



# Convention on the Rights of the Child

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Committee on the Rights of the Child

## Report submitted by Georgia under article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, due in 2012\*

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\* The present document is being issued without formal editing.

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## Introduction

1. This is the first report of the Government of Georgia, submitted under Paragraph 1 of Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. Georgia acceded to the Optional Protocol on 3 September 2010.
2. The purpose of the present report is to inform the Committee on the Rights of the Child on the situation in Georgia with regard to the protection of the children from involvement in armed conflict and the measures implemented by the state in this respect.
3. The report is divided into six sections. The first section provides the description of measures that were carried out for the implementation of the provisions of the Optional Protocol. The second section focuses on the human rights situation in the occupied territories. Preventive measures are described in the third section. The fourth section includes prohibition measures with particular emphasis on criminal legislation. The fifth section contains information regarding protection, recovery and reintegration system for child victims and in the sixth section the issues of international assistance and cooperation are covered.

## I. General Measures of Implementation

### Preparation of the Report

4. Georgia has developed an inclusive national reporting process. In order to facilitate the proper implementation of Georgia's obligations under the human rights treaties, a permanent inter-agency working group as the national coordination mechanism was set up in 2014, bringing together high and mid-level officials from the executive, the judicial and the legislative authorities. In parallel, relevant training was organized for the inter-agency working group members, in cooperation with the UNDP and more training are planned in the future.
5. By common efforts of relevant authorities, coordinated by the Ministry of Foreign Affairs of Georgia, this report has been drafted in accordance with the Revised Guidelines regarding initial reports to be submitted by states parties.<sup>1</sup>
6. The following agencies have been participating in the process of preparation of the present report: the Human Rights Secretariat of the Administration of the Government, the Ministry of Defense, the Ministry of Justice, the Ministry of Labor, Health and Social Affairs, the Ministry of Education and Science, Chief Prosecutor's Office, the Parliament of Georgia, the Supreme Court. The draft report was shared with the Office of the Public Defender, non-governmental and international organizations. Their comments and suggestions were considered in the course of the finalization of the report.

### Legal Status of Optional Protocol in Jurisdiction of Georgia

7. Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict (Optional Protocol) constitutes international treaty of Georgia. International treaty of Georgia is an integral part of Georgian legislation.<sup>2</sup>
8. The Constitution of Georgia recognizes supremacy of international treaties over domestic laws. According to Article 6 of the Constitution, an international treaty of Georgia unless it contradicts the Constitution, the Constitutional Agreement, shall take precedence over domestic normative acts. Provisions of officially promulgated international treaties of

<sup>1</sup> CRC/C/OPAC/2.

<sup>2</sup> Article 6.1, Law of Georgia on International Treaties of Georgia, (1997).

Georgia that establish concrete rights and obligations and need no adoption of implementing national normative acts shall have direct legal effect.<sup>3</sup>

9. Therefore, the legal system of Georgia provides every possibility for treaties to be invoked before the courts and applied by the national authorities.

### **Reservations and Declarations**

10. Georgia has made the following Declaration to the Optional Protocol:

“..., in according with Article 3 (2) of the additional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict [the] Government of Georgia declares that according to the legislation of Georgia the minimum age for the recruitment of a citizen of Georgia in the Armed Forces is clearly defined. According to the paragraph 2 of article 21 of Georgian Law on ‘Military Obligations and Military Service’, the decision concerning the recruitment of the citizens into the obligatory military service shall be made only upon they have reached 18 years of age.

According to the Georgian Law on ‘Military Obligation and Military Service’, for the recruitment in the capital of Georgia is established regional recruiting commission and on the local level — municipality commission. A citizen can appeal the decision of the recruiting commission in the central recruiting commission established by the decree of the President of Georgia or in the Court. In that case the decision of the recruiting commission will be suspended until the decision of the central recruiting commission is declared or Court’s decision enters into force (Article 184 of the Administrative Code of Georgia and article 29 of the Administrative Procedure Code of Georgia).

In case the essential violation of the human rights is caused by illegal recruitment, the action of the official or equivalent shall be qualified as an [excess] of authority and be subject of criminal responsibility (Article 333 of Criminal Code of Georgia)”.

### **Institutional Framework and National Action Plans**

11. In recent years significant measures have been undertaken by Georgia at the policymaking and institutional levels to ensure coordinated state action for the purposes of the effective enjoyment of human rights. Along with the Gender Equality Council chaired by a Vice-Speaker of the Parliament, special posts were also appointed such as the Human Rights Advisor of the President, the Assistant to Prime Minister on Human Rights and Gender Equality Issues, and an Ambassador at Large on Human Rights within the Ministry of Foreign Affairs. Both, the President and the Prime Minister, have appointed Advisors on National Minority issues. The Committee on Human Rights and Civil Integration, as one of the standing committees of the Parliament of Georgia, has broad powers to monitor and evaluate the human rights situation in the country as well as to examine individual petitions from individuals.

