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**Consideration of the Fourth Periodic Report of  
Georgia**

*Alternative Report by:*  
**International Catholic Child Bureau (BICE)  
Public Health Foundation of Georgia (PHFG)**

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This report focuses on violence against children, especially on child sexual abuse on-line and off-line, as well as the situation of children with disabilities.

## **I. Children with disabilities**

1. Although in the past years the Georgian government has taken important steps to improve the child protection system in order to prevent violence against children, children with disabilities do not yet receive the protection they need and deserve. In Georgia, children with disabilities are at increased risk of violence and receive insufficient protection: very often they do not grow up in a safe environment; there are still barriers to children with disabilities and their family in accessing support services; lack of professional skills, expertise and confidence in identifying child protection concerns and the lack of an effective child protection response to violence against children with disabilities.

2. Stigmatization is yet very common when families hide their children with disabilities from their relatives and society. Such situations block any chance of development; child rights are infringed and children often suffer from abuse and neglect.

3. As for the de-institutionalization process, a number of measures have been introduced during the last decade. In March 2013, Georgia ratified the UN Convention on the Rights of Persons with Disabilities according to the 2008 CRC recommendation<sup>1</sup>. In addition, almost all State-run large-scale residential orphanages have been closed down and this first de-institutionalization wave mapped out paths towards alternative care models, including the establishment of small group homes and foster care, with government support to families in vulnerable socio-economic situations through monetary and social allowances. As mentioned by the UN Special Rapporteur on the sale of children, child prostitution and child pornography, Maud de Boer-Buquicchio, during her visit to Georgia in April 2016, “all these measures are aimed at shifting the focus towards ensuring the right to children to a family environment and preventing separation as means to promote the well-being and best interests of the child”<sup>2</sup>.

4. However, the deinstitutionalization process needs to be strengthened as up to 83 children still remain in State-run residential orphanages and required reintegration and alternative care assistance. In addition, there is no statistics about children with disabilities in centers run by religious organizations and private individuals. Families of children with disabilities have to make special efforts, which cause burnout of family members, irritation, and aggression and generally triggers tense, abusive environment, especially when the family is socially vulnerable. Only a well-functioning child-friendly system with qualified professionals can identify children with disabilities who are victims of domestic violence, prevent violence against them and make timely and appropriate responses.

5. Children with disabilities are particularly vulnerable to all type of violence, including sexual abuse and neglect. They represent the most marginalized groups and are victims of abuse, degrading treatment and exploitation. In Georgia, violence, stigmatization and harassment are some of the main barriers for people with disabilities to integrate into society. Children with disabilities are almost 4 times more likely to experience violence than children without disabilities; 3 times more likely to be victims of sexual violence. Children with mental or intellectual impairments are 4.6 times more at risk of sexual violence

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<sup>1</sup> CRC/C/GEO/CO/3, § 43 a).

<sup>2</sup> UN press release dated 18 April 2016 available here [UN human rights expert urges Georgia to address the root causes of the institutionalisation of children](#)

than their non-disabled peers<sup>3</sup>. In addition, children with disabilities are often marginalized within families and communities, which results in the fact that they are less connected to people, government and non government services that could protect them from violence. When children with disabilities are not regarded or regarded as less important, then it becomes easier for perpetrators to violate their rights and more difficult for the victims of violence to protect themselves. Therefore, the protection of their rights and the enablement of their full participation in society have to become a serious priority in Georgia.

6. Georgia has ratified in 2005 the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and designed the Public Defender's Office to serve as the National Prevention Mechanism (NPM). However, it has been repeatedly reported that institutions caring for children, including children with disabilities, have not duly cooperated with the Omdurman's Office. Thus, there were attempts to limit or even stop monitoring activities by State Care Agency as a number of children's homes refused the members of the NPM to have confidential interviews with children although some beneficiaries talked about degrading and humiliating treatment exercised by the personnel and other beneficiaries<sup>4</sup>.

