

# Public Defender of Georgia

## Written submission to the 135<sup>th</sup> Session of the Human Rights Committee

Pursuant to Article 35 of the Constitution of Georgia, the Public Defender of Georgia oversees the observance of human rights and freedoms on the territory of Georgia and within its jurisdiction. Its mandate covers civil, political, social, economic and cultural rights.

Present submission incorporates observations of the Public Defender regarding implementation of the International Covenant on Civil and Political Rights and focuses on the major challenges and trends related to protection and promotion of these rights in Georgia.

The submission follows the list of issues (hereinafter LIOs) posed by the Committee.

### **I. Non-discrimination (arts. 2, 19–20 and 26)**

#### **Observations with respect to issues posed in paragraph 5 in the LIOs**

Discrimination and hostility against the LGBT+ persons and defenders remain acute issues. According to the Government of Georgia, promotion of equality is one of the key priorities of the National Human Rights Strategy 2021-2030.<sup>1</sup> Although the elaboration of the draft of the second National Human Rights Strategy of Georgia for 2021–2030 began in 2020, the draft remains inaccessible to the Public Defender's Office (hereinafter PDO). Despite numerous legislative acts and national action plans committing the state to protect LGBT+ people's rights, these steps are insufficient as tangible changes have not been reflected in practice due to the state's superficial and ad hoc approach.<sup>2</sup>

In the State Replies to the List of Issues (hereinafter State Replies), the Georgian Government fails to answer questions put by the UN Human Rights Committee (HRC) regarding measures taken to ensure, in practice, the right to peaceful assembly and freedom of expression for the LGBT+ community. This may be explained by the lack

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<sup>1</sup> Replies of Georgia to the list of issues in relation to its fifth periodic report, §§ 20-21.

<sup>2</sup> Public Defender of Georgia, The Rights of LGBT+ People in Georgia, 2021, page 12, available at: <<https://bit.ly/39g0b7P>> [last accessed 11.05.2022].

or inadequacy of such measures as once again and sadly proven by the events of 5 July, 2021. In particular, the “March for Dignity” organized by “Tbilisi Pride” could not be held on Rustaveli Avenue on 5 July due to aggression from radical groups threatening, physically and verbally assaulting and persecuting LGBT+ persons and activists and the journalists reporting these events as they unfolded.<sup>3</sup> They also damaged media equipment, offices of “Tbilisi Pride” and the civic movement “Shame” and threw an explosive into the building of the “Human Rights House” where LGBT+ persons and activists were hiding from them.<sup>4</sup> The Georgian government knew (or should have known) about the risk of violence in light of the plans to disrupt the March publicly announced by extremist groups in advance and the past experience of violent opposition to LGBT+ demonstrations.<sup>5</sup> However, the government failed to undertake effective preventive and reactive protective measures as insufficient policemen were deployed on the scene both before and during the violence.<sup>6</sup> The 5 July events clearly underline the systemic failure and perhaps even unwillingness of the state to ensure the enjoyment of freedom of assembly and expression by the LGBT+ community.

Regarding investigation of hate crimes: the Prosecutor’s Office of Georgia (hereinafter POG) has not launched prosecution into the 5 July events under charges of incitement and organization of group violence despite that the standard for bringing charges against at least 2 individuals was met by publicly available evidence according to the PDO’s assessment.<sup>7</sup> This encourages repetition of similar violence. Moreover, protraction of investigations, refusals to grant official victim status and absence of discriminatory motive as a factor aggravating punishment in the Code of Administrative Offences hinder the fight against hate crimes.<sup>8</sup>

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<sup>3</sup> Special Report of the Public Defender of Georgia on the Situation of Equality and Combating and Preventing Discrimination, 2022, pages 28-30, available at: < <https://bit.ly/3wdT2Ot> > [last accessed 11.05.2022].

<sup>4</sup> Ibid, page 29.

<sup>5</sup> Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 9, available at: <<https://bit.ly/3L1xCrL>> [last accessed 11.05.2022].

<sup>6</sup> Supra note 2, pages 27-28.

<sup>7</sup> Supra note 3, pages 29-30; Public Defender Demands Criminal Prosecution of Two Persons for Organizing Group Violence and Calling for Violence on July 5, available at: < <https://bit.ly/3wjwsUj> > [last accessed 16.05.2022].

<sup>8</sup> Supra note 5, pages 12-14.

The State Replies also fail to address the underreporting of hate crimes which is due to low trust in law enforcement caused by inadequate or non-response to critical societal issues and homophobic attitude of the police.<sup>9</sup>

The State does not mention the homophobic and transphobic rhetoric by politicians, public officials and religious figures either. The seriousness of this issue was again manifested in the homophobic statements made by government representatives and religious figures regarding the 5 July events.<sup>10</sup> These statements could be regarded as encouragement of the ensuing violence and intolerance in general.

As to legislation and procedures concerning change of civil status in line with gender identity, one of the grounds for amending the civil status acts is gender reassignment, which is not defined by law and, consequently, administrative agencies and courts often require individuals to undergo coercive medical/surgical procedures in order to legally live with the preferred gender.<sup>11</sup> Without legal gender recognition, transgender people face discrimination in all spheres of life.<sup>12</sup>

## **II. Gender equality and violence against women and domestic violence (arts. 2–3, 6–7 and 26)**

### **Observations with respect to issues posed in paragraph 6 in the LIOs**

Lack of representation of women in political and public life remains a serious challenge. While the State Replies refer to the introduction of mandatory gender quota in the Parliament,<sup>13</sup> the unexpected amendment into the rule regulating election of candidates in municipal elections required every third candidate to be of opposite sex instead of every second one as required by the previous rule.<sup>14</sup> This change, adopted without discussion with stakeholders and the public, is a significant setback for women's political engagement.

As to other measures taken, and their impact, to achieve equitable representation of women in political and public life, Georgia's gender equality policy has many

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<sup>9</sup> Public Defender of Georgia, *The Rights of LGBT+ People in Georgia*, pages 22-23.

<sup>10</sup> Special Report of the Public Defender of Georgia on the Situation of Equality and Combating and Preventing Discrimination, 2022, page 29.

<sup>11</sup> Supra note 2, pages 17-18.

<sup>12</sup> Ibid, page 18.

<sup>13</sup> Supra note 1, §25.

<sup>14</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, pages 143-144, available at: < <https://bit.ly/3MaUMgP> > [last accessed 13.05.2022].

shortcomings, especially in terms of gender mainstreaming.<sup>15</sup> Mainstreaming mechanisms haven't been developed in various sectors whereas existing tools are limited to a formalistic approach.<sup>16</sup> In practice, the implementation and monitoring of gender mainstreaming constitute significant gaps in state policy-making.<sup>17</sup> Moreover, effective implementation of gender mainstreaming is impeded by lack of in-depth understanding of international obligations by all government agencies as the state does not provide information about them to inform employees/officials.<sup>18</sup> On the legislative level, national laws don't explicitly regulate the obligation to use gender mainstreaming tools by institutional mechanisms for gender equality.<sup>19</sup> These mechanisms mainly provide administrative support and have consultative function and thus cannot influence policy determination and improvement of women's lives.<sup>20</sup>

Specifically with regards to the Interagency Commission on Gender Equality, Violence against Women and Domestic Violence mentioned by the State,<sup>21</sup> its effectiveness is hindered by its somewhat ambiguous mandate, weak role in defining the government's vision/strategy, lack of human and financial resources, etc.<sup>22</sup> The work of the agencies within the Commission need improvement. To name examples, the agencies mainly don't use gender mainstreaming methods (and don't have (except for the Ministry of Defense) specific staff member focusing on gender equality issues, etc.<sup>23</sup>

The State Replies fail to provide statistical information on the number of complaints of sexual harassment in the workplace received and their outcomes. The PDO has received 10 complaints on sexual harassment at the workplace between in 2017-2022. In six cases the fact of sexual harassment was established; one case was terminated due to absence of evidences; the PDO submitted an amicus brief before Tbilisi City Court in one case; two of the applications are pending.