12. On 30 April 2014, the Parliament of Georgia adopted the National Strategy on Human Rights for 2014–2020. The main goal of the Strategy is to develop a comprehensive approach to ensure the implementation of the obligations stemming from international human rights instruments in everyday life with a view to building an inter-agency, multi-sector, unified, and consistent policy and, accordingly, to implement good governance. The 13th strategic objective of the document focuses on child rights, especially on improving existing protection and assistance mechanisms, devolving social services, reducing child poverty and mortality rates, and guaranteeing the provision of high standards of education.

13. In order to implement the Strategy, after an inclusive and open drafting process, on 9 July 2014, the Government of Georgia adopted Governmental Action Plan on Human rights for 2014–2015. The process included analyzing relevant local and international reports as

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<sup>3</sup> Article 6.3, Law of Georgia on International Treaties of Georgia, (1997).

well as consultations with the local and international organizations. On 13 June 2016, the Government approved a new action plan for 2016–2017, reflecting new commitments for protecting child rights. Namely, Human Rights Action Plan for 2016–2017 includes chapter on the protection of the child rights: strengthening the system of protection and assistance for children; improvement of services for vulnerable children; eradication of child poverty.

14. An Inter-agency Council chaired by the Prime-Minister was established in order to coordinate and monitor the implementation process of the Action Plan. All of the Ministers are members of the Council and the Public Defender of Georgia as well as non-governmental and international organizations has a voting right within the Council. As an additional guarantee for the effective implementation of the Action Plan, the Human Rights Secretariat, responsible for productive Inter-Agency coordination and close monitoring of the execution of the Action Plan was created in the Administration of the Government, Prime Minister's Office. The Council is accountable to the Parliament by annual reporting.

15. Moreover, in December 2016, in accordance with the recommendations of the Committee of the Rights of the Child, an Interagency Commission responsible for the implementation of the Convention on the Rights of the Child was established by the Georgian Government. The Commission is a coordination mechanism for the effective implementation of the obligations on the issues of child rights among different governmental agencies on the central and local level, as well as between the government and civil society. The Interagency Commission is a deputy ministerial level body and is co-chaired by the head of the Human Rights Secretariat of the Administration of the Government of Georgia and the Deputy Minister of Foreign Affairs. The Commission engages the Judiciary, Parliament, the Ombudsman's Office, NGOs and the United Nations Children's Fund's representatives. The Commission is accountable to the Human Rights Council and submits reports annually.

## **Equality and Non-discrimination**

16. Protection and promotion of human rights and freedoms are guaranteed by the Constitution of Georgia. According to the Constitution everyone is free by birth and equal before law irrespective of race, color, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, and place of residence. Citizens of Georgia shall be equal in social, economic, cultural and political life irrespective of their national, ethnic, religious or linguistic belonging. The Constitution also plainly affirms that — Mothers' and children's rights are protected by the law.

17. One of the most recent and important developments in the legislation of Georgia is the adoption of the comprehensive anti-discrimination law on May 2, 2014 by the Parliament of Georgia. The purpose of the law shall be elimination of all forms of discrimination and to ensure for every person, including minors, equal enjoyment of rights prescribed by law irrespective of race, color, language, national, ethnic or social belonging, sex, sexual orientation or gender identity, marital or health status, disability, age, nationality, origin, place of birth, place of residence, social status, religion or belief, political or any other ground. Any form of discrimination, be it direct, indirect or multiple, are to be prohibited. It also prohibits discrimination in both the public and private sector and imposes responsibilities not only on public institutions, but also on any legal entities and individuals. Elimination of discrimination and ensuring of equality must be monitored and controlled by an independent body — the Public Defender of Georgia. For the monitoring of the implementation of the law, the Public Defender's Office created an Equality Department.

## **Independent National Human Rights Institution**

18. Independent body responsible for the monitoring of the protection of human rights and fundamental freedoms within the territory of the country is the Public Defender of Georgia who is elected for a term of five years by the Parliament of Georgia.<sup>4</sup> The Public

<sup>4</sup> Article 43, Constitution of Georgia, (1995).

Defender acts independently and carries out his/her activities in accordance with the Constitution, international treaties, universally recognized principles and norms of international law.<sup>5</sup> The Public Defender independently examines the situations with regard to the protection of human rights and freedoms, and the facts of their violation, based on both — received applications and on his/her own initiative.<sup>6</sup> As it was mentioned above, the Public Defender is authorized to monitor the implementation of the anti-discrimination law.

19. When conducting an inspection, the Public Defender, inter alia, is entitled to freely enter any state or local self-government body, enterprise, organization, institution, including, military unit, prison and confinement facilities and other places of detention and restriction of liberty; request and receive, immediately or not later than 10 days, from state and local self-government authorities or from officials all documents and materials necessary for conducting an inspection.<sup>7</sup>

20. Based on the results of an inspection, the Public Defender, inter alia, is entitled, in order to restore violated human rights, to send proposals and recommendations to state and local self-government authorities, public institutions and officials whose actions caused a violation of rights and freedoms guaranteed by the state; request relevant investigating authorities to start an investigation and/or criminal prosecution if, after examining the case, he/she comes to the conclusion that there are elements of crime in the case; make proposals to relevant bodies on disciplinary or administrative liability of persons whose actions violated the human rights and freedoms; act as a friend of the court (*amicus curiae*) in common courts and the Constitutional Court of Georgia; inform the mass-media about the results of inspections related to violations of human rights and freedoms; apply to the President of Georgia and to the Prime-Minister of Georgia, if considers that the means of response at his/her disposal are not sufficient.<sup>8</sup> The Public Defender submits to the Parliament of Georgia an annual report on the situation of human rights and freedoms in the country.<sup>9</sup>

21. Based on the principles of the Convention on the Rights of the Child, the Center for Child's Rights has been established under the Public Defender's Office. The Center aims at supervising protection of child's rights and freedoms and promoting implementation of their rights.

