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Rights of the Child in Georgia

Report on the implementation of the Convention on the Rights of the Child by Georgia

A report prepared for the Committee on the Rights of Child
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Introduction

The lives of children in Georgia are still largely affected today by a series of historical and socio-economic trends through which the country has gone over the past decades.

While the Soviet legacy has induced a tradition of high and nearly universal educational and social standards, it has also established strong trends of institutionalisation and central State control over children, especially over those in difficult situations. Transition to market economy has radically affected the quality and resources of State provisions and interventions in favour of all children, without eradicating their harshness on the most deprived. At the same time, children's lifestyles and family situations now reflect the challenges of transition, allowing for more diverse opportunities but also for more risks, such as those induced by poverty, life on the street, child labour, substance abuse, and crime. The socio-economic situation is slightly improving since 1995, but the effects of transition and the gap between rich and poor children is widening, while high levels of corruption are weakening the State and therefore its efforts to protect and promote children's rights in the country.

Children are also affected by post-conflict and present conflict situations. Further to the resurgence of a Georgian nationalist movement at the end of the 80s, a civil war broke out in 1991 when Georgia gained its independence. The nationalist government was replaced by the post-Soviet nomenklatura headed by Edvard Sheverdadze, but separatist groups in South-Ossetia and Abkhazia continued to fight to gain autonomy from Georgia, with some military support and equipment from Russia. These internal conflicts led to serious violations of international human rights and humanitarian law, including extrajudicial executions, torture, rape, looting, burning of homes and apartments, expulsions and forced evictions in 1991-1992¹ and to renewed armed conflict in 1998. This resulted in the internal displacement of 280 000 persons, mainly ethnic Georgians fleeing Abkhazia, 36% of which were children². This situation has now stabilised but both conflicts remain unresolved and most internally displaced persons (IDPs) have not returned. Repression of political opposition since has perpetrated a climate of fear that indirectly affects children. More recently, Georgia was also affected by the situation in Chechnya as between 4 000 and 10 000 Chechen refugees, the majority of which are children and women, settled down in the country. The Georgian government has in some instances collaborated with the Russian government in "anti-terrorist" operations recently, which raises new concerns about the protection of refugee and asylum-seeking children.

Against that difficult background, the Georgian government has committed itself to build a democratic system, to reform its legislative framework and to improve its human rights standards and monitoring mechanisms. Article 7 of its 1995 Constitution "*recognises and defends universally recognised human rights and freedoms as eternal and supreme values. The people and the state are bound by these rights and freedoms as well as by current*

¹ See *Report of the UN Secretary-General's fact-finding mission to investigate human rights violations in Abkhazia, Republic of Georgia*, S/26795, 17 November 1993.

² See *Report of the Representative of the UN Secretary-General on internally displaced persons, Mr. Francis Deng, submitted pursuant to Commission on Human Rights resolution 2000/53 Addendum Profiles in displacement: Georgia*, E/CN.4/2001/5/Add.4, 25 January 2001

legislation for the exercise of state power” and major rights and liberties are defined in subsequent articles. An Office of the Public Defender of Georgia, which has been established on the basis of Article 43 of the Constitution, includes a Child Rights Centre, whose activities and reports are integrated into mainstream protection of human rights and freedoms in Georgia. In addition, a presidential decree about *Measures to strengthen the protection of human rights in Georgia* was issued on May 17th 2002. This decree is an answer to criticisms and recommendations from the international community after monitoring by various international bodies, as well as domestic concerns about repeated human rights violations including torture and other inhuman and degrading treatment, especially in contexts of religious intolerance, pre-trial detention and penitentiary facilities, including against children. While Georgia has made several such commitments before, it has not lived up to them so far.

In that context, HRIDC and OMCT welcome the second periodic report submitted by Georgia to the Committee in accordance with article 44 (1) b of the Convention on the Rights of the Child (CRC). This report covers the period 1998-2000 and follows the initial report of Georgia which was presented in 1998 and was considered by the Committee in June 2000. As noted by the government, the second periodic report was drafted less than a year after the initial session of the Committee on Georgia. While this allowed little time for new improvements and commitments to be implemented, it was an opportunity to evaluate immediate follow-up to the Committee’s concluding observations. In addition, several important evaluations and surveys on the situation of children in Georgia were produced from 2000 to 2002, notably in the lead up to the UN General Assembly Special Session on Children. These documents complement the information provided by the State party second periodic report.

The present report cover the provisions of the CRC which fall under the mandate of HRIDC and OMCT, namely the right to be protected from discrimination, from torture and other cruel, inhuman, or degrading treatment or punishment, from other forms of violence, and the rights of children in conflict with the law.

1. International standards

Georgia became party to the CRC further to a Decree of the Parliament of Georgia passed on 21 April 1994. Georgia is also a party to five other international instruments related to human rights, in particular the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. It is also a member of the Council of Europe and has subsequently ratified the European Convention on the Protection of Human Rights and Fundamental Freedoms.

Article 6, par. 2 of the Constitution of Georgia states that *“the legislation of Georgia corresponds with universally recognised norms and principles of international law. International treaties or agreements concluded with and by Georgia, if they do not contradict the Constitution of Georgia, take precedence over domestic normative acts.”*

Yet, despite a recommendation formulated in the last concluding observations of the Committee regarding the situation in Georgia³, the government has not fully reviewed its legislation to ensure its conformity with the principles and provisions of the Convention, notably in relation with issues of torture, violence against children and juvenile justice.

As a result, we would recommend the Government of Georgia to adopt all necessary measures to ensure the full implementation of its provisions at the national level.

It must be noted that the Georgian legislation is not currently applicable and implemented in the territory of Abkhazia. The present report does not address the implementation of the rights of the child in this territory, but it would be highly recommended for the Committee to request specific information in that context.

