

VIOLENCE AGAINST CHILDREN IN GEORGIA

An Alternative Report to the UN Committee on the Rights of the Child on the implementation of the Convention on the Rights of the Child

47th session, January 2008



World Organisation Against Torture



**Public Health and Medicine
Development Fund of Georgia
(PHMDF)**



**Human Rights Information
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Geneva, Tbilisi, August 2007

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Thanks:

OMCT is grateful to Mariam Maskhulia, Lia Saralidze from PHMDF, Nino Gvedashvili, Usha Nanuashvili from HRIDC for organising the mission and for their hospitality.

OMCT would like to thank the persons met during the mission for their time and consideration: Meri Maglaperidze, assistant of the Head of the Child Rights Centre under the Office of the Public Defender of Georgia, Mari Chokheli (Executive Director) and Manana Kobakhidze (Chair of the Board) from Article 42 of the Constitution, Khatuna Japava, former Head of the Juvenile Colony of Tbilisi, Maya Kurtsikidze, Communication Officer at UNICEF Georgia, Mary Murphy, Regional Director of Penal Reform International, Andro Dadiani, Country Director of Every Child-Georgia, Salome Namicheishvili, Expert for the EU Support to Child Welfare Reform Project, Lela Tsiskarishvili, Executive of the Georgian Centre for Psychosocial and Medical Rehabilitation of Torture Victims, Nata Zazashvili, Chairman of Sapari, and Giorgi Chkheidze (Chairman) and Sophio Japaridze (Project Coordinator) from Georgian Young Lawyers Association (GYLA).

OMCT, PHMDF and HRIDC would also like to thank Delphine Clergue (intern at OMCT), Nino Andriashvili (HRIDC) and Ketevan Margalitadze (PHMDF) for their participation in the drafting of the alternative report, Sarah for her time in editing the report and Sophio Japaridze and Eka Lomtadze (GYLA) for their comments.

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1 Introduction: Overview of children's situation in the country

1.1 Background

Since Mr. Mikheil Saakashvili came into power, following the so-called “roses' revolution,” local and international organisations have seen a regular deterioration of their fundamental freedoms. Many NGOs deem that the violations of these rights and freedoms are encouraged by a progressive establishment of an authoritarian regime by the President. Immediate consequences of these abuses are the excessive use of violence and the impunity by law-enforcement bodies, repression and harassment against journalists, human right defenders, etc...¹ Some also consider this behaviour has led to conflict situations at both internal (minorities and separatist regions of Abkhazia and South Ossetia) and external (break of diplomatic relations with Russia in 2006) levels.

The repressions are mainly aimed at the restriction of freedom of expression, the detention of political opponents (Irakli Batiashvili and supporters of Igor Giorgadze are famous examples), restriction of the free media (closing of the TV company 202, the TV program Tavisufali Tema (free topic) broadcasted by Rustavi 2, outlawing of the journalists in Sighnaghi, etc.).

Moreover, the judiciary system remains unfair and is far from complying with international standards: the courts lack authority and the system as a whole is being occupied by people only acting on their own interest. In addition to the many political prisoners, Georgia also houses many prisoners of conscience. The government incites fear to businesses, opposition opponents, civil society, and mass media.

The repression is obvious in the legislation and the government's policy. Thus, recent amendments to the Georgian Criminal Code, the laws encroaching on the deprivation of private property, the law on reservists, the militarization of the country through conscription of many people in the army (including foreign refugees), excessive use of force against prisoners (so-called riot in the prison that has not yet been investigated), the overuse of deprivation of liberty, the attempt to lower the age for juvenile criminal responsibility, and repressive dispersion of demonstrators, etc. restrict human rights.

1.2 Consideration of the child and place in the society

Not more than 5 years ago, Georgian society was proud of cultural traditions, including the so-called “child cult”, which is a traditional sense in the Georgian society of considering children as objects of special care and with high respect. However, during the recent years, those values have been put under suspicion and the attitudes of the State, the society, and the families towards children have changed.²

¹ In this regard, since January 2006, the OMCT has issued 11 urgent appeals on human rights' (1) and human rights defenders' (10) violations in Georgia. See www.omct.org .

² This may be partly attributed to the collapse of the Soviet Union and consequently the split of the welfare system which contributed to worsen the situation of children.

Therefore, their place and importance are clearly expressed in the following phenomena: street children; the number of children in care institutions and the conditions in childcare institutions; types of penitentiary facilities and conditions for the development of the sentenced minors there, number of those minors; dramatic growth of violence among school adolescents; attitude towards deviant children and etc. The abandonment of children for economical reasons has also increased dramatically.

Children suffer from violence, whether physical or psychological, in many situations and locations: in the family, at school, in detention, etc. and generally on a daily basis.

Legislation regulating child protection is rather poor (with gaps, incomplete, non comprehensive, incoherent with other laws, etc.) and effective implementation of the law is quasi inexistent. There is a clear lack of executive mechanisms. Protection of children is definitely not a priority issue for the current government.

1.3 Legal status of the child

1.3.1 Definition of the Child (article 1 of the CRC)

Article 12 of the Civil Code of Georgia defines a child as a person from birth to the age of 18, the age of majority. The same provision set the rules of legal capacity divided in three age categories: a. persons under age of 7 are incapable; b. persons from 7 until 18 have restricted capability; c. adults from the age of 18 are presumed capable.

a) Minimum age for being employed

Contracts to employ persons under 14 years can be concluded only in the sphere of sports, arts and culture, and for performance of advertisement services. Employment capability of a person under 16 years is effective under the consent of the authorized representative or the agency assuming guardianship provided that the employment relations do not contradict the interests of the under age person, do not impair his/her moral, physical and mental development and do not preclude the right and ability to get elementary and base education.

Employment agreement shall not be concluded with the under 16 years old person for performance of labour associated with gambling, night entertainment establishments, production, transit and sale of erotic and pornographic products, pharmacy and toxic substances. Employment agreement shall not be concluded for night work (from 10 p.m. to 6 a.m.) with a person below 16 year-old.

b) Age of sexual consent

According to article 140 of Georgian Criminal Code “sexual intercourse (...) with someone under 16 years shall be punishable by restriction of freedom (...) or by deprivation of liberty (...).”

c) Minimum age for getting married

Article 1108 of the Civil Code of Georgia establishes the marriageable age at 18 years old. In exclusive cases, marriage is allowed from 16 with the prior written consent of the parents or other legal representatives. If the parents or legal representatives withhold their consent,

marriage may be authorized by a court for valid reasons and on the basis of a declaration by the spouses.

d) Conscription into armed forces

Article 9 of the Law on Military Service and Military Obligation defines that enlistment and conscription into armed forces starts from age of 18 to 27.

e) Minimum age for criminal responsibility

Article 33: “Criminal liability for the illegal action provided under this Code shall in no way be imposed upon the person who has not reached 14 years before the perpetration of this action.”

It should be emphasized that the Parliament of Georgia has amended the Criminal Code of Georgia (article 33) on May 23, 2007, lowering the age of criminal responsibility from 14 to the age of 12 for the commitment of especially severe crimes. This amendment is intended to enter into force on 1 July, 2008 (for details, see section 9.1).

1.3.2 Main legislation with respect to the rights of the child

Chapter 2 of the Constitution of Georgia on “Georgian citizenship. Basic rights and freedom of individuals,” is a list of fundamental rights and liberties, which applies to children. Few articles beyond articles 30 and 36 expressly mention the particular protection of children. Article 36 of the Constitution advances certain children’s rights and guarantees the protection of these rights: “the rights of mothers and children are protected by law” and article 30 details the working conditions required for minors.

A comprehensive legislative act concerning child rights protection has not been adopted yet in Georgia. Along with other legislative acts, the child’s right to be protected from acts of violence is regulated by the following laws:

- Violence (including domestic violence)
 - Law on the Protection of Minors from Harmful Effects enacted on September 28, 2001 and entered into force on January 1, 2002;
 - Law on the Elimination of Domestic Violence, Protection of and Assistance to the Violence Victims, entered into force on May 25, 2006;
 - Some provisions of the Criminal Code which envisage aggravating circumstances when the crime is committed against a child.

- Administration of juvenile justice, children in conflict with the penal law
 - Georgian Criminal Code, Section 5 on “Juvenile Criminal Liability” and article 33 on the “Release in responsibility due to age”; adopted on July 22, 1999;
 - Georgian Criminal Procedural Code adopted on February 20, 1999 and particularly Chapter 63 regarding the procedures regarding crimes committed by children aged 14 and above;
 - Order #635 on the Approval of the Instruction on Organizing Activities to Prevent Crimes Committed against and by Juveniles; it was enacted on May 17, 2006 by the Minister of Interior.³

³ This Order is a binding normative act. Its purpose is to instruct inspectors in their activities against crimes committed by and against juveniles.

The main and current law reforms focusing on children, concern the child welfare reform project and the reform of the juvenile justice system (see section 9.3).

⇒ *Georgian legislation on the rights of the child remains mostly non-comprehensive and generally ineffective.⁴ Despite recently passed laws and reforms which will deal, not specifically but at least partly, with the question of abuse, neglect and violence of children, it is obvious that a global law on the protection of children and their rights is still lacking in the Georgian legislation.*

1.3.3 Law enforcement organs implementing the legislation protecting children from violence

⇒ *The largest problem regarding the rights of the child concerns their concrete effectiveness. Indeed, the implementation of the legislation on the rights of the child is quasi-inexistent (maybe except regarding the trafficking issue). This is partly due to the fact that effective mechanisms are lacking and only very few State bodies work on the rights of the child and even fewer on violence against children because of a clear lack of interest from the State authorities.⁵*

No mechanism has been created to implement the recommendations of the UN Study on Violence against Children, with the exception of some issues about child abuse, which have been addressed by the so called EU Technical Assistance to the Commonwealth of Independent States (TACIS) project.

a) The Child Rights Centre

In April 2001, the Child Rights Centre was established under the Office of the Public Defender of Georgia. Its primary task is the supervision of the implementation of the UN Convention on the rights of the Child, and within this framework, the Centre has various activities aimed at tackling violence against children. The Public Ombudsman's office prepares a report that is presented to the parliament and civil society annually. The reports include monitoring of detention facilities, childcare institutions and child abuse facts.

The Centre receives complaints about acts of violence against children from child victims themselves and other stakeholders such as associations working on the rights of the child, parents, neighbours, etc. The Centre accepts the complaint if it deems that the State is responsible for the particular case. In this regard, it considers that the State could be responsible for lack of due diligence. Additionally, the Centre has the ability to carry out fact finding investigations and visits in any facilities without a warrant.

Despite these positive aspects, the Centre still has some problems to address. Concretely speaking, only three people work in the Centre, which is far from being sufficient to address all the issues that children might face. Many challenges remain to be achieved by the Centre,

⁴ This was stressed during an interview with Meri Maglaperidze, staff member of the Child Rights Centre, Tbilisi, July 2007.

⁵ This was stressed during an interview with Meri Maglaperidze, staff member of the Child Rights Centre, Tbilisi, July 2007.

like the establishment of a real help-line,⁶ or the development of awareness raising campaigns which demands important financial and human resources and currently lacks.

b) Child Care and Guardianship Bodies⁷

These bodies have the jurisdiction to monitor the situation in the family where violence occurs and might act even in the absence of a prosecutor filing a case. They also have the duty to represent a child victim in a procedure where his/her parents cannot do it.⁸

Their duties also include the guardianship and care of children and the participation in the decision taking concerning parental rights' restriction or deprivation and the place where the child(ren) should live after parents' divorce, and the fostering, adoption and education process of the child.