#### **7. Recommendations<sup>5</sup>:**

- (a) Ratify the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities signed on 10 July 2009 to allow for complaint submission to the Committee on the Rights of Persons with Disabilities (CRPD);**
- (b) Close down the two remaining State-run residential care institutions that accommodate children with disabilities and adopt accordingly an assessment and reintegration policy and strategy that prioritize alternative care systems, including into families and communities, small foster homes, with sound support services;**
- (c) Adopt a new plan of action<sup>6</sup> on the child care system reform to fully accomplish the deinstitutionalization process that involves all residential care institutions run by local governments, religious organizations and private individuals, which were not taken into account in the previous deinstitutionalization process;**
- (d) Ensure that the new plan of action:**
  - i. establishes child-friendly complaint and reporting mechanisms in all child care settings for cases of child abuse and violence, and the training of care takers to effectively detect and refer these cases;**
  - ii. strengthens the monitoring capacities of the Ministry of Labour, Health and Social Affairs, while respecting of the existing small group homes and foster care, in order to cover all child-care settings, through the allocation of more staff, training and resources;**
  - iii. includes the adoption of specific regulations and standards applicable to day care centres and their monitoring;**

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<sup>3</sup> Violence against adults and children with disabilities, WHO 2012.

<sup>4</sup> Association for the Prevention of Torture's monitoring tool, [Georgia 2016](#).

<sup>5</sup> Based on the statement delivered on 18 April 2016 in Tbilisi by the UN Special Rapporteur on the sale of children, child prostitution and child pornography, Maud de Boer-Buquicchio, during her *in situ* visit in Georgia. Public Health Foundation of Georgia (PHFG) supported the visit of the UN expert.

<sup>6</sup> Besides the National Action Plan on Human Rights 2014-2016, there were there the Child Action Plan (CAP) 20012 – 2015, that has been developed for 2002-2003 and 2008 – 2011. Despite the previous experiences of the implementation, CAP 2012 - 2015 still lack the baseline data including but not limited to the achievements from the previous CAPs, measurable targets, specific indicators and necessary allocated resources.

- iv. incorporates assistance and support measures for care leavers, namely those beneficiaries who leave child care settings after turning 18, including measures to facilitate their access to housing, education and livelihoods;
  - v. includes awareness-raising campaigns targeted at society at large and conducted in educational settings to combat stigmatization and discrimination against care-leavers;
  - vi. prioritizes economic and social support to families in vulnerable settings and families with children with disabilities, as a mean to prevent that their children end up in child care settings as well as re-institutionalization;
  - vii. pays more attention to the root causes and risks factors, invests in preventive measures, in particular through strengthened cooperation between children's institutions and the Ombudsman's office - and provides more support to families as well as life opportunities to their children with disabilities.
- (e) Establish day-care centers not only in cities but also in rural, remote and mountain regions specifically with trained professionals.
- (f) Increase the participation of children with disabilities in decision-making process, and train professionals to better identify and address the specific needs of children with disabilities.

## II. Online Child Sexual Abuse in Georgia

8. Evidence-based information on child pornography in Georgia is difficult to find out today. Access to internet is increasing from year to year. Internet is now available not only in major cities and towns, but also in all territorial units, including many villages. According to the Internet World Statistics, there are 2'188'311 Internet users registered in Georgia as of June 2014.<sup>7</sup>

9. According to a study published in the electronic newspaper "Netgazeti"<sup>8</sup>, the word "porno" is the most searchable word in the Georgian language in Google in correlation to "Georgian children". If one types "Georgian chi...", Google's 'autocomplete' function offers more than 20'000 search results for "Georgian children's porno". Whilst it does not mean that such content materials definitely exist, but it means somehow that "autocomplete" predictions are automatically generated by an algorithm without any human involvement. The algorithm is based on a number of objective factors, including how often others have searched for a word"- defines Google's autocomplete function.<sup>9</sup>

10. In November 2012, Georgia has established a Specialized Cybercrime Unit with the mandate to undertake prevention, detection, suppression and investigation of online child pornographic crimes in accordance with the Council of Europe Convention on Cybercrime ratified by Georgia on 6 June 2012 which entered into force on 1 October 2012.

