

# THE PUBLIC DEFENDER OF GEORGIA



## 10 DECEMBER REPORT ON THE SITUATION OF THE PROTECTION OF HUMAN RIGHTS AND FREEDOMS IN GEORGIA

# 2016

### FOREWORD

ON 10 DECEMBER, THE ENTIRE WORLD CELEBRATES HUMAN RIGHTS DAY. UPON THE DECISION OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, THE KEY MESSAGE ON 10 DECEMBER 2016 IS “STAND UP FOR SOMEONE’S RIGHTS TODAY”.

THIS REPORT IS THE CONTINUATION OF THE INITIATIVE LAUNCHED BY THE PUBLIC DEFENDER OF GEORGIA IN 2013 – TO SUM UP THE SITUATION OF HUMAN RIGHTS AND FREEDOMS IN GEORGIA ON EVERY 10 DECEMBER.

THIS DOCUMENT IS NOT AS COMPREHENSIVE AS THE PUBLIC DEFENDER’S ANNUAL REPORT TO THE PARLIAMENT OF GEORGIA. IT AIMS TO INFORM SOCIETY OF KEY ACHIEVEMENTS MADE THROUGHOUT A YEAR IN THE FIELD OF HUMAN RIGHTS AS WELL AS PROBLEMS EXISTING IN THE FIELD, WHICH NEED TO BE OVERCOME IN ORDER TO ENSURE THE IMPLEMENTATION OF KEY PRINCIPLES OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS IN GEORGIA.

### 1. HUMAN RIGHTS SITUATION IN PENITENTIARY FACILITIES OF GEORGIA

A number of positive steps have been taken in the penitentiary system in 2016; however, a number of serious challenges remain in the system. The Public Defender of Georgia commends a change to the state program for Hepatitis C management, which was made in accordance with his recommendation. Under this change, the treatment of Hepatitis C with Sofosbuvir has become available, alongside citizens of Georgia, to those inmates of penitentiary facilities who are foreign citizens or stateless person.

The Public Defender of Georgia positively assesses an amendment to the regulation of penitentiary facilities of the Ministry of Corrections and Probation of Georgia, which sets the term of placement of a convicted/accused person in a de-escalation room at 72 hours, notwithstanding the fact that the recommendation of the Public Defender to set the maximum placement term of 24 hours was not taken into account.

The Public Defender of Georgia also gives a positive assessment to the approval by the Minister of Corrections and Probation of the “Procedure on the Exercise by the Public Defender of Georgia and a Member of Special Prevention Group of the Right to Take Photos in Penitentiary Facilities of the Ministry of Corrections and Probation of Georgia.” Nevertheless, a number of essential issues still require further regulation in order to facilitate the effective implementation of powers of the National Preventive Mechanism.

The Public Defender of Georgia commends an amendment to the Imprisonment Code, which allows a convict, who performs an individual activity upon the permission and under the control of the director of prison, to sell thus produced items (objects) with the assistance of the penitentiary facility.

Except for a couple of individual cases, in 2016, the Public Defender/Special Prevention Group has not received information about alleged ill treatment of inmates by employees of penitentiary facilities. Based on the information about alleged ill treatment, obtained from the data of January-November 2016, the Public Defender submitted two proposals for further reaction to the Chief Prosecutor's Office of Georgia in February and September. After the application of Public Defender, these two facts of alleged ill treatment were qualified under Article 144<sup>3</sup>, a development that must be assessed as a positive trend.

Despite the above said, a number of problems continue to exist in terms of prevention of ill treatment at penitentiary facilities. A serious threat of ill treatment arises from a crime subculture established in prisons, which often triggers violence and oppression among inmates. Yet another challenge is the failure of medical personnel to properly detect and document instances of alleged ill treatment.

