

Reply from the Ministry of Justice of Georgia and the Ministry of Environment and Natural Resources Protection of Georgia to the questionnaire regarding the natural resource exploitation and the rights to freedom of peaceful assembly and of association

The freedom of peaceful assembly and the right to form and to join public associations are expressly guaranteed in the Chapter II (*Basic Rights and Freedoms of Individuals*) of the supreme law of Georgia – the Constitution. Thus, according to Article 25(1) of the Constitution, “everyone, except members of the armed forces and Ministry of Internal Affairs, has the right to public assembly without arms either indoors or outdoors without prior permission”, whereas Article 26(1) stipulates that, “everyone shall have the right to form and to join public associations, including trade unions”.

In line with international human rights standards these two articles contain some restrictions necessary in democratic state and proportional to the aims pursued. In addition to already mentioned restriction for military and police personnel, Article 25 makes public assembly or manifestation subject to prior notification of the authorities in case it is held on a public thoroughfare. In addition, the article vests the authorities with the right to interrupt a public assembly or manifestation if it acquires illegal character.

Similar restricting provisions are contained in Article 26. In particular, its paragraph 3 envisages that, “[t]he formation and activity of public and political association aiming at overthrowing or forcibly changing the constitutional structure of Georgia, infringing upon independence and territorial integrity of the country or propagandizing war or violence, provoking nation, local, religious or social animosity shall be impermissible”. According to the principle of superiority of law embodied in Article 25(6) “suspension or prohibition of activity of public or political association shall be possible only under a court decision, in the case determined by [...] law and in accordance with procedure prescribed by law”.

For detailed regulation of the freedom of peaceful assembly, the “Law of Georgia on Assemblies and Demonstrations” (LGAD) was adopted on 12 June 1997 with further amendments. Article 2(3) of LGAD with reference to the Georgian Constitution provides that the restrictions on the rights recognized and protected by this law may be put on such conditions that are necessary in a democratic society in the interest of ensuring state security, territorial integrity or public safety, for preventing of crime, for the protection of the rights and dignity of others, for the prevention of the disclosure of information classified as confidential or for ensuring the independence and impartiality of justice. The same article also requires that any restriction shall be prescribed by law, necessary in a democratic society, non-discriminatory in its nature, proportionally restrictive and such that benefits protected by the restriction exceed the damage caused by the restriction. There is also a duty on the local self-government bodies to strike a balance between the freedom of assembly or demonstration and the rights of persons who lives, works or carries out entrepreneurial activity in places where a demonstration or an assembly is going to be held. In order to strike such balance and in line with requirements of Article 2(3) a restriction on time and place of holding an event may be placed. In addition, in case a public assembly or demonstration is to be held on the traffic roadway or obstruct traffic it is obligatory for its organizers to submit to the local executive body of self-government a prior notice.

Some additional restrictions are also envisaged by Article 9 of the LGAD for the purpose of ensuring public order, normal functioning of public institutions and respecting the rights of others. It is prohibited to hold assemblies or demonstrations in or within a twenty-meter radius from the entrance to the building of the Prosecutor’s offices, police stations, prisons and places of detention, residencies of law-enforcement bodies as well as airports, railway stations and ports. The same rule applies to military objects with the difference that the restrictive radius extends to 100 meters. It is also prohibited to block motorway, railways and entrances of buildings during a demonstration or an assembly. In addition, an administrative body in vicinity of which an assembly or manifestation is to be held may

impose a requirement to hold it at least in 20 meters from the building to ensure its normal functioning. The same rule applies to the courts in order to ensure impartiality and independence of the justice.

In addition, in case an assembly or manifestation poses a real threat to normal operation of an enterprise, institution or organization or it overlaps in time and place with another manifestation or assembly a local executive self-government may make written recommendation to the organizers of the public event to change its time and/or venue.

There are also some prohibitions with regard to the behavior of participants of an assembly or manifestation and the way of expressing the message of the event. In particular, according to Article 11 of the LGAD it is forbidden to call to change or overthrow of the constitutional order of Georgia by force, to encroachment on the independence and territorial integrity of the party and to instigate to war, violence as well as to religious, racial, regional, social hostility. However, in order to be prohibited a call to such actions shall be accompanied with real, direct and essential threat of being implemented. There are also some prohibited items/materials during an assembly or manifestation, in particular: firearms, cold weapon, explosive or flammable materials, alcoholic drinks, tear gas or other toxic substances, etc.

In case participants of the public event violate the requirements of Article 11 of the LGAD in mass representatives of local self-government may require immediate cessation of the event and if participants and organizers refuse to cease the law-enforcement bodies may take necessary measures. In case of sporadic and individual violations the representatives of local self-government may give warning to organizers and request from them to take all necessary measures to stop violations of the law. If the organizers fails to address the participants and call them to immediate cessation of unlawful actions or behaviors he/she shall also be held responsible under the legislation of Georgia alongside with individual violators. Any decision to break up an assembly or demonstration may be appealed in court which shall make its decision on lawfulness of the break up within three working days (Article 13 of the LGAD)

As for the right of assembly and association in Georgian environmental sector, the law on “Environmental Protection” includes principle of public participation in decision-making, which means that public participation is guaranteed in all important environmental activities. The law also recognizes the right of every individual to become member of any public environmental organization.

To address the issues of public participation, social values and the rights of freedom of peaceful assembly and of association in the sector of Natural Resources, Georgia supports these activities through the internationally recognized instruments such as the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

Furthermore, under the Association Agreement with EU, Georgia undertook the commitment to facilitate public participation on environmental issues by rising public awareness, ensuring participation of all stakeholders in decision-making process and by providing easy access to information.

First steps are already taken to meet the abovementioned obligations. Georgian National Forest Program (NFP) was launched by the Ministry of Environment and Natural Resources Protection of Georgia (MENRP) in September 2013. The program aims to ensure the implementation of the forest sector reform and involvement of stakeholders in the decision-making process and to strengthen donor coordination initiatives in the forestry sector. The NFP process aims at supporting institutional and legislation reforms for sustainable forest management to ensure, *inert alia*, public participation in forest management related issues. NFP process involves all stakeholders, including the Representatives of the MENRP and respective structural units within the Ministry, other related Ministries,

representatives of regions and autonomous republics, private sector, educational and vocational institutions, international organizations and Patriarchate of Georgia.

In addition to the Association Agreement, the MENRP works intensively to improve domestic legislation to be in line with other international standards and practices and to facilitate public participation on environmental issues. Namely, MENRP plans to become a member of Extractive Industries Transparency Initiative (EITI). Introduction of EITI standard will increase the level of transparency in company reporting of revenues paid and government reporting receipts, as well as create basis for future wider reforms in this field. EITI is an international standard that ensures transparency around countries' oil, gas and mineral resources. The EITI Standard provides the requirements and guidance on how to report activity in the oil, gas and mining sectors and ensures that this information is available to the public. The Standard also covers areas such as license transparency, transit and state oil sales.