2. Definition of the child

The Georgian Civil Code defines a child as a person from birth to the age of 18. Yet, it can be attained before 18 in two cases. Marriage is permitted from the age of 16 in case of advance written permission from parents or legal representatives and art.12.3 of the Civil Code states that marriage grants majority. Art. 65 also allows for emancipation of a child at 16 by legal representatives for independent management of an enterprise, which also results in attaining majority and full civil capabilities before 18.

We would recommend that Georgia amend its legislation so that, even in instances of marriage and independent management from the age of 16, the rights of all persons under 18 be fully protected.

According to the Georgian Law on Education, schooling is compulsory from the age of 6 and minimum school-leaving age is 14. The minimum age of employment is 14 for vocational or light work, and 16 for contracted work or 15 with consent from labour inspection. These provisions create a vacuum for children who leave school at the age of 14 for socio-economic reasons, rather than for purely vocational ones. This may incite 14 year old children to go to

³ *Concluding observation of the Committee on the Rights of the Child: Georgia, 28/06/2000, CRC/C/15/Add.124, par. 10, 11.*

the black labour market, where the protection and promotion of their rights are not guaranteed.

We would therefore recommend that the minimum age of compulsory education be raised to 16, or that children from the age of 14 be guaranteed the right to adequate contracting and salaries (as allowed by Art.2.4. of the ILO 138 Minimum Age Convention ratified by Georgia on 23.09.1999) with full protection from any form of heavy, unhealthy or exploitative labour until 18 (as guaranteed by Art.3.1. of the ILO 138 Minimum Age Convention and by the ILO 182 Convention on the Worst Forms of Child Labour ratified by Georgia on 24.07.2002) .

Contrarily to the statement made in Par.33 of the initial State party report, quoted in Par.47 of the second periodic report, in Georgia, criminal responsibility for minors does not begin at 16 and only for exceptionally serious crimes at 14. Article 33 of the Criminal Code of Georgia on *Release from Responsibility Due to Age* clearly states that criminal liability starts at 14 and does not mention any other minimum age : “*Criminal liability for the illegal action provided under this Code shall in no way be imposed upon the person who has not reached fourteen years before the perpetration of this action.*”⁴ This is reiterated in Article 80 on the Age of Juvenile Offender: “*In case of awarding or releasing criminal liability, the juvenile shall be the one who had become fourteen before the perpetration of the crime but had not reached eighteen.*”⁵.

A distinction between 14 and 16 years of age is only made in Article 88. on the Imprisonment for Particular Term, which reads : “*1. Imprisonment for the term not in excess of ten years shall be awarded against a juvenile offender whom he/she will serve in an educative institution. 2. Imprisonment in excess of ten but not in excess of fifteen years may be awarded against the juvenile between the ages of 16 and 18 for any especially grave crime.*”.

According to the analysis of the Independent Board of Advisors of the Parliament of Georgia⁶ “grave crime” in that context include crimes against public and private property and against the State, including hooliganism, robbery and stealing of vehicles. This provision may lead to disproportionate sentencing for petty and non-dangerous crime.

Moreover, the government argues that children between 16 and 18 benefit from a special measure as, in cases of such serious offences, they will be sentenced to a minimum of 10 years deprivation of liberty, but no more than 15 years, unlike adults for which no maximum has been set. Such sentences are incompatible with the provisions of Art. 37 and 39 of the CRC and we believe that no minimum duration of deprivation of liberty should be set for persons under 18 in order to allow for sentences to be adapted to their evolving capacities and individual needs.

Finally, it is alarming that Article 87 of the Criminal Code on *Jail Term* allows for jail terms from one to four months to be awarded to male offenders from the age of 16 at the time of the offence. This article, distinct from those concerning the imprisonment of juvenile offenders in an “educative institution” and not referred to in the second periodic state report, appears to provide for detention in settings that are not adapted for juveniles and is gender discriminatory.

⁴ Criminal Code of Georgia, July 1999, TECHINFORMI, Tbilissi, Georgia, p.7.

⁵ Criminal Code of Georgia, *ibid.*, p.19

⁶ *Compliance of Georgian Legislation with the UN Convention on the Rights of the Child*, IBA, Tbilisi, 2000

We thus urge the government of Georgia:

- to review categories of offences considered as grave crimes in its Criminal Code in light of international standards, taking into consideration the socio-economic roots of juvenile delinquency and guaranteeing the protection and rights of all children accused of grave crimes, including of those between 16 and 18;
- to abolish minimum terms of sentences for children from 16 years of age and to lower down the term of sentences for any person under 18;
- to raise the minimum age of deprivation of liberty in any type of institution to 18, and thus reform its single detention centre for minors into an open facility for the rehabilitation of serious minor offenders and prohibit any jail term for persons under 18 (see chapter 6).

3. Discrimination

a. Socio-economic discrimination

Several independent reports⁷ answer to allegations of discrimination against internally displaced children (IDPs) by showing that no general discriminatory policy is being carried out in Georgia under the responsibility of the State. For instance, *“contrary to widespread belief, enrolment figures at all three levels of education (kindergarten, primary/secondary and higher education) are similar for IDPs and the local population. Nor is there much evidence of segregation. Most children attend mixed classes within schools.”*⁸

However, poverty, that is seriously affecting IDPs, as well as other portions of the child population, is increasingly becoming a factor of discrimination. For instance, school fees as well as school development funds for payments of various kinds have been introduced and are a burden on poor families⁹ who already have difficulties to send their children to school without the necessary basic outfits and material. This results in inequalities of learning opportunities and in a disproportionate number of poor children being drawn to idleness and delinquency, which in turn exposes them to torture and ill-treatment as analysed later in this report. Similarly, despite some efforts made by the government and as already noted in the Committee’s concluding observations to the initial State report in Par.24, children living in institutions, children in conflict with the law, children living and/or working on the streets have limited access to adequate health, education and other social services.