The Public Defender of Georgia welcomes the approval by the Ministry of Corrections and Probation of the "Procedure for the Registration of Injuries Sustained by Convicts/Accused Persons in Penitentiary Facilities as a Result of Possible Torture and Other Cruel, Inhuman or Degrading Treatment" which will be enacted beginning on 1 January 2017.<sup>1</sup> In accordance with the provisions of the Istanbul Protocol, this rule also envisages the taking of color photographs of all injuries by a special camera. The Public Defender hopes that this rule will be effectively implemented in practice and will contribute to proper documentation of injuries and detection of possible facts of ill treatment. It must be noted that this was one of most significant recommendations which the Public Defender repeatedly made for years.

Problems are seen in the practice applied by prison administrations towards inmates for the purposes of security and supervision. It has been observed that prison administrations isolate inmates, including by placing them in de-escalation room, for long periods of time even in cases when there is no sufficient ground for that.

Moreover, as the procedures set forth in the regulation allow, the handcuffing of high-risk convicts has become a routine practice in special risk prisons.

Other problems include the conduct of visual and/or electronic surveillance and control without a proper justification; failure to store recordings for a reasonable period of time, and denying the access to such recordings for members of the Special Prevention Group.

A prison administration remains entitled to conduct a visual surveillance of a meeting between a convict/accused person and Public Defender/Special Prevention Group member by using remote surveillance and recording equipment, but without listening. In Public Defender's opinion, this runs counter to the principle of confidentiality of meeting, provided by the Optional Protocol to the UN Convention against Torture and the Organic Law of Georgia on Public Defender of Georgia.

Although compared to previous years several penitentiary facilities have improved physical environment and sanitary-hygienic situation, the existing conditions still need to be improved significantly and brought into line with international standards. Not all inmates in the majority of penitentiary facilities are provided with a four-square-meter space, as specified in the Imprisonment Code of Georgia.

The development of infrastructure for long visits at the penitentiary facility №5 must be assessed as a positive step. However, the situation in this regard has not changed in the penitentiary facilities №7, №8 and №9.

The Public Defender commends an increasing trend in motivating inmates in several penitentiary facilities. In general, however, a decrease has been observed, as compared to the previous year, in motivating inmates in penitentiary facilities. It is also worth noting that the indicator of disciplinary punishment in the penitentiary facilities has increased compared to the previous year. 2016 saw instances of placing inmates suffering from mental disorders in solitary cells again.

---

1 The Decree 131 of the Minister of Corrections and Probation on the approval of the "Rule of Registering Injuries Sustained by Convicts/Accused Persons in Penitentiary Facilities as a Result of Possible Torture and Other Cruel, Inhuman or Degrading Treatment;" 27 October 2016.

Despite certain rehabilitation programs being underway in several facilities, the implementation of rehabilitation activities remains an acute problem in the Penitentiary Department's facilities №3, №6, №7, №9, №18 and №19. It is necessary to enable inmates of closed type prisons to engage, at least in their cells, in artistic, labor, educational or other activities of their interest. It is also important, even under restricted conditions of the establishments, to promote certain individual sport activities. For example, upon request, an inmate may be allowed to go out for an additional time into a walking area to exercise. To this end, walking areas may be equipped with basic sports equipment, with security considerations taken into account.

The Public Defender welcomes the reorganization of medical department and steps taken towards updating penitentiary medical service standards and increasing the health care budget. A successful completion of phase I of Atlantis program must be commended as a positive development.

Despite positive steps taken in terms of healthcare in penitentiary facilities, a number of important recommendations remain unfulfilled as well as a whole set of serious challenges unaddressed. They include the availability of doctors and proper maintenance of medical documentation in penitentiary facilities.

A majority of inmates complain that medical service is not available timely; specialists administer drugs without corresponding checkups, based on oral inquiries alone, which sometimes prove ineffective or have adverse effects.

Although 2016 saw an increase in the number of doctors and nurses, there is still a shortage of this personnel in several establishments. The frequency of visits of invited specialists has remained low in 2016.

Timely referral to a doctor remains a problem as well as delay for months of confirmation by the medical department of a case when the referral is registered in a common electronic database.

