, https://bit.ly/48X8vUk

39 UNECE, Aarhus Convention Implementation Guide, 2014, https://bit.ly/3RWSjME

NGOs expressed their discontent with the functioning of judicial review regarding refusals of information. They mentioned that the judges sometimes approach these refusals in a formalistic manner, relying solely on a narrow interpretation of national legislation. This approach, they argued, falls short of fully embracing the Aarhus Convention, along with its principles and objectives.[40] Still, most of the issues raised concerned the timelines of the judicial review process and many of our interviewees from the civil society agreed that they do not perceive courts as effective due to the time-sensitive nature of the environmental information. A journalist involved in the www.mtisambebi.ge portal mentioned that he has filed 52 appeals to the court in 2020-2021 on access to information from which about more than 20 were environmental in nature. He explained that the court timelines are so unreasonably long, that not a single hearing was held in the last 18 months.

Practice analysis and stakeholder opinion suggest that challenges in accessing environmental information in Georgia are less attributable to the legislative environment than to the implementation of law. There seems to be a consensus that non-environmental public administration, especially those in charge of economic matters, do not interpret the notion of environmental information broadly and, therefore, tend to limit access to possibly relevant information which they hold. This is explicitly against the broad interpretation of environmental information by the Aarhus Convention Compliance Committee (ACCC).[41] While there is clearly a remedy against refusal of information, and at certain courts (especially in Tbilisi), the environmental information cases form almost half of the entire Freedom of Information caseload,[42] the effectiveness of these remedies is weakened by a number of factors. As the study refers to these major barriers later in detail, these are the long duration of court cases (again, as a general phenomenon mentioned by many stakeholders) and the lack of specialised knowledge of judges on environmental law.

b. Access to Justice Regarding Public Participation in Decision-making

Applicable legislation

In Georgia, public participation in environmental decision-making is a constitutional right. According to the Constitution, everyone has the right to care for the protection of

40 Some of the cases cited included the Green Alternative case (Tbilisi City Court, Case 3/3960-13, 2014, https://bit.ly/3rVY0jp) and the River Kazretula case: *ifact v. the Ministry of Finance.*

41 ACCC, Case ACCC/C/2014/112, Ireland, 2021, https://bit.ly/490ropb

42 Interviews with the judiciary members on 19-21.09.2023

the environment, and the "right to participate in the adoption of decisions related to the environment shall be ensured by law."[43]

According to the Aarhus Convention, the public authorities must ensure that:

- Public is informed in a timely manner and reasonable time-frames are provided for the public to prepare and participate effectively during the environmental decision-making;
- Early public participation takes place when all options are open and effective public participation can occur;
- In the decision, due consideration is taken of the outcome of the public participation.[44]

Specific details that characterise public participation in environmental matters in Georgia are contained in the Law on Environmental Protection, which recognises the importance of public participation in the decision-making process. Among the rights of citizens in the field of environmental protection, the law guarantees the right to participate in the process of consideration and adoption of important decisions in the field of environmental protection.[45]

The Environmental Assessment Code, which was inspired by the association process of Georgia with the EU, regulates Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA), both of which are used to evaluate and mitigate the environmental effects of certain proposed projects or policies respectively. Public participation is considered in all stages of EIA and related decision-making processes, as well as SEA.[46] Public participation in EIA and SEA is mostly done by organising a public hearing based on prior notice. EIEC is put in charge of organising the EIA modalities, including informing the public online, in printed newspapers and on notice boards of relevant municipalities affected by the decision-making procedures.[47] The opinions of the members of the public may be submitted in a number of formats, including in writing and orally at the public hearing.

43 Art. 29.1, Constitution of Georgia

44 Art. 6, par. 3, par. 4 and par. 8 of the Aarhus Convention, respectively

45 Art. 6.v, Law on Environmental Protection

46 Art. 12 and 13, Environmental Assessment Code

47 Art. 5.1, Ministerial Order №2-94, 2018

The law stipulates that the opinions of the members of the public must be taken into consideration when making EIA-related decisions (in line with Art. 6.8 of the Aarhus Convention), and obliges EIEC that the decision, once made, shall be communicated to the public.[48] Also, a public hearing will be considered held regardless of whether a public representative attends/participates.[49]

The remedies available for public participation complaints are administrative much like those for access to information requests mentioned earlier. However, public participation complaints on screening[50] and scoping,[51] as well as EIA-related environmental decisions[52] can also be appealed directly to the administrative chamber of a court without the review of a superior administrative body.[53]

There is also a Ministerial Order N°2-94 (2018) on Public Hearing Rules that not only describes in a very detailed manner the modalities of how to organise and hold a public hearing in EIA and SEA procedures but ensures a separate remedy as well. A person having participated in the public discussion may submit comments on the public hearing minutes.[54] In case the public authority does not agree with these comments, it issues an individual administrative-legal act rejecting the comments; however, in this case, this individual act alone may be appealed to a superior administrative body and then to the court. Additionally, both the Ministerial Order and the Environmental Assessment Code make it possible to appeal an EIA-related environmental decision solely for not ensuring public participation in the decision-making process.[55]

Finally, it is noteworthy that there is also a possibility for individuals and organisations to participate in all types of judicial reviews on environmental matters by submitting *amicus curiae*[56] in constitutional, civil, administrative, and criminal court proceedings.[57]

48 Art. 30.2, Environmental Assessment Code; Art. 10, Ministerial Order N°2-94, 2018

49 Art. 9.1.3, Ministerial Order N°2-94, 2018

50 Screening is a procedure to determine the need to perform EIA

51 Scoping is the first step before EIA

52 Final decision after EIA

53 Art. 46.6, Environmental Assessment Code

54 Art. 10, Ministerial Order N°2-94, 2018

55 Art. 12, Ministerial Order N°2-94, 2018; Art. 46.6, Environmental Assessment Code

56 *Amicus curiae* or friend of the court is a person who would like to influence the adjudication of a case by the court, however, this person belongs to none of the parties of the case.

57 Art. 21[4], Organic Law on Constitutional Court; Art. 55.1, Criminal Procedure Code, Art. 16[1] Administrative Procedure Code; There is no specific provision in Civil Procedure Code on *amicus curiae,* however, courts generally allow it: see the Supreme Court Judgement in Case as-664-635-2016, 2017

Practice and Stakeholder Opinion

Stakeholders from the state administration (including high-level public servants) confirmed that during the permitting procedures, information is made public and notifications about the modalities of public participation are communicated to the members of the public in the legally prescribed manner.