Resource centres do not have sufficient human resources in order to fulfil their duties and responsibilities.

⁶ At present, children can already call directly the Centre when they are victims of violations of their rights. Its phone number is quite well known actually but a real help-line open 24 hours and 7days still lacks.

⁷ Also called Resource Centres.

⁸ Information given by Mari Chokheli from the NGO Article 42 of the Constitution, Tbilisi, July 2007.

2 Non-discrimination (article 2 of the CRC)

➤ The worrying situation of children living or working in the streets

There are no accurate statistics on children living in the streets in Georgia. According to an interview given to OMCT by Meri Maglaperidze, from the Child Rights Centre, there is no exact number of street children and “it could range from 100 to 10 000!” she told the OMCT. The issue of street children has been admitted by Georgia in its Third State Party Report to the UN Committee on the Rights of the Child.⁹

According to a recent study on children living in the streets in Georgia,¹⁰ the reason why children end up on the street is mainly because of “family-related issues associated with poverty and social problems such as fighting and beating, alcoholism, and poor family relations that push and keep children in the streets.” It may also be due to “social issues related to street life that lure them to and keep them in the streets once they are there.” Comparing the situation of children in institutions and those living in the streets, the studies have found that although the family problems facing children in institutions and street children are largely overlapping, the children in institutions have a life style which more closely resembles a family structure and therefore are less likely to engage in destructive behaviour.

Centre for Social Adaptation of Children is a public open institution in Tbilisi receiving street children. Though no manifestations of torture or abuse have so far been reported in the Adaptation Centre, it is still far from what a rehabilitation facility for street children should be. This is not only due to a lack of good will and expertise from the staff, but also attributable to the weakness of Georgia’s child protection system, namely, its resources and legislation. For instance, the Centre receives both street children and children accused of, or having infringed the law even if, technically, the latter should not be received by the Centre. Children are mixed with no regard to their reasons for coming to the centre, their age or their sex. From May 2005 through January 2006, 110 street children were registered in the Centre.

According to an interview given by Maya Kurtsikidze, communication officer at UNICEF’s Tbilisi office, with a journalist, Eka Gulua from HRIDC, there is a need to conduct a survey in order to have an idea of the number of children living or working in the streets in Georgia and to have a clear and comprehensive picture of the situation of street children in Georgia. According to Mrs. Kurtsikidze, many of those children are engaged in begging which has become a real business. There are even reported cases where parents themselves force their children to beg money in the street and then ask for the “earned” money. An additional problem is that children in the street might have their rights easily violated and are at higher risk of being trafficked.

⁹ Implementation of the Convention on the Rights of the Child, Third periodic report, Georgia, February 2007, para. 274.

¹⁰ Laura Murray et al “Causes of Children Living on the Street in Urban Georgia: A Qualitative Assessment; Problems of Children in Urban Georgia: A Qualitative Assessment of Centers and Orphanages” (2006). The study was supported by the Applied Mental Health Research Group of Boston University’s School of Public Health, in partnership with Save the Children.

Furthermore, many reports show that street children suffer from various types of violence: physical, emotional and sexual; despite repressive treatment by the police is becoming lower and lower.

Following is a case of a father forcing his daughter Ela, a ten-year-old girl to come back home every evening with at least ten Lari. Here is the dialogue she had with a journalist from HRIDC in the street:

“Journalist: *Ela, Why are you begging?*”

Ela: *I must raise some money.*

Journalist: *Why do you need money?*

Ela: *I must give it to Borik, my father.*

Journalist: *How much do you get a day?*

Ela: *Borik would beat me if I do not give him ten Lari a day. He would not let me into the house and would not feed me. He treats all of us the same way.*

Journalist: *Where do you live, and who are other children?*

Ela: *I live far from here. The other children also live there, and each of them should give money to Borik. He beat Gosha once so much that he broke his nose. We all go home together. Nesi is older, and he counts the money. We cannot count. If any of us does not have ten Lari, another should give him enough. Borik meets us at the door, and if each of us gives him ten Lari, he will let us in. He gives us food, and there is a room where we all can sleep.”*

3 Protection from all forms of violence (article 19 CRC)

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3.1 Overview of the legal framework

Children's protection from violence is covered both by ordinary legislation under the Criminal and Civil Codes of Georgia (with some provisions protecting children especially) as well as by some specific laws like the Law on the Protection of Minors from Harmful Effects and the Law on General Education.

Although there are no specific provisions in the Criminal Code on child abuse and violence, ordinary assault laws do apply. Violence against the child is addressed in the Criminal Code under the general provisions on assault offences, particularly under chapter 30 "Crimes against Health". Some provisions provide for heavier penalties when the act has been perpetrated against a child¹¹ (aggravating circumstance).¹² Articles 125 and 126 of the Criminal Code provides punitive sanctions for beating minors without causing serious damage to health, also for regular beating or other violence that has resulted in the physical and psychological suffering of the victim but has not produced the physical injury which is dangerous for life, or produced less severe intentional damage to health, which is not dangerous for life. The sanctions are stricter for the same action perpetrated against a minor than against an adult. Articles 130 and 131 of Criminal Code define the punitive sanctions for infecting the minor with AIDS or Especially Dangerous Infectious. The sanctions are also stricter in these cases where the same action is perpetrated against a minor as compared to against an adult.

3.1.1 Legislation on domestic violence, abuse, and neglect

a) Civil Code - Parental rights and duties

The Civil Code regulates relations between parents and children: parents have duties to protect and raise their children. The Civil Code (articles 1205 and 1210) establishes child protection mechanisms in case of parents' maltreatment and abuse such as the annulment and restraint of parental rights. The extinction of parental rights is the ultimate sanction and can only be ordered by the court against parents if they do not respect their parental duties relating to their upbringing.

Adequate implementation of those provisions remains problematic because there is no organ to ensure their implementation. Further, there are no qualified specialists (social workers) who are enabled to supervise parents in the period of restraint of parental rights to establish conclusions to be used by the courts to pronounce fair verdicts. In practice, the extinction of parental rights rarely occurs, and criminal or administrative sanctions are even rarer.¹³

¹¹ The articles refer to minors with no minimum age limit, meaning that all children benefit from an equal legal protection under the Criminal Code.

¹² Aggravated crimes under Criminal Code of Georgia include: Premeditated killing against a minor; Intentional grave injury to health against a minor; Intentional less grave injury to health against a minor; Beating of a minor; Violence against a minor; Rape against a minor; Sexual violence against a minor; Coercion of sexual relations against a minor; Taking a minor hostage; Torture against minor; Inhuman or degrading treatment towards a minor; Coercion against a minor; Involvement of a minor in prostitution; Persuasion of a minor into abusing narcotics, its analogy, psychotropic substance or its analogy.

¹³ Implementation of the Convention on the Rights of the Child, Third periodic report, Georgia, February 2007

b) Law on the Elimination of Domestic Violence, Protection of and Assistance to the Violence Victims (25.05.2006)

This Law aims at preventing family violence, providing the victims with social and legal protection, assistance and rehabilitation, as well as the access to the justice system. In this regard, all family members have equal rights. One of the means the Law provides to prevent and tackle family violence is the cooperation of various institutions. The Law does not target only child victims but all victims of violence within the family sphere (mostly women and children in practice).

According to article 3 of the Law, family violence legally occurs when one member of the family violates the constitutional rights and basic freedoms of another member through physical, psychological, economical, sexual harassment or compellation.

Concrete and positive devices have been created under this law to combat family violence:

- the possibility to issue a warrant to react to an act of violence: it may be issued by a court (protection warrant) or a police officer (preventive warrant, should be confirmed by a court), and is always on a temporary basis. The aim is the protection of the victim. The protection warrant may also be demanded by the victim, a family member, or any other person providing legal assistance or medical, social and psychological care to the victim;
- the possibility to isolate the victim from the perpetrator: the primary aim is the protection of the victim of course, but this provision also aims at getting evidence more easily;
- the relationship (affective links, financial dependency, etc) between the victim and the perpetrator is assessed and, depending on the results of this evaluation, the perpetrator may be deprived of his/her right to be the child's representative and his/her rights to see the child will also be restricted.
- the victim benefits from several guarantees: interrogation in private, information about his/her rights, transfer to a hospital or an asylum if the urgent situation requires, etc.

⇒ *Despite improvement in the legislation, the Law on the Elimination of Domestic Violence is criticized by many Georgian NGOs and organs, particularly because of the clear lack of an efficient mechanism to implement the law and therefore make it effective in the protection of child victims.*

For instance, according to this law, when violence occurs in the family, the victim and the perpetrator should be separated; this separation should be based on a protection warrant of a court. However, at least two problems prevent the full and appropriate implementation of this provision: 1) there is no maximum definite time limit to issue the warrant and sometimes, it takes time to issue it and during this time period there is no legal obligation for the perpetrator to be separated from the victim; 2) it seems that there is no adequate shelter able to receive child victims of family violence.¹⁴

Moreover, despite the fact that there are some provisions on the rehabilitation of victims in the law, no mechanism has been created or provided for in practice.

¹⁴ This was stressed during an interview with Meri Maglaperidze, staff member of the Child Rights Centre under the Office of the Public Defender of Georgia, Tbilisi, July 2007.

There is also a lack of mechanisms to enforce the right to complain to the department of the children's rights under the Ministry of Education.¹⁵

Following is an example showing lacks of the law on preventing family violence: A 12-year old boy lives between the homes of his father and mother, who both suffer from mental disabilities. Due to child suffering from deep depression, and even attempt to commit suicide, a question was raised about the possibility of the father abusing his son. Thanks to psycho therapeutic séances the Public Health and Medicine Development Fund of Georgia (PHMDF) identified the signs of violence. PHMDF then alerted the Child Care and Guardianship Body. As a consequence, the Child Care and Guardianship Body advised the child to appeal to the Ministry of Education and Culture to be adopted by another family. At present, the Child Care and Guardianship Body must appeal to the law-court, which it has not done yet; apparently for lack of human resources. Therefore, the case is stalled.¹⁶

This case reveals the shortcomings of the Law on the Elimination of Domestic Violence. First, appealing a case of child abuse or violence to the law-court could lead to several risks or obstacles due to the shortcomings of the Law. For instance, it is not clearly determined in the legislation whether the testimony of the child received by PHMDF on the basis of therapeutic séances is admissible evidence by a law-court. Furthermore, the law did not establish any mechanism to properly follow-up such a case; concretely there is no means to appropriately investigate the case, prosecute the perpetrators, etc. For instance, the question of the removal of the child victim from the perpetrator or the whole family is problematic since there is no child shelter or rehabilitation center where the child could go if he or she needs some therapy. This situation is a clear obstacle to the follow-up of the case, the investigation and the prosecution. Finally, it appears that the Child Care and Guardianship Body failed in clearly identifying staff members responsible for this situation. Guidelines or protocol on how it should react in those circumstances is also lacking.

⇒ Gaps in the law

Georgian legislation does not actively create a safe environment for children, nor does it provide efficient protection against all forms of violence and abuse, especially when the authors of abuse are the children's parents or other caregivers.

There are only few government agencies in Georgia that deals with child abuse. Except the Child Care and Guardianship Body in the framework of domestic violence, no official agency is in general responsible for taking action on following up on cases of child abuse and neglect and none have policies regarding these issues (i.e. via a child protection plan or a formal set of expectations about how to respond to the problem of child abuse). There is no governmental agency which maintains an official record of all child abuse cases reported in Georgia.