11. In December 2012, as mentioned in the Georgian national fourth periodic report (§ 201), Georgia endorsed the EU-USA Declaration on Global Alliance against child sexual abuse online and endeavoured to the Global Alliance's Guiding principles, policy targets, operational goals and specific actions. Georgia purposely committed to:

<sup>7</sup> Internet World Stats, accessed at <http://www.internetworldstats.com/asia/ge.htm>

<sup>8</sup> Qoqoshvili, D., Netgazeti, *Google Help for Georgian Users interested in Child Pornography* (05.05.2015), available at: <http://www.netgazeti.ge/GE/105/Technology/44532/>

<sup>9</sup> Where predictions come from, Google, accessed at <https://support.google.com/websearch/bin/answer.py?hl=en&answer=106230>

- a. enhance its national forensic capacities for victim identification;
- b. adopt legislation to facilitate international law enforcement cooperation;
- c. provide training for law enforcement authorities, including investigators, prosecutors and the judiciary involved in the fight against child sexual abuse online;
- d. provide more training and intend to administer it in a joint manner together with other countries and/or with international organizations;
- e. invest in improving the tools available for police investigations, such as improved software for automatic image analysis to speed up the forensic process and to prevent law enforcement officers from manually combing through thousands of images of child sexual abuse;
- f. cooperate more closely with the Global Alliance’s Virtual Global Task Force (VGT) :
- g. introduce software to identify known images that will furthermore automatically remove known images.

12. Whilst cooperation States agencies as well as with Interpol and other countries is commendable, concerns remain over the fact that the identification of child sexual abuse victims has not reached the yearly 10% pledged. In addition, the Digital Evidence Research Unit which is supposed to improve the victim identification process in child online sexual abuse cases, has not yet been yet established as planned by the 2013 Development Strategy of the Ministry of Internal Affairs (MoIA).

13. Furthermore, with regard to the increasing public awareness of the risk posed by children’s activities online, including grooming and self-production of images that results in the production of new child pornography that may be distributed online, the government endeavors still fragmented and incoherent. At present, there is neither national campaign nor an education policy for parents, teachers, children and other care givers involved with children to minimize risks and maximize internet benefits for children.

14. Despite the ratification on 27 September 2010 (entry into force on 1 January 2011) of the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), concrete steps have not yet been fully undertaken to align the domestic legislation to the regional instrument so as to translate into action pledges made, *inter alia*, under the Global Alliance against child sexual abuse online framework.

15. As rightly mentioned by the newly launched Council of Europe Strategy for the Rights of the Child (2016-2021): “digital environment also exposes children to harmful content and its effects, privacy and data protection issues and other risks, including online sexual abuse and excessive exposure to sexualised images. In some cases, such as cyber-bullying and self-exposure, children’s own conduct online may harm others and represent a risk to them »<sup>10</sup>. Georgian children encounter the same challenges, including “grooming”, “sexting”, “sextorsion” and other forms of abuse through computers, gaming consoles, tablets, smartphones and social networking platforms.

16. According to the Chapter 2 para 9 k) of the Statute of the Ministry of Internal Affairs (MoIA) as well to article 5 of the law of Georgia on Combating Terrorism, the functions of the Ministry include the “implementation of operative-searching activities in order to prevent and suppress criminality and other violations of law”. In its report to the Global Alliance against child sexual abuse online, Georgia did acknowledge that the law on “Operative-Searching Activities” ([1999 Law on Operative Investigation Activity amended in 2015](#)), “does not specify types of crimes against which it is permissible to use covert

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<sup>10</sup> [Council of Europe Strategy for the Rights of the Child \(2016-2021\)](#), § 21.

operations and other criminal intelligence activities”. Indeed, article 2 related to “Tasks of the operative investigation activity” does not specifically state that child online pornography or online child sexual abuse is in the scope of the searching activities. As for the Criminal Code of Georgia, its chapter 22 on “crime against sexual freedom and inviolability”, whilst it did mention “sexual abuse under violence” (article 138), coercion into sexual intercourse or other action of sexual character (article 139) and sexual intercourse or other action of sexual character with one under sixteen (article 140), no specific provisions have not pointed out the issue of child online abuse and exploitation. Therefore, a specific legislation is needed to provide required tools and means to law enforcement officials to act appropriately against online child sexual abuse.