Nevertheless, it was highlighted that even if the laws are respected, it is not guaranteed that the information about a planned project reaches the members of the public. This is due to the format of public information, e.g., not everybody has access to the internet and notice boards are not frequented by the members of the public. As mentioned by several interviewees, courts tend to accept these modalities of public information as legal and satisfactory, therefore, decisions that were preceded by a participation process based on the prescribed information methods but that did not substantially involve members of the public in the decision-making process were found legal by the courts.[58]

EIEC representatives highlighted that since 2023, EIEC is in charge of organising public hearings and even established a special unit called Service of Public Participation in Environmental Decision-making Process. Their task is to plan, organise and inform about public hearings, and they set up a portal for sharing EIA-related information with the public (www.ei.gov.ge). Information about public hearings is also shared via printed media, email databases, and the EIEC Facebook page. Electronic versions of environmental decisions are published online.

Civil society representatives and NGOs expressed concerns on the instances of an ineffective organisation of public hearings in some EIA cases, including the remote location of the hearing, limited accessibility including due to a lack of public transportation options, an unfortunate timing in working hours, only public servants participating in the audience as members of the public, and questions not properly answered.[59] To avoid comprehensive public consultation, it also happens that project developers apply the so-called "salami slicing" tactic and apply for permits for sections of their projects that individually do not fall under the EIA requirement.[60]

58 Tbilisi City Court, Decision on Case 3/3140-20, 2022

59 Social Justice Center representative mentioned that Namakhvani HPP EIA report public hearing was held in the Tskaltubo municipal administration, about 50 km away from the project venue, https://bit.ly/403nVSE

60 Georgian Young Lawyers Association mentioned Bzhuzha-2 HPP, which was opposed by the local community in 2019. Now, the developer plans to build two smaller HPPs on the River Bzhuzha that do not fall under the Annex I of the Environmental Assessment Code, hence require no public participation.

Additionally, NGOs referred to the language-related barriers for ethnic minorities. The public hearing language is Georgian.[61] While translation is provided during public hearings, the quality is a concern, as well as the information about public hearings is not always being issued in the languages of ethnic minorities. A story was shared with the researchers about the Mushevani mine case, where most of the people who were affected were ethnic Azerbaijanis and despite this, no documentation was translated into the Azerbaijani language, neither the EIA report nor its non-technical summary. As a result, people being affected did not understand the technical details and this significantly hindered the public participation.

Another concern of civil society groups is that public participation comes very late in the process. The top decision-making bodies in matters involving large-scale infrastructure projects are MESD and MEPA. According to the interviewed NGOs, MESD sometimes makes concessions with the project developers, while MEPA only then issues the environmental permit/decision or starts the EIA procedure with the participatory mechanism. This time gap is problematic because by the time the EIA procedure starts, the state is already financially committed to a certain development project, despite potential grievances from the public.

The Environmental Assessment Code is still considered new in terms of its application, although it entered into force in 2018. There are still not enough technical experts qualified to perform the assessment of environmental impacts and this is also reflected in the quality of EIA documentation. This evaluation was also confirmed by the MEPA public servants, noting that the National Environmental Agency already complained about the quality of environmental impact statements. This also has a negative impact on public participation and the willingness of the public to participate. There are still no updated guidelines on assessments, however, they are under preparation.

The members of the judiciary provided information that due to the territorial competence rules, Tbilisi City Court (first instance administrative court in the capital) receives a huge variety of public participation cases because many state agencies have their seat in Tbilisi and the level of NGO activity is also higher in Tbilisi. Nevertheless, there is no legal obligation to actively involve environmental NGOs in environmental decision-making procedures besides ensuring public participation opportunities. When a construction case was taken to court by an NGO for not being involved in the procedure, the Tbilisi Court of Appeals concluded in its judgement that the public authority has no obligation to proactively look for other stakeholders, including environmental NGOs.[62] While the members of the judiciary

61 Art. 9.1, Ministerial Order N°2-94, 2018

62 Interview with the Tbilisi Court of Appeals judge on 19.09.2023

have information about a few landmark environmental administrative cases on public participation, it is also known that most of them were decided in favour of the defendant state administration, even by reversing first instance judgments on the higher instance.[63]

In conclusion, while the regulation of public participation in environmental matters, especially the regulation of the EIA procedure is satisfactory in Georgia, and even qualifies it as a progressive country in terms of the participation of the public, certain implementation barriers remain. While EIEC, a special body within MEPA, is in charge of making sure the public can participate in environmentally relevant procedures, it cannot guarantee that information on participation opportunities (notably on public hearings) in fact always reaches the target audience: inconvenient location and timing in some cases, and the lack of inclusive public hearings, including the lack of proper translation for ethnic minorities hinder effective public participation and weaken trust in the functioning of the system.

c. Access to Justice Against Acts or Omissions

This subchapter focuses on remedies against general acts or omissions that are beyond the matters of access to information or public participation.

According to the Constitution of Georgia, every person has the right to apply to a court to defend his/her rights.[64] The Aarhus Convention guarantees access to justice for cases where a member of the public challenges acts and omissions by private persons and public authorities, which contravene provisions of its national law relating to the environment.[65] There are several ways in Georgia to access justice against acts or omissions related to environmental matters.

Administrative remedies

Administrative proceedings are best suited to remedy acts or omissions of authorities on environmental matters in Georgia. The Law of Georgia on Environmental Protection specifically recognises the rights of citizens to demand, through court proceedings, changes to decisions made on the location, design, construction, reconstruction and operation of environmentally dangerous facilities.[66]

63 Interviews with judiciary members on 17, 19-21.09.2023

64 Art. 31, Constitution of Georgia

65 Art. 9, Aarhus Convention

66 Art. 6.t, Law on Environmental Protection

Legal standing in Georgia on environmental matters in administrative cases stems from a number of sources. Most importantly, it has a general constitutional underpinning further detailed and reaffirmed by the General Administrative Code.[67] Based on these legal grounds, anyone can appeal against an administrative-legal act or administrative action/omission on environmental matters to a superior administrative authority and/or court. As a result, there is *actio popularis* in Georgia in relation to environmental matters in administrative cases. Judges in Georgia directly refer to the Aarhus Convention when applying *actio popularis,* thus in practical terms this standing is grounded in the Convention.[68]