In practice, the rights of the child will not be fulfilled if they are not strengthened by parents' obligations with strict controls in monitoring these obligations by relevant State

¹⁵ This was stressed during an interview with Mari Chokheli from the NGO Article 42 of the Constitution, Tbilisi, July 2007.

¹⁶ Since the case is under process, PHMDF prefers keeping details of the case confidential.

organs. Unfortunately, this is not mentioned in the current legislation. Due to the absence of any State control over parents' negligence and the lack of measures sanctioning this kind of behavior, in practice, the existing provisions do not yield proper protection.

Legislation which is lacking includes the establishment of social programmes to provide necessary support for the child victims of abuse and neglect and for those who have the care of the child, as well as other forms of prevention and identification mechanisms, reporting, referral, investigation, treatment and follow-up, including judicial one, of instances of child maltreatment.

3.1.2 Legislation addressing school violence

According to the Law on General Education (April 8, 2005), school discipline must be conducted according to the methods that are based on respect for a child's freedoms and dignity (article 19 of the Law). Moreover, violence against a pupil or any other person shall not be allowed in the schools. In the case of a physical or verbal insult, a school is obliged to react immediately and adequately according to the observance of legislative provisions (article 20 of the Law).

3.2 Occurrence of violence against children in Georgia

Different forms of abuse and violence towards children are very frequent in Georgia and this phenomenon is accentuated in the rural areas. However, this issue remains taboo in the Georgian society.

3.2.1 Results of a survey on child abuse and neglect in the family, schools and institutions

Since 2002, the Public Health and Medicine Development Fund (PHMDF) of Georgia has attempted to register the cases of child abuse and neglect. The organization monitors childcare institutions and conducts surveys among the child population and with professionals working with children. The questionnaire consisted of about 30 questions mainly looking for the description of behaviours and types of abuse. Below are presented the results of the work performed by PHMDF.

184 pupils from secondary schools, age 13-16 (2004-2005) responded to the survey which was anonymous. The study clearly shows the spread of child abuse and neglect in the family and institutions.

- **General existence of Child Abuse and Neglect (CAN):**

In Family

- a) Emotional Abuse – 90%
- b) Physical Abuse – 57%
- c) Neglect – 92%

In School

- a) Emotional Abuse – 81%
- b) Physical Abuse – 88%
- c) Neglect – 78%

Sexual Abuse – 77% (the questions included all forms of sexual violence, from pornographic films to raping)

- **Respondents considering themselves as a victim:**

In Family

- a) Emotional Abuse – 36%
- b) Physical Abuse – 12%
- c) Neglect – 4%

In School

- a) Emotional Abuse – 23%
- b) Physical Abuse – 7%
- c) Neglect – 13%

Sexual Abuse – 22%

- **Monitoring on the spread of CAN in children institutions:**

110 respondents, age: 10-18 (2005-2006)

- a) Emotional Abuse – 74%
- b) Physical Abuse – 63%
- c) Sexual Abuse – 0%
- d) Neglect – 77%
- e) Bullying – 8%
- f) Need help in studying – 79%
- g) Attention concentration problems – 81%
- h) Problems of adaptation in the new environment – 79%
- i) Problems on keeping of hygienic norms – 85%

Since 2002, PHMDF has conducted trainings with the participation of up to 800 professionals working with children and more than 200 parents. These trainings created the possibility for participants to assess their points of view and the attitude of the society towards child abuse and neglect. As a result, the organization found out that corporal punishment is a widespread form of violence both in educational institutions and in families, even though it is considered to be a violation of the rights of the child. People justify corporal punishment with the argument that children make them agitated and angry. Less significance is given to different forms of emotional abuse, and only sexual intercourse and rape are considered to be forms of sexual abuse.

3.2.2 Child care institutions

A 2005 study on child care institutions shows that the two main reasons why abuse and neglect may occur in such institutions are: inadequate training of the personnel working with children and the excessive use and misuse of child institutionalisation. The report recommended re-evaluating children in institutions, studying their family conditions, establishing a strict control over admittance, and training staff on child care¹⁷ (for further information on child institutions, see section 7.2).

3.2.3 Domestic violence

¹⁷ Laura Murray et al “Problems of Children in Urban Georgia: A Qualitative Assessment of Centers and Orphanages” (2006).

It appears from several recent studies and reports that child abuse and violence used as a form of discipline in the family is more often committed by the mother and that slapping is the most common form of discipline used.¹⁸

It seems that case-law on domestic violence does not exist; allowing us to think that domestic violent acts against children are weakly prosecuted in Georgia.

3.2.4 School violence

Nowadays, in the cities, violence is prevalent among pupils whereas, in the villages, violence is more often perpetrated by teachers themselves. Some reports have been made of collective punishment and those forms of violence are widely accepted by parents and society in general.

The following case was reported by Meri Maglaperidze from the Child Rights Centre under the Office of the Public Offender of Georgia:¹⁹

A girl has been recently beaten very seriously by a teacher. As a penalty, the board of the school only decided to remove one-month salary and to give a warning to the teacher.

This solution is not satisfactory because the penalty is too light and because it does not consider at all the victim.

3.3 Denouncing child violence

3.3.1 Child abuse reporting

There is no State system or service which attempts to prevent and identify the facts of violence and which aids in the appropriate treatment of the victims of abuse. There is no obligatory reporting body or system to receive referrals in cases of abuse and violence.²⁰

There is no system, which takes the responsibility of case management, treatment, or follow-up. According to the Law on the Elimination of Domestic Violence, the responsibility of supervision and responding to child abuse cases lies on the Child Care and Guardianship Bodies (violence committed by a parent, guardian, and foster parent), as well as with police officials who have an obligation to immediately respond to cases of physical abuse of children via the issuance of a restrictive order.²¹

In practice, there are few investigations, although the police have the obligation to conduct them when there are signs of physical abuse and witnesses exist.

¹⁸ Dr. Selim Iltus produced “Early Childhood Development and Preschool Education in Georgia: Research Findings and Recommendations”, August 2005: “discipline was primarily the responsibility of the mother (75%) and that slapping was the most common form of discipline used”; UNFPA reproductive health survey of males : 55% of the respondents admitted that their children have been subjected to domestic violence perpetrated by one of the parents, and more often by the mother. 2005; <http://georgia.unic.org>

¹⁹ During OMCT’s mission to Georgia, 4-7 July 2007.

²⁰ The only exception is the obligation of doctors to send a report to the police in case of traumas. This is emphasized in the law on Domestic Violence, 2006.

²¹ A Restrictive Order is an act issued by the authorized police officer, which defines temporary protection measures of victims in cases of domestic violence and which shall be submitted to the court for approval within 24 hours. The court, in case of issuance of the restrictive order within 24 hours, shall be authorized to decide on extension of the restrictive order until the decision of the issuance of the Protective order.

As far as the appropriate judicial involvement is concerned, the issue is very complicated as the person who can raise a complaint in the court regarding child abuse is the child's legal representative – a parent, and in the absolute majority of the cases a parent does not want to witness against partner/spouse, or a teacher due to the fact there are no protection guarantees after raising the complaint. Another body which has the obligation to protect children's rights is the Child Care and Guardianship Bodies, which rarely carries out this responsibility due to the incompetence of the staff or lack of resources. Moreover, the statute of the Ministry of Education and Science does not define the exact responsibilities of the Child Care and Guardianship Body. That is why the personnel of the Body cannot determine its own obligations and responsibilities.

Finally, professionals are not educated on child violence and the appropriate reaction to have when such cases occur.

3.3.2 Complaint's procedures

Several provisions enable the child to file a complaint to guarantee his/her right to be protected from violence:

- 1) Article 42 of the Georgian Constitution: "everyone has the right to apply to a court for the protection of his/her rights and freedoms";
- 2) Articles 14 and 15 of the Georgian Civil Code: a minor between the ages of seven and eighteen is of restricted capability and his/her legal capacity to apply to the court is valid only subject to his legal representative's consent;
- 3) Article 1198 of the Civil Code: "children have the right to defence from their parents (or from other legal representatives) if they are abusing their duties;
- 4) Article 27 of the Criminal Procedure Code requires the victim to initiate charges. It also provides for termination of proceedings based on the reconciliation of the victim and the perpetrator in all but the most severe levels of crimes.

According to the above-mentioned provisions, every child in Georgia is conferred the right to lodge complaints on any question somehow impacting his/her legal rights and interests prescribed by Georgian legislation. This can be done even individually without interference of any other person. For instance, the rights and legal interests of children have been violated by parents who have not fulfilled their responsibilities regarding the child's education or have infringed their parental duties, the child has right to independently apply to the Child Care and Guardianship Body and, from age 14, to the court (article 1198.1 of the Civil Code).

However, the difficulty again remains with the implementation of this right because it appears that, in practice, even where cases of child violence and abuse in the family or at school are reported, there is generally no prosecution, disciplinary nor administrative penalties. As evidence, there is no case-law on this issue.

In this regard, the Georgian NGO Article 42 of the Constitution reports²² the case of a woman whose rights, as well as those of her children, have been violated by her husband in 2005 and who filed a complaint with the prosecutor (among other relevant bodies), about the facts of her case. The prosecutor decided not to open an official investigation, did not appoint any experts, nor hear any witnesses related to the case. This decision of the prosecutor was challenged to the Court who confirmed the absence of legal ground to litigate the case. A

²² During OMCT's mission to Georgia, 4-7 July 2007.

complaint was then lodged by the female victim to the European Court of Human Rights for the absence of due diligence of the Georgian State.

4 Protection from all forms of sexual exploitation and sexual violence (article 34 CRC)

4 Protection from all forms of sexual exploitation and sexual violence (article 34 CRC)

4.1 Sexual violence against children

4.1.1 Legislation

Chapter XXII of Criminal Code of Georgia is dedicated to “Crimes against Sexual Freedom and Inviolability”.

Two articles focus on sexual acts that are prohibited when perpetrated especially against a child, i.e. under sixteen years old according to the law in question: article 140: “Sexual Intercourse or other action of sexual character with one under sixteen” (also determining the age of sexual consent) and article 141: “Perversion.” Penalties might amount up to three years of imprisonment.

Other sexual offences are not expressly directed towards the particular protection of children, but include the commission of the offence against a child under fourteen as a ground for more severe penalties. This is the case for the crime of rape (article 137.4 of the Criminal Code) and sexual abuse under violence (article 138.3.a) for which the penalties could extend up to twenty years of imprisonment.

The third category of sexual offences do not provide for particular penalties when the victim is a child (article 139: “Coercion into sexual intercourse or other action of sexual character). This is the same schema regarding the production, distribution, showing or promotion of pornographic material.

4.1.2 Rehabilitation and reintegration of child victims of sexual violence

The rehabilitation and reintegration for the victims, including children, of sexual violence unfortunately is not functioning in Georgia. The victim of physical abuse is provided with medical support, but nobody cares for victim’s psychological rehabilitation or for his/her further reintegration in the society. No governmental structure is working on the improvement of the aforementioned problem, which is supported by the fact that obligation is not imposed on any group within the framework of existing legislation.

4.2 Sexual exploitation of children

4.2.1 Prostitution

Prostitution in and of itself is not an offence. What is punishable however, is engaging someone into prostitution (article 253 of the Criminal Code). Additional worth note is the fact that there is not more severe penalty against the pimp nor does particular protection exist when the prostitute is under-aged.