#### **17. Recommendations:**

- (a) Enforce the existing legal framework on child sexual abuse online and off-line in all settings, taking into account the Lanzarote Convention that needs harmonization with domestic legislation, and clarify steps towards i) awareness raising to maximize potential and minimize risks; ii) reducing as much as possible the re-victimization; iii) victim identification; iv) investigation and prosecution of child sexual abuse online, and v) cooperation.**
- (b) Establish due diligence obligation vis-à-vis internet, mobile phones and online game providers, to regulate their operations, and introduce preventive and alert window for children online;**
- (c) Effectively introduce the announced new software programs that allow technically to identify and remove known child pornographic images in partnership with the private sector.**
- (d) Implement policies on public age-appropriate awareness-raising campaigns for children, parents and teachers; identification of victims; investigation of cases; prosecution of offenders; capacity building of law enforcement agents; and needed assistance, support and protection to victims or children at risk.**
- (e) Establish the announced Digital Evidence Research Unit to forensic the cybercrime digital evidence and identify child online sexual abuse cases.**

### **III. Child Sexual Abuse Off-line in Georgia**

#### **A. Prevention, Protection, Assistance, Care and Support to Child Sexual Abuse Victims**

##### **1. *Prevention: Parents and community-based education and awareness-raising***

18. The majority of Georgian parents are not familiar with Internet and social networks and do not always pay due attention to their children while navigating on internet, including via their Smartphones. In fact, sensitization obligations in article 4 and 8<sup>11</sup> of Lanzarote Convention engage States parties, including Georgia, to “take the necessary legislative or other measures » and “promote or conduct awareness-raising campaigns ».

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<sup>11</sup> Article 4 – Principles

Each Party shall take the necessary legislative or other measures to prevent all forms of sexual exploitation and sexual abuse of children and to protect children.

Article 8 – Measures for the general public

1. Each Party shall promote or conduct awareness raising campaigns addressed to the general public providing information on the phenomenon of sexual exploitation and sexual abuse of children and on the preventive measures which can be taken.

2. Each Party shall take the necessary legislative or other measures to prevent or prohibit the dissemination of materials advertising the offences established in accordance with this Convention.

## 19. Recommendations

- (a) Seek for technical assistance from the International Telecommunication Union (ITU) that has developed [Guidelines for Parents, Guardians and Educators on Child Online Protection](#) as a key training tools to inform, educate, sensitize parents and communities, and fight against cybercrime and cyberthreats towards children.
- (b) Based on the Lanzarote Convention, undertake awareness-raising campaigns to sensitize pupils, students and schools, social service providers, medical professionals, judicial and child care institutions, and provide parents with practical training on existing preventive and support mechanisms, counseling services and how to identify possible sexual abuse signs, such as increased nightmares; sudden, unexplained avoidance of certain people or places; angry outbursts or sudden mood swings; loss of appetite or difficulty at swallowing; and anxiety or depression.

### 2. Child Helplines Services

20. Hotlines of the MoIA (112) and 1505 of the Ministry of Labour, Health and Social Affairs of Georgia are operational. The toll-free number, which recently changed into 116 006 from 2309903 for domestic violence victims needs to be extended to cover the whole country as well as other forms of violence, including online and off-line sexual exploitation, harassment and abuse at school, work place or other circles of trust and other settings. The mountain regions such as North Samegrelo-Zemo Svaneti (Mestia), East Racha-Lechkhumi and Kvemo Svaneti, North Mtskheta-Mtianeti, and North-East Kakheti (Archilo), as well as at the border with Turkey and Armenia, are not properly covered.

21. Despite the above-mentioned available resources, there is still an acute need for 'child helpline service with three-digit number, to be easily remembered and to reach out to all children, including children with disabilities, in need of care or assistance throughout the country.

22. The child helpline is not known by everybody, including parents, care givers and children themselves, especially in the rural and mountain regions at the border with Turkey, Armenia and Russian Federation.

23. Public Health Foundation of Georgia (PHFG) operates a child helpline with number 116 111. However, currently, this service is limited to providing telephone consultations for children, parents and professionals across country. PHFG tries (in terms of mobilizing local and international resources) to strengthen a child helpline throughout Georgia in order to make it an essential element of any comprehensive child protection system to report on cases of abuse, violence and exploitation against children.