## **Observations with respect to issues posed in paragraph 7 in the LIOs**

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<sup>15</sup> The Public Defender of Georgia, Review of Georgia's Gender Mainstreaming Obligations and their Fulfillment Status, 2021, page 4, available at: < <https://bit.ly/3wsoxmu> > [last accessed 13.05.2022].

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid, page 31.

<sup>19</sup> Ibid.

<sup>20</sup> Supra note 14, page 144.

<sup>21</sup> Supra note 1, §27.

<sup>22</sup> The Public Defender of Georgia, Assessment of Effectiveness of Gender Equality Institutional Mechanism in Georgia, 2021, pages 8-9, 13, available at: < <https://bit.ly/39cUWWI> > [last accessed 13.05.2022].

<sup>23</sup> Ibid, pages 16-20.

Shortcomings in prevention and investigation of gender-based violence and administration of justice in cases of such crimes persist. The law enforcers are unable to perceive systematic nature of cases of violence against women and domestic violence and the police reaction is fragmental, incapable of preventing repetition of violence.<sup>24</sup> While gender motivated intolerance was reflected in cases of murder of women in 2020 for the first time according to the State Replies,<sup>25</sup> difficulties in identification of gender as a motive in cases of attempted femicides, identification of an action as committed against a family member and on the ground of gender, and classification thereof according to a specific legal provision still persist.<sup>26</sup> Although the rate of prosecutions identifying gender intolerance as a crime motive has grown, there is no tendency of decrease in femicide/attempted femicide cases and the number of cases of incitement of suicides/attempted suicides by women and attempted killings has increased.<sup>27</sup> As to intimate partner violence, the current legislation does not define the meaning of an intimate partner. Thus, gender-based crimes committed by intimate partners are not classified and registered/recorded separately and the scale of this problem remains unassessed and largely unsolved.

Legislation plays an essential role in combating gender-based violence. Although the adoption of the Law on Combating Crimes against Sexual Freedom and Sexual Inviolability mentioned in the State Replies is generally welcome, legislation addressing gender-based violence has serious flaws. Contrary to international standards, it fails to include absence of free and voluntary consent in the definition of sexual crimes, to define honor-based violence, to comprehensively regulate economic violence and to provide certain important guarantees (e.g., free legal aid and involvement of the psychologist) for the victims during court hearings.<sup>28</sup>

Lack of due diligence by law enforcement officers constitutes another significant obstacle. In particular, assessment of risk of gender violence is still problematic. There have been cases when repetition of violence could not be prevented although investigation had already begun.<sup>29</sup> There were also cases when risks were not assessed correctly and femicide/attempted femicide could not be prevented although

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<sup>24</sup> Supra note 14, page 151.

<sup>25</sup> Supra note 1, §29.

<sup>26</sup> Supra note 14, page 154.

<sup>27</sup> Ibid.

<sup>28</sup> Supra note 5, pages 20-21.

<sup>29</sup> Ibid, page 15.

the Ministry of Internal Affairs (hereinafter MIA) had already received reports about violence against women and/or domestic violence.<sup>30</sup>

Lack of gender-sensitivity by law enforcement is another serious concern, especially in case of women with disabilities. Law enforcers often have stereotypical attitudes towards women with disabilities.<sup>31</sup> Investigators, for example, often question the credibility of a testimony given by a woman with a mental health problem and/or intellectual disability.<sup>32</sup> Women with disabilities often give up on protection of their rights because of this stereotypical attitude.<sup>33</sup> Moreover, there are other systemic barriers to access to justice, including stigma against women and girls with disabilities, lack of reasonable accommodation and of access to physical environment, poor training of respective agencies.<sup>34</sup>

Finally, in terms of provision of supportive services for victims of gender-based violence and their families, the State replies only mention the broadening of functions of the Witness and Victim Coordinators Service.<sup>35</sup> It is doubtful that witness and victim coordinators will be able to adequately perform the added functions as they have struggled with the tasks they've already had. The involvement of the coordinators in cases of violence against women and domestic violence is very low and formalistic due to, inter alia, the small number of the coordinators employed by the MIA and POG.<sup>36</sup> Thus, without addressing this shortage, the practical benefit of the broadening of functions is questionable.

In general, provision of appropriate and sufficient support services for victims and their families remains an acute issue. The shelters lack basic items/necessities needed for dignified life of the beneficiaries and are not fully accessible for victims with disabilities.<sup>37</sup> Moreover, the amount of psychological support resources is insufficient.<sup>38</sup> Similarly, involvement of social workers in cases of gender-based violence is superficial and very low partially due to absence of the document of national

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<sup>30</sup> Ibid, page 18.

<sup>31</sup>The Public Defender of Georgia, Assessment of the Needs of Women and Girls with Disabilities and the State of Protection of their Rights in Georgia, 2022, page 11, available at: < <https://bit.ly/3FHfbHI> > [last accessed 13.05.2022].

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid, pages 11-12.

<sup>35</sup> Supra note 1, §30.

<sup>36</sup> Supra note 5, page 17; Supra note 14, page 152.

<sup>37</sup> Supra note 14, page 153; Supra note 31, pages 12-13.

<sup>38</sup> Supra note 31, page 12.

referral procedure for identification, protection, support and rehabilitation of victims of domestic violence and/or violence against women.<sup>39</sup> Finally, the victims of gender-based violence often lack awareness and are not informed by relevant authorities about available services.<sup>40</sup>

### **III. Voluntary termination of pregnancy and sexual and reproductive rights (arts. 2–3, 6 and 17)**

#### **Observations with respect to issues posed in paragraph 8 in the LIOs**

Lack of access to reproductive health care is especially problematic for women with disabilities and women of ethnic minorities. The scarcity, unequal geographical distribution and insufficient funding of state sexual and reproductive health programs and services, lack of gender-sensitivity, non-inclusiveness, low-quality and administrative problems of existing programs significantly prevent access of women of ethnic minorities to such services/programs.<sup>41</sup> Moreover, socio-cultural factors or practices hinder these women from receiving reproductive health care. They include, for example, neglect of a woman's physical autonomy, gender stereotypes and taboo on sexuality.<sup>42</sup> Moreover, access to reproductive health care, including contraception and abortion, is also impeded by lack of knowledge as women of ethnic minorities and even doctors often have scarce or scientifically false information about reproductive health care.<sup>43</sup> Lack of information available in ethnic minority languages further hinders access to sexual and reproductive health services.<sup>44</sup>

The situation is not better in case of women with disabilities either. Current legislation, state policy documents and programs do not adequately consider their needs in the areas of sexual and reproductive health and rights.<sup>45</sup> In practice, these women have difficulties in obtaining reproductive health services due to non-adaptation of medical facilities.<sup>46</sup> Medical professionals' inadequate competence, stereotypical attitude and

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<sup>39</sup> Supra note 5, page 17; Supra note 14, page 150.

<sup>40</sup> Supra note 14, page 153.

<sup>41</sup> Special Report of the Public Defender of Georgia on Assessment of Sexual and Reproductive Health and Rights of Women and Girls from Non-dominant Ethnic Groups in Georgia, 2022, page 6, available at: <<https://bit.ly/39gXu5N>> [last accessed 13.05.2022].

<sup>42</sup> Ibid, page 5.