4.2.2 Sex tourism

The Law on Tourism and Holiday Resorts does not ban sex tourism of children. This should be included in the legislation as a type of trans-national organized crime in accordance with relevant international standards.²³

It is difficult to assess the existing legislation because of a lack of attention on this field from governmental and non-governmental structures. There are no entities dealing with this issue in Georgia.

Apart the fact that prostitution and sexual exploitation are themselves degrading treatments, children in those situations suffer from both physical and psychological abuse.

²³ Human Rights violations in Georgia, An alternative report to the United Nations Committee Against Torture, 36th session, May 2006, p.33.

5 Prevention of abduction, sale and trafficking (article 35 CRC)

5 Prevention of abduction, sale and trafficking (article 35 CRC)

5.1 Legislation on child trafficking

There are many children in Georgia who do not have family care and who are living in unbearable living conditions. These children often become the victims of trafficking. This is also the result of poverty and lack of social awareness, with a particularly lack of attention from the government. The main reasons behind child trafficking are forced labour, adoption and mainly sexual exploitation.

During the period under review, amendments to the Criminal Code criminalizing trafficking in persons and trafficking in minors, and imposing relevant sanctions for this crime (article 143 para. 1 and 2) were passed by the Parliament of Georgia. The Law entered into force on July 10, 2003. Moreover, the view of ensuring the effective fight against human trafficking, the system of aggravating circumstances and sanctions were changed with amendments dated April 28, 2006.

In compliance with article 143 of the Criminal Code, trafficking in minors is defined as selling or purchasing a minor or carrying out any other form of illegal transactions, *with the purpose of exploitation*.²⁴ It is punishable with deprivation of liberty for a term from 8 to 12 years.

Article 143.2 also stipulates aggravating circumstances: abuse of power, repetition, commission by an organized group, and act which causes death or other grave results.

5.2 Implementation

As it is rightly stated in the State Party report, the Law on Combating Trafficking in Human Beings and the Action Plan regarding the Fight against Trafficking in Persons in Georgia provide for effective mechanisms for protection, rehabilitation and reintegration of victims of trafficking (among them for the victims of trafficking who are minors).

One should admit the positive changes in the legislation and rules of implementation regarding the fight against trafficking, although they are generally directed towards all types of victims, adults and children. The main concern here is that the legislation, and particularly the Law on Combating Trafficking in Human Beings considers only minimally the rights of the child within such context, for instance the issue of rehabilitation of a child in the shelters for the victims of trafficking which is not thought-out separately.

²⁴ According to article 143.1 of the Criminal Code, the term “exploitation” means the use of a person for the purpose of: (a) forced labor; (b) involvement in criminal or any other anti-public activity or in prostitution; (c) sexual exploitation or any other kind of service; (d) implementation or any other kind of the use of a human organ, part of human organ; (e) forcing a person to live in the conditions of modern slavery. The same provision also gives the explanation of the term “forcing a person to live in the conditions of modern slavery”. It is defined as follows: “The deprivation of identity documents of a person, restriction of the right to free movement, prohibition of contacts to one’s family including correspondence and phone calls, cultural isolation, coercion of a person to work in the conditions degrading his/her reputation and dignity or without any salary or inadequate salary”.

6 Protection from torture and other cruel, inhuman or degrading treatment (article 37-a)

6 Protection from torture and other cruel, inhuman or degrading treatment (article 37-a)

Capital punishment and life imprisonment

Death sentence is not allowed under the Georgian Legislation: both for adults and children. According to article 51 of Georgian Criminal Code, the deprivation of liberty for indefinite term could not be imposed on a person who had not reached the age of eighteen while committing the crime.

6.1 Legal framework

6.1.1 Definition of torture: a definition in compliance with article 1 CAT but no particular definition of torture when the victim is a child

Based on several shortcomings of the criminal legislation of Georgia, in respect to the definition of torture, the UN Committee against Torture, as well as the Special Rapporteur on Torture, recommended that Georgia “*amend its domestic penal law to include a definition of torture which is fully consistent with the definition contained in Article 1 of the Convention, and provide for appropriate penalties.*”²⁵

With the aim to comply with those recommendations, on 23 June 2005, the Parliament of Georgia adopted amendments to the Criminal Code regarding the definition of the crimes of torture and ill-treatment.

According to the amendments, article 144.1 of the Criminal Code now defines the crime of torture as: “*subjecting a person, his/her relatives or financially or otherwise dependant persons to such conditions, such treatment or punishment, which by their nature, intensity or duration cause severe physical or mental pain or suffering, and have the purpose to obtain information, evidence or a confession, to intimidate, coerce or punish a person for an act she/he or a third party committed or is/are suspected of having committed.*”

As for the Committee Against Torture, this new legislation is “*in line with international norms with regard to the definition of torture.*”²⁶

There is no specific definition of torture where the victim is a child, nor is there a trend to accept a broad interpretation of torture by the law-courts where the victim is a child. However, although the definitions of torture and of inhuman and degrading treatments have been broadened by the 2005 amendments,²⁷ there are still concerns and doubts with regard to the way the law-courts might interpret and adequately apply them in practice to cases of child victims (in practice and until now, no court has had to decide on such a case of child torture).

²⁵ See preliminary Note by the UN Special Rapporteur on Torture, Mission to Georgia, 2005,

²⁶ Committee Against Torture, Conclusions and recommendations, Georgia, May 2006, CAT/C/GEO/CO/3, para. 7.

²⁷ Indeed, the new definition of torture applies to both public and private individuals and does not consider torture as an act committed at the instigation or with the consent or acquiescence of a public official or other person acting in an official capacity.

In addition, attacking a child is considered to be an aggravated circumstance in cases of torture and cruel, inhuman or degrading treatment or punishment and other forms of violence (when the victim is a child, the person responsible is punishable with deprivation of liberty for a term from 9 to 15 years, deprivation of the right to hold office or pursue activity for a term not exceeding 5 years instead of 7 to 10 years of deprivation of liberty when there is no aggravated circumstance; article 144 paragraphs 1 and 3 of the Criminal Code).

6.1.2 Prohibition of torture

The prohibition of torture and other cruel, inhuman and degrading treatment or punishment is enshrined in the Constitution of Georgia. Chapter 2 of the Constitution dedicated to the basic rights and freedoms of the individual contains articles (articles 17.2, 18.4, 42.7) prohibiting torture and coercion of an arrested person and provides for the inadmissibility of evidence obtained through illegal means.

Moreover, according to article 46 of the Constitution, in cases of a state emergency or martial law, the President of Georgia shall be authorized to restrict some rights and freedoms either throughout the whole country or a certain part thereof. However, in compliance with the relevant international standards, the prohibition of torture is not included in this list of possible restricted rights.

By virtue of the 2005 amendment, the Criminal Code additionally criminalizes threat to torture (Article 144.2) and inhuman or degrading treatment or punishment (article 144.3). Criminal responsibility is also imposed for the attempted torture based on article 144.1.

6.2 Implementation of the law

In September 2003, top government officials agreed on a Plan of Action against Torture in Georgia. Due to be implemented in 2003-2005, this plan, which was drawn up in cooperation with the OSCE, includes, among other things, bringing the Georgian legislation up to par with OSCE and other international commitments regarding torture, improving investigation mechanisms of alleged torture, enhancing the control of police and prison facilities, training officials as well as establishing regular monitoring by adequate bodies.

International organs, including the UN Committee against Torture and the Council of Europe's Committee for the Prevention of Torture (CPT), issued highly critical reports about the use of torture and ill-treatment in Georgia in the past, and demanded that the government take decisive measures to combat this problem.²⁸ Similarly, in its last concluding observations and conclusions, the Committee on the Rights of the Child "urge[d] the State party to take all necessary measures for the expeditious and effective implementation of the Plan of Action against Torture, ensuring full protection of children from all forms of violence, proper

²⁸ Committee Against Torture, Concluding observations: Georgia, CAT/C/GEO/CO/3, May 2006. Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 November 2003 and from 7 to 14 May 2004, Strasbourg, June 30, 2005; available at <http://www.cpt.coe.int/documents/geo/2005-12-inf-eng.pdf> . In April 2007, the CPT carried out a new visit in several detention facilities, including where children are kept, in Georgia. Its report is not yet public: <http://www.cpt.coe.int/fr/etats/geo.htm> .

interrogation, prosecution and sentencing of perpetrators, and the provision of care, recovery and compensation for all child victims”.²⁹

6.3 Effective legislative, administrative, judicial and other measures to prevent acts of torture³⁰

One should welcome governmental significant actions during the year 2006 to address torture and ill-treatment. Positive steps include legislative, administrative and judicial measures.

6.3.1 Legislative measures

The Parliament has agreed on amendments to the Criminal Code to bring the definition of torture in line with international standards (see section 6.1.1), amendments to the Criminal Procedure Code to discourage abuse (the new law requires that confessions given by detainees during their detention must be confirmed in court before being admissible as evidence), and alternative to detention (see section 7.1.2).

On 8 July 2005, the Parliament of Georgia delivered a resolution³¹ on acceding to the Optional Protocol to the UN Convention against Torture (OPCAT).

6.3.2 Administrative measures

The main effective mechanism is the monitoring of places of detention. Various entities exist and are generally composed of NGOs representatives with possible governmental representatives.

During the recent years, there have been several attempts to create entities in charge of the monitoring of the places of detention. For instance, the Public Monitoring Council of the Ministry of Justice created in 2004 collapsed few months after its establishment. Moreover, standing commissions under penitentiaries have been provided for in article 93 of the Law on Imprisonment but their starting and application did encounter difficulties. In addition, in October 2004, the General Prosecutor and the Minister of Interior reached an agreement about the monitoring of police departments and pre-trial detention aimed at preventing torture and other inhuman treatments. Following this agreement, several public monitoring groups (composed of NGOs’ representatives) were created and reported violations in Tbilisi,³² whereas this monitoring was hardly conducted in the rest of the country.

Moreover, according to the requirements of article 93 of Georgian Law on Imprisonment and article 62 of the Administration Code, the Minister of Justice established the Commissions of Penitentiary facilities.³³ The Commissions are set up in 14 penitentiary facilities in the whole country, and particularly in two facilities receiving juveniles: the prison #5 for women and

²⁹ Committee on the Rights of the Child, Concluding observations: Georgia, CRC/C/15/Add.222, 27 October 2003, para. 35.

³⁰ Human Rights violations in Georgia, An alternative report to the United Nations Committee Against Torture, 36th session, May 2006.

³¹ N° 1889.

³² As an example, the Monitoring Commission of Tbilisi was established recently on November 27, 2006.

³³ Order #21901.

juveniles in Tbilisi and the Juvenile Correction and Education Institution in Tbilisi, Avchala district.³⁴

However, the way those entities function in practice is of concern regarding at least two points:

- Aside to some NGOs representatives who are active, many NGOs composing the public monitoring groups and commissions above mentioned remain pro-governmental, leaving doubts on the full independence of those bodies which remain accountable to the Minister;
- Moreover, there are cases of violations' denunciations that have been reported to the commissions who refused to follow-up and monitor the cases. As an example, when HRIDC Batumi branch informed the competent commission about violations in Batumi prison against one of HRIDC's client, they refuse to react.

Regarding specifically the places where children are deprived of their liberty, it seems that the Office of the Public Defender, Child Rights Centre, is planning to start the monitoring of children's houses soon.

6.3.3 Judicial measures

There are instances of law-courts providing longer imprisonment and suspension of public office for abuse by officials; the general prosecutor activity to investigate and prosecute abusers is increasing; serious abuses and police misconduct, such as the fabrication or planting of evidence, are reportedly decreasing. This is a general evolution that might positively affect children.