As explained earlier, when an administrative-legal act has been issued, the review procedure is started by the submission of an administrative complaint to the superior administrative body. The so-called "silence of the administration" i.e., the lack of response by an administrative authority within a timeline of one month, is considered as a refusal of the application.[69] Before a decision is made in the review procedure, the reviewing body must inform those parties who participated in the administrative proceedings related to the issuance of the contested administrative-legal act and make sure that the interested parties can present their opinions during the review procedure.[70] After the administrative complaint is exhausted, the next step in pursuit of legal remedies is judicial review. Administrative claims on environmental cases are considered by the common courts of Georgia and they have both reformatory and cassation powers.[71]

According to the General Administrative Code, the omission of a public authority falls under the very same legal regime as issuing an administrative-legal act, therefore the applicable remedies for an omission are identical with those available in the situation of an act.[72]

Most often, it is local municipal acts or omissions that are appealed against on environmental grounds. These include construction permits and municipal land use (zoning) changes. According to the civil society organisations, municipal decision-making is slow when it comes to reacting to illegal constructions affecting the environment. It was illustrated by a case where a large town's municipal legal department reacted to a report on illegal building

67 Art. 31, Constitution; 22.2, 23.2., 24.2 Administrative Procedure Code

68 This was confirmed during the interviews with judiciary, including judges from the Supreme Court of Georgia, Tbilisi Court of Appeal, Tbilisi City Court, Poti City Court, Rustavi City Court

69 Art. 177, General Administrative Code

70 Art. 194, General Administrative Code

71 Interview with the Supreme Court Judge on 19.09.2023; Art. 390, 399, 411, 412 Civil Procedural Code; Art. 32 Administrative Procedure Code

72 Art. 177.2, General Administrative Code

only after four months, over the statutory time limit.[73] The NGO and academia representatives interviewed by the research team agreed that municipalities are probably the weakest among public authorities in terms of capacity and knowledge on environmental matters.

A Tbilisi City municipal administration representative noted a large number of complaints against construction permits issued by the municipality. The municipality even had to increase the size of the staff to be able to cope with this many cases. An opinion was expressed that such a large number of complaints against construction permits is burdensome. The municipality representative explained that most of the construction permit related appeals are not successful.

Some development projects require EIA, and in such cases, the environmental decisions are made by the national authorities rather than the local self-government. Screening and scoping, as well as EIA-related environmental decisions can also be appealed directly to the administrative chamber of a court without the review of a superior administrative body.[74] Up until recently, the superior authority for administrative review in EIA complaints has been the Government of Georgia, however, the Government did not get substantially involved in such reviews, rather suggested that the dispute be taken to court for adjudication. This has represented a significant barrier for NGOs and the public in general, as the court litigation is lengthy and burdensome. In May 2022, EIA/SEA competence moved from MEPA to the National Environmental Agency, accordingly, the superior administrative body on EIA complaints will now be MEPA and not the Government. As part of the change, MEPA will also be the superior administrative body for EIA-related public participation claims mentioned earlier.

A high-level public servant from MEPA mentioned that from 2018 to 2022, there were 46 cases at the court relating to EIA, 12 of which were concluded in favour of MEPA, and the rest of the processes were not completed in that period. Within this same period, the competent authority issued 1,050 screening decisions and only seven were challenged in court. As to the scoping, 450 scoping decisions were issued and seven were challenged. 220 EIA-related environmental decisions were issued in this period and 25 were challenged. It shows a consistently low rate of conflict regarding these decisions, especially in terms of screening. As of March 2023, MEPA has 23 ongoing EIA-related court cases. This is largely due to the fact that the disputes last for years, e.g., the status of one dispute is still ongoing in 2023, despite the original decision that is being appealed was issued in 2017.

73 Interview with the Georgian-American University Professor on 23.08.2023

74 Art. 46.6, Environmental Assessment Code

Members of the public may also file administrative lawsuits against decisions that were made following SEA.[75] Government stakeholders confirmed that there have been no such lawsuits yet, therefore we cannot make an evaluation about the functioning of this legal instrument. However, the opportunity provided by the Georgian legislation therefore complies with the Aarhus Convention as interpreted by its case law.[76]

> Despite the fact that both the procedural and the substantive lawfulness of an environmental decision can be challenged in Georgia, the civil society organisations claimed that there is a feeling that people cannot find real justice in this formal system. The statistics on environmental decisions show that in only a small minority of the cases the claims are granted, while the majority of such claims are decided as unfounded.[77]

Some NGO representatives argued that this is due to the formalistic approach of the courts when judgments contain numerous references to provisions from diverse laws, but there is no actual analysis of the legal barrier with limited reasoning responding to the arguments of the parties. One example brought up was when the Supreme Court did not annul the judgement of the lower court with reference to the environmental impact of a hotel construction in a public park in Tbilisi. The Court's reasoning was largely formalistic. According to the court, "the project area and the real estate owned by "Vake Park" LLC were and are two independent cadastral units and are not included in the boundaries of Vake Park".[78]

The civil society representatives also argued that the courts often apply general principles of administrative law, but not specific fields of law, e.g., those regulating construction and environmental cases. Other barriers raised by stakeholders, both NGOs and members of the judiciary alike, relate to the long duration of cases and difficulty to achieve injunctive relief in environmental cases, which are explored in further detail in the sections below.

Civil Remedies

Civil law in Georgia provides legal remedies such as injunctions, compensations, and specific performance orders to enforce environmental rights. The main legislative

75 Art. 36, Environmental Assessment Code

76 ACCC, Case ACCC/C/2011/58, Bulgaria, 2012, https://bit.ly/4055Ljx

77 Judicial statistics on environmental cases as presented during a meeting at the Supreme Court of Georgia, 19.09.2023

78 The Supreme Court of Georgia, Ruling on Case BS-942(3K-18), 2018

instrument for such claims is the Civil Code that makes possible nuisance[79] and trespassing and neighbourhood[80] claims against harmful activities or omissions, or tort claims for the compensation of damage.

All interviewed stakeholders, including members of the judiciary, confirmed that there are very few environmental cases submitted under civil law. For instance, the judge at Rustavi City Court told the research team that they had only three civil cases on environmental matters registered in the last ten years. The judge at Tbilisi City Court explained that environmental issues are very difficult to subsume under civil law given that the environment belongs to the public domain. Indeed, legal standing in civil matters belongs to those only who were personally affected by the disputed act or omission.