22. Objectives of the Center are: to monitor implementation of the UN Convention on the Rights of the Child as well as the national and international acts on child's rights; to monitor children's institutions and prepare relevant reports; to detect and survey certain cases of violation of child's rights as well as to respond to them; to consider citizens' applications and complaints on alleged violation of the child's rights; to prepare recommendations and proposals for the legislative and administrative bodies; to carry out educational activities for promotion of child's fundamental rights and freedoms and raising public awareness in this field.

23. Any person, including juveniles, may apply to the Public Defender's Office. Applications will be accepted by the Department for Reception of Citizens of the Public Defender's Office. The service rendered by the Center is free of charge.

24. It should be noted that the budget of the Public Defender's Office increased by EUR 620 000 which is 68% higher than in 2014. In 2015 the budget allocation for the Public Defender's Office reached 4.000.000 (Four million) GEL and in 2016 budgetary allocations amounted to 4.500.000 (increased by 12.5 %). According to regulations of the Office of the Public Defender of Georgia (PDO), the Office of the PDO is responsible for budget and financial planning as well as organization of the policy of human resources.

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<sup>5</sup> Article 4.1, Organic Law of Georgia on the Public Defender of Georgia, (1996).

<sup>6</sup> Article 12, Organic Law of Georgia on the Public Defender of Georgia, (1996).

<sup>7</sup> Article 18, Organic Law of Georgia on the Public Defender of Georgia, (1996).

<sup>8</sup> Article 21, Organic Law of Georgia on the Public Defender of Georgia, (1996).

<sup>9</sup> Article 22, Organic Law of Georgia on the Public Defender of Georgia, (1996).

## II. Human rights situation in the occupied territories

25. The Government of Georgia has been consistently continuing its policy aimed at ensuring full enjoyment of the rights provided in the Optional Protocol for the entire State population. However, to this end, obstacles of outstanding gravity were imposed on the Georgian government due to Russia's effective control of Abkhazia, Georgia and the Tskhinvali Region/South Ossetia, Georgia since the beginning of the 1990s, when armed conflict in Abkhazia, Georgia and Tskhinvali Region/South Ossetia, Georgia was triggered by the Russian Federation. Due to the armed conflicts of 1992–1993 that erupted in said regions, Georgia lost de facto control over the parts of those regions. Subsequently these territories were occupied by Russia as a result of new wave of armed aggression exercised against Georgia in August 2008.

26. As a result of Russia's illegal actions, the central Government of Georgia, as well as the legitimate authorities of these regions currently in exile, are unable to exercise effective control of the territories to give effect to the provisions of the Optional Protocol. While Georgia fully undertakes its obligation to take all possible measures for implementing the provisions of the Optional Protocol, preventing its possible breaches and terminating its ongoing violations in light of its positive obligations under international human rights law, at the same time, it contends that the primary responsibility for non-compliance with the provisions of the Convention as well as their violation in these regions rests with the Russian Federation.

27. As a result of military aggression, creeping annexation and occupation policy, well-planned and systematically implemented by the Russian Federation with respect to Georgia, several hundreds of thousands of persons were expelled from their homes to become IDPs and refugees and they have been deprived of their internationally recognized right to a voluntary, safe and dignified return to places of their permanent residence.

28. Russia, as the occupying power that exercises effective control over the occupied regions of Georgia, continues to prevent numerous international as well as humanitarian organizations from entering those territories. It is deplorable that the European Union Monitoring Mission (EUMM) in Georgia is still prevented from carrying out its monitoring mission inside the occupied regions, as provided by its mandate.

29. The occupation line with Abkhazia and the Tskhinvali Region separates Georgia from its two occupied territories. In the spring of 2011, the Russian occupation forces intensified the process of the installation of barbed wire fences and other artificial obstacles along the occupation lines in Abkhazia, Georgia and the Tskhinvali region/South Ossetia, Georgia (placed in 2009). Currently, the total length of artificial barriers along the occupation lines is approximately 100 km. (48 km along the occupation line in Abkhazia, Georgia and 52 km along the occupation line in the Tskhinvali region/South Ossetia, Georgia). Russia continues to place undue restrictions on the local population wishing to cross the occupation line often leading to casualties among those locals, including children and women, seeking urgent medical treatment. People are illegally detained by Russian FSB border guards for so called "illegal border crossings" on a regular basis.