6.4 Practice of torture or other cruel, inhuman or degrading treatment or punishment perpetrated against children

Different forms of violence against children committed by teachers, parents and other caregivers might amount to torture or other cruel, inhuman or degrading treatment or punishment; however, the reporting of incidents of cruel treatment is not often encountered. There are also reports where violence is committed by public persons: children experience ill-treatment from the police and staff of state institutions. However, this kind of treatment is rarely reported by the police. For instance, during 2000-2004, there were no registered facts of torture or other inhuman or degrading treatment of juveniles.³⁵

6.4.1 Methods of torture

In 2005, the Rehabilitation Centre for Victims of Torture received 40 children and adolescents victims of torture.³⁶ Below are details on the acts of torture committed against them.

a) Physical methods of torture:

1. Beating (with clubs, boots, pistols, other blunt objects, by hand, other) – 15 adolescents

³⁴ <http://www.justice.gov.ge/Penitentiary%20commision.html>

³⁵ According to the Ministry of Internal Affairs of Georgia.

³⁶ Annual Report of the Rehabilitation Centre for Victims of Torture.

2. Systematic beating - 21, beaten once – 10 juveniles
3. Oral method of torture – 1
4. With phalanx (extremities) – 2
5. “Non-physiology” dislocation – 11
6. Sexual torture – 7
7. Suffocation (by water, bag, gas – mask) – 5
8. Burning (with cigarette, hot iron objects etc) – no statistics

b) Psychological methods of torture:

1. Deprivation of liberty, isolation – 40 adolescents (for example the pre-trial detention of 17-year-old Aleko Kamushadze, who was held for eight months in a cell with 30 men - among them convicted murderers and rapists.)
2. Lack of the sanitary-hygienic conditions – 40
3. Other torture victims in the isolator – 22
4. Hearing voices of someone being tortured – 13
5. Torture of family members or other close relatives – 5
6. Threats to rape - 23
7. Watching torture of family members – 27
8. Humiliation, inhuman treatment, oppression – 40
9. Lack of medical aid, inhuman treatment – 35

6.4.2 Cases

a) Officially registered cases

In its Third Periodic State Party Report to the Committee on the Rights of the Child, Georgia states that “in 2005-first half of 2006, six criminal cases related to torture and ill-treatment of minors were initiated”. However, considering the repressive policy and the fact that, in practice, legal procedures and guarantees are respected only infrequently in Georgia, this is only an incomplete picture of the actual situation. Moreover, in instances where law enforcement officials are themselves lawbreakers, it remains very difficult for victims to get justice. Having a clear and true picture of the child torture situation in Georgia supposes to get comprehensive statistics with disaggregated data.

b) Examples

According to information from NGO Former Political Prisoners for Human Rights in 2004-2005, 278 torture cases were registered, including 5 cases regarding children from different regions in Georgia.³⁷ The following are some examples of cases:

- On 31 March 2004, at the eleventh floor of the central police department, 28 years old Giorgi Zhorzholiani and his 16 year-old-sister, Ia Zhorzholiani were brutally tortured.
- On 17 July 2004, Borjomi police officers, Onoprishvili and Khachidze, detained 17-year-old Kakha Sanodze, who was suspected of stealing several bottles of soda. He was beaten by them and was shot in the feet.

³⁷ Illegal detentions and torture of detainees by Former Political Prisoners for Human Rights, http://www.fpphr.org.ge/view.php?view_id=7&id=59 ; <http://www.fpphr.org.ge/>

- On 1 September 2004, 17-year-old Rati Antelidze was kept in the Ozurgeti regional police department because he was suspected of robbery. During his custody, Rati was cruelly beaten. On 4 September, Rati was moved to Ozurgeti Hospital. Later, the police threatened him and told him that if he complained about the incident, they would kill him.
- On 16 October 2004, head of Gurjaani Police Department, Mr. Gela Mchedlishvili, and his assistant detained and beat 14-year-old Giorgi Iashvili at the city cemetery. When a patrol later approached and asked why the child was near the graveyard, the police officers answered that the child had been moved to satisfy his needs.

→ *In all these cases, none of the perpetrators have been prosecuted.*

- Marika Sulamandze, a 17-year-old girl from the Terjola Region, came to Tbilisi and was living in the street. Mentally ill, her mother refused to take care of her because they were already living in poverty. Marika lives at the Children's Social Adaptation Centre, though the centre does not have the necessary resources for her rehabilitation. Marika was brought to the Centre by a patrol. Due to the non-existence of a psychological department for minors, she was previously living at the women's division of the Tbilisi Psychiatric Clinic. She claims that she was raped several times but there was no follow-up by the authorities to her complaints, mainly because Marika is considered to be suffering from a psychological disorder. Further, no medico-gynecological examination was conducted. (last update in January 2006).
- Alex Bagashvili, 8 years-old, had been beaten and was found by a patrol in a street hole. He does not speak. Alex does not have a father and his mother is mentally ill. He lives at the Children's Social Adaptation Centre. According to Director of the Centre, Mr. Ketevan Kobaladze, they have referred Alex's case to the police but the case was not followed up on.³⁸

6.5 Legal assistance to the child victim

It is obligatory to involve an attorney if the claimant/victim is under age and cannot defend his/her interests. In this case the litigation body is obliged to ensure the involvement of the attorney in the case. The expenses for the attorney will be reimbursed by the State.

The victim can refuse to have the representative, but the litigation body can override this refusal if the victim is under age.

³⁸ Last update in October 2005.

7 Protection of children deprived of their liberty (article 37-b, c, d)

7 Protection of children deprived of their liberty (article 37-b, c, d)

Introduction:

There are five detention centres holding children in Georgia:

- Avchala juveniles correction and educational institution or colony, receiving boys;
- Batumi prison n°5, receiving boys;
- Kutaisi prison n°2, receiving boys;
- Zugdidi prison n°4, receiving boys;
- Prison n°5 for women and children, receiving boys and girls, the latter being detained with female adults.

Both children in conflict with the penal law and those in need of care and protection may be deprived of their liberty, i.e. held in a place where they are not allowed to leave at will. These two categories of children are kept in separated premises: the former in detention centres and the latter in specialised institutionalised facilities like childcare institutions, boarding schools or other children's homes and shelter. However, there are few cases where both categories of children have been kept together: the Centre for Social Adaptation of Children in Tbilisi for instance.

Even though the various types of existing premises face different problems, low level of living conditions is a trend common to the majority of the places.

7.1 Deprivation of liberty of children in conflict with the law

7.1.1 Legal framework, procedure and conditions and limits of the detention of a child

a) Arrest (legal grounds)

The following rules are applicable to all persons, including children.

According to the Georgian Constitution, article 18, "An arrest of an individual shall be permissible by a specially authorized official in the cases determined by the law." Nobody can be arrested without the resolution of a judge or some other court decision. Children, like other persons, may be arrested under the following legal conditions depending on the type of offences:

- for having committed a crime charged with at least 2 years of imprisonment;
- for having committed a crime carelessly which is charged with at least 3 years of imprisonment;
- if the accused infringes procedural measures like pre-trial detention, bail, custody, transfer, supervision, etc.

Moreover, a teacher or a legal representative of the child accused shall take part in his/her very first interrogation by the police.

b) Police custody (time period and place)

According to article 18 of the Georgian Constitution, “(...) Everyone arrested or otherwise restricted in his/her liberty shall be brought before a competent court not later than 48 hours after the arrest. If within next 24 hours the court fails to adjudicate upon the detention or another type of restriction of liberty the individual shall be immediately released.” Therefore, the maximum time for police custody is 72 hours.³⁹ There is no specific and shorter time period for arrested children.

As a rule, a detainee is placed in a temporary cell while in police custody.

c) Pre-trial detention

As soon as a juvenile is brought to the court, the decision on his release on bail or under supervision or to be placed in a pre-trial detention setting must be discussed.

Before trial, the court may impose on the accused some procedural forcible measures such as pre-trial detention. They can be imposed under the following circumstances: to prevent the avoidance of the preliminary investigation and trial, to eliminate further criminal activities, to ensure the criminal investigation to find the truth is not impeded, or to enforce the verdict. Moreover, valid proof, stating that a person might disappear or will not appear before the court, or might annihilate proofs, threaten participants of the proceeding, or commit a new crime, shall be used as a basis for such measures.

An accused shall not be sentenced to pre-trial detention, or some other prosecution, if the above-mentioned goals can be easily accomplished with less restrictive activities.

The detention measure (before trial) is used only for a person who is charged with a crime punishable with imprisonment from two years according to the law. This form of detention could be used with juveniles only where the law envisages the imprisonment of more than 3 years for the crime.

The prosecutor's decision on detention will have to be confirmed by a court. However, in practice, the court's decision on detention is simple formality. Indeed, it appears that the court assesses the prosecutor's decision as a legal one and mostly satisfies it without discussing the possibility of using a less grave penalty.

Furthermore, when a decision is being made about the possible deprivation of liberty, the examination of the concrete situation of the child, his or her social and familial background, is usually not taken into consideration.

Following amendments to the Criminal Procedure Code in 2005 which came into force on 1st January 2006, the maximum term of pre-trial detention has been reduced from nine months to four months. When a prosecutor seeks an order for pre-trial detention, the judge may make an order for 2 months. However, the time period may be extended twice, each for a further period of one month⁴⁰ if the case is returned for additional investigation⁴¹ Therefore, a

³⁹ In case of administrative arrest, police custody might last up to 3 hours.

⁴⁰ See Article 162. The period may be extended if after the expiration of the detention period, the accused has violated a less restrictive measure, a graver charge has been brought against him, the complexity of the case or the parties have not had sufficient time to get familiar with the case files after the completion of a pre-trial investigation. In addition, if the case is returned for additional investigation from the court of trial, a judge of this

juvenile may stay up to 4 months in pre-trial detention. Furthermore, the total period of time that a juvenile can be detained up until the end of the trial has also been amended. Article 18 para 6 of the Constitution of Georgia, reflected in article 162 of the Criminal Procedure Code (which came into force on 28th April 2006), provides that the total period of time in detention (including both pre-trial and pending trial) should not exceed 9 months. The 9 months-period begins on arrest, or where there has not been an arrest (i.e. detention prior to court appearance) at the moment when a judge decides on the conviction.

Some figures about places where children may be kept in pre-trial detention:

On 27th October 2006, there were 184 juveniles (under 18) held in pre-trial detention⁴², divided into the following places: Prison No. 2: (Kutaisi): 16; Prison No 3 (Batumi): 28; Prison No 4 (Zugdidi): 9; Prison No. 5 (Womens' and Delinquents Institution of the Penitentiary Department): 105; Prison No. 6 Rustavi: 20; Hospital for prisoners of the Penitentiary Department: 6.

On July, 3rd, 2007, juveniles were 178 in pre-trial detention in Georgia (out of 378 child detainees in total).⁴³

d) Detention after conviction

A distinction between 14 and 16 years of age is made in article 88 of the Criminal Code relating to the "imprisonment for a particular term":

- deprivation of liberty of a juvenile for less than 10 years should be served in an educative institution;

- a juvenile between 16 and 18 years old may be sentenced to a deprivation of liberty from 10 to 15 years, however, this sentence is only available for an especially grave crime.⁴⁴

e) Legal principles, guarantees and rights of child detainees

Unless otherwise mentioned, the following principles apply to both adults and children.

As a principle and individual legal guarantee, the accused shall be protected against the use of methods which shall be dangerous to his or her life and health or degrade his or her honour during the time of the investigation or the possible evaluative process or expertise.