Tbilisi City Court also has heard a few civil cases where applicants claim compensation for damage for illegal construction causing harm to neighbours and surrounding environment. There is also a recent case on neighbourhood nuisance when the court ruled in favour of Tbilisi residents who were affected by noise and air pollution from the nearby driving school set up in a recreational zone.[81]

One case of note in this regard is *Jugheli and Others,* which started as a tort law case against the operators of the then-operating Tboelectrocentrali thermal power plant in central Tbilisi.[82] The case ended domestically in 2005 on the level of the Supreme Court with the partial victory of the applicants, whereby they received compensation for damage suffered by the disturbances of the plant. Later the case was taken to the ECtHR with reference to Art. 8 (right to respect for private and family life, home and correspondence) of the ECHR. The ECtHR established the breach of the rights of the applicants and ordered Georgia to pay compensation to the applicants in 2017. According to the official interpretation by the Council of Europe:

> *After the European court judgement, the power plant was not in operation for quite some time already and Georgia took steps to improve environmental protections, including by changing the law. The Environmental Assessment Code was also adopted in 2017, which requires both private and public bodies to carry out environmental impact assessments for relevant activities and projects. New rules on air quality standards were introduced in 2018.*[83]

79 Section III - Torts, Civil Code of Georgia

80 Section II - Ownership, Chapter II - Law of Neighbouring Tenements, Civil Code of Georgia

81 Tbilisi City Court Civil Chamber, Decision on Case 2/32354-21, 2022

82 ECtHR Judgment on *Jugheli and Others v. Georgia,* 2017, https://bit.ly/46w3Yq4

83 Council of Europe brief on the case *Jugheli and Others v. Georgia,* 2017, https://bit.ly/3PSUGgV

d. Remedying of Environmental Damage

Administrative Offences

Administrative offences are minor breaches of administrative regulations that belong to administrative authorities to process. However, according to the Georgian domestic legislation, administrative authorities may decide to forward environmental offence cases to the first instance courts for adjudication and application of sanctions.[84]

It was commonly mentioned regardless of the court location or level that administrative authorities do not use their right to apply administrative sanctions but rather forward the cases to the courts of first instance. This creates a huge burden for the courts, e.g., in 2022, in Tbilisi City Court, the order was delivered against 296 persons, out of which the court dismissed 28, applied a fine for 185, and a verbal warning for 79.[85] On the appellate level, in 2022, there were 530 offences, while in 2023 until September, they received 259 offence cases. The most typical of such offences are illegal logging, illegal fishing or pollution of the environment.

If an administrative offence leads to environmental damage, then the state is entitled to seek compensation in addition to any administrative sanction.[86]

Environmental Crimes

The Georgian Criminal Code contains a specific section on crimes against environmental protection and natural resource use as well as several other articles connected to environmental crimes spread across different sections of the Code. Most of these crimes fall into the less severe category, leading to the imposition of relatively lenient penalties. When a crime leads to environmental damage, then the state is entitled to seek compensation in addition to the criminal sentence.[87]

Anyone can report a crime to the competent authority. The Environmental Supervision Department maintains a 24-hour call centre to receive reports on environmental violations and has regional authorities that identify violations and send information to the police. When notified of the commission of a crime, an investigator or a prosecutor is obliged to initiate an investigation.

84 Art. 222.1, Administrative Offences Code

85 Data provided by Tbilisi City Court on 16.10.2023

86 Art. 40, Administrative Offences Code; Chapter XXXIV^3, Civil Procedural Code of Georgia

87 Chapter XXXIV^3, Civil Procedural Code of Georgia

The perpetrators of environmental crimes in Georgia are often socially vulnerable people.[88] According to the civil society representatives, this stems from the fact that criminal investigations and prosecutions mostly address petty environmental crimes and not large-scale pollution by companies.[89]

In the Georgian legal system, while individuals can certainly commit environmental crimes, a legal entity can only be held criminally liable if specified in the relevant article of the Criminal Code.[90] In the environmental crimes section liability for a legal entity is established only under three articles.[91] For this reason, when a crime is committed related to the activity of a legal person, prosecutors have to find the responsible individual up in the company hierarchy. From January 2018 to June 2023, no legal entity was prosecuted for environmental crimes in Georgia.

From January 2021 to June 2023, prosecution was initiated against 810 individuals under the environmental crimes section of the Criminal Code. The specific provisions under which the most of the prosecution cases were initiated are Art. 303 (Illegal felling of trees and bushes), followed by Art. 287^1 (Violation of the sawmill registration requirements), Art. 300 (Illegal fishing), Art. 299 (Use of mineral resources without an appropriate licence), and Art. 304^1 (Transportation of round timber (log), tree-plants or firewood in violation of the statutory procedure). According to the data provided by the Supreme Court, in 2022, 276 persons were found guilty of committing environmental crimes. For the majority of the articles under the environmental crimes section, no prosecutions have been initiated during the last two years.[92]

According to a 2022 report from the Georgian Young Lawyers Association, a local watchdog, combating environmental crimes in Georgia is challenging due to the lack of human capacity and technological resources, as well as a general lack of awareness regarding environmental crimes within society.[93] The report argues that given the specific and technical nature of the offences, judges encounter difficulties in assessing specific technical evidence.[94] The latter was confirmed by the stakeholders interviewed for this study, including some of the judiciary members. The judge in Tbilisi City Court explained that because environmental

88 Interviews with stakeholders, including a prosecutor on 14.09.2023

89 Social Justice Center, Georgian Young Lawyers Association

90 Art. 107^2, Criminal Code of Georgia

91 Art. 287^1, 289^1, 306^2, Criminal Code of Georgia

92 Art. 287, 288, 289, 289^1, 290, 291, 293, 294, 295, 296, 298, 302, 302^1, 304, 306, and 306, Criminal Code of Georgia

93 Georgian Young Lawyers Association, Criminal Regulation of Environmental Protection, 2022

94 Ibid.

crimes often involve complex technical aspects, expert opinions are utilised when making determinations in such cases.

Environmental Liability

Georgia adopted a new Law on Environmental Liability in 2021, which represents a positive move for advancing environmental justice. Previously, the violation of legislation in the fields of environmental protection and natural resources was to be only financially compensated through administrative or civil proceedings in addition to an administrative sanction or criminal sentence. The past system was heavily criticised by the Public Defender as fundamentally flawed and failing to meet international standards.[95] Under the new system, the primary obligation of polluters in cases of significant environmental damage is remediation and restoration, and only in a limited number of cases can a polluter avoid such measures by paying compensation.[96] The Environmental Supervision Department is involved in enforcing the Environmental Liability Law.[97]

e. Other Means of Access to Justice

Constitutional Court

The Constitutional Court is in charge of ensuring the constitutionality of normative acts in Georgia, including regarding the right to a healthy environment.[98] The Court proved in its judgments that on environmental matters, it essentially allows an *actio popularis*.[99]

In the proceedings of the Constitutional Court, anyone can submit an opinion.[100] This means that anyone can be an *amicus curiae* in an ongoing constitutional case, however, the Court is not obliged to follow any external opinion.