<sup>43</sup> Ibid, pages 5, 7-9, 11.

<sup>44</sup> Ibid, page 5.

<sup>45</sup> Supra note 31, page 23.

<sup>46</sup> Ibid, page 24.

low sensitivity also persist.<sup>47</sup> Moreover, women with disabilities lack awareness about reproductive health services.<sup>48</sup>

In general, lack of information applies to the whole population as its primary cause is inadequacy of education about reproductive and sexual health. The preparation of a learning course within the framework of “Doctor’s Hour” for basic educational level mentioned in the State Replies is insufficient. More effort is needed to completely integrate sexuality education as the current approach is too narrow and fails to address such issues as early marriage and child pregnancy.<sup>49</sup> Furthermore, teachers themselves lack knowledge about reproductive health matters.<sup>50</sup>

As to sex-selective abortion, this practice seems to still be common among ethnic minorities as women are frequently forced by family members to have an abortion when the fetus is female.<sup>51</sup> Family members prevent women from using contraception in order to prolong “family name” and pregnant women are forced to have an abortion if sex of the fetus is unacceptable to their families.<sup>52</sup> This practice constitutes gender-based and reproductive violence. Moreover, the lack of awareness among medical professionals and the society is still challenging. The authorities undertook obligation to address this issue within the 2018-2020 Human Rights Action Plan and carried out some measures (such as awareness raising on gender equality and inclusion of an interactive educative package about family planning in continuous medical education).<sup>53</sup> However, as monitoring of the Plan by the Public Defender’s Office revealed, they lacked systemic character and the government has to give more effort in conducting informative/educational activities dedicated specifically to prevention of sex-selective abortions.

#### **IV. Past human rights violations, right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment (arts. 6–7 and 14)**

##### **Observations with respect to issues posed in paragraph 10 in the LIOs**

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<sup>47</sup> Ibid, pages 24-26.

<sup>48</sup> Ibid, page 26.

<sup>49</sup> Supra note 14, page 148.

<sup>50</sup> Ibid.

<sup>51</sup> Supra note 41, page 23.

<sup>52</sup> Ibid.

<sup>53</sup> Letter from the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, №01/12197, 07.10.2020; Letter from the Administration of Georgia, GOV 0 20 00057064, 30.12.2020.



Legislative amendments adopted in an expedited manner by the Parliament of Georgia in December, 2021, abolished the position of State Inspector and the State Inspector Service (hereinafter SIS) and established two separate state agencies: Special Investigation and Personal Data Protection Services. The PDO and CSOs consider these changes to be punishment of the SIS and the State Inspector for their independent and professional decisions/activities. The amendment terminated the term of office of a head of an independent state body elected for a fixed period without prior warning or a reasoned argument with respect to her professional activities. This can have a chilling effect on other state bodies which will fear that if their opinions don't comply with the interests of the government, their institutions will be abolished. It is noteworthy that OSCE/ODIHR prepared legal opinion on legislative changes relating to State Inspector's Service at Public Defender's request and negatively assessed the amendment.<sup>54</sup> According to the OSCE/ODIHR it is highly problematic that, contrary to international standards, amendments to the law on the State Inspector's Service were rushed through the Parliament of Georgia without consultation.<sup>55</sup>

As a result of monitoring the activities of the State Inspector, the PDO concluded that the investigations conducted by the SIS met the requirements of timeliness, thoroughness and accuracy.<sup>56</sup> At the same time the PDO consistently referred to shortcomings in the legal framework of functioning of the SIS. For example, the SIS was largely dependent on the prosecutor in the investigation process.<sup>57</sup> In addition, the State Inspector herself indicated that certain power of the SIS brought no practical results.<sup>58</sup> Thus, the PDO believes that this institution needed strengthening of its independence and effectiveness instead of abolition/division.

The aforesaid amendment does not envisage any substantial novelty regarding investigative functions of the Special Investigation Service. Although the investigative jurisdiction of Special Investigation Service is slightly increased compared to SIS,

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<sup>54</sup> Statement of the Public Defender of Georgia, 21.02.2022, available at: < <https://bit.ly/3vt4a9S> > [last seen 26.02.2022].

<sup>55</sup> OSCE/ODIHR, Opinion on the Legislative Amendments on the State Inspector's Service of Georgia, 18.02.2022, page 2, available at: < <https://bit.ly/3wOll4Q> > [last seen 26.05.2022].

<sup>56</sup> Supra note 14, page 60.

<sup>57</sup> Special Report of the Public Defender of Georgia, "Effectiveness of the investigation of inhuman treatment cases", 2019, pages 4-5, 35, available at: <<https://rb.gy/bdsutp>> [last accessed 19.05.2022].

<sup>58</sup> Report of the State Inspector's Service of Georgia 2020, available at: <<https://bit.ly/3eeba00>> [last accessed 19.05.2022].

there is nothing new in terms of dependence on the Prosecutor's Office. On the other hand, certain crimes committed by the prosecutors fall outside the mandate of the new Special Investigation Service.<sup>59</sup> The amendment failed to provide sufficient guarantees for the institutional independence of the two newly established services. The OSCE/ODIHR in its legal opinion particularly emphasized that the expansion of mandate to a range of additional offenses and to potentially cover those committed by any individual risks seriously diluting the important focus of the institution in combatting the impunity of law enforcement officials.<sup>60</sup>

In addition, as of May 2022, the new legislative amendment on the Special Investigation Service is under review in the Parliament of Georgia. The unreasonably accelerated nature of preparation and consideration of the amendment without involvement of the PDO, civil society and international partners fail to meet the needs of the Special Investigation Service and contradict Georgia's international human rights obligations.

The current draft law does not increase the institutional independence of the Service and does not create an action space free from dependence on the investigator/prosecutor for conducting investigative/procedural activities. The draft law is mostly unrelated to the investigative activities and is only organizational-technical in nature.<sup>61</sup>

## **V. Liberty and security of person (arts. 9-10)**

### **Observations with respect to issues posed in paragraph 12 in the LIOs**

In 2021, detainees continued to speak about cases of physical and psychological violence after arrests by law enforcers. This was especially problematic during detentions carried out under the provisions of the Code of Administrative Offences. According to paragraph 70 of the State Replies, the Parliament of Georgia plans to adopt a new Code of Administrative Offenses. The government has had this plan for

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<sup>59</sup> Public Defender's Statement on Attempt to Abolish State Inspector's Office, 27.12.2021, available at: <<https://rb.gy/npuzhi>> [last accessed 19.05.2022].

<sup>60</sup> Supra note 55, page 19.

<sup>61</sup> Public Defender's Statement, 04.05.2022, available at: <<https://bit.ly/3MsLDjE>> [last accessed 18.05.2022].

years. However, legislative reform is yet to be implemented, and the Code inherited from the Soviet Union remains in force.

Right to timely access to a lawyer and inform families about the detention is not always respected. Family members and lawyers of the persons detained during protests were informed about the whereabouts of the detainees after a long period of time or were not informed at all. Consequently, lawyers were unable to visit their defendants in a timely manner, interview them, and agree on a defense strategy.<sup>62</sup> According to our data, the rate of lawyer involvement in the case within the first 24 hours has significantly decreased in 2021.

The PDO commends the adoption of the Order N 633 on 30 November 2020, which sets new regulations aimed at increasing the effectiveness of the procedure for identifying, documenting and reporting cases of violence to the investigative authorities. The regulations determined the duty of a medical professional to directly notify the State Inspector about alleged incidents of ill-treatment.