In 2016, juvenile inmates, except those from juvenile rehabilitation facility, were transferred to №2 and №8 penitentiary facilities which lack the environment conducive to the rehabilitation of juveniles. Moreover, juveniles are not isolated from adult inmates in these facilities.

A general situation in the penitentiary facility for women №5 is satisfactory. The Public Defender commends the development of infrastructure for long visits in this facility. Yet another commendable step is the purchase of scanner to introduce an alternative method of inspecting women, something which the Public Defender recommended. The Public Defender hopes that this procedure will be fully introduced in the foreseeable future.

Separation of mother and child after the child turns three years old remains a challenge in 2016 too. Existing procedures are very painful both for children and mothers. Engagement of mothers, who are placed with children, in various programs and events needs to be paid attention as children, in such cases, are lefts without supervision.

Penitentiary facilities with inmates sentenced for life do not carry out diverse and regular rehabilitation activities tailored to individual needs. Moreover, penitentiary facilities №7 and №8 lack an appropriate infrastructure for long visits. For this purpose, inmates of the establishment №8 are transferred to the penitentiary facility №6 whereas inmates of the penitentiary facility №7 cannot exercise their right to long visits at all.

A practice of placing convicts and accused persons together remains a problem in several facilities. Ensuring a minimum of four square meter space per inmate and long visits are important issues and according to the Public Defender's recommendation, they must be regulated by the law. Although the presumption of innocence applies to accused persons, they are deprived of their freedom in an excessively restricted conditions. Consequently, it is important to provide them with a more human conditions of imprisonment that correspond to their status.

A language barrier represents a particular problem for citizens of foreign countries and representatives of ethnic or religious minorities. This results in the majority of them being unaware of the rights granted to them under the law and facing serious problems in exercising those rights. Also, religious and cultural peculiarities are disregarded in organizing catering.

The monitoring revealed that the disregard of places of residence of inmates' families prevent inmates from exercising their right to be visited by family members. In particular, the transfer of inmates from peni-

penitentiary facilities located in Eastern Georgia to those in Western Georgia and vice versa remains a problem. Since a segment of inmates are placed far from the places of residence of their families, inmates' right to a short/long visit is infringed. Also, due to economic and other factors, families find it difficult to deliver parcels to inmates. A dividing glass barrier erected in a room for short visits prevents inmates from having any kind of physical interaction with family members.

Inmates of special risk prisons, who are prohibited long visits, are not able to maintain adequate relations with their families through only one short visit and one phone call per month. Moreover, the regulation of a special risk prison obligates its inmates to provide the director of prison with a list of phone numbers they intend to call. In order to allow a prisoner to call any other number, the prisoner must apply to the director anew and the phone numbers must also be changed in writing. This makes it difficult for prisoners to call the Public Defender's Office, the General Inspection or other such institutions. Consequently, this vice practice needs to be eliminated.

The infrastructure for a video visit is developed only in five penitentiary facilities; consequently, inmates of other prisons cannot use this right that is provided by the law.

Telephones in a closed type prisons are placed in a duty room of prison employees, with a controller on duty always present in it; consequently, the confidentiality of phone conversation is violated.

The Public Defender of Georgia is concerned about a fact that prisoners who are placed in a de-escalation room cannot send letters or make phone calls to the Public Defender. An inmate placed in a solitary cell should be able to call the Public Defender, but allowing this requires amendments to the law.

The existing practice of informing inmates about their rights fail to ensure a proper level of awareness of inmates of prisoners' rights, in general, and in particular, of their right to file requests/complaints and the procedures for consideration such requests/complaints.