One of the most significant cases of the Constitutional Court on environmental matters is *Giorgi Gachechiladze v. Parliament of Georgia* from 2013. The case concerned Article 57[10] of the Law on Environmental Protection that allowed the Ministry of Energy to sign an agreement within which all actions committed by an investor in the sphere of environmental

95 Public Defender, Alternative Report on the Status of the Implementation of the Aarhus Convention 2017-2020, 2021

96 Art. 7, Environmental Liability Law

97 Art. 4, Art. 6, Environmental Liability Law

98 Art. 39.1.a, Organic Law on Constitutional Court

99 Interview with Georgian-American University Professor on 23.08.2023. See Constitutional Court Judgements *Gachechiladze v. Parliament of Georgia,* 2012, *Green Alternative v. Parliament of Georgia,* 2018

100 Art. 21.4.1, Organic Law on Constitutional Court

protection and natural resources would have been deemed as legitimate. The Court ruled the Article unconstitutional under the right to a healthy environment.

> The Constitutional Court explained in *Giorgi Gachechiladze v. Parliament of Georgia* that "Bringing environmental rights into the constitutional-legal space is especially important to effectively coordinate state accountability, access to environmental information, public participation and other environmental mechanisms." The Court also declared that the right to a healthy environment entails positive and negative obligations and acknowledged that even though promotion of economic development is one of the most important tasks of the government, the constitution provides the lens for keeping the balance with environmental sustainability.

During the stakeholder consultations, civil society representatives highlighted that the Constitution of Georgia is an invaluable part of the legal framework as it specifically recognised the right to environmental protection.[101] The interviewees highlighted the role of the Constitutional Court and recognised that it has a few but noteworthy practice in environmental matters.

National Human Rights Institution - Public Defender

According to the Law on Public Defender, "The Public Defender of Georgia supervises the protection of human rights within the territory of Georgia and its jurisdiction."[102] It has several powers that could be relevant to ensure redress in environmental matters. The Public Defender can consider applications and complaints in relation to the violation of human rights and freedoms by decisions of a public institution and may send non-binding proposals and recommendations for the restoration of violated human rights and freedoms. In case there is a non-compliance of a normative act with the Constitution of Georgia, the Public Defender may apply to the Constitutional Court with a constitutional application. It can also act as an *amicus curiae* in ongoing cases at both common courts and at the Constitutional Court.[103]

According to the stakeholder consultations, the Public Defender's Office does not receive a high number of complaints about the environment, but this number is increasing. The complaints mainly include appeals against construction and energy projects. The Public

101 Interview with the Georgian-American University Professor on 23.08.2023, Interview with the Tbilisi State University Professor on 06.09.2023

102 Art. 2, Law on Public Defender

103 Art. 14 and 21, Law on Public Defender

Defender's recommendations on environmental matters are mostly not taken forward, however, the representative from the Public Defender's Office cited one instance where the recommendation was accepted by the local government, and the Tbilisi City Hall withdrew a construction permit.

The Public Defender's Office can act as *amicus curiae* in judicial proceedings.[104] In 2022, the Office submitted an *amicus curiae* brief on an environmental case filed by Rustavi residents to Tbilisi City Court claiming compensation from authorities for moral damage to health because of the large-scale air pollution caused by the industry in Rustavi. One of the applicants had been diagnosed with anxiety and the applicants allege that MEPA and the Environmental Supervision Department did not take actions to resolve the pollution issue. Part of the claim is to order MEPA and the Department to oblige factories to install emission filtration systems and define what types of factories can be built in Rustavi by elaborating the permissible air emission load that the city can tolerate. The Public Defender's *amicus curiae* brief urges the court to assess the impact of the air pollution in Rustavi not only on the plaintiffs' health but also on the quality of their lives. In addition, the brief argues that the Court should assess how effectively the current legislation and their enforcement mechanisms reduce the air pollution in Rustavi.[105]

The Public Defender regularly publishes reports on environmental matters. It has issued an air pollution report in 2019, an EIA (policy, legislation, and practice analysis) report in 2021 and a special report on the status of implementation of the Aarhus Convention (2017-2020) in 2021.

The existence of the National Human Rights Institution alone would not be sufficient to meet the requirements of the Aarhus Convention towards effective remedies.[106] However, the Public Defender certainly adds to the range of available legal remedies in environmental justice in Georgia.

f. Evidence and Expert Opinions

Environmental issues could often be fundamentally technical in nature. It means that even in the regulation of environmental matters, there are a number of technical norms that govern the parameters of such regulations and define a permissible level of environmental impacts. As a result, the significance of having access to a highly skilled pool of experts should not be underestimated.

104 Art. 21.e, Law on Public Defender

105 Public Defender's *Amicus Curiae* Brief on Air Pollution Lawsuit, 2022, https://bit.ly/45wMXLo

106 ACCC, Case ACCC/C/2010/48, Austria, 2011, https://bit.ly/3FprfOy

Courts in Georgia apply technical experts, either in the form of expert witnesses brought into the proceeding by any or both of the parties or of a court appointed expert. Interviews with the members of the judiciary revealed that in case there is a need for special technical knowledge, the adjudication is, to some extent, dependent on the expert opinion.

There is no data about the use of experts in environmental proceedings, however, the stakeholder consultations have revealed that technical experts or expertise are necessary for almost every environmental case and it is usually difficult to find the expert with the necessary qualification and willingness to participate in the process. There is also no pre-approved list or any other form of official registration for judicial experts, however, there is the Levan Samkharauli National Forensics Bureau that provides its services to state and non-state entities.

g. Injunctive Relief

Environmental cases – especially those that are initiated by members of the public to prevent the construction of a building or the operation of a facility – have a special feature, in that they can be urgent in nature. While on the side of project developers, there is a clear and mostly economically fuelled motivation to build and start an installation as fast as possible, environmental claimants may seek to halt further construction or measures to avoid irreparable changes or harm until the legality of the decision is adjudicated. This becomes particularly crucial when the legal proceedings often extend unreasonably long, which can be the case in Georgia.