We therefore urge the Georgian government to enhance its socio-economic support to the most deprived and/or vulnerable groups, with special attention to IDPs, so as to eliminate discrimination against them.

b. Children affected by the fight against terrorism

⁷ *Report of the Representative of the Secretary-General on internally displaced persons, Mr. Francis Deng*, submitted pursuant to Commission on Human Rights resolution 2000/53 Addendum Profiles in displacement: *Georgia and Trends of child and family well-being in Georgia*, country paper, background paper prepared for the Regional Monitoring Report N°8: A Decade of Transition, UNICEF Innocenti Research Centre(2001).

⁸ *Trends of child and family well-being in Georgia*, *ibid.*, p. 24.

⁹ *Report of the Public Defender of Georgia*, Centre for Child Rights Section, 2002.

In the second half of 2002 onwards, with the intensification of hostilities taking place in Chechnya between Chechen armed groups and Russian military forces, and in the wake of the international political climate having resulted from the 2001 September 11th terrorist attacks in the US, some children have been directly affected in Georgia by the “fight against terrorism”.

Along with other grave violations of the rights of ethnic Chechens (extradition of men wanted by Russian authorities without court decision, arbitrary execution of suspects by Georgian forces under obscure circumstances, etc.), some children were ill-treated and stigmatised as suspects of terrorist acts.

As reported by the International Helsinki Federation for Human Rights (IHFHR), “*on 7 December 2002, in Tbilisi, the Interior Ministry and security officials arrested and detained about a hundred Chechen refugees, including women and children. It was reported that there have been multiple violations of the rights of the detained persons, including the denial of access to lawyers of the detainees' choice, as well as intimidation. Before being released, fingerprints of the detained were taken, as in the case of suspects, and without a court decision.*”¹⁰. Even very young children, under the minimum age of criminal responsibility, were detained and had their fingerprints taken. The mere fact that the Georgian authorities contemplate using their personal data and fingerprints is a very clear sign that they are ready to override basic children’s rights for the purpose of anti-terrorist operations.

In addition, since September 2002, access to the Pankisi Gorge where many Chechen refugees reside, has been restricted, especially for NGO and media representatives, which prevents them from monitoring the situation and the behaviour of Georgian police forces deployed there. According to IHFHR, “mopping-up” operations are conducted jointly by the Georgian Security Forces and the Ministry of Internal Affairs in this region and in the course of such operations refugees are intimidated and maltreated. Making children witness such acts and have relatives arbitrarily arrested or executed amounts to intentional violence against them.

Chechen children in the Pankisi Gorge are stigmatised on ethnic and political grounds. Some classified material including video tapes which prove the presence of Chechen and Arab militants and their training camps in the gorge have been released by the Georgian authorities in early 2003. Commenting upon this material, the spokesman for the Georgian State Security Ministry told the independent news magazine Civil Georgia that “*Along with the fighters, there also were Arab religious emissaries ("Spiritual Fathers of Wahabism") in the Pankisi gorge, who were responsible for functioning of the wahabist schools in Pankisi. There were several such schools in the gorge, where children were taught wahhabi ideology. "There are children in Pankisi, who speak Arab better than Georgian"*”¹¹. Considering the international political context and however exact the information is, such language on the part of a State official is an incitement to ethnic hatred against children.

We therefore call on the Georgian government :

- to respect the human rights of all Chechen refugees on its territory, also bearing in mind that the ill-treatment of adults can deeply affect children’s well-being and development;

¹⁰ Civil Georgia, online magazine, <http://www.civil.ge> © 2001. Civil-Georgia, 23.12.2002

¹¹ Civil Georgia, *ibid.* 20.01.2003

- to strictly respect all CRC provisions in any anti-terrorist operations carried out by the government;
- to allow for close monitoring of the situation of Chechen refugees by NGO and media representatives;
- to take measures to fully protect Chechen children residing on its territory and to respond positively to requests made by Chechen families with children for the government to facilitate their asylum in a safe third country (excluding Russia).

4. Protection from torture and other cruel, inhuman or degrading treatment or punishment

The State report's handling of the issue of torture and other forms of ill-treatment is insufficient. The report provides very little information on *de facto* cases of torture or ill-treatment of children and *de jure* protection. Thus, the Committee should be provided with more information thereon.

a. Georgia's legal framework

Article 17 of the Constitution states that "*Par.1 A person's honour and dignity are inviolable. Par.2 Torture, inhumane, brutal or degrading treatment or punishment is impermissible.*" This is complemented by Articles 18 on Human freedom, coercion and deprivation of liberty, Article 40 on the Presumption of innocence and Article 42 on the Right to defence and appeal.

Article 126 of the Criminal Code refers to torture as "*regular beating or other violence that resulted in the physical and psychological suffering of the victim*". The Criminal Procedure Code contains a special article 12 on Personal immutability, protection of a person's honour and dignity, which details protection measures without, however, defining torture itself. In its concluding recommendations to its second periodic report, the UN Committee Against Torture asked Georgia to "*amend its domestic penal law to include a definition of torture which is fully consistent with the definition contained in article 1 of the Convention, and provide for appropriate penalties*"¹²;

In his decree about *Measures to strengthen the protection of human rights in Georgia* of May 17th 2002, the President of Georgia committed the Ministry of Justice to submit within six months some proposals on the compatibility of the definition of torture in the Criminal Code with the requirements of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and to work out a draft on relevant amendments to be made in the Criminal Code of Georgia. To this day, no amendment have been presented.

Sentences provided by Article 126 of the Criminal Code for perpetrators of torture are harsher (doubled in duration) if the victim is a minor. They may amount to imprisonment ranging from three to six years. However, they can also be limited to the mere deprivation of the right to occupy a position or pursue a particular activity for three years or more. This is neither an appropriate sanction for acts of torture committed against children, nor a sound preventive measure against further acts of torture by the same perpetrators.

¹² CAT Georgia. 07/05/2001. A/56/44, paras.77-82. (Concluding Observations/Comments)

Hence, torture and other inhuman and degrading treatment and punishment committed against minors, as well as provisions for the prevention and repression of such acts, are not adequately addressed in the Georgian legislation which remains weak and unspecific.