30. The ongoing military occupation results in severe human rights violations in the occupied territories. People, including children, especially those of Georgian ethnicity, have been deprived of most of fundamental rights and freedoms. In this regard, children remain as one of the most vulnerable groups as their rights continue to be systematically abused. The violations include restrictions on freedom of movement; restrictions on education in native language as well as access to education; illegal detentions; and threats to physical security that gravely breach the Convention on the Rights of the Child.

31. In 2016, the situation worsened with regard to the freedom of movement across the occupation lines. From 6 so-called "check-points" operating alongside the occupation line with regard to the region of Abkhazia, two were already closed and the other two are announced to be shut down.

32. The restrictions imposed by the so-called "border guards" of the Russian Federal Security Service directly affect the right of the children to access the health care services in

timely and due manner. In 2015, this resulted in the death of 12 year old child who was prevented from crossing the occupation line. The officers of the Russian Federal Security Service also did not allow two children in severe need of medical care to cross the occupation line and access medical institutions. Let me add that one of them suffered from pneumonia, and the other had the third-degree burns.

33. A two-year old infant suffering from an asthma attack was not allowed to be taken to the hospital located on the central Government-controlled territory. The existing restrictions and imposed artificial procedures on the movement also conditioned in 2016 the death of an infant from Sokhumi, who was only several months old that happened due to the hindered access of the ambulance across the occupation line. Unfortunately, the above described situation still prevails.

34. The imposed restrictions also relate to the right of children to receive education in their native language. The restriction of the right to mother tongue based education starts already at pre-school level, as all kindergartens in Gali district of Abkhazia region were transformed into Russian. Since the beginning of the 2015–2016 academic year, the right to education in the native Georgian language is almost fully restricted in Gali schools. In particular, drastic changes were introduced to the curriculum of the remaining 11 Georgian schools there, where 97% of schoolchildren and 91% of employees are ethnic Georgians. In fact, now all subjects in these schools are taught to the 1st, 2nd, 3rd, 4th and 5th graders in Russian language. This reveals ethnically-driven policy of Russification of local population.

35. Throughout 2015–2016, more than 50 incidents involving Russian FSB officers have been registered, who did not allow ethnic Georgian schoolchildren to cross the occupation line to attend their schools on the central Government-controlled territory.

36. 127 facts of the children detention for the so-called “illegal border crossing” have been recorded. Sometimes children were detained for hours. They were frequently taken to the so-called “State Security offices,” and released only after paying illegal fines.

37. Due to these restrictions, many parents have withdrawn their children from Georgian schools and the number of schoolchildren has declined — from 48 in 2013 to only 14 in 2016.

38. The Georgian Government is highly committed to duly protect human rights and freedoms throughout its entire territory, including in the occupied regions. For instance, Georgia’s health care system operates a special Referral program that ensures free medical treatment of residents of Georgia’s occupied regions in any medical institution of Georgia. According to the existing data, thousands of residents from the occupied regions of Georgia, including hundreds of children, benefited from this medical system receiving free services on the territory controlled by the central government. In recent years, the number of people coming over the occupation line for healthcare purposes has doubled. The Georgian Government also regularly delivers to Abkhazia region various types of medicine and medical equipment.

39. A multi-profile and fully equipped modern university clinic is under construction and a multifunctional trade center was already opened in the village of Rukhi that is closest to occupation line.

40. In the framework of the “1+4” program, the Government provides an opportunity to the students residing in the occupied territories to enroll in the universities across Georgia via simplified procedures. At the same time, we provide possibilities to the residents of Abkhazia and Tskhinvali region/South Ossetia to receive scholarship and participate in international academic and exchange programs in leading American, European and other universities.

41. For years, the Georgian authorities have been advocating the involvement of international organizations in the issue of the protection of human rights in the occupied regions of Georgia as well as significance of the access of international human rights monitoring mechanisms in these areas. The occupying power, exercising effective control, continues to prevent numerous international organizations, including humanitarian, from entering those territories. As of 2015, the Ministry of Foreign Affairs of Georgia



commenced to issue quarterly reports based on open sources concerning the human rights situation on the occupied territories of Georgia.

42. The international community has been calling on the Russian Federation to bear responsibility for violations of human rights on the Georgian territories currently under Russia's effective control. The UN Human Rights Committee issued recommendations to the Russian Federation regarding the issue at its 97th and 113th sessions in 2009 and 2015 respectively.

### **III. Prevention**

43. According to the "Additional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict", the age of the person, who is subject to call up for military service, is stipulated in the Law on Military Obligations and Military Service. In particular, in accordance with Article 9 of the Law, call up for military service is allowed for the person aged 18 to 27.

44. According to Article 5 of the Georgian Law on "Military Reserve Service" mandatory reserve call-up is permitted from the age of 27. In accordance with the same Article, the persons who are entitled to a release or a postponement from call up for compulsory military service are subject to call up for Military Reserve Service from the age of 23. According to the Law, in case the person expresses the desire to serve in military reserve service, minimum age of call up is 18.

45. In addition, the Law on Military Obligations and Military Service provides the possibility for persons to learn in high military educational institution under 18 as an exception. However, the Law establishes that the person may become the Junker (student) of high military educational institution only by the consent of parents; also they are obliged to submit certificate of general education, certificate of birth and identification card with other documentation. As well, prior to call-up for the Armed Forces, Junker (student) should sign the contract to realize the features of military service; this meets the requirements of Protocol.