Legality of the deprivation of liberty

As for article 12 of the Criminal Procedure Code, "restriction in liberty shall not happen without legal basis and regulations. Detainee and arrested shall immediately be introduced with the reasons and basis of his/her detention as well as the crime s/he is accused for."

Legal assistance

The person shall demand the assistance of the lawyer and the demand shall be satisfied.

court may prolong the detention up to 60 days. At the expiry of this term, the person should be immediately released unless the case has been transferred to court (see NORLAG report)

⁴¹ Article 162.4 Criminal Procedure Code

⁴² This term includes children held in pre-trial and pending trial detention.

⁴³ Figures given by the International Centre for Prison Studies, 3 July 2007.

⁴⁴ Especially serious offences include those intentional offences, for which a person shall be sentenced to more than 10 years or life imprisonment under the Criminal Code, such as premeditated murder (art. 109) and premeditated severe injury to health (art 117).

The detainee, arrested or medically-examined person shall have the right to meet his/her lawyer (without restriction on the number and length of the meeting) unless some other conditions are envisaged in the Code, shall enjoy legal materials and literature, and shall have paper and stationary staff to write suits, mediations or some other documents (Criminal Procedure Code, articles 182, 73(1-v), 11).

Information regarding the family or legal representative

The investigator and prosecutor, as soon as they apply detention as procedural measure or place a person in a medical institution for evaluation, shall inform the family members, or any relative or legal representative of the detainee, within five hours if s/he is an adult and within 3 hours if detainee is juvenile.

Conditions of detention respecting human dignity

Conditions of the place of detention shall guarantee honourable existence of the person, respect his/her dignity and conscious, his/her personal integrity, main his/her health, and retain the ability to defend his/her interests. Inhuman treatment, physical and moral torture of the detainee and arrested are prohibited under the law.

Restriction of his/her liberty shall not be more severe than necessary for the avoidance of his/her escape or prevention of ascertaining the truth in a criminal case.

A detained, arrested or medically-examined juvenile shall have the right to receive compulsory education according to the school program.

7.1.2 Misuse of deprivation of liberty

- a) Lack of alternative measures to detention

Supervision

Currently, the court can make a decision on supervision of the child or of availability of bail for the child, which can be viewed as alternative penalty. In practice, projects implementing a court decision on supervision are only few and therefore restrain the possibility for the courts to choose such a solution.

Conditional sentence

One of the opportunities for a person, including a child, to avoid a prison sentence provided by the Criminal Code is a conditional sentence.⁴⁵ If the court decides to impose a conditional sentence, it sets a probation period for the convicted person throughout which s/he must not commit any additional crimes and discharge the obligations assigned. Conditional sentences are mainly used with respect to less serious crimes, taking in mind the character of the crime and the personality of the convicted individual. If during the probation period, by his or her proper behaviour, the convicted person proves that he or she has reformed, the court will abolish the conditional sentence and annul the record of conviction.

However, there is a tendency from the government to challenge conditional sentences. Indeed, on 14 February 2006, during the annual speech of the plenary session of the Parliament, the concept of “zero tolerance” was introduced to small crimes. The President

⁴⁵ If the convicted individual can be corrected without serving the awarded sentence of corrective labor, restriction of freedom, jailing or imprisonment, the court shall rule that the awarded sentence be deemed to be conditional.

stated, “I am introducing a new draft law “Zero Tolerance to small crimes”. I am introducing amendments to the Criminal Code aiming at full abolishment of the conditional sentence, no conditional sentence, every criminal to jail. No judge will be able, based on human considerations, to release the person... Zero tolerance to every small crime, for everybody’s note, for the note of the judiciary, Parliament, executive branch and the police, this is our new, strong policy”. The President’s speech can be considered as a direct order to judges not to impose conditional sentences, also showing the lack of independence and impartiality of the judiciary in Georgia.

Non-custodial sentences as an alternative to pre-trial detention

Before the amendments introduced to paragraph 1 of article 152 of the Criminal Procedure Code,⁴⁶ it provided for several non-custodial preventive measures,⁴⁷ though pre-trial detention was a measure mainly used.⁴⁸ After the amendments mentioned above, the list of alternative non-custodial measures was quite reduced and only bail and the personal guarantee remain. Moreover, if a person cannot afford to post a bail or find a reliable person who will agree to be his or her guarantor, the individual will be destined for imprisonment no matter how unreasonable the application of this preventive measure is in the given case. These rules also apply to children.

b) Practice: misuse and overuse of detention against children

Imprisonment rate for convicted juveniles

	2000	2001	2002	2003	2004	2005	2006(first 9 mths)
Total number of convicted juveniles	388	525	497	459	598	475	633
Nb of minors sentenced to imprisonment (%)	58 (14.9)	74 (14.1%)	106 (21.3%)	108 (23.5%)	140 (23.4%)	104 (21.9%)	237 (37.4%)

It is very clear from the figures that imprisonment is increasingly used as sentence for juveniles. While in the year 2000, imprisonment was only ordered by the court on 14.9% of convicted juveniles, by 2006 it was used for 37.4% of convicted juveniles.⁴⁹

⁴⁶ December 16, 2005.

⁴⁷ Placement under police surveillance, written undertaking not to Leave Place and behave properly, house arrest, etc.

⁴⁸ For a clear illustration of the practice here, statistics are available providing information on how many motions were submitted before the court to impose pre-trial detention as a preliminary measure to the defendant and how many were granted. Statistics cover the period from January 2004 to January 2005:

Didube-Chugureti regional Court: From 361 motions 289 were granted

Gldani-Nadzaladevi regional Court: From 515 motions 481 were granted

Vake- Saburtalo: From 401 motions 384 were granted

Krtsanisi-Mtatsminda regional Court: From 500 motions 451 were granted.

Isani-Samgori regional Court: From 471 motions 337 were granted.

Tbilisi District Court: From 139 complaints of the persecutor 77 were granted and from 832 complaints of the lawyer on abolishing/replacing pre-trial detention as a preliminary measure imposed on the defendant 61 were granted.

The Supreme Court of Georgia: Collegium of criminal cases: From 22 complains of the prosecutor 21 were granted.

⁴⁹ UNICEF Georgia – Analysis of the Juvenile justice system in Georgia.

Despite the fact that the law frames detention with legal conditions, such as the reasonability of the measure and the impossibility to use other less grave penalty, it appears in practice that the court, frequently, does not order the deprivation of liberty only when it is an urgent necessity. Indeed, most of the offences committed by juveniles are minor and could be addressed with a probation term (which is a non-custodial sentence) for instance.⁵⁰

Moreover, in general, the system is reluctant to release a child on bail.⁵¹

Furthermore, as an example of misusing detention for children, one can mention the fact that mentally disabled children who commit offences rarely benefit from an expert evaluation and therefore are frequently sent to detention centres instead of appropriate health facilities.⁵²

It is obvious that CRC's recommendations stated in 2003, with regard to the examination of the second periodic report of Georgia, have not been enforced. This is particularly true regarding the use of detention as a measure of last resort and the development of preventive and alternative measures to detention.

7.1.3 Conditions of detention: treatment of child detainees

a) Separation according to the age and reason of the detention

In pre-trial detention facilities, juveniles are rarely separated from other inmates. This is different in post-trial detention places where strict separation between adults and children is effective in the whole country.

The fact that pre-trial minor detainees are often kept with convicted prisoners results in overcrowding.

b) Treatment in detention

According to an interview with a member staff of the Child Rights Centre, when representatives visit the pre-trial detention facilities, they find a limited number of cases of violence against the children. The person interviewed believes that violations in pre-trial detention are decreasing.

However, it seems that this assessment of the situation is not shared by other stakeholders. Indeed, during an interview with OMCT in July, the former head of the juvenile colony, Mrs. Khatuna Japava, stated that once they arrived in the colony, some children said they had been beaten while in pre-trial detention for disciplinary reasons and while in police custody in order to force them to confess.

c) Overcrowding

⁵⁰ According to the Director of the Georgian Center for Psychological and Medical Rehabilitation of Torture Victims.

⁵¹ This view has been presented by Mrs. Katuna Japava, former head of the Juvenile Colony during OMCT's mission in July 2007.

⁵² This view has been presented by Mrs. Katuna Japava, former head of the Juvenile Colony during OMCT's mission in July 2007.

The official (planned) capacity of the Georgian prison system is about 15'040 detainees. Actual number of prisoners in Georgia by:

- 1) May 10, 2007: Total: 17'371
 - 16'235 men prisoners;
 - 746 women prisoners;
 - 390 juvenile prisoners.⁵³
- 2) July 3, 2007: Total 18'138
 - 17'053 men prisoners;
 - 707 women prisoners;
 - 378 juvenile prisoners.⁵⁴

As an example, according to recent figures, the juvenile colony in Tbilisi is overcrowded. Indeed, as of early July 2007, there were between 218 and 220 convicted child detainees (aged between 15 and 19) where the colony measures only 230 m² and was built to receive a maximum of 56 to 60 juveniles.⁵⁵ All of the detainees sleep in the same dormitory. Here, overcrowding clearly affects the conditions of detention which do not meet minimum child rights standards.

Moreover, in August 2007, 120 juveniles were transferred from the Achvala colony to Rustavi jail n°2, as a result of a riot attempt. The special operation forces were even mobilised. When HRIDC representatives tried to enter the colony to monitor the situation, they were refused to enter and to interview the head of the colony by the penitentiary department.

d) Conditions in pre-trial detention

- TBILISI, GEORGIA, 10 June 2005 - Aleko Kamushadze stole an accordion and a drum from the basement of his school and he is now serving an 18-month sentence in a juvenile detention centre. Aleko looks much younger than his 17 years and he is vulnerable to live amongst aggressive and stronger detainees. During the pre-trial detention period, Aleko spent eight months behind bars at one of Georgia's most notorious adult prisons where abuse is rampant. "Prison was tough. We were only allowed outside for 10 or 15 minutes in a day. The rest of the time I was in a small room with 30 other persons. I could barely breathe," Aleko remembers.⁵⁶
- Recently, around April or May 2007, the following facts occurred in the pre-trial detention facility of prison n°5 where 8 children were detained in a cell: 7 of them raped the youngest. The case was reported by a child witness who was in the same prison with the group and who informed Mrs. Japava (former head of the juvenile colony) about the case once he was transferred to the colony she was in charge of. When Mrs Japava informed the relevant authorities about the facts, the child victim was isolated from the group of rapists who have also been isolated from the other child detainees. The victim (who was initially accused of an offence) has been released on bail. A complaint was lodged against the 7 children for rape with aggravated circumstances (because it was perpetrated by a group and against a child). This case is currently under investigation. It reveals several problems:
 - absence of adequate mechanisms to prevent the facts;

⁵³ Figures from the Ministry of Justice.

⁵⁴ Figures given by the International Centre for Prison Studies, 3 July 2007.

⁵⁵ Even if the government, using a "special" calculation decided it was suitable for 160.

⁵⁶ <http://www.unicef.org/infobycountry/georgia>

- lack of reporting and complaining process: the case is only known “by chance” because a witness was moved to another place and gave testimony after being relocated;
- the reaction was too late;
- there has been no penalty against the staff of the prison for having failed to prevent and inform about the rape.

It seems that the conditions in detention are better for girls.

7.2 Deprivation of liberty of children in need of protection and care

Deprivation of liberty of children in need of care and protection is generally named institutionalisation. Anyway, both determine situations or places where children are held and cannot leave at will.