We thus recommend that Georgia lives up to its commitments to amend its legislation on torture and, in that context, to include child specific articles in the criminal code, providing for broad and comprehensive definitions of torture and other cruel, inhuman or degrading treatment or punishment committed against children, and for comprehensive provisions for the prevention and repression of such acts.

b. Practice

The State report does not provide information on the practice of torture committed against children. It only refers to reporting to other UN Treaty bodies, and especially to the UN Committee Against Torture, which actually admitted to the widespread practice of torture in Georgia, but made no specific mention of the situation of children¹³. However, numerous instances of torture against children have been recorded by various sources in the past months¹⁴.

For instance, on January 21, 2003, the Partsakhashvili brothers were detained in the police department of Didube (Tbilisi). The police considered them to be responsible for a robbery. During the interrogation David Partsakhashvili, 16 years old, lost consciousness and was taken to the hospital of Digomi. According to the explanation of Levan Tsereteli, the head of Didube police, David Partsakhashvili became unconscious before the interrogation began and no psychological or physical pressure took place. The police ensured that the detainee suffered from epilepsy since childhood and used to lose consciousness quite frequently. According to David's parents, the information spread by the police did not reflect the reality. They ponder that police used psychological or physical pressure during the interrogation and caused the accident¹⁵.

More generally, an action-research project carried out by the Psycho-Rehabilitation Centre for Victims of Torture "EMPATHY" from July to September 2002¹⁶, revealed that the vast majority (87.5%) of children between 15 to 18 years of age serving their sentence in Avchala Juvenile Colony have been tortured at one or several stages of the judicial process. Scientific monitoring methodology was applied to detail causes and consequences of the torture they endured. As a result of its findings, EMPATHY carried out a comprehensive rehabilitation programme for the children concerned, as well as information and lobbying efforts, to which the present report hopes to contribute.

The research shows that nearly *all* juvenile offenders were tortured in local police stations or/and in Tbilisi or Rustavi municipal police departments. Torturers were all police representatives, usually acting in group, with very few exceptions of severe beating by prison staff. Indeed, torture and inhuman or degrading treatment committed by agents of the State

¹³ Second periodic reports of States parties due in 1999 : Georgia. 02/06/2000. CAT/C/48/Add.1

¹⁴ See for instance the US Georgia Country Report on Human Rights Practices - 2002, Released by the Bureau of Democracy, Human Rights, and Labor, March 31, 2003

¹⁵ Human Rights Information and Documentation Center (HRIDC), 22.01.2003 communication.

¹⁶ *Monitoring and prevention of Torture in Georgia*, final project report, a project carried out by the Psycho-Rehabilitation Centre for Victims of Torture "EMPATHY", supported by OSCE/ODHIR, Tbilisi, November 2002.

mostly take place during the first hours in custody. The police benefit from loopholes in the Georgian legislation, as offenders have no access to an independent lawyer and a doctor in these first hours of detention. Moreover, the Soviet habit of using torture to obtain information and confession from victims is very much alive, notably as the police is still evaluated on the quantity of criminal cases it files, rather than on actually preventing or solving crime. The police argue that their reason for using these methods is the lack of resources for investigations.

Methods used are mainly beating and threats of rape and, in certain cases, sexual abuse. Additional methods chosen for adolescents are those that leave no traces, such as electric shock, gas mask, special beating (*Phalange*) and hanging (*Modern Lastochka*) practices.

According to EMPATHY, Inhuman living conditions in pre-trial detention (darkness, cold, lack of hygiene and of adequate medical care, corruption and violence among inmates, etc.) often worsen the consequences of earlier acts of torture, with no opportunity of recovery or respite. Then, in detention, the most vulnerable children fall prey to their inmates. Violence and sexual abuse take place with the silent consent of the prison staff.

These findings are alarming in that they reveal the nearly universal use of torture against children within the Georgian judiciary system. They prove that the vast majority of children who have been judged as juvenile offenders have been tortured. This induces that some of them may have confessed offences that they have not committed and have therefore been unjustly sentenced, in addition to having been tortured. It also implies that many more children who have come in contact with the police, but have not been judged or convicted, may also have been tortured, but are simply not identified and therefore do not receive any support for their recovery.

Along with the comprehensive series of general recommendations made by EMPATHY in its *Monitoring and Prevention of Torture Project Report*¹⁷, we strongly urge the government of Georgia:

- to urgently undertake an in-depth reform of its police system in order to fully train, monitor and, if necessary, sanction its staff so that it will operate in full accordance with international human rights treaties and, in particular, with the UN Convention Against Torture and the CRC. For that purpose, specialised youth police units in all police stations, as well as in municipal police departments, should be duly established to respond both to child protection and juvenile delinquency cases with the purpose and duty of promoting the rights of children;
- to change its legislation and practice in order to ensure that children held in police stations have immediate access to an independent lawyer and a civilian doctor, freed from any military subordination, and can communicate with their family;
- to ensure that police records include medical information and that, for that purpose, medical institutions and staff of police departments are moved from the supervision of the Ministry of Internal Affairs to that of the Ministry of Health, and that medical examinations and interventions include appropriate psychological and age specific diagnosis and support;
- to amend its legislation and reform its administration in order to fully prevent, monitor, sanction and compensate for any act of torture or inhuman and degrading treatment committed against a child.

¹⁷*Monitoring and prevention of Torture in Georgia*, ibid.

5. Protection from other forms of violence

In its concluding observations further to the initial report presented by Georgia, the Committee on the Rights of the Child requested Georgia to reinforce legislative measures against corporal punishment and all forms of physical and mental violence committed against children. Yet, in the second periodic report, Georgia admits to the absence of any improvement in the legislative sphere on that issue. This impedes adequate legal protection as well as the swift improvement of governmental policies to protect children from violence.