46. Furthermore, according to the rule approved by the Order N512 (29.05.2013) of the Georgian Defense Minister on "the Enrollment of Pupils in LEPL General George Kvinitadze Cadets Military Lyceum and Suspension of Status of Cadet", the enrolment in LEPL Cadet Military Lyceum, may be carried out for the male and female pupils who graduated from the general basic level (9th grade) and they are obliged to submit with other documentation the following documentations:

- (a) Parent/legal representative application on the admission of pupil;
- (b) Copy of Identification Card;
- (c) Copy and original copy of birth certificate;
- (d) The reference from Secondary Educational Institution on the graduation from the general basic level (9th grade) of current year.

47. However, it should be mentioned that they are civilians, not military servicemen.

### **Overview of the Comprehensive Policy in International Humanitarian Law**

48. The Government has elaborated a comprehensive policy for the implementation of international humanitarian law in its legislation and practice. The National Inter-Agency Commission on the Implementation of International Humanitarian Law (the Commission) was established on 31 October 2011 as a standing body set up to implement and ensure respect for International Humanitarian Law (IHL) and to coordinate the work of different entities in this field.

49. The Commission is a consultative body of the Government and aims at the promotion of protection of relevant norms of international law and coordination activities

of relevant governmental institutions and non-governmental organizations. The Commission is composed of the representatives from different state agencies (Ministry of Justice, Ministry of Defense, Ministry of Foreign Affairs, Ministry of Internal Affairs, Ministry of Education and Science, Chief Prosecutor's Office, National Security Council, etc.). At the same time, experts in the fields of Public International Law, International Humanitarian Law and International Criminal Law, as well as representatives from International Committee of the Red Cross (ICRC) are invited to participate in the working process of the Commission. The Commission is chaired by the Minister of Justice.

50. One of the main objectives of the Commission is to promote the determination of IHL programs and various educational activities in cooperation with the International Committee of the Red Cross (ICRC). On 15 July 2014, the Commission approved the 2014–2015 Action Plan, envisaging inter alia the dissemination of the IHL's principles among target groups (journalists, teachers, schoolchildren, doctors, etc), training the personnel of the Ministry of Defense and the armed forces on IHL and providing information regarding the civilian population and objects. The main objective of the 2014–15 Action Plan is to ensure compliance of Georgian legislation with international obligations. With this objective, the Action Plan envisages the integration of the IHL and the IHRL norms into the manuals and doctrines of the armed forces.

51. Currently, the Commission is working on the elaboration of a National Action Plan for the upcoming 3 years on the Implementation of International Humanitarian Law. One of the aims of the plan will be to strengthen protection mechanisms of children through prevention of recruitment of children into armed forces or groups.

### **Public awareness, human rights and peace education**

52. Since 2010, the High School of Justice of Georgia is annually conducting the trainings on the topic of the rights of the child, which includes the Convention on the Rights of the Child and other relevant international instruments.

53. These trainings are aimed at retraining of judges and other employees of the judiciary. Up to 2016, 5 trainings have been conducted. In the framework of 2016 retraining programme for judges and other employees of the judiciary, with the support of the UNICEF, 2 trainings are planned to be held for judges on the topic of rights of the child.

### **Human rights and humanitarian principles in national curriculum**

54. In National Curriculum (2011–2016) the issues of protection of human rights, including the protection of children's rights, is reflected in social science subject group programmes (History, Geography, Civic Education and Civil Defense and Security). A student has the opportunity to get acquainted with the international framework of human rights protection as well as mechanisms and instruments for protecting human rights in Georgia.

55. Apart from this, by now, the National Curriculum for 2017–2023 at primary level is already approved and in the renewed Curriculum Social Science group subjects are offered in more intensive manner at public schools, where the issues of civic education, especially respect for and protection of human rights, tolerance and positive attitude towards diversity and equality are highly represented. According to the new National Curriculum (2017–2023), teaching social science group subjects starts at a primary level. Different international and local organizations were actively involved in the process of developing the subject standards to bring them in line with international frameworks which support human rights protection, respect for diversity and equality.

56. According to the revised National Curriculum, students will be introduced to the concept of equality from the III grade. The topics — peers (or friends), equal opportunities and conditions for girls and boys to develop, respect for one another, tolerant attitude to diversity are also embedded in the subject standard.