## 24. Recommendations:

- (a) Bearing in mind that encouraging and setting up telephone or internet helplines is an obligation under Lanzarote Convention (article 13)<sup>12</sup>, ensure that the child helpline is:
  - a. a toll-free number totally free of charge for callers, even if there is no credit in their phones (landline or mobile);

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<sup>12</sup> Article 13 – Helplines Each Party shall take the necessary legislative or other measures to encourage and support the setting up of information services, such as telephone or Internet helplines, to provide advice to callers, even confidentially or with due regard for their anonymity.

- b. **accessible**, easy-to-remember, without any restriction from all over the country, including remote and mountain regions, and from all mobiles phones regardless subscription plans, and from abroad, free from roaming tariffs;
  - c. **permanent**, accessible at any time, 24 hours a day 7 days a week;
- (b) **Raise awareness in schools, work places and communities to sensitize the entire population (parents, social workers, care givers, teachers, civil society organizations, etc.) about the existence and the use of the child helpline, and remove all hurdles in order to ensure effective access to the line;**
  - (c) **Provide those who call the child helpline with immediate access to confidential, suitable and appropriate counseling, care and support services;**
  - (d) **Set up norms and standards applicable to public and private institutions or centers providing care and support services and train professionals accordingly;**
  - (e) **Use the child helpline as a tool for case studies, case management and data collection.**

### **3. Right to be heard - interviews/hearings of victims**

25. Based on article 12 of the CRC, the 2008 Concluding Observations on “Respect for the views of the child”<sup>13</sup> expressed concern over the right to be heard and formulated recommendations accordingly. In Georgia, interviews in accordance with the child procedures stated by article 35 of the Lanzarote Convention have not been duly transposed into domestic law with appropriate implementation policies and tools. According to the European legal framework, interviews have to be conducted *inter alia* without undue delay, adapted, carried out by trained professionals, likely the same professionals throughout the proceedings, as limited as possible and videotaped. Yet, these practical steps are not fully undertaken by the Georgian authorities. The ongoing collaboration with UNICEF is an important step forward but has to be translated, without further delay, into concrete actions.

### **26. Recommendations**

- (a) **Establish interview/hearing rooms in child-friendly and child-sensitive places equipped as required, including with good quality video recording system, with the presence of a guardian or a person of trust, if necessary;**
- (b) **Train professionals based on internationally recognized protocols to conduct diligent, child-sensitive, age-appropriate, non-suggestive, qualitative-recorded interviews/hearing that could be used throughout the whole administrative, social and judicial proceedings.**

### **4. Strengthening Capacities of Law Enforcement Officials and Other Care Givers**

27. Regular, specific, victim-sensitive, child-friendly capacity-building courses are required to ensure effective, efficient and timely counseling, care, support and rehabilitation for child sexual victims. Georgia should “increase trainings of teaching staff throughout the country, so that they are better prepared to identify situations of abuse or domestic violence against children”, as recommended in 2015 by Paraguay within the UPR process. The counseling and rehabilitation process could be less resilient if care givers do not have the capacity to address challenges and need. Without proper training, care givers might not have the capacity to appropriately address challenges and needs, and the resulting frustration might distort the whole recovery process, and violence and ill-treatment of victim-to-protect might occur.

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<sup>13</sup> CRC/C/GEO/CO/3, §§ 25-26.



## 28. Recommendation

- (a) Pursue ongoing efforts in terms of capacity building but most importantly organize regular joint training sessions, all over the country, including in the rural and mountain regions, for the police, judges, teachers, doctors, social workers and other care givers, on their respective mandate; disciplinary, administrative and criminal liability and penalties; cooperation mechanisms; National Referral Mechanisms; identification, preventive, protective, care and support measures; data collection and other relevant topics.
- (b) Implement a comprehensive system to detect and identify children living and/or working in the street more exposed to violence, abuse and neglect through, *inter alia*, the establishment of child-friendly reporting and complaint mechanisms, and strengthening cooperation between law enforcement and care givers.
- (c) Adopt a holistic and systemic approach prioritizing prevention measures to children living and/or working in the street, referring them to child-centred and rights-based care, recovery and reintegration programmes, and providing not only immediate support services, but also medium and long term support<sup>14</sup>.

### 5. *Child-sensitive, Child-friendly Procedures for Effective Access to Justice*

29. During its review by the Universal Periodic Review second cycle in November 2015, Spain recommended to “take concrete steps to streamline and ensure efficiency of judicial procedures concerning gender violence”<sup>15</sup>.

