german cooperation
DEUTSCHE ZUSAMMENARBEIT

UNDP

THE FULL VERSION OF THE BASELINE ASSESSMENT IS AVAILABLE HERE:

ACCESS TO ENVIRONMENTAL JUSTICE IN GEORGIA

BASELINE ASSESSMENT

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 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 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.

The lack of inclusive and accessible public hearings of development projects affecting the environment, and instances of access to information requests being ignored or inadequately answered, were also identified as additional barriers in the report. The latter mostly pertains to ministries outside the environmental administration, which, along with local municipalities, are believed to be the least capacitated among public authorities in terms of addressing environmental challenges. 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.

RECOMMENDATIONS

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:

- Design and administer a regular training module on environmental justice in order to increase the capacity of lawyers.
- 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 to increase public awareness of access to environmental justice, including by organising nationwide campaigns.

The study was prepared under UNDP's Improving the Rule of Law and Access to Justice for All Project with support from the German Government. The opinions expressed in this publication are those of the authors and do not necessarily represent those of UNDP and the German Government.