## IV. Prohibition and Related Matters

### Criminal Legislation and Regulations in force

57. In accordance with Article 3.2 of the Additional Protocol, the Government of Georgia declared that "... in case the essential violation of the human rights is caused by illegal recruitment, the action of the official or equivalent shall be qualified as an [excess] of authority and be subject of criminal responsibility (Article 333 of Criminal Code of Georgia)".<sup>10</sup>

58. Article 333 of the Criminal Code is composed of three paragraphs. According to Paragraph 1, "... exceeding of official power by an official or a person equal thereto that has inflicted a substantial damage to the right of a natural or legal person, public or state lawful interests" is criminalized. The penalty for the commission of the crime shall be fine or imprisonment for term of up to 3 years with deprivation of the right to hold official position or pursue activity for term not exceeding 3 years.<sup>11</sup> Paragraph 2 aggravates criminal liability if exceeding of official power is committed by political official. In this case penalty shall be fine or imprisonment for term of 3 to 5 years with deprivation of the right to hold official position or pursue activity for term not exceeding 3 years.<sup>12</sup> The harshest penalty — imprisonment for term of 5 to 8 years with deprivation of the right to hold official position or pursue activity for term not exceeding 3 years — is stipulated by Paragraph 3 of the said Article, namely, when the crime is committed in the following aggravating circumstances: repeatedly; under violence or by use of weapons; by insulting a dignity of the victim.<sup>13</sup>

59. Statute of limitation for crime envisaged by Article 333 of the Criminal Code is 15 years.<sup>14</sup>

60. According to the Criminal Code not only perpetrator shall be responsible for the commission of crime, but also his/her accomplices. Complicity in the crime shall mean intentional joint participation of two or more persons in the perpetration of intentional crime.<sup>15</sup> Types of accomplices are (1) organizer — the one who staged the crime or supervised its perpetration as well as the one who established the organized group or supervised it, (2) instigator — the one who persuaded the other person to commit the offense and (3) aider — the one who assisted perpetrator in the commission of the offence.<sup>16</sup> Criminal liability shall be imposed upon the accomplices according to their own fault on the basis of joint illegal action, taken into consideration the character and quality of the part that each of them played in the wrongdoing.<sup>17</sup> Criminal liability of accomplices shall be determined under the relevant article of the Criminal Code.<sup>18</sup> When imposing a sentence for complicity in the crime, consideration shall be given to the actual character and quality of the person's participation, the importance of the participation in attaining the goal of the crime as well as its influence on the character and quality of the incurred or possible damage.<sup>19</sup> The extenuating or aggravating circumstance, which shall be applied to one of the accomplice, shall be taken into consideration only when imposing a sentence on this accomplice.<sup>20</sup>

61. The Criminal Code provides threefold structure of crime consisting of definition, wrongfulness and culpability. Grounds precluding criminal responsibility are divided,

<sup>10</sup> [https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg\\_no=iv-11-b&chapter=4&lang=en#EndDec](https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11-b&chapter=4&lang=en#EndDec).

<sup>11</sup> Article 333.1, Criminal Code of Georgia, (1999).

<sup>12</sup> Article 333.2, Criminal Code of Georgia, (1999).

<sup>13</sup> Article 333.3, Criminal Code of Georgia, (1999).

<sup>14</sup> Article 71 (c)<sup>1</sup>, Criminal Code of Georgia, (1999).

<sup>15</sup> Article 23, Criminal Code of Georgia, (1999).

<sup>16</sup> Article 24, Criminal Code of Georgia, (1999).

<sup>17</sup> Article 25.1, Criminal Code of Georgia, (1999).

<sup>18</sup> Article 25.3, Criminal Code of Georgia, (1999).

<sup>19</sup> Article 57.1, Criminal Code of Georgia, (1999).

<sup>20</sup> Article 57.2, Criminal Code of Georgia, (1999).

accordingly, into circumstances negating wrongfulness and circumstances negating culpability. All such grounds can be applied by defendant to preclude criminal responsibility if criteria established by the law are met. Execution of an obligatory order or instruction of superior shall not be excuse (negating culpability) for a person and ground precluding criminal responsibility if he/she executes order or instruction with the knowledge of its illegality.<sup>21</sup>

62. The Criminal Code establishes liability for inchoate crimes, provides definition of attempted crime and principle of liability: attempted crime shall be intentional act that was directly designed to perpetrate a crime but the crime was not completed. Criminal liability for attempted crime shall be determined under the relevant article of the Criminal Code which provides liability for completed crimes.<sup>22</sup>

63. It should be mentioned that relevant working groups under the Ministry of Justice of Georgia work to bring criminal legislation, including the concepts of attempt and execution of superior order/instruction, fully in line with international standards.

64. According to Article 410 of the Criminal Code of Georgia, it is punishable to recruit mercenaries for participation in the armed conflict or hostilities. In particular: "Recruitment, training and funding of mercenaries or providing them with material needs in any other way, also their inclusion in armed conflict or hostilities shall be punishable by imprisonment extending from five to seven years." The second part of the same Article defines aggravated conditions for the prescribed crime. Namely, for the same action perpetrated by using one's official capacity or against a minor, perpetrator shall be punishable by imprisonment extending from seven to fifteen years.

65. The law defines the mercenary as the person who is not a citizen of the state embroiled in the armed conflict or hostilities and acts so to receive material payment, while not permanently residing in the territory of the foregoing state. Moreover, he/she is not sent on a mission to carry out official obligations.

66. Chapter XLVII (Crimes against Peace of Humanity, Security and International Humanitarian Law) of the Criminal Code, among other core crimes of international concern, criminalizes Intentional Violation of Norms of International Humanitarian Law in Armed Conflict (Article 411), Intentional Violation of Norms of International Humanitarian Law in Armed Conflict of International or Non-international Character by Endangering Health or by Mutilation (Article 412) and Other Violations of Norms of International Humanitarian Law (Article 413). The articles contain prohibitions of violation of norms of International Humanitarian Law. Moreover, Article 413 of the Criminal Code provides reference to international instruments widening scope of responsibility for war crimes.