In addition, as highlighted in HRIDC's report on the implementation of the CRC in Georgia¹⁸ gaps in birth registration enhance the vulnerability of some children and makes their protection and social welfare by the State haphazard. This is partly due to the fact that one has to pay a small fee for birth registration, which is doubled in the case of birth out of wedlock. This discourages disadvantaged and single parents to register their children, making them even remoter from basic State support. It then makes these children more prone to exploitation and trafficking. It also makes State intervention in these spheres less efficient, as it is therefore based on unreliable statistical data and records.

We thus support and reiterate the Committee's recommendations to reinforce legislative measures against corporal punishment and all forms of physical and mental violence committed against children.

We also urge the Georgian government to engage in an active campaign of free birth registration including of children born out of wedlock and children born/living in the street.

a. Violence, abuse and neglect

As stated in the governmental report, the concept of "domestic violence" is not encountered or used in Georgian criminal law. Any violence or other offences are punished regardless of whether they were committed within or outside the family or by a person known or unknown to the victim. Hence, the Criminal Code does not contain, for example, any specific provision criminalizing incest. A governmental plan of action to combat violence against women for the period 2000-2002 gives particular attention to measures to combat violence against girls and, in general, to provide assistance and protection for the victims of violence¹⁹. Yet, in practice children victims of violence, abuse and neglect appear to have limited support and/or to be further stigmatised by inadequate protection measures in certain cases.

HRIDC argues that "due to traditional approaches to the issue of domestic violence, only very few cases are registered. The police avoid interfering in such cases. It is therefore difficult to estimate the frequency and nature of domestic violence against children (...). A psycho-social programme developed by the Coalition Against Family Violence revealed that the rights of children victims of abuse and violence to receive immediate juridical assistance was infringed, that the existence of a hot-line service was insufficient for children and that there existed no elaborate complaint procedures and assistance, to which children could apply in case of violence. This obviously results in the fact that children are not protected adequately from family violence or neglect, even though the phenomenon clearly exists in Georgia (...).

¹⁸ *The rights of the Child in Georgia*, report on the implementation of the CRC, HRIDC, May 2003, p. 4.

¹⁹ Second periodic report of Georgia to the Committee on the Rights of the Child, CRC/C/104/Add.1, p.34-35

*Newspapers such as Alia or Akhali Taoba have occasionally reported on deadly instances of domestic violence and neglect.”*²⁰

The concluding observations of the Committee on the Rights of the Child concerning abuse, maltreatment and violence further to Georgia’s initial report should therefore be reiterated and implemented as a matter of urgency. In particular, we deem that the government of Georgia should:

- undertake studies on domestic violence, corporal punishment, ill-treatment and abuse, including sexual abuse in the family, with the active participation of children themselves;
- adopt adequate prevention, protection and rehabilitation policy measures informed by the results of the studies;
- develop a broad awareness-raising and attitude change campaign;
- take legislative measures to prohibit all forms of physical and mental violence in the family.

b. Sexual abuse, trafficking and sexual exploitation

As it is made clear in the governmental report, the Criminal Code considers interference in a child's sexual sphere as a serious crime. It addresses it as a qualifying circumstance and states the strict responsibility of offenders. Chapter XXII on Offences against sexual freedom and the sexual inviolability of the individual, provides measures to protect children from various forms of sexual exploitation, including rape of a minor (art.137.3), rape of a child under 14 (art.137.4), sexual violence against a child under 14 (art.138.4); sexual intercourse or other acts of a sexual nature with a person under 16 (art.140); sexual perversion of a person under 16 (art.141). In addition, the Criminal Code provides penalties for enticing minors to engage in prostitution or in sexually abusive acts (art. 171, part one) and for trafficking in minors, in particular for the purpose of their involvement in prostitution or the commission of antisocial acts (art. 172, Par. 3 (c)).

Yet some of the terms used in this legislation are ill-defined in particular in relation with sexual abuse. Art. 138 defines “Sexual Abuse under Violence” (or “Sexual Violence”) as “*homosexuality, lesbianism or other sexual intercourse distorted in form committed under violence, threat of violence or abusing the helplessness of the victim*”²¹. Firstly, the distinction between homosexual and heterosexual acts is irrelevant. Secondly, it limits the definition of sexual abuse other than of homosexual nature to “sexual intercourse distorted in form”. This leaves other types of sexual contacts, sexual violence without physical contacts, and sexual intercourse in a non-distorted form unaddressed and undefined in this very important article. Finally, “abusing the helplessness of the victim” does not sufficiently qualify children’s situation in instances sexual abuse (power relation, emotional or family ties, etc.). Art. 138 of the Georgian Criminal Code should be reformulated in light of these comments.

In terms of protection, 14 as the age of the victim is a threshold under which sexual abuse is an aggravated crime in most instances of sexual acts (rape, sexual violence, and sexual intercourse), while 16 is a threshold for protection against “perversion”. 16 is a realistic age of sexual consent and 14 an important threshold for reinforced protection/repression of sexual

²⁰ *The rights of the Child in Georgia*, HRIDC, *ibid.*, p. 9.

²¹ Criminal Code of Georgia, *ibid*, p.29.

abuse. Yet, children between 14 and 18 must also enjoy special protection in all instances of abuses. Therefore Art. 138 should include a reference to sexual abuse against minors in general as an aggravating circumstance (in addition to existing provisions on abuse against a child under 14 and abuse against a minor “*at the previous knowledge of the offender*”) and Art.141. on perversion should be made more explicit and apply accordingly to all children up to 18.