30. Effective access to free care and support services, including to remedy, requires from Georgia readily, available, accessible, effective, and child-sensitive procedures, including information, advice and advocacy as well as access to independent complaint mechanisms and to the courts with necessary legal and other assistance. In addition, procedures must be safe and confidential, if necessary, for protection purposes, to address violence against children.

31. In addition, judicial proceedings should be accessible and understandable by the child, age-appropriate, personalized and focused according to the child needs, diligent and speedy, and his/her resilience capacities in order to safeguard his or her best interests in providing him or her with psychotherapeutic services, legal assistance and other appropriate assistance, including immediate *interim* protection measures to prevent further harm and re-victimization. The draft amendments to the current Law on the Elimination of Domestic Violence, Protection of and Support to its Victims (new article 26 para 2 of the Law on Legal Aid) provides for “free defence and assistance for the protection of victims of domestic violence as prescribed by the Administrative Procedure Code of Georgia”. In addition, article 162 par 1 sub-par f) refers to “free legal consultation” for persons staying in the shelter/crisis center. In any case, proceedings should respect the child private and family life as well his/her integrity and dignity.

32. To ensure effective access to justice for child victims of domestic sexual abuse, it is important that children themselves, family members but also tutorship and guardianship authorities as well as professional taking care of the victim, are allowed to apply to court to obtain protective measures.

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<sup>14</sup> See footnote n°4.

<sup>15</sup> A/HRC/31/15, § 118.13 (Spain).

Evidently, professionals should have information or abuse signs beyond a reasonable doubt and secure the consent of the child in respect to his or her best interests.

### **33. Recommendations**

- (a) Effectively provide timely, free, accessible, informative, age-appropriate legal assistance to child sexual abuse victim throughout the entire administrative, social or judicial proceedings;**
- (b) Ensure immediate protection to victims, including decision on interim and provisional measures so as to avoid further re-victimization;**
- (c) Establish accessible, ready, effective as well as age-appropriate, personalized, focused, diligent and speedy child-friendly and child-sensitive procedures taking into account the child resilient capacities and best interests for his/her interviews, counseling, care, support and legal proceedings;**
- (d) Provide training courses to professionals, care givers and relevant stakeholders according to established practical procedures.**

### **6. Limitation period for proceedings initiation**

34. As mentioned by the national report in its § 103, the Inter-Agency Council Implementing Measures to Eliminate Domestic Violence's package of amendments to a number of legal acts on domestic violence completed in June 2013 envisaged, *inter alia*, modifying article 71 of the Criminal Code, or other appropriate legislation, by introducing a special statute of limitation in case of child victims. This legal reform is commendable as it triggers hope for ending impunity of child sexual abuse perpetrators. Along with articles 137, 138 and 140 of the Criminal Code, the reform is in line with articles 36 and 58 of the 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). It often happens that child sexual abuse victims experience leads to denial or traumatic amnesia that prevents them from talking or initiating any psychological or legal proceedings.<sup>16</sup> Psychological grievances can ruin the victim's ability to talk or even start an eventual litigation process, due *inter alia* to taboo, silence, secrecy, rejection, exclusion and shame around sexual abuse. Therefore, the limitation period should not ensure impunity for perpetrators and leave the victim unprotected.

### **35. Recommendation**

- (a) Proceed and complete the legal process leading to the extension of the statute of limitation to at minimum the age of majority of the victim of sexual abuse, or make it easier to seek extension, in compliance with article 33 of the Lanzarote Convention and article 58 of the Istanbul Convention (Council of Europe).**

### **7. Restrictive and Protective Orders**

36. The national report refers to those restrictive and protective measures in paragraphs 99 and 106. In Georgia, the police can issue restrictive orders and the court can take protective orders according to the article 21<sup>15</sup> (para. 4 and 5) of the Administrative Procedural Code and article 199 of the Criminal Procedure Code. These provisions and related practices are positive and need to be continued and strengthened.

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<sup>16</sup> Final Declaration of the International Catholic Child Bureau's International Congress on "[Child Sexual Abuse: Protection Mechanisms and Resilience](#)", BICE, Paris 2015, p. 2 § 6.