## 2. HUMAN RIGHTS SITUATION IN BODIES SUBORDINATED TO THE MINISTRY OF INTERNAL AFFAIRS OF GEORGIA

The monitoring conducted in 2016 has shown that ill treatment of detained persons by police officers remains an acute problem. The analysis of monitoring results suggests a high likelihood of application of excessive force by police officers when detaining persons, as well as physical and verbal offence against detainees. The monitoring established that on several occasions the protocols of visual inspection drawn up in temporary detention isolator indicated far more injuries than the protocols of detention. It is also worth noting that certain detainees had such injuries on head and face that they could hardly go unnoticed by detaining persons. Such cases provide a strong ground to suspect that detainees were ill-treated after the detention.

Flaws are seen again in filling in detention and visual inspection protocols, also logbooks and medical documentation existing in police departments. A duty officer at the police department, as a rule, does not inspect injuries on the body of a detainee. A duty officer merely copies the data provided in a protocol on detention into a detainee registration logbook. It is worth noting that a protocol on detention often does not specify whether a police officer applied force - something which the legislation allows in certain circumstances; however, when a protocol does specify the application of force, it never details a form and a need of application of force and whether the injuries seen on the body of a detainee resulted from this very application of force. Such cases also provide a strong ground to suspect that detainees were ill-treated after the detention.

On certain occasions, the data provided in a visual inspection protocol do not coincide with the data in the records of emergency medical service doctor. Instances were revealed of injuries on the body of a detainee not being documented by an emergency service doctor. Injuries specified in a visual inspection protocol are not described in medical terminology. There are cases when the nature and location of injuries on a body are not described in detail.

Shortcomings in keeping logbooks in departments represent a problem. For example, in certain cases it is impossible to find out the time of a person's detention by a police officer, the date/time of delivering

a detainee to a police department as well as a further fate of the detainee; numbering order in logbooks is disorderly, they do not indicate the place and circumstances of offence and sometimes, the blanks in logbooks are not filled in at all. Police departments/units do not maintain a uniform logbook to record the exact time of a citizen, witness or interviewee entering and leaving the building.

There were separate instances of neglecting guarantees of legal protection of detainees such as contacting their families and lawyers.

The practice of so called “interviewing” citizens by police officers has remained problematic throughout the year. In particular, the monitoring revealed that police employees regularly talk to people who have conviction records, have been released from prisons or who are viewed as potential offenders. It was found out that during such interviews, interviewees are not explained the reasons of interview; nor are they informed of their rights, including the right to refuse to be interviewed. Moreover, no protocol or any other document reflecting the interview is drawn up, which would be signed by an interviewee and then, would be available to the National Preventive Mechanism. In the Public Defender’s opinion, such interviews put citizens in a vulnerable, unprotected situation while such practice increases a risk of arbitrary, illegal detention of interviewees by police officers as well as the use of physical and psychological violence by them against interviewees. Hence, this practice should also be eliminated.

Yet another problem in the reporting period was the practice of transfer of citizens for drug testing. A formally voluntary though actually arbitrary transfer of citizens for drug testing has outlined as a trend during the year. On such occasions individuals certify with their signatures that they agree to be taken for a drug test as they are well aware that the refusal to undertake such a test will result in their detention under Article 45 of the Code of Administrative Offences of Georgia. Thus, it means that upon receiving an offer from a police officer to undertake a drug test, a person is virtually detained since he/she cannot refuse it and continue his/her movement freely. The Public Defender believes that in cases of formally voluntary transfer for a drug test, a person, who is actually detained, is unable to use legal guarantees of protection provided by the law. One should also stress a vice nature of the practice to test those persons on drug consumption who have been detained under Article 45 of the Code of Administrative Offences of Georgia. In particular, if such a person refuses to undertake the test, police officers, as a rule, keep him/her in custody for 12 hours of the detention and only after the expiry of this term release the detainee.

Detained persons are not informed of their rights. The list of rights is an integral part of a protocol on detention, which a detainee, as a rule, signs formally.