The PDO also commends another amendment determining medical professionals' duty to describe, photograph and report injuries to investigative authorities, irrespective of the prisoner's informed consent, whenever he/she suspects that the prisoner who is undergoing medical examination based on his informed consent, could have been subjected to torture or other inhuman treatment. However, identifying and documenting facts of alleged ill-treatment is problematic when a prisoner refuses a medical examination. Under current regulations, before the medical examination, a doctor must obtain the prisoner's informed consent, which must be confirmed by his signature. In the absence of the consent, the doctor is not allowed to fill out a special injury registration form. Consequently, the doctor cannot send a notification to the State Inspector's Service, regardless of whether there is any injury and whether the doctor suspects any ill-treatment.

Unfortunately, the faulty practice of identifying and documenting incidents of alleged violence is still maintained. This practice is preconditioned by the absence of a confidential environment for doctor-prisoner meetings. Inadequate qualification of doctors and the lack of information should also be pointed out. Doctors fail to explain to prisoners the significance and purpose of documenting injuries. The indicated

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<sup>62</sup> Supra note 14, page 57.

mechanism of documentation is not properly used by the doctors of the penitentiary establishments.<sup>63</sup>

In the State Replies, the Georgian Government fails to answer questions put by the HRC regarding measures taken to ensure (a) keeping pretrial detainees separate from convicted persons; (b) improving material conditions of detention facilities; (c) reducing inter-prisoner violence; (d) providing adequate access to health care, including mental health care, in all places of detention. The PDO addresses these issues in the same order: a) Accused and convicts are still housed together in N2 and N8 penitentiary establishments; b) Overcrowding remains a problem in both semi-open and closed large penitentiary establishments. Barracks-style dormitories have not been abolished in N17 penitentiary institution, where sanitary-hygienic conditions are impossible to maintain. Most convicts do not have 4 sq.m. of private accommodation. The physical environment in psychiatric institutions is particularly troublesome and amount to ill-treatment. In 2021, the situation was especially problematic at the Tbilisi Mental Health Center, as well as the Surami Psychiatric Clinic and others.<sup>64</sup> c) Overcrowding and informal governance in penitentiary institutions frequently cause physical and psychological violence among prisoners. As a result of the state's direct and indirect support, informal governance creates a violent environment in penitentiary institutions and affects a large number of prisoners every day. Abolition of the criminal subculture-based governance is a critical issue for the protection of human rights in penitentiary establishments. d) The provision of timely and high-quality somatic (physical) health care and mental health care for prisoners in penitentiary establishments remains a challenge. Inadequate qualification and shortage of staff create problems in both penitentiary system and psychiatric institutions. Timely referral of a prisoner to a psychiatrist remains a problem in penitentiary system. Mental health screenings are still only performed once. Although some prisoners with mental illnesses receive inpatient psychiatric care, the vast majority of inmates with mental illnesses remain incarcerated. Psychiatric care in establishments is inconsistent with the modern biopsychosocial approach and evidence-based health care principles. In the absence

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<sup>63</sup> Ibid, page 50.

<sup>64</sup> Ibid, page 40.

of a psychosocial component, psychiatric care in penitentiary establishments is limited to medical treatment only.<sup>65</sup>

With regards to the system of the MIA, detainees were provided with medical services in a timely manner while under the control of the police.<sup>66</sup> It should be noted, however, that the number of isolators (TDI) with a medical unit was reduced in 2021. In particular, as of 2021, the medical unit functioned in 21 isolators, while the number was 23 in 2020. The medical staff is constantly available in only 10 isolators out of 30, and there has been no progress in terms of medical staff recruitment and employment.

## **VI. Internally displaced persons (arts. 2–3, 12 and 24)**

### **Observations with respect to issues posed in paragraph 14 in the list of issues**

There were 289925 internally displaced persons (IDPs) and 91627 registered IDP families in Georgia as of 2021.<sup>67</sup> The state has resettled 45724 families while 45903 families have filed applications for provision of housing and await resettlement.<sup>68</sup> Thus, the continued need for durable housing and improved living conditions remains an unsolved issue despite various accommodation measures or financial assistance mentioned in the State Replies.<sup>69</sup>

In terms of durable housing, 1383 IDP families were resettled to newly built or restored buildings in 2021.<sup>70</sup> However, the planning of durable housing doesn't consider the wish of IDPs to be resettled in specific administrative units.<sup>71</sup> Thus, the resettlement programs are inconsistent and don't match IDPs' needs.<sup>72</sup> Moreover, IDPs involved in village resettlement program are still waiting for resettlement decisions while negative decisions on resettlement still tend to be unsubstantiated.<sup>73</sup>

As to living conditions, 1410 IDP families live in the buildings at the risk of collapsing.<sup>74</sup> The number of families resettled from such buildings decreased during 2021 and

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<sup>65</sup> 2021 Annual Report of the National Preventive Mechanism, pages 68-69, available at: <https://bit.ly/3yL6ef7> > [last accessed 19.05.2022].

<sup>66</sup> Supra note 14, page 53.

<sup>67</sup> Ibid, page 340.

<sup>68</sup> Ibid.

<sup>69</sup> Supra note 1, §§ 80-82.

<sup>70</sup> Supra note 14, page 342.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

specific rules regulating their resettlement remain undetermined.<sup>75</sup> Moreover, the state doesn't conduct expert assessments of the sustainability of the buildings proactively.<sup>76</sup> This hinders data gathering on such buildings and effective resettlement planning and prolongs the stay of IDP families in unassessed, life-threatening environment.<sup>77</sup>

Although the State Replies mention provision of rental funds for IDP families,<sup>78</sup> the amended subordinate normative act regulating IDP resettlement no longer considers living in dire living conditions as a ground for provision of rental funds.<sup>79</sup> As rental fund provision aims to temporarily improve living conditions of the most vulnerable families and families living in dire conditions especially need temporary accommodation, the aforesaid change will deteriorate their human rights situation.<sup>80</sup> The latter is also exacerbated by illegal practice of annulment of points awarded to IDP families living in dire conditions as the decisions to resettle depended on these points in some cases.<sup>81</sup>

As to the impact of the COVID-19 pandemic on IDPs, some of them could not follow health recommendations (frequent hand washing, observance of hygiene) as they lacked access to clean water due to problems with water supply and sewerage systems in some IDP settlements.<sup>82</sup> As to socio-economic situation, the coronavirus related restrictions led to loss of income of IDPs. According to IDPs, as they were mostly informally employed without a stable job, they were unable to confirm the fact of employment and couldn't benefit from the state assistance.<sup>83</sup> Women IDPs were even more affected by the pandemic. They lacked information about the virus, its spread or the means for dealing with it.<sup>84</sup> In addition to economic challenges, they faced increased risk of domestic violence as isolation requirements put them in one space with the perpetrator(s) while responsive state measures were not tailored to their needs.<sup>85</sup>

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<sup>75</sup> Ibid, pages 341-343.

<sup>76</sup> Ibid, page 343.

<sup>77</sup> Ibid.

<sup>78</sup> Supra note 1, §82.

<sup>79</sup> Supra note 14, page 341.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid, page 342.

<sup>82</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2020, page 355, available at: < <https://bit.ly/3yFxpYN> > [last accessed 16.05.2022].

<sup>83</sup> Ibid.

<sup>84</sup> Special Report of the Public Defender of Georgia on Impact of Covid-19 Pandemic on Conflict Affected Women and Girls, 2021, page 20, available at: < <https://bit.ly/3yFxyBT> > [last accessed 16.05.2022].

<sup>85</sup> Ibid, pages 17-20.

## **VII. Access to justice, independence of the judiciary and fair trial**

### **Observations with respect to issues posed in paragraph 16 in the LIOs**

Administration of prompt and effective justice remains a significant challenge. The terms for decision-making in the general courts and the Constitutional Court do not meet the standards set by the law. Although the Supreme Court is fully staffed, it is still problematic to uphold the principles of speedy and effective justice in the cassation proceedings.