The Criminal Code does not cover the whole scope of sexual exploitation. The Code does not consider specific penalty for the production of child pornographic materials, their advertisement, consumption and circulation. The sexual exploitation of children in specific settings and in situations of vulnerability (such as the domestic sphere, refugee, IDPs and asylum seeking situations, the tourist industry, life on the street, State institutions, etc.) are not addressed. This allows the sexual exploitation, abduction, and trafficking of children for sexual purposes to flourish, especially in the present severe economic situation. Yet, the causes of this phenomenon are not only economic and can be directly related to issues of domestic violence and abuse previously addressed. The report of the Public Defender of Georgia states itself that “*at the beginning of 2002, the latent problem of unaccompanied minors has acquired new aspects. The number of teenager prostitutes has increased significantly. Most of them are victims of sexual harassment or domestic violence.*”²²

The national Plan of Action to combat violence against women is said by the government to be a framework within which measures are also developed to protect children against sexual exploitation. The government of Georgia should therefore provide more information on its implementation and effectiveness in relation with children to the Committee. It must however be noted that, by definition, the Plan may not properly address the sexual abuse and exploitation of boys. Moreover, according to article 34 of the CRC, child protection against sexual abuse and exploitation is much broader than women’s protection against violence (i.e. guaranteeing protection against non-physical forms of sexual violence and abuse, against non-forced sexual exploitation, etc.). Also, perpetrators of sexual abuse against children should be targeted by specific prevention, repression and rehabilitation measures in order to break pathological cycles of sexual violence and abuse. Finally, legal representation, protection, reparation as well as psycho-social rehabilitation and follow-up of sexually abused children require special services, procedures, staff and qualifications in different spheres (judiciary, medical, social, etc.) that must be developed separately and/or beyond women support.

Thus, we urge the Georgian government to :

- amend its legislation to address all forms of sexual abuse, trafficking and sexual exploitation of children, including child pornography, and to efficiently protect children of different age groups;
- develop policy measures to better protect most vulnerable groups of children against sexual abuse, trafficking and sexual exploitation;
- to develop a specific plan of action to protect children against sexual exploitation in line with the Stockholm Agenda for Action and the Yokohama Declaration, including special attention to boys and to perpetrators;
- to develop specialized services, procedures, staff and qualifications in different spheres (judiciary, medical, social, etc.) of support to children victims of sexual abuse, trafficking or sexual exploitation;

²² *Report of the Public Defender of Georgia, ibid.*

6. Children in the justice system

Like most countries having undergone transition to the market economy and a rapid change of social values, Georgia has been hit by widespread poverty and delinquency in entire portions of its population. At the same time, the reduction of State budgets has led to the decay of the child protection and social welfare systems, leaving those most negatively affected by socio-economic hardship without adequate support. Only when children in need of protection come in conflict with the law, either by committing offences or by simply disturbing public order, do they fully attract public attention. OMCT would thus like to remind Georgian authorities that the great majority of children in conflict with the law are first and foremost in need of support, are often victims of violence themselves, and can become key players in the country's socio-economic stability if adequately accompanied and supported.

a. Administration of juvenile justice

Age of criminal responsibility and jurisdiction

As explained in chapter 2 of the present report, criminal liability starts at 14 in Georgia and a distinction is made between 14 and 16 years of age in relation with “grave crime”. According to governmental information, 14 year old children are only held criminally liable for what is considered as “grave crime” and the legislation provides that they can be sentenced to up to 10 years imprisonment. 16 year old children are held criminally liable for any crime, must be sentenced to a minimum of 10 years and a maximum of 15 years for “grave crime” and can be awarded “jail terms” from one to four months if they are males.

As noted in previous concluding observations of the Committee on the Rights of the Child, Georgia has no specialised jurisdiction for children, which implies that magistrates who deal with cases of minors receive no special child rights training or support and that there are no juvenile courts.

Grounds of arrest and police custody

Article 42 of the Georgian Constitution states that “*Par.5. No individual has to answer for an action if it was not considered a violation of law at the moment it was performed.*”. However, on grounds of prevention of delinquency, children are arrested and labelled as juvenile delinquents for use of alcohol or drug, prostitution, begging and vagrancy. Even though these arrests are considered as preventive, they focus on the potential criminality of children rather than on their need for protection. They are performed in a repressive manner (“raids”) and clearly target street children rather than identified offenders.

It would be advisable to evaluate to which extent the “*State Programme for protection, professional training and prevention of juvenile delinquency*” developed further the presidential decree #431 of July 1st 1996²³ has either favoured or limited this negative trend.

²³ *Young people in transition in Georgia*, country paper, Ministry of Economy, background paper prepared for the Regional Monitoring report N°7 “*Young people in changing societies*” (2000), UNICEF Innocenti Research Center, Florence, p.21.

The Constitution further states that “*Par.7. Evidence obtained by breaking the law is inadmissible and has no legal force. 8. No individual is obliged to give evidence against himself or his relative as defined by law. 9. Any individual who suffers damage illegally caused by the state, self-governing bodies or officers is guaranteed full compensation through the court from state resources.*”.

In the light of the documented practice of torture against children in police custody exposed in chapter 4, it is clear that the provisions of the Constitution are being routinely violated.

In terms of inquiry and interrogation, the Criminal Procedure Code requires²⁴ :

- the participation of a lawyer in the proceedings of a case *from the first questioning of a minor*;
- a suspect or accused under arrest *to be given 3 hours* to chose and invite their desired defence attorney;
- a teacher or a legal representative to participate in the interrogation of an accused *under the age of 16*;

This means that during the first 3 hours of custody or before questioning has officially started and is formally recorded, an arrested child *does not* have access to a lawyer or any other representative. In addition, the third provision appears to imply that a child of 16 or above may not be guaranteed the presence of a representative during interrogation, which goes against the 2 previous provisions as they refer to minors (i.e. under 18).

Hence there is a grey area during the first hours of custody during which most children are tortured or ill-treated and there is a general lack of special protection of children from 16 years of age. Finally, there exist no recorded cases of compensation awarded to children for recognised acts of torture, despite documented facts.

b. Children deprived of their liberty

We welcome the transfer of the penitentiary system from the jurisdiction of the Ministry of Internal Affairs to that of the Ministry of Justice. It should be noted however that the fact that the government highlighted that change as “*a mark of progress from the standpoint of upholding the rights and freedoms and ensuring the human treatment of persons in custodial facilities, including minors.*”²⁵ is only an alarming confirmation of the absence of such rights, freedoms, and human dignity in facilities and actions under the supervision of the Ministry of Internal Affairs, the staff of which continue to be the first public agents to come in contact with children alleged of being in conflict with the law.