The results of the monitoring revealed that the engagement of a defense lawyer in a process from the very early stage represents a serious problem. It has been found out that lawyers often get engaged in the process either at the stage of accusation or the negotiations on the terms of plea bargain. The Public Defender believes that in the majority of cases, detainees are unprotected at an early stage of detention and a risk of applying torture and other ill treatment against them is high. It is therefore necessary to undertake legislative, administrative or other necessary measures to ensure that a person enjoys a lawyer’s service from the initial stage of his/her detention.

The Public Defender welcomes ongoing and planned works for the installation of video surveillance systems along the inside and outside perimeters of the police departments. Nevertheless, the majority of police buildings are not equipped with CCTV cameras; temporary detention isolators are equipped with a real time video surveillance but recordings are not stored. The Public Defender underscores the significance of storing video recordings over a reasonable period of time and notes that it is an important guarantee for the prevention of torture and other ill treatment and at the same time, a material evidence against false accusations of police by detainees.

The monitoring showed that a proper training of employees of law enforcement bodies is a serious challenge. Special training courses undertaken by employees are very limited in scope. Employees have not been delivered trainings on the management of conflict situations, mediation, proportionate use of force and other important issues which would further enhance their skills for acting adequately and in compliance with the law in critical situations. The existing situation increases the risk of violating human rights on the part of law enforcement officers.

The Public Defender commends the closedown of several temporary detention isolators with extremely poor conditions as well as completed, ongoing and planned repairs of various isolators. It is also commendable that the Ministry of Internal Affairs of Georgia shared the Public Defender's recommendation to totally separated toilets in isolators and took practical steps. Despite positive changes, problems with central heating, natural light and ventilation, and a total separation of toilets remain in some temporary detention isolators in the regions of Georgia.

### 3. ILL TREATMENT AND THE NEED TO ESTABLISH AN INDEPENDENT INVESTIGATION MECHANISM

In 2016, the Public Defender's Office of Georgia studied a number of applications concerning the alleged ill treatment of individuals by employees of law enforcement agencies and penitentiary facilities.

Based on relevant information obtained in the process of studying the applications on the facts of alleged ill treatment, the Public Defender's Office, in a number of cases, applied to the Chief Prosecutor's Office of Georgia. Moreover, over the period from January to November 2016, the Public Defender submitted proposals to the Chief Prosecutor's Office of Georgia with regard to nine cases to initiate investigations into concrete facts of alleged ill treatment of persons by employees of law enforcement agencies and penitentiary facilities.

Among the abovementioned Public Defender's nine proposals, six proposals concerned the alleged ill treatment of citizens by law enforcement officers during the detention of citizens, two proposals concerned the alleged ill treatment of convicts by employees of penitentiary facilities and one proposal concerned an alleged ill treatment of a person by an employee of financial police.

The analysis of information obtained from investigative bodies makes it clear that procrastination and ineffective conduct of investigations into criminal cases on alleged facts of ill treatment remain a problem. At the same time, as in previous years, the issue of qualifying facts of alleged ill treatment - something which the Public Defender underlined in his reports of previous years too - is a problem again. In particular, investigations into all the six cases of alleged ill treatment by employees of law enforcement agencies were initiated under Article 333 of the Criminal Code of Georgia envisaging abuse of official powers, not under special Articles 144<sup>1</sup>-144<sup>3</sup> of the Code.

It should be noted that penitentiary facilities have treated the facts of alleged ill treatment differently. As a result of Public Defender's application, both facts of alleged ill treatment were qualified under Article 144<sup>3</sup>, which can be viewed as a positive tendency.

The number of complaints about facts of alleged ill treatment of detainees by employees of police departments of Adjara, Imereti and Kakheti regions was high.

The Public Defender sees the establishment of independent investigative mechanism as a means of combatting torture and ill-treatment, eliminating impunity for such crimes and ensuring effective and independent investigation. This has been one of key recommendations of the Public Defender for years now.