37. However, in February 2016, the Special Rapporteur on violence against women, its causes and consequences, Ms. Dubravka Šimonović, expressed, during her visit to Georgia, concerns about the « low number of protection orders, allowing an increased protection to victims – up to six months. Pro-active issuance of protection orders by the police and Public Prosecutors is needed and should be connected with restriction orders and the risk assessment of each case »<sup>17</sup>. In addition, she declared that notwithstanding an increasing number of restriction orders issued the last couple of years, since the Group for Determining Domestic Violence Victim Status of the Interagency Council for Prevention of Domestic Violence has not determined the “status of victim » , victims, including children, remain « alleged victims » which do not give them full access to protective measures<sup>18</sup>.

38. The current legislation is not very clear about the enforcement of restrictive and protective orders. In case of non compliance at the first time to those measures by the perpetrator of the domestic child sexual abuse, should there be any “warning” or immediate penalties imposed, and which body, police or court, should be in charge?<sup>19</sup>

39. In addition, it is meaningful that violations of protective and restrictive measures are subjected to criminal liability and not to disciplinary, administrative or any other sanctions. Therefore, the orders themselves should duly indicate that when there is a breach of the law, immediate criminal penalties will be taken.

#### **40. Recommendations**

- (a) Remove obstacles that impede the full enjoyment by victims of protective and restrictive measures;**
- (b) Ensure that the issuance of a restrictive order or a protective order for the protection of the child victim do not prevent him or her from issuing simultaneously other legal proceedings, which requires harmonization of the Criminal Procedure Code (article 199) and the ongoing amendments (new article 10 para. 6) to the legal framework on Preventing and Combating Domestic Violence in Georgia<sup>20</sup>.**

#### **B. Identification, Referral, Prosecution and Liability**

41. The draft amendment to the legal framework on preventing and combating domestic violence in Georgia provides for the obligation of revealing child sexual abuse by medical, educational and child care institutions, social service agency, and employees of tutorship and guardianship establishments as well as other relevant institutions and their authorized employees involved in child protection referral procedures. The duty to report has to strictly comply with the obligation of confidentiality. Derogations to this obligation must be expressly stated by law so as to allow disclosure only in limited situations regulated by law. The confidentiality is meant to protect the child against stigmatization or discrimination.

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<sup>17</sup> OHCHR press release entitled « Special Rapporteur on violence against women finalizes country visit to Georgia », available here, including in Georgian language <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=17073&LangID=E#sthash.XLDJKQXz.dpuf>

<sup>18</sup> *Ibid.*

<sup>19</sup> DV-GEO/241/2013 [AIC], Opinion on the draft amendments to the legal framework on preventing and combating domestic violence in Georgia, OSCE Office for Democratic Institutions and Human Rights, Warsaw, 17 December 2013, §§ 96-100.

<sup>20</sup> *Op. cit.*, § 107-108.

42. Yet, the draft legislation is not clear about sanctions when the above-mentioned bodies or professionals failed to comply with their reporting obligation. In addition, for clarity sake, the legislation has to specify whether the liability will be of disciplinary, administrative or criminal nature. If professionals or bodies knew or should have reasonably known all facts of the case as well as current and potential danger the child victim faces or could encounter and still fail to report, they must be held accountable. Georgian authorities' endeavors to tackle child sexual abuse within the family must provide for tougher sentences to better dissuade those who are responsible to prevent, protect and assist to take timely, suitable and appropriate actions.

43. Bearing in mind provisions of article 19 of the Convention on the Rights of the Child in connection with articles 375 (Crime Cover-up) and 376 (Non-Reporting of Crime) of the 1999 Criminal Code of Georgia, as well as article 46<sup>21</sup> of the Council of Europe Istanbul Convention, the ongoing legal reforms should duly ensure that child sexual abuse within the family is considered an aggravating circumstances whilst determining criminal sentences for perpetrators but also for law enforcement officials, professionals and bodies-in-charge that fail to comply with their responsibility to protect by using referral mechanism procedures.

44. Furthermore, the current legal framework is not very clear about the institution that ensures leadership for responding to reported cases. There is an ambiguity about the role of the prosecutor and the police.