Pre-trial detention

The Georgian Law on Arrest requires that convicted minors be placed separately from minors awaiting trial²⁶. However, as noted before, Article 87 of the Criminal Code on *Jail Term* appears to allow for male offenders from the age of 16 to be held with adults in certain cases,

²⁴ According to the information provided in *Compliance of Georgian Legislation with the UN CRC*, IBA, *ibid.*, p.132-133.

²⁵ Second periodic report to the Committee on the CRC due in 2001, CRC/C/104/Add.1, p. 65

²⁶ *Ibid.*, p.136

notably before trial. According to the UN Committee Against Torture, conditions in adult prisons are “unacceptable, which may violate the rights of persons deprived of their liberty as contained in article 16”²⁷ of the CAT. This is notably due to overcrowding, violence among inmates, poor hygiene and high health risks.

Detention in juvenile penitentiary colony

The Zemo Avchala Juvenile Offender Reform Facility is the only juvenile penitentiary colony in Georgia. It is located about 30 km outside of Tbilisi. An average of 25 children from 14 to 18 years serve sentences of up to 10 years there. They are transferred to adults’ facilities when they turn 18 if they still have to serve their sentence.

The government of Georgia has put efforts into the restoration of this penitentiary institution in May 2002. Material conditions are now more adequate than before. Staff and daily activities are oriented towards education and psychosocial recovery. However, some concerns have been raised about the long-term sustainability of the institution. “*The facility has had three directors in its short lifespan, and some observers suspect that some of the facility’s funding is possibly being diverted into the pockets of politicians, businessmen and organised crime*”²⁸.

In addition, many issues typical of the post-Soviet penitentiary system remain of concern. A sub-culture of violence and casts among detainees continue to exist, that encourages discrimination of “*chickens*” (homosexuals or children having been raped) who are actually the only ones to strictly follow the educational curricula offered in the facility. Transfer of detainees who have turned 18 to adults’ facilities can be a trauma and destroy all previous efforts made towards social rehabilitation. And reinsertion programmes are themselves insufficient. While vocational training and preparation for release during detention is a positive element in Avchala’s Centre, measures of semi-detention and psychosocial support after release are inexistent, which may contribute to a high rate of recidivism.

Deprivation of liberty in other settings

As part of the “*State Programme for protection, professional training and prevention of juvenile delinquency*”²⁹ - and although they are not offenders - many children are regularly arrested on the street and deprived of their liberty for so-called preventive purposes. Children lifted from the street are taken by force to the Gladni Reception-Distribution Centre of the Ministry of Internal Affairs. Various observers report overcrowding and routine abuse by other children or guards in this facility, where they are detained until they are dispatched to educational institutions such as Kachreti and Samtredia special schools. As in other post Soviet countries, the special school system is under the supervision of the Ministry of Education and is therefore not considered to be part of the juvenile justice system. However, some special schools such as the one in Samtredia are closed-type institutions, defined by the authorities and the community as institutions for the re-education of young delinquents.³⁰

²⁷ CAT Georgia. 07/05/2001, *ibid*.

²⁸ Smock John, *Inside Georgia’s first juvenile offender reform facility*, Eurasianet, 7 February 2003

²⁹ *Ibid*.

³⁰ See for instance, Vladimir Papava, Georgian Ministry of Economy and Trade, *Trends in Poverty and well-being in the 90s in Georgia, Country paper for the Regional Monitoring Report N°8: A Decade in Transition*, MONEE Reports, UNICEF Innocenti Research Centre, 2001, p.19

Children can also be placed in such schools by their parents or by local commissions for juveniles affairs that can order placements.

We would like to specify to the Georgian government that deprivation of liberty is neither a measure of prevention, nor a measure of protection. Rather, as demonstrated above, deprivation of liberty leads directly to abuse and criminality, and highly reduces chances of social adaptation and access to autonomy.

All child protection and educational facilities should be open and placements there should be made on the basis of the child's consent and with strict follow-up by adequate child protection services, in conformity with the law and with the CRC.

c. Diversion and alternatives to imprisonment

After arrest, children can be merely released by the police without any specific follow-up and Article 40. of the Georgian Criminal Code provides for a series of different types of punishment other than prison sentences, such as a fine, the deprivation of the right to occupy a position or pursue a particular activity, socially useful labour, corrective labour and restriction of freedom. However, these are neither alternatives to prosecution nor alternatives to imprisonment. Release does not offer any support or follow-up to prevent recidivism. And sentences other than deprivation of liberty are given in case of minor offences, while deprivation of liberty is given in case of more serious offences. In addition these sentences are given with a punitive rather than with a restorative aim. Hence, Georgia does not provide for alternatives to prosecution and to imprisonment for minors although this is strongly recommended by international standards and in particular by the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).

d. Contacts with parents in detention

As highlighted in the report of the Public Defender of Georgia's³¹, children are prevented from or not supported to meet with their parents, and notably their mothers, who are held in detention. These children, usually deprived of parental care, are themselves living in State children's homes. As the management of the penal institution for women #5 does not provide for meetings between mothers and children to take place, it is left to the good will of the directors and staff of children's homes to facilitate or not such meetings at their own expenses.

The lack of contacts between convicted parents and their children may further hamper the psychosocial and emotional development of individuals who are already in a difficult position. It may also lead to unlawful or inadequate situation. The following example from the Public Defender's report is a rather positive one, but raises serious protection issues : *"In one case, the 9 year old son of the convicted Adulaeva left the Martkopi children's home and arrived at the prison at 9.00 p.m. He was received there and stayed in the prison premises during 5 days."*³²

We thus strongly urge the government of Georgia to :

³¹ *Report of the Public Defender of Georgia*, Centre for Child Rights Section, 2002.