Two main issues are related to the institutionalisation of children in need of care and protection:

- institutionalisation of children in need of care and protection is clearly overused;
- the living conditions in the institutions do not meet international standards.

7.2.1 Overuse of institutionalisation of children in need of care and protection

Recently, the government has made certain progress at legislative and policy levels by starting the de-institutionalisation process. Governmental policies are developing with the aim at preventing institutionalisation and accelerating de-institutionalisation of children based on the promotion of alternative and family-based care practices. In 2005, the government even declare that children de-institutionalisation is one of the country policy priorities.⁵⁷

Although it is noticeable that there is a political will to improve the situation, a clear understanding of the issue and a systematic approach to resolve the complex and multiple problems are lacking. Even the law is not comprehensive: for instance, it states that children who attain 16 years old should leave the shelters; but there is no other place to go and therefore, most of them are at risk of going and staying in the streets.⁵⁸

It also appears that socio-economically vulnerable children are numerous in institutions. This has been admitted in the Third Period Report of Georgia to the Committee on the Rights of the Child. Indeed, many needy parents abandon their children who are then sent to institutions and shelters. Residential care has become the main answer to poverty and family distress.⁵⁹ Despite good initiatives by Georgia (see the State Party Report, para. 111 to 114) to treat the causes of this phenomenon in assisting families, the number of poor children in institutions remains too high. Efforts should be continued and developed.

⁵⁷ For examples, see UNICEF in Georgia 2006, p. 22

⁵⁸ Report of the Public Offender of Georgia on Defence of Human Rights and Liberties in Georgia, Second half of 2005, p. 85-87.

⁵⁹ UNICEF, office in Georgia: www.unicef.org/georgia/protection.html . Report of the Public Offender of Georgia on Defence of Human Rights and Liberties in Georgia, Second half of 2005, p. 85. “Most of over 5’400 children in Georgia’s residential institutions actually have parents. This long-standing problem is in part related to poverty”: UNICEF in Georgia 2006, p. 27.

7.2.2 Poor living conditions in institutions and homes receiving children

All residential institutions face serious problems at different levels: education, health and sanitary issues are particularly problematic and need deep and urgent changes. The situation in homes holding socio-economically and handicapped children as well as in the rural and mountainous regions is even worse. Children in boarding schools generally do not have the possibility to communicate with persons from outside. Moreover, monitoring of the places and assessment of the current situation and the needs and interests of the children is missing as well.

The existing main problems remain the lack of standards for childcare, the unqualified and low paid staff and the seriousness of the issue in the regions.⁶⁰

⇒ *Although efforts exist, they remain very formal and mainly focus on time and scope limited projects. Stable and significant funding and effective implementation of alternative solutions to residential institutionalisation are urgently needed.*

⁶⁰ Report of the Public Defender of Georgia on Defence of Human Rights and Liberties in Georgia, Second half of 2005, p. 87.

8 Rehabilitation of child victims (article 39 CRC)⁶¹

8 Rehabilitation of child victims (article 39 CRC)⁶¹

Georgian law is very poor in regulating the psychological rehabilitation and social integration of child victims as well as child offenders.

8.1 Social reintegration of juvenile offenders

Only one initiative exists in Tbilisi where the Tbilisi Municipality Resolution # 1-2 (January 17 2001) was enacted to implement the UN Convention on the Rights of the Child in Tbilisi. The principal goal of the resolution is that corresponding institutions must establish mechanisms for juvenile employment, allocate the regional funds for child and juvenile social protection, and implement the activities in order to raise the responsibility of the parents. The Georgian Education Ministry was ordered to establish open or semi-open special institution in Tbilisi for decriminalization and psycho-social rehabilitation of the juvenile offenders. The Ministry must discuss the establishment of the above-mentioned institutions together with the Tbilisi Authority. At the moment, the question has not been resolved.

8.2 Recovery of child victims of family violence and trafficking

One of the objectives of the Law on the Elimination of Domestic Violence was the development of the rehabilitation of victims of domestic violence through the establishment of a temporary shelter for such victims. The same applies for child victims of trafficking under the Law on Combating trafficking in Human Beings. Although the establishment of shelters for child victims is a good measure, the system of child victims' recovery remains incomplete. There are still gaps in the psychological rehabilitation system.

⁶¹ Implementation of the Convention on the Rights of the Child, Third periodic report, Georgia, February 2007.

⁶¹ Implementation of the Convention on the Rights of the Child, Third periodic report, Georgia, February 2007.

9 Administration of juvenile justice (article 40 CRC)⁶²

9 Administration of juvenile justice (article 40 CRC)⁶²

9.1 Minimum age of criminal responsibility

Until 1999, the age of full criminal responsibility in Georgia was 16, with 14-16 year-old children only having criminal responsibility for certain, more serious offences.⁶³ Due to amendments to the Criminal Code in 1999, the age of criminal responsibility in Georgia is currently 14⁶⁴ for all crimes. All children ages 14-18 who have criminal responsibility are, according to both the Criminal Code⁶⁵ and the Criminal Procedure Code,⁶⁶ to be treated as minors.

Even if this does not fall in the period of examination, it is significant to mention that, on May 23, 2007, Georgian President Mikheil Saakashvili signed into law a set of amendments to three laws (Criminal Code, Criminal Procedural Code and Law on imprisonment),⁶⁷ lowering the minimum age of criminal responsibility for children from 14 to 12 for certain crimes: premeditated murder, including under aggravated circumstances, intentional damage to health, rape, most types of robbery, assault, and possession of a knife. Under the amendments to the Criminal Procedure Code, minors will be prosecuted and tried by “*judges, prosecutors and investigators who have had special training in pedagogy and psychology.*” If convicted, minors would face the same punishments as adults, but under the amendments to the Law on Imprisonment, they would serve their prison terms in separate penitentiary institutions from adults, which Georgia has yet to build. At the same time the relevant Ministries should create programs and provide retraining for judges, prosecutors and investigators, who examine the juvenile cases.

Taking into account the recent amendments and statistics showing that the number of children being prosecuted increased of almost 50% from 2005, and the fact that, although children enter the criminal system generally for petty property offences, they also enter it at an earlier age, there is a clear risk for more children to be introduced to the criminal system for grave crimes and thus to be subject to the ordinary procedure and sentences. In addition, a high proportion of children spend time in detention, and for some children this is a significant amount of time. This is particularly worrisome when we know that the conditions in the detention centres do not, at present, meet international minimum standards (see section 7). Moreover, the risk also exists that the number of children placed in detention will increase and thus will worsen the situation of overcrowding in these facilities.

⁶² Implementation of the Convention on the Rights of the Child, Third periodic report, Georgia, February 2007

⁶² Implementation of the Convention on the Rights of the Child, Third periodic report, Georgia, February 2007

⁶³ Crimes are categorised under the Criminal Code into minor crimes (a minor crime is a deliberate or unintentional crime for which the maximum punishment is 5 years of imprisonment – article 12 of the Criminal Code), serious crimes (defined as an intentional crime for which the maximum punishment provided by this Code is 10 years of imprisonment, or an unintentional crime for which the maximum punishment provided by this Code is 5 years of imprisonment) and grave crimes (defined as an intentional crime for which the sentence is more than 10 years of imprisonment or life imprisonment).

⁶⁴ Article 33 of the Criminal Code

⁶⁵ Article 80 of the Criminal Code.

⁶⁶ Article 37 of the Criminal Procedure Code.

⁶⁷ It should enter into force on July 1, 2008.

As for the NGOs, the amendments directly contravene the article 40 of the Convention on the Rights of the Child as well as the recent General Comment on Children's Rights in Juvenile Justice of February 9, 2007, where the UN Committee on the Rights of the Child explicitly states that countries already setting their minimum age of criminal responsibility over 12, "should not lower their minimum age of criminal responsibility to 12," and encourages state parties to progressively increase the age of criminal responsibility.⁶⁸

9.2 Applicable law

9.2.1 Lack of a genuine juvenile justice system

Juveniles ages 14-17 should be treated as under aged persons according to the relevant provisions of the Criminal Code and Criminal Procedure Code.

The Georgian criminal justice system does not have juvenile courts, specialist juvenile judges or a separate form of court procedure for children accused of having infringed the penal law. There are no professionals within the criminal justice system dedicated to dealing specifically with children, whether as offenders, victims or witnesses.

In addition, while judges are required to undergo some training in pedagogy and psychology before hearing juvenile cases, there is no system of specialized training for other professionals working in either the law enforcement agencies or in the bodies administering justice. Moreover, the training provided appears to be a short course, and one which does not amount to systematic training in juvenile justice and human rights. This does not conform with the Beijing Rules, Rule 22.1 which requires all those personnel dealing with juvenile cases to receive specialized training.

One concern throughout the rules on juveniles involves the people associated with the case. Article 416 of the Criminal Procedure Code discusses the participation of teachers and psychologists in this process. It is unclear if this means (1) any teacher or a teacher for an age appropriate class and (2) any psychologist or one who is specially trained. It is also unclear who chooses these individuals and whether the "legal representative of a minor" is a defence attorney, a parent, or an appointed guardian. The roles of a defence attorney and a guardian are vastly different, and this section needs to make clear what is contemplated. A defence attorney is responsible for protecting all the rights of a juvenile, while a guardian should be interested in what is in the "best interest" of the child. Those are clear gaps in the law regarding assistance to children in conflict with the law.

It is vitally important that a criminal justice system recognize that juveniles do not commit crimes for the same reasons as adults, and, therefore, the punishments should not be the same. It is correct that the Criminal Code provides for particular sentences when the person responsible of the offence is a child. However, social reintegration is far from being the ultimate aim of the juvenile justice system and educational sentences and measures are lacking in the Georgian system (see below).

⁶⁸ Committee on the Rights of the Child, General Comment n°10 on Children's rights in juvenile justice, CRC/C/GC/10, 9 February 2007, para. 16 and 17; available at <http://www.ohchr.org/english/bodies/crc/docs/AdvanceVersions/GeneralComment10-02feb07.pdf>

9.2.2 Modalities of the trial

Article 656 of the Criminal Procedure Code envisages the closed discussion of the juvenile case. While discussing the case, the judge can conduct completely or semi-closed court hearing if the party demands it in order not to ensure the intimate and private life of a juvenile does not become public. Similar provisions shall be applied in order to protect the security of accused child's family members or relatives. However, article 16.7 of the Criminal Procedure Code states that all kind of verdicts, resolutions or decisions passed by the court must be published. It is worrisome that none of the resolutions prevents the court from making the names of the tried juveniles public and thus contradicts the UN Convention on the Rights of the Child, article 40.2(b)(vii).

If a juvenile participated in committing a crime with adults, if possible, his/her case should be discussed separately according to the requirements of the article 246 of the Criminal Procedure Code, except in the event where the separation of the documents of juvenile case might cause a significant obstruction to the objective and complete investigation of the whole case.