45. In the same vein, professionals, bodies or public officials, including police and the prosecutor's office that failed to duly, timely and diligently investigate and prosecute reported cases of domestic child sexual abuse must be punished. Article 19 of the CRC affirms that States, including State law enforcement agents, "shall take all appropriate legislative, administrative, social and educational measures to protect the child". Likewise, article 2 of the Istanbul Convention states that when sexual abuse against girls occurs in the family, Governments shall exercise a due diligence obligation when the act is perpetrated by State authorities, officials, agents, institutions and other actors acting on behalf of the State as well as by non-States actors to *inter alia* investigate and punish. Besides, article 29 of the same Convention declares that "State authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers" can be held accountable.

#### **46. Recommendations:**

- (a) Maintain confidentiality and non disclosure of the identity of the child as a key principle and provide for enforceable sanctions for professionals, care givers and others who violate them;**
- (b) Apply appropriate sentence for non referral and non reporting and harmonize the domestic legal instruments (Code of Administrative Offences of Georgia, Criminal Code and law on domestic violence) accordingly;**
- (c) Clearly designate a specific institution for child sexual abuse cases' treatment;**
- (d) Hold accountable professionals and institutions that failed to ensure their responsibility to protect children through diligent, timely and prompt investigation and prosecution;**
- (e) Provide practical training courses to State law enforcement officials about the duties, responsibilities, existing referral and complain mechanisms as well as internal and international cooperation.**

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<sup>21</sup> Especially, b) the offence, or related offences, were committed repeatedly; d) the offence was committed against or in the presence of a child; and h) the offence resulted in severe physical or psychological harm for the victim.

### C. Rehabilitation-Recovery Mechanism for Victims

47. In 2008, the Committee on the Rights of the Child recommended to Georgia to “strengthen support for victims of abuse and neglect in order to ensure their access to adequate services for recovery, counselling and other forms of rehabilitation”<sup>22</sup>. However, until now, there are no specific rehabilitation services for abused and neglected children especially for child victims of sexual abuse, exploitation and cyberbullying, but only very limited rehabilitation and counseling services that are provided by non-governmental sector. The services that are funded by foreign donor organizations lack of persistency and fail to meet existing needs countrywide, including counseling and rehabilitation services for children in alternative care settings (foster care, small group homes). Currently, there are no State-run programs-focused on the rehabilitation of child-victims and witnesses to violence. The principles of CRC Article 39 are not translated and implemented in Georgia.

#### 48. Recommendations:

- (a) Carry out child-friendly budgeting and appropriate allocation of resources, as well as increase the budget for child social protection measures (i.e. invest in and develop national standards and mechanisms on protection, rehabilitation, recovery and reintegration programs for those affected by any form of maltreatment and exploitation).**

### D. Data Collection

49. Even though there is no specific provision in the CRC urging States parties to collect data, the Committee on the Rights of the Child always issues recommendations during periodic reviews, including in 2008 when Georgia was considered<sup>23</sup>. Indeed, the Committee expressed concerns over the lack of disaggregated data and analytic information in important areas of the CRC such as child abuse and neglect, children who are victims of sexual exploitation, including prostitution, pornography and trafficking. In accordance with articles 10 b) and 37 of the Lanzarote Convention, Georgia must set up or designate mechanisms for data collection or focal points in collaboration with civil society with due respect for the requirements of personal data protection (e.g. right to privacy of victims and witnesses), on the phenomenon of sexual exploitation and sexual abuse of children, including recording and storing national data on convicted sexual offenders. Unfortunately, the national report (paragraphs 40 and 41) did not mention any data with regard to child abuse, child exploitation and children with disabilities.

#### 50. Recommendations

- (a) Harmonize the national legislative and institutional framework with the Lanzarote Convention and *inter alia* design a specific mechanism to coordinate and centralize and up-to-date data collection system, including on children with disabilities, child sexual abuse, and child exploitation online and off-line;**
- (b) Develop a disaggregated data collection mechanism on child sexual abuse, child exploitation and children with disabilities, with a specific designated in charge for it, and in partnership with civil society organizations, child helplines and hotline operators, social service agencies and Child Protection Referral Procedures.**

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<sup>22</sup> CRC/C/GEO/CO/3, § 41 d).

<sup>23</sup> Op. cit, §§ 14-15.