Injunctions (injunctive relief) are used in such situations requiring urgent action to halt irreparable damage being caused, which is a prohibitive writ issued by a court forbidding a party to do some act. While the instrument of injunction exists indeed in domestic Georgian law, its regulation, as well as application, raises a number of questions for environmental justice issues. Since most of the environmental cases in Georgia stem from administrative law, this subchapter focuses on administrative injunctions.

The Administrative Procedural Code guarantees the automatic suspension of the appealed individual administrative-legal act, the so-called "suspensive effect."[107] While this is the general rule, and one would expect that by this, the suspensive effect of court claims is guaranteed, a number of broad exceptions are outlined under Art. 29.2, including "if delaying execution will cause significant material damage, or will create a significant threat to public order or security", "its suspension will cause significant damage to the legal right or interest

107 Art. 29.1, Administrative Procedure Code

of another person" or "it is an enabling act and its suspension may significantly prejudice the legal rights and interests of other persons". For this reason, typically, project developers and administrative bodies claim the disputed administrative-legal act not to be suspended because this suspension would cause significant material damage or may significantly prejudice the legal rights and interests of other persons.

There is still an option for the parties to individually claim the suspension or termination of suspension of the disputed act if substantial harm is foreseen or it would be impossible to protect a legal right or interest.[108]

The Civil Procedural Code also applies in administrative proceedings, namely Art. 199, which introduces damage compensation claims in injunctions:

> *If the court assumes that the enforcement of measures for securing the claim will cause damage to the defendant, the court may enforce the measures for securing the claim and at the same time, request the person who applied to the court to secure the claim to provide security to compensate possible damages that the other party may incur.*

Interviewees expressed various concerns related to the granting of injunctions. The academia representatives highlighted that under the current legislation and judicial approaches, with a potential damage compensation claim, it is almost impossible to secure an injunction.[109] The members of civil society[110] confirmed that according to the administrative law, they can request the suspension of an individual administrative-legal act until the case is over, and they almost always do. However, these acts are usually not suspended and the court bases its decisions either on the lack of "urgent necessity" and "substantial harm"[111] or the potential economic losses on the side of the respondent and the plaintiff's inability to pay deposit (especially in cases of construction permits and business operations).[112]

Civil society representatives recalled one successful case when a Khashuri District Court judge suspended a hotel construction in a landslide-prone area in Surami.[113] The Court aligned with the applicant's stance, because the danger of harm was high and the judge decided so because of the potential fatalities and damage risks to property.

108 Art. 29.3 and Art. 29.4, Administrative Procedure Code

109 Interview with Georgian-American University Professor on 23.08. 2023

110 Georgian Young Lawyers Association, Social Justice Center, Green Alternative

111 Batumi Riviera Case, Tbilisi City Court, 3/252-21, 2023

112 Nenskra HPP Case, Tbilisi City Court, 3/2005-19, 2019

113 Khashuri District Court, Decision on Case 3/85-2018, 2018

Interviews with the members of the judiciary mentioned that in most cases, the injunction request lacks evidence or has no evidence at all. They also claimed that the practice is that if the defendant is a state body and the subject of the legal dispute is an administrative-legal act then the granting of the injunction cannot be made conditional upon the payment of a bond or deposit. Nevertheless, it is a common practice that during the adjudication of the claim for injunction, the construction of a permitted project continues and while most of the disputes related to infrastructure construction at Tbilisi City Court include a claim for injunction, it is very rare that it is actually granted. The lack of injunction granting cases was confirmed by a judge from the Tbilisi Court of Appeals claiming that there are very few cases of the positive application of this legal instrument. He explained that this is mostly because there is firm evidence needed that there is a very high risk of infringing the rights of the applicant, and that there is imminent and urgent damage, in order to issue an injunction, and also because judges want to avoid taking a side in the merits of the case before the actual adjudication.

h. Costs, Financial Assistance Mechanisms and Legal Aid

Exercising the right to remedy does not only depend on the legal regulation of the topic but also on other factors, principal among them is the financial burden of using access to justice opportunities.

Mostly, environmental claims are non-proprietary disputes and the fee to be paid is GEL 100 while for appeals and cassation appeals it is GEL 150 and GEL 300, respectively.[114] The fee for requesting an injunction is GEL 50.[115]

These costs are not high, but the social situation of individual applicants can make it a hurdle. NGOs confirmed that it is not an expensive procedure to file an administrative lawsuit at the court, however, other cost components such as expert fees and attorney fees can easily be expensive. Members of the judiciary, in fact, confirmed this on all levels.

As regards the availability of legal aid in environmental matters, the Legal Aid Service of Georgia offers such services, albeit in a limited capacity. They are a nationally-funded independent agency and have 14 bureaus and 43 consultation centres nationwide. Consultation is free for everyone in any legal matter, but legal representation and assistance require that beneficiaries meet certain criteria, prescribed by the law. These are usually people from vulnerable groups, as outlined under the law. Statistics for 2022 show that the

114 Art. 4.1.l, Law on State Duty

115 Art. 4.1.t, Law on State Duty

Legal Aid Service had 122 environmental cases, including water pollution, illegal hunting, illegal logging, illegal fishing where they represented the alleged perpetrators.

NGOs opined that environmental rightsholders do not fully trust the Legal Aid Service in administrative and civil environmental proceedings where a certain level of dedication and specific knowledge would be needed. Instead, a handful of NGOs provide project-based free legal aid on environmental matters.[116] However, their lawyers are overworked, under-resourced and lack funding, and despite the high demand, many NGOs only choose strategic environment litigation.

i. Court Timeliness

"Justice delayed is justice denied" is a legal maxim. It means that if legal redress or equitable relief to an injured party is available, but is not forthcoming in a timely fashion, it is effectively the same as having no remedy at all.

> Georgian legislation sets case processing timelines, but these are almost always missed. The unreasonable length of court proceedings has been the single most frequently cited barrier during the stakeholder consultations and that except for a minor disagreement there was virtually consensus among the stakeholders that this is the most problematic area of access to justice in Georgia, and is not limited to environmental matters.

Representatives of the Government admitted that the procedures are very lengthy and may take years. Even the Government's own Aarhus Convention National Implementation Report admits that "several cases of failure to meet deadlines for consideration of claims filed to the court with regard to violation of access to environmental information right were registered."