Changes in the justice system known as ‘waves’, unfortunately, failed to enhance the degree of independence of the judiciary and exacerbated the lack of internal independence of the judiciary. The problems in the justice system at the institutional as well as the legislative level necessitate an extensive and fundamental reform. Under the political agreement of April 19, 2021, the ruling political force undertook to carry out a fundamental reform within the judiciary; Until the completion of the reform the state had to suspend the process of staffing the Supreme Court; However, it was not suspended despite calls from the PDO<sup>86</sup> and OSCE/ODIHR.<sup>87</sup>

An influential group of judges within the judiciary, in agreement with the ruling political party, administers the judiciary authority under corporate influences. The High Council of Justice, which is a collegiate body responsible for court administration, makes decisions (including on judicial nominations) based on some informally pre-agreed, pre-coordinated rules, which completely undermine the entire reason of having a collegiate body making decisions based on pluralism, discussion and consensus/agreement. This circumstance, the unsatisfactory quality of the reasoning of judicial decisions and an obscure process result in the judiciary system failing to meet even minimum requirements of transparency.<sup>88</sup> The monitoring of the judiciary system over the years shows that the High Council of Justice maintains influence over regular judges via court chairpersons who are appointed by the Council. It is by means of this vertical management that Council maintains influence over judges. Since 2017,

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<sup>86</sup> Public Defender Calls on Parliament to Start Justice Reform, available at: < <https://bit.ly/3NvGJCJ> > [last accessed 23.05.2022].

<sup>87</sup> OSCE/ODIHR, Fourth Report on the Nomination and Appointment of Supreme Court Judges in Georgia, August 2021, available at: <<https://bit.ly/3yRfwWW>> [last accessed 23.05.2022].

<sup>88</sup> Supra note 82, pages 90-91.

the PDO has actively been emphasizing the necessity of a legislative amendment to achieve decentralization of decisions on selection of chairpersons.<sup>89</sup>

The fast-track initiation and passage of the Amendments to the Organic Law of Georgia on Common Courts at the end of 2021 can be assessed as another step backwards in the justice system; these amendments have considerably weakened legal safeguards for judicial independence.<sup>90</sup>

Given that the April 19 Political Agreement is not fulfilled and considering the widespread institutional challenges as well as the corporate influences within the judiciary, have further highlighted the necessity of discussions about the need for a radical reform of the judiciary.<sup>91</sup> It should also be noted that the Venice Commission<sup>92</sup> and the European Court of Human Rights<sup>93</sup> have both supported, against the background of the context existing in the country, rather extraordinary solutions to bring about a profound reform of the judiciary system.

The Public Defender welcomes the insertion of an amendment in the Law of Georgia on Legal Aid in 2020, which ensures legal aid also to child witnesses. But regrettably, the Georgian Government did not take any effective steps to train psychologists in juvenile justice and to introduce a respective quality assurance system.<sup>94</sup>

Regarding the Independent Inspector mentioned in the State Replies, the PDO assessed rules of election of the Independent Inspector as faulty from both legal and factual perspectives.<sup>95</sup>

Since 1 January 2018, the cases have been assigned to judges through the electronic system, according to the principle of random allocation. This development was welcomed by the PDO. However, the decision approved by the High Council of Justice provides for exceptions when the cases in the common courts are distributed,

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<sup>89</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2017, pages 103-104, available at: <<https://bit.ly/3wBV7ne>> [last accessed 23.05.2022].

<sup>90</sup> Public Defender Negatively Evaluates Bill relating to Judicial System, available at: <<https://bit.ly/3BJHfs3>> [last accessed 23.05.2022].

<sup>91</sup> Supra note 82, page 97.

<sup>92</sup> The Venice Commission, Amicus curiae brief for the Constitutional Court of Albania, Opinion no. 868/2016, available at <<https://bit.ly/3vsxstab>>

<sup>93</sup> ECtHR, Xhoxhaj v. Albania, judgment of 9 February 2021, application no. 15227/19, par. 299.

<sup>94</sup> Supra note 82, page 89.

<sup>95</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2019, page 106-107, available at: <<https://bit.ly/3MsOucl>> [last accessed 19.05.2022].



bypassing the principle of random distribution and thus it raises suspicions on the credibility of the process.<sup>96</sup>

### **VIII. Right to privacy**

#### **Observations with respect to issues posed in paragraph 19 in the LIOs**

The current legislation regulating the State Security Service (hereinafter SSS) has shortcomings, which enable the SSS to conduct illegal surveillance. The body authorized to conduct covert investigative actions is LEPL Operational Technical Agency - a legal entity of public law under the SSS. Thus, it remains fully dependent institutionally, financially and organizationally on the SSS. For its part, the SSS has a professional interest in gathering as much information as possible. Unfortunately, external parliamentary control of the Operational Technical Agency is ineffective.

Furthermore, the June 2021 amendments to the Law of Georgia on Information Security give Operative-Technical Agency the opportunity to have direct access to information systems of the legislature, executive or judiciary, as well as the telecommunications sectors and indirect access to personal and commercial information stored in the systems. The law enforcement agency is given the opportunity to have access to personal data and there is a real danger of illegal and disproportionate processing of personal information. Local watchdogs also expressed concerns over the aforesaid changes, stating that the amendments simultaneously grant the Operative-Technical Agency regulatory, monitoring, and sanctioning powers.

The result of similar uncontrolled power was revealed on September 13, 2021 when numerous files were leaked, including processed information obtained through covert surveillance. The files probably created in 2014-2021, relate to a circle of numerous individuals, thousands of people and contain intensely sensitive information. The files, along with various types of personal data, are likely to contain information about sexual abuse of minors, alleged failure to report the crime and abuse of office by law enforcement officers.<sup>97</sup>

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<sup>96</sup> Supra note 82, pages 129-130.

<sup>97</sup> Supra note 14, page 123.

Surveillance and data processing of this magnitude can only be linked to the State Security Service, as due to an access to the resources in such extent is only the State Security Service's capacity.

The SSS has mandate to carry out covert electronic surveillance when an appropriate legal basis is met. In addition, prior or subsequent consent of the judge is needed. It is implausible that the court permitted to obtain material that covers personal data of the disclosed volume and content, and serious questions arise regarding legality of covert electronic surveillance allegedly conducted by the SSS. The aim to collect information about activities and private lives of individuals, their video and audio recordings was allegedly to discredit them and use this data as compromising material against certain individuals. On September 14, the POG announced the launch of an investigation on the facts of violation of the secrecy of private communication, crime under Article 158 of the Criminal Code of Georgia. According to information provided by the POG, at this stage nobody has been identified as the accused or victim under the pending investigation.

In State Replies, the Georgian Government stated that the PDO is authorized to have access to any information including the information containing state secrets and thus, to conduct oversight over the activities of the SSS. The Public Defender underlines that the monitoring mechanisms described in the State Replies fail to prevent violations of the right to privacy. Furthermore, the PDO has no oversight functions in terms of conducting monitoring over the activities of the Operative Technical Agency.

## **IX. Freedom of conscience and religious belief**

### **Observations with respect to issues posed in paragraph 20 in the LIOs**

Return of religious buildings to historical owners remains challenging. Those buildings were confiscated from religious associations during the Soviet period. The PDO criticized the transfer of the disputed religious buildings to the Patriarchate without proper study.<sup>98</sup>

Despite the 2019 judgment of the Constitutional Court of Georgia, discriminatory regulations regarding taxation of religious organizations persist. Moreover, the Law of

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<sup>98</sup> Supra note 95, page 219; Supra note 82, page 169.