67. According to Article 413(d) of the Criminal Code "... any other war crime that is envisaged by a treaty of Georgia and is not punishable under Article 411 or Article 412 of this Code — shall be punishable by imprisonment from 10 to 20 years." Georgia is party to numerous of international treaties guaranteeing protection of human rights. For example, among the most important international instruments is the Rome Statute of International Criminal Court signed by Georgia on 18 July 1998. Georgia deposited its instrument of ratification on 5 September 2003. From that time onward the country has been bound by this treaty and it has become integral part of the Georgian legislation. Article 8 of the Rome Statute prohibits commission of war crimes including conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities. Therefore, in light of Article 413 of the Criminal Code, the latter, by (indirect) reference to the Rome Statute, in fact, criminalizes all war crimes envisaged by it, including crime of conscripting or enlisting children into armed forces/groups or using them to participate actively in hostilities. Penalty for such crimes, as it was mentioned above, vary from 10 to 20 years of imprisonment.

68. Georgian legislation guarantees protection of children from different types of violence, physical abuse/punishment and other cruel and degrading forms of punishment.

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<sup>21</sup> Article 37, Criminal Code of Georgia, (1999).

<sup>22</sup> Article 19, Criminal Code of Georgia, (1999).

For instance, in Chapter XX of the Criminal Code of Georgia (Criminal Code) different types of acts against health are criminalized, in particular, assault and battery,<sup>23</sup> intentional damage to health of different degrees,<sup>24</sup> violence,<sup>25</sup> domestic violence,<sup>26</sup> etc. The Criminal Code also prohibits torture,<sup>27</sup> threat of torture,<sup>28</sup> inhuman or degrading treatment.<sup>29</sup> Moreover, commission of prohibited acts envisaged by some of these articles committed against minors shall be considered as aggravated circumstances and shall result in harsher penalties.

69. The Criminal Code regulates aspects of exercise of criminal jurisdiction on crimes committed on the territory of Georgia, as well as on crimes committed outside its boundaries by applying principles of territorial, extraterritorial and universal jurisdictions.

70. Person who has perpetrated a crime on the territory of Georgia shall bear criminal liability in accordance with relevant provisions of the Criminal Code. Crime shall be considered to be perpetrated on the territory of Georgia if it began, continued, terminated or ended on the territory of Georgia. The same rule applies to crime committed on or against the vessel authorized to use the national flag or identification mark of Georgia unless otherwise is prescribed by the international treaty of Georgia.<sup>30</sup>

71. Citizen of Georgia as well as the person with stateless status in Georgia, who has committed crime abroad under the Georgian criminal legislation that is also regarded as a crime under the legislation of the state in which it was committed, shall bear criminal liability under the relevant provisions of the Georgian Criminal Code.<sup>31</sup> In case when illegal act is not considered as crime in the state of its commission Georgian citizen or the person with stateless status in Georgia shall be liable under the Georgian legislation if it is grave or especially grave crime directed against interests of Georgia or if responsibility for such crime is envisaged by international treaty of Georgia.<sup>32</sup> Citizen of a foreign state as well as the stateless person who has committed illegal act abroad envisaged by the Georgian criminal legislation shall bear criminal liability under relevant provisions of the Georgian Criminal Code if it is a grave or especially grave offense directed against interests of Georgia or if the criminal liability for this offense is provided by the international treaty of Georgia.<sup>33</sup> The notion “offense directed against interests of Georgia” should be interpreted as crimes committed not only against the state, but against citizens of Georgia as well. Grave intentional crime is crime that is punishable by imprisonment for term up to 10 years; especially grave crime is intentional crime that is punishable by imprisonment for more than 10 years or life imprisonment.<sup>34</sup>

72. It should be noted that one of the main activities under the draft National Action Plan for the implementation for the International Humanitarian Law is the analysis and the revision of the Georgian legislation in order to make it in compliance with the principles and standards of International Humanitarian Law and International Criminal Law, and, if it is required, drafting amendments and presenting them to the Parliament of Georgia for approval.

## Relevant International Treaties

73. Georgia is a Party to the following international treaties without any declaration or reservation:

<sup>23</sup> Article 125, Criminal Code of Georgia, (1999).

<sup>24</sup> Articles 117–120, Criminal Code of Georgia, (1999).

<sup>25</sup> Article 126, Criminal Code of Georgia, (1999).

<sup>26</sup> Article 126<sup>1</sup>, Criminal Code of Georgia, (1999).

<sup>27</sup> Article 144<sup>1</sup>, Criminal Code of Georgia, (1999).

<sup>28</sup> Article 144<sup>2</sup>, Criminal Code of Georgia, (1999).

<sup>29</sup> Article 144<sup>3</sup>, Criminal Code of Georgia, (1999).

<sup>30</sup> Article 4, Criminal Code of Georgia, (1999).

<sup>31</sup> Article 5.1, Criminal Code of Georgia, (1999).

