Honorable guests,

I have a pleasure to introduce today's working session that deals with the rule of law. In this framework we will discuss independence of judiciary, democratic law-making and ensuring equal enjoyment of rights and equal participation in political and public rights.

Democratic law-making and equal participation

Equal participation of under-represented groups such as women, persons with disabilities and ethnic minorities in politics and decision-making process still remains a serious challenge in Georgia. It is crucial for Georgia, on the way of democratic development to use the experience and knowledge of different groups and opportunities for establishment of the principle of justice and equality. However, it is difficult to talk about equal participation, when 53% of the country's population is women, but their voice in the decision-making process is not reached up to 20%.

Public Defender's Office of Georgia continues to have a crucial role, as a national human rights institution in the country to monitor, advocate and voice the problem that people from marginalized communities have. Lack of equal opportunities, public prejudices, inadequate education and social protection, access to information, infrastructural barriers are one of the main challenges underrepresented groups are suffering.

According to the Global Gender Gap Index 2018, based on the political empowerment and women in parliament, Georgia is ranked 119 among 149 countries. The Public Defender of Georgia pointed out numerous times to the importance of the gender quotas being instrumental for equal political participation in those circumstances, where the existing political stereotypes, invisible social, cultural or individual barriers significantly hamper women's political participation.

No efficient measures have been taken for facilitating the participation of national minorities in decision-making process. The main challenge in this field is lack of information and language barriers among groups of minorities. The representation of national minorities in managerial positions even in those municipalities that are densely populated by national minorities are problematic. That undermines the efficiency of the state policy towards integration. With rare exceptions, national minorities are not represented in the Government of Georgia at the level of a

minister, deputy minister, head of department or deputy head of department. It is noteworthy that very few representatives of national minorities are employed in the Ministry of Internal Affairs in the regions that are densely populated by national minorities.

Let me give you last year example from Georgian Parliament practice. There was working group hearing at the parliament regarding religion. One of the participant was unable to speak Georgian and he was assisted by the translator. One of the MPs was criticized him for not being able to speak in Georgian since he was citizen of Georgia. I have issued general recommendation towards this MP to refrain from using discriminatory wording in future and to obey with the requirement of the Code of Ethics of Geo Parliament. I hope it will have deterrent effect in future regarding other discriminatory speech.

Equal participation of PWDs in social and political life remains to be a challenge. In 2018, during the presidential elections, it was still problematic to ensure an inclusive electoral environment for PWDs, as there were only 1,268 such polling stations (35%).

Office of Public Defender is an equality body at the same time and with this additional mandate we try to use newly adopted anti-discrimination law and formulate additional arguments to promote inclusive environment.

Democratic law-making is totally excluded when parliamentary tribune is used to spread hate speech and incitement of discrimination. In this regard the Ethics Code for Members of the Parliament of Georgia adopted in February 2019 is noteworthy. The Code prohibits, inter alia, the use of discriminatory statements and hate speech and lays down relevant sanction too by posting the name of the person who violated the code on the website of the parliament along with a short summary of the violation. Unfortunately, the resort to xenophobic, homophobic and religious hate speech inciting discrimination was a part of election campaign and one of the ways to win over voters in the period before the presidential elections of 2018. During the lifetime appointment of one of the judges media circulated her viewpoint expressed in social network on the demonstration held to mark the International Day Against Homophobia and Transphobia on 17 May 2013. She referred to the fight of representatives of LGBT+ community for their right as *sick and indecent*. Expressing hateful viewpoints inciting discrimination towards any vulnerable group by public figures, especially those involved in political life endangers the equality of these groups and undermines the process the Georgian public underwent on the way of embracing the equality principle.

In the country where socio-economic situation is harsh, minority issues and equal participation of under-rated groups are not seen as important part of the electoral process on the national level. Political parties and their programs are not highlighting the problems that minorities face. Participatory process is regarded not as a real advantage and benefit for the state and society but as a good tone. Some steps taken in this direction are mostly motivated by creating some good impression than receiving real results. Institutional solutions and permanent formats bring more results in comparison of spontaneous approach. For example, Gender Equality Council that is created in the Parliament of Georgia and consists of the several MPs, managed to advocate for sexual harassment bill and in 2019 changes to the law were introduced. After three months of its adoption 11 incidents of sexual harassment was revealed by the police. Gender Equality Council is a format that enables to focus on gender equality issues on a permanent basis, to cooperate tightly with civil society organizations that have expertise in that sphere and finally, to bring a real change. Institutional solutions are not always effective. We have different councils that deal with issues of different minority groups on municipal levels, but they do not work effectively. Institutional solution needs devoted and sensitive persons in this institution, high political representation for effective decision-making and political will.

And for the final word, let me mention also the process of law-making in the Parliament. Last year, Georgia adopted the new Rules of Procedure of the Parliament, which increased parliamentary supervision mechanisms for the legislative body. Current practice and legislation, gives possibility to any group, NGO, activists to attend committee hearings, they are given the right to ask questions, make comments and express their views. One of the innovative tools that were included in the new Rules of Parliament is the right to Petition. 300 citizens can apply with the petition to the Parliament and it will be transferred to the Committee of the Parliament for the supervision.