Georgia on State Property<sup>99</sup> puts limitations on religious associations other than the Orthodox Church to purchase and exchange state property. Also, only the Orthodox Church was allowed to take ownership of the 20 hectares of forest around the churches.<sup>100</sup>

The vicious, discriminatory practices of funding religious organizations that provide disproportionate financial resources to religious organizations have not changed. For years, the Public Defender has been calling on the state to develop a new standard of financing religious organizations that is consistent with the principles of equality and neutrality.

The problem related to the construction of a new mosque in Batumi is still unresolved. The decision made by the Batumi City Court in 2019, which considered the refusal of the Batumi City Hall to build a new mosque in Batumi discriminatory and illegal, was upheld by the Kutaisi Court of Appeal in 2021. The latter was appealed by the Batumi City Hall to the Supreme Court of Georgia. Non-governmental organizations working on religious issues considered such a move by the City Hall as part of a strategy to delay the fulfillment of its obligations, which violates the rights of the Muslim community and hinders their full realization.<sup>101</sup>

## **X. Freedom of expression (arts. 19–20)**

### **Observations with respect to issues posed in paragraph 21 in the LIOs**

Unfortunately, cases of attacks and intimidation against media representatives have become more frequent.<sup>102</sup> The PDO documented tens of cases of alleged crimes or offences against media representatives, including illegal interference in professional activity, attacks, threats, preparation of murder, exceeding official powers, etc.<sup>103</sup> Moreover, several cases of alleged interference in professional activity, threats and verbal assaults against journalists were revealed during the municipal elections.<sup>104</sup> The events of July 5, 2021 were especially alarming – more than 40 media representatives were injured during the violent disruption of LGBT+ Pride March by

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<sup>99</sup> Article 3 (Paragraphs 1, 2, 5 and 6) of the Law of Georgia on State Property.

<sup>100</sup> Supra note 82, page 214.

<sup>101</sup> See e.g.: < <https://bit.ly/35EVfYL> > [last visited on 24.05.2022], < <https://bit.ly/3CvMKLB> > [last visited on 24.05.2022]

<sup>102</sup> Public Defender Responds to Frequent Attacks on Journalists, available at: <<https://bit.ly/3woIj3M>> [last accessed 17.05.2022].

<sup>103</sup> Supra note 14, page 172-173.

<sup>104</sup> Ibid, page 174.

far-right, radical groups.<sup>105</sup> One of them, TV Pirveli cameraman Aleksandre Lashkarava died in a few days and was included in the UNESCO list of murdered journalists.<sup>106</sup>

The PDO has published statements expressing concern about frequent attacks on journalists and urging the investigative authorities to conduct effective investigations and to punish perpetrators.<sup>107</sup> However, the reaction of relevant bodies has been inadequate, thereby contributing to impunity and rise in offences against media representatives. Based on analysis of data from years 2015-2020, several investigations into crimes against journalists were being conducted without addressing and determining the issue of responsibility of specific perpetrators.<sup>108</sup> Moreover, the POG refused to investigate the act of Tea Tsulukiani, the Minister of Culture, Sports and Youth although the PDO had proposed that her action (taking away a microphone from a journalist and returning it after 3 months) may have amounted to several crimes.<sup>109</sup> As to investigation of events of 5 July, 2021, the POG has not launched prosecution under charges of incitement and organization of group violence despite that the standard for bringing charges against at least 2 individuals was met by publicly available evidence according to the PDO's assessment.<sup>110</sup> In addition to ineffective investigations, the hostile environment was also encouraged by discreditation and disrespect of critical media by government officials.<sup>111</sup>

Instead of investigating possible offences against journalists, the government of Georgia seems to use criminal liability to intimidate representatives of critical media. In particular, Nika Gvaramia (the Director and TV host of TV company "Mtavari Arkhi" and the former Director General of Rustavi 2 Broadcasting TV Company Ltd) was found guilty of abuse of powers under article 220 of the Criminal Code in a case considered as politically motivated by Amnesty International.<sup>112</sup> The Prosecution

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<sup>105</sup> Ibid, page 175.

<sup>106</sup> Ibid.

<sup>107</sup> Supra note 102; Public Defender's Statement on Assault on Journalist Vakho Sanaia, available at: <<https://bit.ly/3woqfGE>> [last accessed 17.05.2020]; Public Defender's Statement on Offences Committed against Representatives of Media, available at: <<https://bit.ly/3sKGDz9>> [last accessed 17.05.2022]; Public Defender's Statement on Violence against Journalists, available at: <<https://bit.ly/3MiBZQJ>> [last accessed 17.05.2022].

<sup>108</sup> Supra note 14, pages 175-176.

<sup>109</sup> Ibid, page 174; 2021 Activity Report of the Criminal Justice Department of the Public Defender's Office, 2022, page 109, available at: <<https://bit.ly/3MoAlx7>> [last accessed 18.05.2022]

<sup>110</sup> Supra note 14, pages 184-185.

<sup>111</sup> Supra note 102.

<sup>112</sup> Georgia: Sentencing of pro-opposition media owner Nika Gvaramia a political motivated silencing of dissenting voice, available at: <<https://bit.ly/37Z36S4>> [last accessed 18.05.2022].

argued that the decision made by Gvaramia as the manager of the enterprise (changing the terms of the contract, determining the amount of income) and agreed with the enterprise owner was a crime.<sup>113</sup> According to the indictment, he could have brought more income to the company but he did not do so, which constituted a crime.<sup>114</sup> However, the PDO's amicus curiae submitted to the court argues based on international and national standards that such an entrepreneurial decision may not lead even to corporate liability, not to mention criminal liability.<sup>115</sup>

## **XI. Right of peaceful assembly (arts. 6–7 and 21)**

### **Observations with respect to issues posed in paragraph 22 in the LIOs**

On 18 and 26 November, 2019 demonstrations held against the failure to adopt reform on election system was dispersed by water cannons after several hours of picketing the Parliament building.<sup>116</sup> Although this behavior of protesters contravened the Law on Assemblies and Manifestations, it did not exclude a peaceful nature of the rally, especially as protesters were not violent.<sup>117</sup> As the authorities should show a certain degree of tolerance even towards unlawful but peaceful assemblies, the proportionality of the use of water cannons in both cases is questionable.<sup>118</sup> Moreover, the use of water cannons at 5 a.m. on 26 November to clear the entries to the Parliament was unnecessary because at that time (nonworking hours) there was no need to clear the entries.<sup>119</sup> Although the MIA argues to have established communication/negotiation with the protesters to avoid forceful interference, it didn't explain what type of communication was established in each case, thereby making it impossible to assess effectiveness of that communication.<sup>120</sup> It also did not substantiate any oral decision in writing, which is necessary for assessing the legality of undertaken measures.<sup>121</sup>

As to arbitrary arrests, detentions, ill-treatment and deprivation of fundamental guarantees, the following shortcomings were identified in police conduct on 18 November, 2019: policemen didn't use body cameras when arresting demonstrators;

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<sup>113</sup> Public Defender's Statement on Nika Gvaramia Case, available at: <<https://bit.ly/3yMV49J>> [last accessed 18.05.2022].

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> Supra note 95, page 186.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

<sup>120</sup> Ibid, page 187.