³² *Ibid.*

- Ensure immediate access to a lawyer, a doctor and family members for any arrested child;
- Limit the duration of police custody for children to 24 hours, period during which any child arrested should come in front of a specialised judge who will allow for immediate and adequate sentencing or referral to child protection services;
- Develop a juvenile justice system that will provide for educational measures and alternatives to imprisonment for children, adequately chosen and monitored by specialised personnel, trained in children's rights and restorative justice practice and principles.
- Raise the minimum age of deprivation of liberty in any type of institution to 18, and thus reform the single detention centre for minors into an open facility for the rehabilitation of serious minor offenders and prohibit any jail term or pre-trial detention for persons under 18.
- Facilitate regular contacts between children and their parents held in detention

Conclusion and recommendations

HRIDC and OMCT ask the Committee on the Rights of the Child to urge the Government of Georgia to undertake the following recommendations:

Status of the CRC in Georgia

- Adopt all necessary measures to ensure the full implementation of its provisions at the national level;

Definition of the Child

- Amend its legislation so that, even in instances of marriage and independent management from the age of 16, the rights of all persons under 18 be fully protected;
- Raise the minimum age of compulsory education to 16, or ensure that children from the age of 14 be guaranteed the right to adequate contracting and salaries (as allowed by Art.2.4. Of the ILO 138 Minimum Age Convention ratified by Georgia on 23.09.1999) with full protection from any form of heavy, unhealthy or exploitative labour until 18 (as guaranteed by Art.3.1. Of the ILO 138 Minimum Age Convention and by the ILO 182 Convention on the Worst Forms of Child Labour ratified by Georgia on 24.07.2002);
- Review categories of offences considered as grave crimes in the Criminal Code in light of international standards, taking into consideration the socio-economic roots of juvenile delinquency and guaranteeing the protection and rights of all children accused of grave crimes, including of those between 16 and 18;
- Abolish minimum terms of sentences for children from 16 years of age and lower down the term of sentences for any person under 18;
- Raise the minimum age of deprivation of liberty in any type of institution to 18, and thus reform the single detention centre for minors in Georgia into an open facility for the rehabilitation of serious minor offenders and prohibit any jail term for persons under 18;

Discrimination

- Enhance socio-economic support to the most deprived and/or vulnerable groups, with special attention to idps, so as to eliminate discrimination against them;
- Respect the human rights of all Chechen refugees on its territory, also bearing in mind that the ill-treatment of adults can deeply affect children's well-being and development;

- Strictly respect all CRC provisions in any anti-terrorist operations carried out by the government;
- Allow for close monitoring of the situation of Chechen refugees by NGO and media representatives;
- Take measures to fully protect Chechen children residing on its territory and to respond positively to requests made by Chechen families with children for the government to facilitate their asylum in a safe third country;

Protection from torture and other cruel, inhuman or degrading treatment or punishment

- Amend its legislation on torture and, in that context, to include child specific articles in the criminal code, providing for broad and comprehensive definitions of torture and other cruel, inhuman or degrading treatment or punishment committed against children, and for comprehensive provisions for the prevention, repression and reparation of such acts;
- Reform the administration in order to fully prevent, monitor, sanction and compensate for any act of torture or inhuman and degrading treatment committed against a child, in compliance with the new legislation;
- Urgently undertake an in-depth reform of its police system in order to fully train, monitor and, if necessary, sanction its staff so that it will operate in full accordance with international human rights treaties and, in particular, with the UN Convention Against Torture and the CRC. For that purpose, specialised youth police units in all police stations, as well as in municipal police departments, should be duly established to respond both to child protection and juvenile delinquency cases with the purpose and duty of promoting the rights of children;
- Ensure that children held in police stations have immediate access to an independent lawyer and a civilian doctor, freed from any military subordination, and can communicate with their family;
- Ensure that police records include medical information and that, for that purpose, medical institutions and staff of police departments are moved from the supervision of the Ministry of Internal Affairs to that of the Ministry of Health, and that medical examinations and interventions include appropriate psychological and age specific diagnosis and support;

Protection from other forms of violence

- Engage in an active campaign of free birth registration, including of children born out of wedlock and living in the street
- Reinforce legislative measures against corporal punishment and all forms of physical and mental violence committed against children.

- Undertake studies on domestic violence, corporal punishment, ill-treatment and abuse, including sexual abuse in the family, with the active participation of children themselves;
- Adopt adequate prevention, protection and rehabilitation policy measures informed by the results of the studies;
- Develop a broad awareness-raising and attitude change campaign;
- Take legislative measures to prohibit all forms of physical and mental violence in the family.
- Amend its legislation to address all forms of sexual abuse, trafficking and sexual exploitation of children, including child pornography, and to efficiently protect children of different age groups;
- Develop policy measures to better protect most vulnerable groups of children against sexual abuse, trafficking and sexual exploitation;
- Develop a specific plan of action to protect children against sexual exploitation in line with the Stockholm agenda for action and the Yokohama declaration, including special attention to boys and to perpetrators;
- Develop specialized services, procedures, staff and qualifications in different spheres (judiciary, medical, social, etc.) Of support to children victims of sexual abuse, trafficking or sexual exploitation;

Children in the justice system

- Ensure immediate access to a lawyer, a doctor and family members for any arrested child;
- Limit the duration of police custody for children to 24 hours, period during which any child arrested should come in front of a specialised judge who will allow for immediate and adequate sentencing or referral to child protection services;
- Develop a juvenile justice system that will provide for educational measures and alternatives to imprisonment for children, adequately chosen and monitored by specialised personnel, trained in children's rights and restorative justice practice and principles;
- Raise the minimum age of deprivation of liberty in any type of institution to 18, and thus reform the single detention centre for minors into an open facility for the rehabilitation of serious minor offenders and prohibit any jail term or pre-trial detention for persons under 18;
- Facilitate regular contacts between children and their parents held in detention.