According to the Tbilisi Court of Appeals, administrative judicial cases, on average, last from 17 to 19 months on the appellate level. The first instance procedure takes much longer. For example, the caseload in Tbilisi City Court often results in case adjudications extending well beyond two years, despite procedural legislation mandating a timeline of two to five months for case resolution.[117]

116 Georgian Young Lawyers Association, Social Justice Centre, Green Alternative, Transparency International Georgia, Initiative for the Public Space

117 Vakhtang Mtchedlishvili, The Problem of Access to Justice, Its Causes, and Ways to Solve the Problem, 2017, https://bit.ly/40b1mvn

Representatives from academia pointed out that the main problem is that the court system is overloaded with cases, each judge has hundreds of cases, ongoing and unfinished.[118] NGOs as primary users of access to environmental justice brought up cases where they filed a claim to the court but after more than 18 months there were no hearings held. They even named a specific case, the Namakhvani HPP case where the construction permit is four years old but the case has not even been in the preparatory phase at the court. They of course confirmed that courts are really busy with other cases and judges are not trained in environmental justice so it may take years to get a judgement. Social Justice Center, a local watchdog, shared the information that they are following seven cases currently that started the proceedings at least three years ago, but no hearing was held until relatively recently.[119]

j. Awareness

Awareness of public

Stakeholders agreed that there is a low level of awareness on environmental matters in Georgian society and the public are relatively less engaged in environmental issues or discourse. According to the representative of the Public Defender, many people are unaware that they can access the courts for the protection of their environmental rights and interests. Stakeholders also agreed that awareness on environmental rights is very low among Georgian businesses.

Members of the judiciary shared the observation that public awareness has started to increase recently and more lawsuits and complaints are initiated. But still, they agree that the public should have access to more information on how to access the courts on environmental matters.

Awareness of judiciary

According to the judiciary representatives, there is no special regime for environmental cases at the courts, therefore, there is no specialisation of judges on environmental matters, and, generally, every administrative judge can take an environmental case. Tbilisi City Court and the Tbilisi Court of Appeals use a wider specialised categorisation for judges where the so-called "Category A" judges adjudicate certain administrative cases which include environmental disputes.

118 Law professors from the Tbilisi State University and the Georgian-American University

119 These cases include appeals on the Namakhvani HPP, Nenskra HPP, construction on Shartava Street in Tbilisi, construction on Kipshidze Street in Tbilisi, permit for the Hippodrome Park in Tbilisi, manganese mining licence in Shkmeri, and construction of the Ambassador Hotel in Batumi.

There is no platform to inform judges about new legislative changes in environmental matters, and judges have no regular training opportunities on environmental matters either. Development organisations and some public agencies, such as EIEC occasionally offer one-off training for judges on environmental justice.

All of the judges interviewed as part of this research unmistakably demonstrated a keen interest in expanding their knowledge and expertise in environmental law. Some of them recognised that the lack of special knowledge of judges in environmental law is a barrier to increasing access to environmental justice and protecting environmental rights. The civil society stakeholders also highlighted that this lack of specialised knowledge could be contributing to the formalistic approach mentioned earlier that courts generally adopt in environmental cases.

Availability of information on environmental case law for the public

In Georgia, common courts use two websites: one publishes decisions from all courts (https://ecd.court.ge/), while the Supreme Court also uploads its decisions separately on its website (https://www.supremecourt.ge/). The former has been suspended since 2020 pending the implementation of the Constitutional Court's 2019 decision which laid out additional instructions to the Parliament to amend the law and enhance public access to court decisions.[120] In June 2023, the Parliament adopted the amendments which will enter into force from 2024 and the https://ecd.court.ge/ portal should be updated.[121] Additionally, the public can submit written requests to the court to receive court decisions based on the access to information provisions in the General Administrative Code.[122]

k. Enabling Environment for Access to Environmental Justice

It is an emerging concern among scholars that often when public participation and access to justice in environmental matters affect strong economic or government interests, members of the public become targets of deterrent attacks in order to curb public participation in the discussion. These have various forms and can take the shape of either a legal action against environmental activists, or can be subject to unlawful verbal or even physical attacks against individuals or civil society organisations. Environmental activists are human rights defenders and must be protected with specific support developed for environmental human rights defenders.

120 Judgement of the Constitutional Court of Georgia 71/4/693.857 of June 7, 2019, Media Development Fund and the Institute for Development of Freedom of Information against the Parliament of Georgia.

121 Art. 13.3,[1] Law on Common Courts

122 Art. 10.1, General Administrative Code

In this regard, civil society stakeholders in Georgia shared their concerns related to the specific cases. A journalist who also is engaged as an environmental activist mentioned that while working in an industrial town of Chiatura in Western Georgia, he published a story about a manganese mine and two days after the publication he received a threat to his life in writing. This led to a criminal investigation. The activist claims a company sent the person who wrote this threat, and the wider group working on this mining issue were subject to attacks and further threats.

Social Justice Center shared a story that in the village of Shukruti in the Chiatura Municipality a private investor and the authorities harassed and threatened locals who protested against the environmental impacts of the mining companies. The NGO believes that there was a coordinated effort between the company and the authorities to suppress the public dissent. The researchers were told that even a trumped-up criminal case was initiated against one of the protesters for allegedly disturbing "public order".[123]

While it was not possible to independently verify all the specifics of these allegations, they show, at the very least, incidents of unfriendly environment that could hinder access to justice in Georgia.

123 Interview with the Social Justice Center representative on 29.08.2023. The criminal charges were brought under Article 226 – Organisation of group activity disrupting public order or active involvement in it.

VI. CONCLUSION

Strengthening access to environmental justice in Georgia is imperative for a sustainable and equitable future. A strong legal foundation, informed citizenry, people-centred and effective institutions, legal empowerment and effective enforcement mechanisms are vital for ensuring environmental justice.

The review of Georgia's international obligations and national legislation shows that access to justice in the country has a strong legal foundation. The Aarhus Convention applies directly, and the Constitution enshrines the right to a healthy environment, emphasising the importance of access to information and public participation. Lower-level norms and specific environmental laws further regulate these rights. In addition, Georgia offers a wide legal standing with procedural guarantees and *actio popularis* allowing anyone to seek judicial remedies against violations of environmental laws. The country has functioning administrative agencies and judicial bodies and both the procedural and the substantive lawfulness of an environmental decision can be challenged.

While many aspects of access to justice regulation in Georgia are satisfactory and some even qualify as progressive, several barriers to access to justice have been identified. This creates a situation where there is adequate but not effective access to justice in environmental matters. Such barriers include general and systemic gaps, such as timelines of judicial review so unreasonably long that it could even qualify as denial of justice. Other barriers refer to problems more specific to environmental cases, such as the lack of injunction use and special knowledge of judges in environmental matters, as well as narrow and formalistic interpretation of national legislation when ruling on environmental appeals. These challenges create a sense among some rightsholders that they are unable to attain effective legal remedies in environmental matters in Georgia.