<sup>32</sup> Article 5.2, Criminal Code of Georgia, (1999).

<sup>33</sup> Article 5.3, Criminal Code of Georgia, (1999).

<sup>34</sup> Article 12, Criminal Code of Georgia, (1999).

- (a) The Additional Protocols I and II to the 1949 Geneva Conventions, (1977);
- (b) The Rome Statute of the International Criminal Court (1998);
  - (i) Amendments to Article 8 of the Rome Statute of the International Criminal Court (2010);
  - (ii) Amendments on the Crime of Aggression to the Rome Statute of the International Criminal Court (2010);
- (c) The International Labour Organization Convention No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999).

## V. Protection, Recovery and Reintegration

### Right of the Child to Education

74. The Georgian law on General Education (approved by Parliament of Georgia on 8 April 2005) ensures free general education for students at all public schools in Georgia. Educational institutions are open to all children regardless of their race, skin color, religion, language, national and ethnic and social belonging. To ensure that all children have the possibility to access educational institutions and have quality education.

75. Under the applicable laws on education, refugees, asylum-seeker children as well as children holding humanitarian status fully enjoy the right to compulsory free general education at public schools in Georgia.

### Programs Implemented with respect to Occupied Territories

76. The Ministry of Education and Science has been implementing Subprogram Training of Teachers and Preparation of the Entrants for the Unified National Exams Residing in Gali District which aims at increasing an access to a full general education in compliance with the Georgian legislation, for the teachers and school students residing on the occupied territory of Abkhazia, Georgia.

77. Within the framework of the mentioned subprogram, the National Examinations Center under the Ministry of Education, informs/provides instruction to Gali district teachers in the following subjects: Georgian language and literature, Russian Language, History, Geography, Mathematics, General Ability, English, Biology and Chemistry, which was added in 2016. Duration of the program is 3 months. To get well prepared for the unified national examinations, entrants and teachers are provided with the relevant teaching and learning materials free of charge.

78. The Ministry of Education implements “Summer School Subprogramme”. Under it 30 schoolchildren nominated by the Ministry of Education of the Autonomous Republic of Abkhazia and 10 schoolchildren nominated by the Administration of South Ossetia take part in the English language summer school.

79. In 2015, Abkhazian and Georgian teachers, as well as teachers residing Gali (a total of 30 teachers) were involved in the project “Improving Pedagogical Practice together”. The project is financed by confidence-building division of the Council of Europe and is implemented by National Center for Teacher Professional Development and NGO “Institute for the Study of Nationalism and Conflicts”.

80. The National Center for Teacher Professional Development, a LEPL under the Ministry of Education, strives to ensure provision of equal access to all school children. The center provides various services such as trainings, master classes, seminars, conferences for school teachers. The National Center for Teacher Professional Development regularly provides teachers living in the occupied territories with various recourses, such as publications. In 2016, the National Center for Teacher Professional Development in cooperation with the Ministry of Education provided internally displaced

women association “Tanadgoma” with subjective model lessons to disseminate among Gali high school teachers.

## VI. International assistance and cooperation

81. Georgia has in place comprehensive mechanism for international judicial co-operation in criminal matters. International Cooperation in Criminal Matters Act 2010 (ICCMA) provides the main legal framework for judicial co-operation. According to the ICCMA international cooperation is provided based on the international treaty of Georgia. However, in case of the absence of such treaty, Georgia is able to provide Mutual Legal Assistance (MLA) based on ad hoc agreement or on the principle of reciprocity, in case of extradition — based on an ad hoc agreement.

82. Georgia is a party to a considerable number of international conventions on the basis of which it effectively co-operates in the field of Mutual Legal Assistance and extradition with respective foreign states. Main international judicial co-operation treaties to which Georgia is a party are as follows:

- European Convention on Extradition (Paris, 13.XII.1957);
- Additional Protocol to the European Convention on Extradition (Strasbourg, 15.X.1975);
- Second Additional Protocol to the European Convention on Extradition (Strasbourg, 17.III.1978);
- European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 20.IV.1959);
- Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 17.III.1978);
- Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 8.XI.2001);
- European Convention on the International Validity of Criminal Judgments (the Hague, 28.V.1970);
- Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Minsk, 22.1.1993).

83. ICCMA lists widely accepted preconditions for extraditions: dual criminality, minimum punishment of at least one year, extradition for only non-statute barred offences, non-extradition pursuant to non-refoulement obligations (risk of torture, flagrant denial of right to the deprivation of liberty and security and fair trial and/or persecution under 1951 Geneva Convention on the Status of Refugees), non-extradition for political offences.

84. Where extradition is denied owing to non-refoulement obligation, Georgia undertakes to prosecute such offences if those offences fall under the jurisdiction of Georgia.

85. Georgia makes all the offences referred to in the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict extraditable as far as the offences in question are punishable under Georgian law with a requisite minimum penalty.

86. Throughout the reporting period, no Mutual Legal Assistance or extradition request has been transmitted or received in relation to the offences referred to in the Optional Protocol.

87. Throughout the reporting period there have been no investigations, prosecutions and respective judicial practice in Georgia concerning the crimes referred to in the Optional Protocol.