<sup>121</sup> Ibid.

administrative offence reports didn't specify acts constituting the administrative offence concerned; the timestamps of violations and arrests indicated in administrative offence reports didn't coincide with actual times; administrative offence reports were often signed not by the arresting policemen but other law enforcers.<sup>122</sup> According to the majority of arrested persons, they didn't know the ground for their arrest, hadn't seen either arrest or administrative offence reports and those who saw the reports rejected the facts described therein.<sup>123</sup> Moreover, 20 detainees visited by the representatives of the Public Defender had been handcuffed in patrol police cars for several hours, were not allowed to use the toilet or inform their family about their whereabouts while their lawyers were being delayed after arriving at the MIA building.<sup>124</sup> The detainees' trial failed to meet even minimal procedural standards. Assignment of the cases of all 37 detainees to one judge led to an unreasonable delay in court proceedings.<sup>125</sup> Although the maximum term of detention prescribed by law was violated in some cases, the judge did order release.<sup>126</sup> It was impossible to exactly identify alleged offences or offenders from video recordings while the police did not submit the video footage of body cameras and the request of the defense to obtain it was rejected by the court.<sup>127</sup> The explanations of policemen often contradicted each other.<sup>128</sup> Thus, it became impossible to determine whether the policemen who signed the detention protocols were actually at the detention scene or whether the protesters were actually detained by them.<sup>129</sup> The defense was not given sufficient time or opportunity to actually exercise the right to defense and to obtain evidence.<sup>130</sup> Finally, the court imposed disproportional penalties on the detainees.<sup>131</sup>

As to dispersal of the demonstration with rubber bullets, tear gas and water cannons on 20-21 June, 2019, the force used for the dispersal, especially the use of non-lethal bullets, absence of order allowing their use in accordance with law, the number of bullets (several hundreds) and shooters (several dozens), the size of locations

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<sup>122</sup> Ibid, pages 101-102.

<sup>123</sup> Ibid, page 102.

<sup>124</sup> Activity Report of the Criminal Justice Department of the Public Defender's Office, 2019, page 11, available at: <<https://bit.ly/38HBgKa>> [last accessed 19.05.2022].

<sup>125</sup> Public Defender Responds to the Trials of Persons Arrested during the 18 November Rally outside Parliament, available at: <<https://bit.ly/3wpZfqy>> [last accessed 19.05.2022].

<sup>126</sup> Ibid.

<sup>127</sup> Ibid.

<sup>128</sup> Ibid.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

(outside the parliament as well as other sections of Rustaveli Avenue), duration (several hours), the number of injured protesters (more than 200) and the degree of injuries were disproportionate.<sup>132</sup> Moreover, the police didn't warn protesters about use of force and didn't give them reasonable time to comply with the law and leave the area.<sup>133</sup> The exemption from this obligation did not apply as the police had practical opportunity to give warning a both before the initial escalation of the situation and in the following period.<sup>134</sup> A special statement by the MIA and calls made via media by the Interior Minister and the Tbilisi Mayor, fell short of the OSCE/ODIHR standard of warning.<sup>135</sup> As to the detainees, 35 detainees out of 112 visited by the PDO complained about police violence and 12 detainees had physical injuries.<sup>136</sup> The PDO's representatives also attended trials of some detainees during which the cases were reviewed in an accelerated manner and the detainees were unable to enjoy important procedural guarantees.<sup>137</sup> As to the investigation into the dispersal, the full circle of responsible and the clear contours of the scope of responsibility remain undetermined although enough time has passed since the investigation began.<sup>138</sup> The investigation has numerous shortcomings, e.g., it is focused only on identifying criminal actions of individual officers and not on determining responsibility of high officials, etc.<sup>139</sup> Only 3 persons have been persecuted under the charge of violently exceeding official powers and victim status has been granted to 68 policemen and only 27 individuals.<sup>140</sup> In this connection, victim status has been usually granted after issuance of medical examination report by Levan Samkharauli National Forensics Bureau but the issuance and transfer of the reports by the Beure to the investigation has been delayed for months, even years in several cases.<sup>141</sup> Thus, the investigation is neither effective nor timely.

## **XII. Rights of the child (arts. 23–24 and 26)**

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<sup>132</sup> Supra note 95, page 184.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> Supra note 124, page 9.

<sup>137</sup> Public Defender of Georgia Responds to the Events Developed on Rustaveli Avenue on June 20-21, available at: <<https://bit.ly/39zreLk>> [last accessed 19.05.2022].

<sup>138</sup> The Public Defender of Georgia, Interim Report on the Investigation of the June 20-21 Events, 2020, page 8, available at: <<https://bit.ly/3wpfzI3>> [last accessed 19.05.2022].

<sup>139</sup> Ibid.

<sup>140</sup> Activity Report of the Criminal Justice Department of the Public Defender's Office, 2021, page 45, available at: <<https://bit.ly/3Lusw7N>> [last accessed 19.05.2022].

<sup>141</sup> Ibid.

## Observations with respect to issues posed in paragraph 23 in the LIOs

Unfortunately, child marriage is still common. Issues such as insufficient coordination between authorities, unsatisfactory functioning of the referral procedure and shortcomings in prevention persist.<sup>142</sup> Relevant state bodies are mostly unable to identify coercion to marry in cases of engagement of underaged girls.<sup>143</sup> Moreover, despite the information campaign named in the State Replies,<sup>144</sup> parts of society and even some authorities lack awareness about child marriage as they stereotypically consider causes of child marriage to be minorities' traditions, religions and "backwardness".<sup>145</sup>

Child labor is another frequent practice in violation of children's rights. In light of harsh socio-economic conditions of the population and the growing child poverty,<sup>146</sup> the risk of child labor is also increasing, while state response is ineffective and has no specific mechanisms to assess risks, prevent and react to such cases.<sup>147</sup> The fact that in 2021 the Labor Inspection revealed only 1 case of the employment of children incompatible with law<sup>148</sup> and that, according to the State Replies,<sup>149</sup> in 2018-2020 only 10 children were identified as statutory victims of human trafficking (bagging) and in 2020 only one case of forced labor was revealed, only supports the assessment that identification of child labor is delayed and some cases remain unidentified.<sup>150</sup> For example, cases of quitting education due to labor are not always recorded and are left without reaction.<sup>151</sup> Thus, child labor, including seasonal work, labor migration, agricultural work, live-stock farming and collection of scrap-iron, is still common.<sup>152</sup> As to specifically street labor of children, number of mobile groups working with children is insufficient, provision of adequate infrastructure and social services to meet basic needs, empowerment of such children and their families, fight against stereotypes,

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<sup>142</sup> Supra note 14, page 155.

<sup>143</sup> Ibid.

<sup>144</sup> Supra note 1, §161.

<sup>145</sup> The Public Defender of Georgia, Harmful Practices of Early/Child Marriage in Kvemo Kartli: Research of Attitudes, 2021, 2021, pages 4-7, available at: <<https://bit.ly/3yMMInS>> [last accessed 19.05.2022].

<sup>146</sup> Supra note 14, page 272.

<sup>147</sup> Supra note 82, page 282.

<sup>148</sup> Supra note 14, page 278.

<sup>149</sup> Supra note 1, §§ 166-167.

<sup>150</sup> Supra note 82, page 283.

<sup>151</sup> Ibid; Supra note 14, page 277.