The instances of access to information requests being ignored or inadequately answered were also identified as an additional barrier. This mostly pertains to ministries outside the environmental administration, which, along with local municipalities, are believed to have low awareness on environmental matters in Georgia. Concerns on the lack of inclusive and accessible public hearings of development projects affecting the environment were also noted.

Last but not least, the social atmosphere for exercising access to environmental justice in Georgia is relatively neutral, however, some signs of a negative trend already appeared when those exercising their environmental rights such as communities protesting against large-scale development projects and heavy industries became targets of threats or intimidation.

VII. RECOMMENDATIONS

The interviews with judges, prosecutors, lawyers, and the officials of environmental administration left a strong impression that they are determined to address any shortcomings in access to environmental justice in Georgia. In light of this and the pressing need to enhance such access in Georgia, this chapter presents a set of comprehensive and actionable recommendations based on a snapshot of current legislation and practice and suggestions received during the interviews. These recommendations are designed to address the identified barriers and promote a more inclusive, transparent, and effective environmental justice framework in Georgia. They are formulated for each main stakeholder relevant to access to justice in environmental matters. Some require new or amended legislation, policy, or practice, some only require the enhancement of knowledge, while others necessitate funding input.

THE JUDICIARY IS RECOMMENDED TO:

- Take steps to decrease adjudication timelines in environmental cases in common courts in order to comply with the requirement of a "timely" remedy under the Aarhus Convention.
- Integrate environmental justice into its strategy and action plan.
- Recommence the online publication of court decisions to enhance public access to these rulings.
- Collect comprehensive statistical data on environmental cases.
- Consider introducing the specialised categorisation for judges on environmental cases, especially in courts receiving the high number of such cases.

THE HIGH SCHOOL OF JUSTICE IS RECOMMENDED TO:

- Design and administer a regular training module on environmental justice in order to increase the capacity of judges and court administration.

THE GOVERNMENT OF GEORGIA AND ITS MINISTRIES, INCLUDING THE MINISTRY OF ECONOMY AND SUSTAINABLE DEVELOPMENT, ARE RECOMMENDED TO:

- Ensure that time limits and other statutory requirements are complied with by state administration when satisfying requests for environmental information, including making sure inadequate and incomplete responses are avoided.

THE GOVERNMENT OF GEORGIA IS RECOMMENDED TO:

- Include activities on environmental justice in the upcoming Action Plan to the Human Rights National Strategy 2022-2030.

THE MINISTRY OF ENVIRONMENTAL PROTECTION AND AGRICULTURE IS RECOMMENDED TO:

- Utilise its newly acquired function as a superior administrative body for claims related to Environmental Impact Assessment and conduct an effective administrative review in order to decrease the number of cases filed to the court.
- Ensure that there are authoritative and updated guidelines on Environmental Impact Assessment in order to improve their quality.

THE ENVIRONMENTAL INFORMATION AND EDUCATION CENTER IS RECOMMENDED TO:

- Enhance its efforts of raising public awareness about access to environmental justice, including by informing the public on the available wide legal standing in Georgia and the right of everyone to seek redress on environmental matters through administrative bodies and common courts. Vulnerable communities, such as ethnic minorities and those living in remote regions should be identified to benefit from targeted awareness-raising measures and legal empowerment.
- Organise inclusive and accessible public hearings taking into consideration location accessibility, public transport, and the availability of public in light of the working hours. Translation of all relevant documentation into ethnic minority languages must be ensured in cases where ethnic minority communities are affected.
- Regularly monitor and evaluate the effectiveness of public participation measures and access to environmental information and issue implementable recommendations for relevant public agencies.

THE ENVIRONMENTAL SUPERVISION DEPARTMENT IS RECOMMENDED TO:

- Independently impose administrative penalties on environmental offences to ease the caseload in courts.

THE PROSECUTOR'S OFFICE IS RECOMMENDED TO:

- Design and administer a regular training module on environmental crimes in order to increase the capacity of prosecutors.
- Take steps to implement its 2022-2027 Strategy objective of increasing the effectiveness of its fight against environmental crimes.

THE MINISTRY OF INTERNAL AFFAIRS IS RECOMMENDED TO:

- Effectively investigate all instances of environmental crimes, as well as harassment, threats, and intimidation against environmental activists and communities affected by large-scale development projects.

THE PARLIAMENT OF GEORGIA IS RECOMMENDED TO:

- Consider regulating decision-making competencies regarding environmental administrative offences in a way that poses a minimal caseload burden on courts.

THE PUBLIC DEFENDER IS RECOMMENDED TO:

- Continue to monitor the implementation of the right to a healthy environment in Georgia and utilise its *amicus curiae* function on environmental cases using a human rights-based argumentation.

THE LEGAL AID SERVICE IS RECOMMENDED TO:

- Build the capacity of its staff and lawyers to be able to provide competent consultation and representation in environmental cases.

THE GEORGIAN BAR ASSOCIATION IS RECOMMENDED TO:

- Design and administer a regular training module on environmental justice in order to increase the capacity of lawyers.

THE LEVAN SAMKHARAULI NATIONAL EXPERTISE BUREAU IS RECOMMENDED TO:

- Take steps to increase the pool of experts and examination services relevant to environmental matters.

LOCAL SELF-GOVERNMENTS ARE RECOMMENDED TO:

- Ensure that its decision-makers and staff, including those in charge of administrative reviews, increase their knowledge, capacity, and awareness of environmental justice and the right to a healthy environment.

GEORGIAN BUSINESSES AND THEIR ASSOCIATIONS ARE RECOMMENDED TO:

- Take steps to increase their awareness of the right to a healthy environment and access to environmental justice and integrate environmental matters into the business and human rights realm.

ACADEMIC INSTITUTIONS ARE RECOMMENDED TO:

- Incorporate environmental law courses into the curriculum of law schools to equip future legal professionals with a strong foundation in environmental justice.

- Include environmental pro bono cases in their legal clinics to increase access to free legal aid for individuals and communities facing environmental threats.

DONOR AGENCIES ARE RECOMMENDED TO:

- Recognise access to environmental justice as an unmet need in Georgia and mobilise resources for relevant state and non-state stakeholders.
- Support NGOs, grassroots community groups, and lawyers to provide free legal aid in environmental cases, including strategic litigation cases.
- Support civil society groups and relevant state agencies to increase public awareness of access to environmental justice, including by organising nationwide campaigns.