Independence of Judiciary

Independence of judiciary is crucial element of the rule of law. It is also a human right. Article 6 of ECHR stipulates, that “everyone is entitled to a fair and public hearing within a reasonable time by an **independent and impartial tribunal established by law**.” It enables us to achieve fulfilment of other human rights and in this regard has also an instrumental nature. Democratic transformation is characterized with harsh debates and disputes on various issues and we should find reliable answers in the system of judiciary to ensure peaceful development and resolved social conflicts. In Georgia where political polarization is high, judiciary bears additional importance. On the other hand, political polarization itself makes judiciary more vulnerable.

In the context of Georgia, constitutional court plays an important role and its decisions really reshape human rights environment in the country and bring direct changes to the society. For example, during last 4 years constitutional court ruled that criminalization of marijuana consumtion was unconstitutional, depersonalization of all court decisions was unconstitutional, tax privileges only for Orthodox Church was unconstitutional etc.

In the system of common courts, the results are more modest. Here we have an important precedents for example, in the sphere of labor rights, but in widely known cases, especially in the criminal justice field, there are controversies. For sure, judges should be protected from social pressure and their decisions will not always be applauded by the public, but multitude of controversial cases that form a tendency, really affects public trust towards judiciary in a negative way. Common courts address to the constitutional court rarely and take decisions on the basis of unconstitutional norms, although they have a legal possibility to refer the case to the constitutional court. These examples are also followed with decreased public trust in judiciary.

The main problem we face in Georgia now is lack of internal independence of judiciary. For our country it is relatively new phenomenon. In past, the main criticism towards judiciary was lack of external independence and direct interference in the work of individual judge by political power. Today civil society organizations, experts, politicians and even some members of High Council of Justice indicate existence of highly influential group of judges who are controlling all important decisions on appointment of lower instance judges and court presidents, disciplinary proceedings etc. In the given situation where majority members of High Council of Justice represent themselves an influential group of judges and impair internal independence, accountability is excluded. In the system where fundamental problems exist equal enjoyment of rights and equal participation becomes secondary issue and loses its significance. **Notwithstanding the fact that about 53% of all judges in Georgia are women, in the High Council of Justice only 4 members out of 14 are women, only 4 court presidents out of 26 are women.**

Georgia now goes through the process of selection of 20 Supreme Court justices out of 28. For the first time in the history of Georgia, all of them will be elected for lifetime tenure. Before the selection process, Parliament of Georgia adopted related legislative changes. We had criticism towards proposed amendments and presented our opinion even before the plenary session of the Parliament. We presented our opinion to the Venice Commission, who prepared urgent opinion on the draft law. We invited OSCE/ODIHR to prepare opinion on the bill. The Public Defender of Georgia, as a national human rights institution, is authorized to address the OSCE Institute for

Democratic Institutions and Human Rights, which submits opinions and comments concerning the draft law in order to assess its compliance with international human rights standards and the obligations undertaken by the state before the OSCE. ODIHR opinion on proposed model of selection and nomination of Supreme Court justices played an important role in the discussions that took place in the Parliament of Georgia. Parliament adopted legislative changes with small compromises. After several days actual process of nomination and selection of Supreme Court justices started. We invited OSCE/ODIHR to monitor process and to follow up recommendations in law-making process. Several days ago OSCE/ODIHR published its preliminary report that covers all problematic aspects and drawbacks in the nomination process that took place in the High Council of Justice of Georgia. Now the appointment process is ongoing in the Parliament of Georgia. As a NHRI we also observed the process and are going to publish our special report soon.

For us as NHRI to ensure right to a fair trial is important not only in each case and on individual level, but also systemically on an institutional level. Systemic approach towards judiciary encompasses numerous cases and numerous individual rights simultaneously and it also has a preventive nature, if followed. There was not vast practice on how NHRIs were involved in the institutional reforms that address judiciary, but we have to take into consideration local context and challenges, to raise the problems that are obvious and to voice against them. For public our involvement in this reform was unquestionable, but certain persons, for example, current Prosecutor General (and at the same time candidate for the Supreme Court justice position) stated that it was beyond our mandate and competence to observe the process on selection and nomination of Supreme Court justices.

Recent case-law of the European Court of Human Rights shows development of strong international standards towards appointment of judges. In this regard it is notable the judgement against Iceland that was delivered in March 2019. The applicant (Guðmundur Andri Ástráðsson) complained before the Court that appointment of one of the judges who delivered decision against him in the criminal case had not been in accordance with the domestic law and that he had not enjoyed a fair trial before an independent and impartial tribunal. He argued that Minister of Justice proposed to the Parliament the candidate that was not considered by the evaluation committee as the most qualified, was ranked number 18 and was therefore not included by the Committee in the top fifteen. Parliament approved the list proposed by Minister and President of Iceland signed appointment letters. European Court of Human Rights found that the process by which a judge was appointed to the Court of Appeal had amounted to a flagrant breach of the applicable rules at the material time. It had been to the detriment of the confidence that the judiciary in a democratic

society must inspire in the public and had contravened the very essence of the principle that a tribunal must be established by law. The Court emphasised that a contrary finding on the facts of the case would be tantamount to holding that this fundamental guarantee provided for by Article 6 § 1 would be devoid of meaningful protection.

Now the case is reffered to the Grand Chamber which will deliver final judgement. I think that third party intervention by NHRIs in the present case is important and I am going to present amicus curie brief according to the Rules of the Court if we have access granted by the President of the ECHR.