<sup>152</sup> Supra note 14, page 277.



detection of street labor cases, communication and coordination among relevant authorities remains challenging.<sup>153</sup>

Violence and other types of breaches of children's rights in residential institutions is an alarming problem which the State Replies leave completely unaddressed. 3 large residential institutions still operate in Georgia, including the NNLE Javakheti Ninotsminda St. Nino Boarding School (hereinafter Ninotsminda Boarding School).<sup>154</sup> The monitoring by the PDO in Ninotsminda Boarding School revealed systemic violations of the rights of children, including behavior possibly equal to torture, degrading and humiliating treatment, systemic violence, labor exploitation, etc.<sup>155</sup> Despite this, 15 children still lived in Ninotsminda Boarding School as of November 22, 2021. It is also concerning that PDO's representatives were not allowed to monitor Ninotsminda Boarding School on April 15 and May 19, 2021<sup>156</sup> despite the Public Defender's statutory authorization, while the social worker had not been allowed to enter the facility from June 20, 2020 to the end of April 2021.<sup>157</sup> Furthermore, investigations of facts of alleged crimes committed against children living in Ninotsminda Boarding School are flawed and although investigations of some criminal cases began in 2016, they are still ongoing today and no one has been held liable.<sup>158</sup>

As to foster care, difficulties in foster care provision for children with disabilities persist and include insufficient number of foster caregivers and services tailored to the needs of such children, lack of accommodation, etc.<sup>159</sup>

In terms of sexual abuse and exploitation of children, national legislation needs improvement.<sup>160</sup> For example, the penetration of a sexual nature into the body of a child and any other action of sexual nature committed by abusing trust, authority or influence do not independently constitute rape without the necessary preconditions of violence, threats of violence or vulnerability; "buying sex" from a child is not criminalized and engagement of children in prostitution is only an administrative

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<sup>153</sup> Ibid, pages 277-279.

<sup>154</sup> Ibid, pages 274-275.

<sup>155</sup> Special Report of the Public Defender of Georgia on the Rights of Children in NNLE Javakheti Ninotsminda St. Nino Boarding School, pages 4, 17-18, available at: <<https://bit.ly/3Mqn3iZ>> [last accessed 24.04.2022].

<sup>156</sup> Contrary to the interim measure dated 7 May, 2021 of UN Committee on the Rights of the Child.

<sup>157</sup> Ibid, page 9.

<sup>158</sup> Ibid, pages 21-23.

<sup>159</sup> Supra note 14, pages 290-291.

<sup>160</sup> The Public Defender of Georgia, The Administration of Justice on Crimes of Sexual Abuse and Sexual Exploitation of Children, 2021, pages 8-9, available at: <<https://bit.ly/3wpUdu8>> [last accessed 19.05.2022].

offence; evidentiary standard is inconsistent with the specifics of sexual abuse of children.<sup>161</sup> As to administration of justice, emphasis on physical violence during qualification of crimes ignores the vast majority of cases of sexual abuse committed without by use of physical force and met with no resistance.<sup>162</sup> Moreover, often decisions terminating investigation/prosecution do not fully reflect how the relevant agencies responded to a case, making it impossible to assess effectiveness of the response.<sup>163</sup> In terms of support services, the State doesn't have services specifically for child victims and the number of specialists, social workers and psychologists is clearly insufficient to properly assist the victims and ensure geographic accessibility.<sup>164</sup> Moreover, the specialists currently employed lack qualification and their involvement in administration of justice is mostly formal.<sup>165</sup> As to infrastructure, most buildings of the law enforcement agencies and courts don't provide a child-friendly environment.<sup>166</sup> Finally, the practice of corporal punishment unfortunately persists. Although the Code on the Rights of the Child explicitly prohibits corporal punishment of children in all settings, the society, parents, caregivers, and teachers still sometimes tolerate certain forms of corporal punishment as an acceptable form of upbringing. The use of corporal punishment in the family, pre-school, general educational institutions etc., is improperly regulated. In the absence of criminal liability, corporal punishment by a parent remains beyond legal response, unless it has caused physical pain and constituted psychological violence. National legislation doesn't define corporal punishment and the administrative legislation is not exhaustive in imposing sanctions on all forms of corporal punishment.

### **XIII. Rights of minorities (arts. 25-27)**

#### **Observations with respect to issues posed in paragraph 25 in the LIOs**

The PDO welcomes adoption of the State Strategy for Civic Equality and Integration for 2021–2030 and its Action Plan mentioned in the State Replies and, at the same time, would like to underline main shortcomings of the documents. In particular, they don't indicate activities to be carried out in order to increase participation of national

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<sup>161</sup> Ibid.

<sup>162</sup> Ibid, page 9.

<sup>163</sup> Ibid.

<sup>164</sup> Ibid, pages 9-10.

<sup>165</sup> Ibid, page 10.

<sup>166</sup> Ibid, page 9.

minorities in central and local executive bodies They don't envisage provision of free Georgian language classes to members of mixed families or other national minorities with permanent residence in Georgia; translation of the websites and social media pages of self-government bodies in the regions densely populated by ethnic minorities; etc. Moreover, national minorities were only involved in the development of the strategy and were not given the opportunity to participate in the process of developing the action plan.<sup>167</sup>

Contrary to the government's assertion under paragraphs 180-181 in the State Replies, national minorities are still underrepresented in central government bodies (except for the State Ministry for Reconciliation and Civic Equality of Georgia) and at the local level in the self-governments of regions densely populated by national minorities.<sup>168</sup> Language-related difficulties still hinder integration of national minorities and their access to employment, education, etc. One of the main barriers for Armenian-and Azerbaijani-speaking people in seeking public employment is insufficient knowledge of the Georgian language.<sup>169</sup> Unfortunately, still no statistics on the number of ethnic minorities employed in government services are recorded.<sup>170</sup>

As for the access to public services, language barriers, lack of native speakers in service providing institutions, and financial barriers hinder the access. The most significant challenge is providing information about governmental programs and public services in a language understandable to national minorities. Only the official website of Akhalkalaki Municipality, one of the six municipalities most densely populated with national minorities, is translated into a language understandable to national minorities.<sup>171</sup>

Georgia still lacks effective institutionalized advisory mechanisms for national minorities. Therefore, it is important to take effective steps to strengthen the consultative mechanisms; among others, the Council of National Minorities under the auspices of the PDO should become a platform for regular and formalized dialogue

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<sup>167</sup> Supra note 14, page 303.

<sup>168</sup> Ibid, pages 305-306.

<sup>169</sup> UNDP Georgia, Diversified and inclusive civil service, April 26, 2022, available at: <<https://bit.ly/3lkndgC>> [last accessed 17.05.2022].

<sup>170</sup> UNDP Georgia, Taking Stock of Ethnic Minority Participation in Public Service, 2022, page 6, available at: <<https://bit.ly/3yDnhQI>> [last accessed 17.05.2022].

<sup>171</sup> Supra note 3, page 2.

with relevant authorities.<sup>172</sup> Unfortunately, significant steps to strengthen current advisory mechanisms have not been taken. The Scientific Advisory Council for National Minorities was established in March 2021 on the basis of the Committee on Diaspora and Caucasus Issues of the Parliament of Georgia. Such a decision considers groups that have historically lived in Georgia as diaspora. Thus, the latter strengthens ethnic minorities' ties to other states while undermining the integration process.<sup>173</sup>

Unfortunately, the internship program offered through the 1 + 4 program does not adequately meet the goal of increasing ethnic minority youth involvement in public service. Internships are ineffective for developing relevant skills, and there are no mechanisms in place to help young people transition from internship to employment.<sup>174</sup>

Despite the Public Broadcaster's significant efforts, access to media for national minorities remains a challenge. The Public Broadcaster provides simultaneous translation of the main news program into Azerbaijani and Armenian, which is televised on several regional televisions. It is critical to ensure that such programs can be televised in all areas populated by national minorities. Although information in a language understandable to national minorities is also available via web portals, disseminating information primarily through the online platform is an ineffective way to ensure media access as the population of regions inhabited by national minorities has limited access to the internet.

Finally, supporting and continuing the activities of cultural houses and cultural centers in municipalities and villages densely populated by ethnic minorities is also challenging.

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<sup>172</sup> Supra note 82, page 320.

<sup>173</sup> Supra note 14, page 305.

<sup>174</sup> Supra note 169, page 38.