9.2.3 Procedural guarantees for children

Many of the rights which can be enjoyed by those children in conflict with the penal law are stated in the Criminal Procedure Code (i.e., most are common to both adults and children):

- until a person is prosecuted s/he is considered guiltless (article 10 of the Criminal Procedure Code);
- the person must immediately and personally be informed about the accusations against him/her. S/he must be provided with corresponding legal or other kind of support in order to prepare and provide the defence (Criminal Procedure Code, articles 11, 12 and 13); in practice, there is a gap in the implementation of this right: many accused children do not have access to legal representation and assistance during the criminal procedure;
- the case must be immediately evaluated by competent, independent and impartial officials or some other legal institution and it must be carried out within the law through honest discussion with legal or some other kind of assistance. The court hearing must be attended by the parents or official guardian of the accused (Criminal Procedure Code, articles 15, 644, 646);
- the accused must not be prevented from giving testimony or pleading guilty (articles 73, 75 and 114 Criminal Procedure Code);
- right to challenge the verdict (Criminal Procedure Code, articles 21, 234 and 659);
- right to be assisted with an interpreter if it is necessary (Criminal Procedure Code, article 17);
- right of not interfering in the personal life of the accused during the court discussion;
- legal assistance: a teacher or a legal representative of the accused shall take part in the very first interrogation by the police, of a juvenile. The first hearing process of the suspected or accused minor must be held with the presence of a teacher or legal representative. The accused possesses the right to use the defender of their choice and in case s/he does not know nor appoint any defender, the prosecutor is obliged to engage the defender in the case;

- other types of assistance: in the process of interrogation accused minor might these a psychologist on demand of the investigator or prosecutor or by the petition of the defender;
- children accused of having infringed on the penal law must appear before the investigator, prosecutor or the court, accompanied by his or her parents or legal representative or administrator of the institution where s/he studies or is being raised;
- other particular rules: Cases where the legal representative violates child's interest: according to the investigator or the prosecutor's resolution, or judge's decision, the legal representative of the juvenile's criminal case shall be dropped or shall have his/her rights restricted during the investigation if it shall be proved that the representative violated juvenile's interests. If the initial legal representative is dropped, the juvenile accused shall be defended by another legal representative and a representative of the tutorial institution;
- the Criminal Code clearly defines the duration of the questioning process. Particularly, the interrogation must not last more than 2 hours without break, and mustn't proceed longer than 4 hours in one day. If the minor gets tired the questioning may stop before the aforementioned period expires. Those terms are common for adults and children.

9.2.4 Types of measures applicable to a convicted child

When sentencing a juvenile offender, the law-court shall consider offender's living and upbringing conditions, level of mental development, health condition, other personal peculiarities, or possible influence of seniors.

Both coercive measures of educative effect and punishments may be applied to juvenile offenders (articles 81 and 82 of the Criminal Code).

- Coercive measures of educative effect:
 - caution;
 - transference under supervision;
 - assigning the obligation of restitution;
 - restriction of conduct;
 - placement into a special educative or medical-educative institution.
- Types of punishments:
 - fine: it shall not exceed 400 daily payment;
 - deprivation of the right to pursue a particular activity: from one to three years in length;
 - socially useful labour: it should be executed during spare time from studies or main employment and shall not exceed two hours per day for juvenile up to 15 years old and three hours per day for those between 15 and 18 years old;
 - corrective labour: from to months to one year;
 - jail term: from one to four months and only against male juvenile offenders who are sixteen or over when the sentence is delivered;
 - imprisonment for a particular term: imprisonment for a term not in excess of ten years shall be awarded against a juvenile offender that he/she will serve in an educative institution. Imprisonment in excess of ten but not in excess of fifteen years may be awarded against the juvenile between the ages of sixteen and eighteen for any especially grave crime.

9.2.5 Absence of diversion programme and alternative measures to the criminal system

The current system places too little emphasis on prevention and diversion from the criminal justice system.

The police, prosecutors and judges have no power to divert children from the criminal justice system into community-based programmes that address the offending behaviour and work with the child and his/her family. The lack of judge independency from the executive linked with an absence of political will leads to the non use of such alternative mechanisms by the judges. Nevertheless, the establishment of such schemes for under-aged offenders would ensure that children are not taken to court for minor offences and suffer all the disadvantages that prosecution causes. It would enable children to stay with their families, in educational settings and allow them to receive corresponding support.

9.3 Statistical data and comments on the situation of children in conflict with the penal law

9.3.1 Disaggregated data and comments on the number of juveniles accused of or sentenced for having committed an offence

	2000	2001	2002	2003	2004	2005	2006 (9 mths)
Total number of convicted juveniles	388	525	497	459	598	475	633
Boys	386 (99.5%)	520 (99.0%)	486 (97.8%)	450 (98.0%)	588 (98.3%)	469 (98.7%)	621 (98.1%)
Girls	2 (0.5%)	5 (1.0%)	11 (2.3%)	9 (2.0%)	10 (1.7%)	6 (1.3%)	12 (1.9%)
Aged 14-15	65 (16.8%)	99 (18.86%)	102 (20.5%)	122 (26.6%)	170 (28.4%)	127 (26.7%)	199 (31.4%)
Aged 16-17	323 (83.2%)	426 (81.14%)	395 (79.5%)	337 (73.4%)	428 (71.6%)	348 (73.3%)	434 (68.6%)

Boys make up the vast majority of those convicted, with only 12 girls in the first ninth months of 2006 (1.9%) convicted in the first 9 months of 2006.

The age of those convicted has changed over the last 6 years, with a steadily increasing number of 14 and 15 year-old being convicted: from 16.8% of total juvenile convictions in 2000 to 31.4% in the first nine months of 2006. A number of factors may be responsible for this change, including the closure of the Special Vocational School, the fact that the Commission of Minors no longer has jurisdiction over 14-16 year-old committing minor offences, and the change in the Criminal Code which permits judges to impose a term of imprisonment on 14-16 year-olds. The rise in the number of 14-15 year-old being convicted raises serious concerns, particularly in the light of the proposed amendments to the Criminal Code, which would reduce the age of criminal responsibility from 14 to 12 years of age (see section 9.1).

Statistical data juveniles committing crimes (throughout Georgia)⁶⁹

Years	2006	2007 (January to April)
Nb of juveniles <i>accused of having committed a crime</i>	888	340

Registered crimes committed by juveniles throughout Georgia and in Tbilisi according to criminal police data

Opened cases totally	
3 months of 2006	3 months of 2007
Throughout Georgia	
294	220
In Tbilisi	
67	70

9.3.2 Disaggregated data per types of crimes

Crimes of violence committed by juveniles

	2000	2001	2002	2003	2004	2005	2006 (1st 9 months)
Murder	5	5	14	12	5	5	18
Manslaughter	4	4	0	1	0	?	0
Intentional grave damage to health	4	7	9	7	8	?	11
Damage to health	3	?	1	1	1	3	0
Rape	3	?	3	3		1	4
Total	19	21	27	24	14	10	33
Number (and percentage) of children imprisoned for any of the offences above mentioned	11 (58%)	11 (52%)	19 (70%)	15 (63%)	13 (93%)	8 (80%)	28 (85%)

Property offences committed by juveniles

Type of crime: property offences	2000	2001	2002	2003	2004	2005	2006(1st nine months)
Theft	276	384	330	235	286	299	367
Larceny	13	33	42	52	62	41	41
Robbery	11	14	16	10	23	23	67
Fraud	0	1	1	0	2	1	3
Total	300	432	389	297	373	364	478
Number (and percentage) of children imprisoned for any of the offences	39 (13%)	47 (11%)	74 (19%)	79 (27%)	93 (25%)	73 (20%)	179 (37%)

⁶⁹ Figures from the Ministry of Interior.

It would appear that the nature of the crimes committed by juveniles has not changed significantly. The statistics for crimes against the person, as opposed to property crimes, for the years 2000- 2006 show very small levels of juvenile offenders.

What is noticeable however, is the increase in the rate of imprisonment in general. As an example, this has risen from 10.9% of convictions to detention for theft in 2000, to 27.2% in 2006. While imprisonment for property offences has risen steadily over the recent years, there has been a huge leap in the rate of imprisonment in 2006. This is undoubtedly partially due to a zero tolerance approach adopted by the government, which has also resulted in a greater use of imprisonment of juveniles. At the same time, it also reflects the lack of diversionary measures and alternative sentencing programmes available to address juvenile offences.

Not only has the rate of imprisonment of juveniles increased steadily, but the length of the term of imprisonment has also shown some shift over the decade. The number of children sentenced to 5-10 years and 10-15 years has increased. In 2000 20.7% of those convicted received sentences of between 5 and 15 years, 16.2% in 2001, 16.1% in 2002, 21.3% in 2003, 14.3% in 2004, 17.3% in 2005 but in 2006, 32.5% of convicted juveniles received a sentence of between 5 and 15 years, mostly for committing property offences.⁷⁰

In the first nine months of 2006, 37.4% of convicted juveniles were given a custodial sentence.

- ⇒ *It is obvious that the juvenile justice system itself needs to be reviewed as a whole. In this regard, the development of diversion programmes and alternative educational measures to detention are of key importance. Create mechanisms to avoid any child rights' violation and, particularly, any act of violence is essential. Moreover, the Georgian government should also prevent juvenile delinquency by addressing the various causes leading children to infringe the penal law and establishing policies and adequate mechanisms. To be comprehensive, the system would have to address the effects of the system on children and give priority to the social reintegration process.*
- ⇒ *Since 2005, several interesting initiatives to reform the juvenile justice system have been set up. For instance, the common project UNICEF-HRIDC "Support of the Reform of Administration of Juvenile Justice in Georgia" trained justice and law enforcement officials on international standards of juvenile justice and worked towards rehabilitation of juvenile offenders. Moreover, the Ministry of Justice built the capacity of the staff working in the penitentiary and probation systems in social work. Finally, in July 2007 the project to reform the juvenile justice system in the country started.⁷¹ Both governmental and non-governmental entities were consulted. A Strategy and Action Plan on Juvenile Justice should be prepared, leading to the adoption of legal amendments in full compliance with international standards. In the framework of this reform, systematic training of juvenile judges, diversion and alternative measures should also be established.*

⁷⁰ UNICEF Georgia – Analysis of the Juvenile justice system in Georgia

⁷¹ It is supported by the Embassy of the Kingdom of Netherlands and UNICEF. Source: http://www.unicef.org/georgia/media_7019.html .

⇒ *The NGOs welcome these initiatives and hope the initiated reform will effectively fully comply with the Convention on the Rights of the Child as well as other relevant international standards (UN Rules for the Protection of Juveniles Deprived of their Liberty, UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), Guidelines for Action on Children in the Criminal Justice System, and the UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)) both in the legislation and in practice.*

10 Recommendations

OMCT, HRIDC and PHMDF recommend the Georgian authorities to:

- reform the legal system protecting the rights of the child so that it become comprehensive and in full compliance with the international standards;
- reform, create and develop child rights' implementation mechanisms in order to get a complete and effective protection of children;
- develop a system to prevent children from living or working in the street, to assist and care of them once they are in the street, to help them to get off it and to procure them social reinsertion;
- reform the existing legislation so that it fully protect child from violence, including torture or other cruel, inhuman or degrading treatment) and create adequate assistance mechanisms as well as systems to stop impunity of the perpetrators (either public or private);
- develop the child violence reporting process both by the victims, the representatives and relevant professional as well as the system of complaint;
- develop the de-institutionalisation and alternative types of care of children in need of care and protection;
- ensure that no child is kept in custody or detention with adults;
- develop procedures and mechanisms so that detention, including pre and pending trial detention, is used as a measure of last resort and for the shortest period of time;
- develop and effectively apply alternative measures to detention as well as diversion programmes;
- improve the conditions of detention and the life in detention of children both in prisons or similar penal centres receiving children and residential care institutions (primary eliminate overpopulation);
- develop the rehabilitation of child victims of violence as a priority;
- withdraw the recent amendments to the Criminal Code lowering the minimum age of criminal responsibility to twelve for certain serious crimes;
- continue the reform of the juvenile justice system in compliance with the relevant international standards.



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