Moreover, in 2016, for the first time ever, the Public Defender, established a communication with the Committee of Ministers of Council of Europe and presented it an opinion regarding the enforcement of those rulings delivered against Georgia by the Strasbourg Court, which concern systemic/structural problems in the area of investigating facts of ill-treatment. The Public Defender believes that in certain cases, the establishment of independent investigation mechanism is a necessary condition in order to ensure that the Georgian government conscientiously fulfills the international obligations assumed under the European Convention on Human Rights.

### 4. RIGHT TO FREEDOM AND INVOLABILITY

The Public Defender of Georgia gives a positive assessment to the decrease in the application of detentions in 2016. According to comparative statistics provided by the Supreme Court of Georgia, over the first eight months in 2015, detentions comprised 31 percent of all applied restrictive measures while a corresponding

indicator for 2016 stood at 28.5 percent. At the same time, a percentage share of non-custodial sentences applied in 2016 has increased, as compared to the previous year, which is also a commendable trend.

Although the number of complaints about illegal detention, submitted to the Public Defender, was not high, one should note those individual cases, the study of which revealed facts of unjustified restriction of the right to freedom and inviolability of citizens by bodies conducting the process. In particular, although in a case studied by the Public Defender there is photo and video evidence reflecting the fact of detention of a citizen (handcuffing; providing verbal explanation about the detention; putting into a patrol police car and transferring to a police building, thereby depriving the citizen of a possibility to move freely), official information issued by the investigative bodies maintain that the person was not detained but was only interrogated as a witness.<sup>2</sup>

The Office of the Public Defender also studied the case of alleged illegal restriction of liberty and ill-treatment of minors. The minors were delivered to a police station at about 22:00 on 15 December 2015 and released at 06:00 on 16 December. During this time they were not allowed to contact their families. According to official information, the minors were taken to the yard of the Terjola district department of the Interior Ministry for the aim of identification; they were identified and then released immediately as they had not committed any offence. However, this recount differs from the circumstances studied by the Public Defender.

There was also a case in 2016 when after the extradition of a wanted person to Georgia, a judge of Tbilisi City Court did not consider a motion of prosecution on changing, cancelling or maintaining a restrictive measure imposed on the accused person. The judge deliberated on this matter only after receiving the motion of the defense as well as at his own initiative, thereby delaying a decision on remanding the person into custody for an unreasonable time

## 5. RIGHT TO FREE TRIAL

To ensure the independence and impartiality of judges as one of key principles of a fair trial, it is necessary to adopt a legislative amendment initiated in the Parliament, which aims at establishing a mechanism of appointment and promotion of judges as well as the electronic distribution of cases among judges. The Public Defender hopes that the newly elected Parliament of Georgia will consider the package of legislative amendments at an accelerated speed and will adopt it.

The Public Defender gave a negative assessment to a legislative change concerning the Constitutional Court, as well as the hasty consideration thereof, which was adopted by the Parliament of Georgia on 14 May 2016. According to the amendments, the Plenum of the Court is authorized if seven out of nine judges are present while the quorum for the delivery of decisions (including on the suspension of provisions) has increased up to 2/3 of the full bench. At the same time, the circle of issues to be considered by the Plenum of Constitutional Court has broadened significantly. Moreover, any judge of the Collegium with a dissenting opinion is authorized to refer a case to the Plenum. And the last but not least, after the expiration of 10 year tenure a judge of the Constitutional Court automatically leaves his/her office.

The Public Defender believes that the legislative process of considering and adopting the amendments concerning the Constitutional Court was not transparent and did not provide a possibility for a proper conduct of a broad public discussion on the issue of particular importance. Moreover, the Public Defender believes that the amendments adopted by the Parliament may undermine the fast and effective operation of the Constitutional Court.

In January 2016, the Public Defender applied to the Parliament of Georgia and the State Constitutional Commission with the initiative to broaden the powers of the Constitutional Court. In his legislative proposal, the Public Defender proposed to the Parliament to broaden the scope of powers of the Constitutional Court and consequently, the limits of constitutional control. According to the draft amendment, the pow-

<sup>2</sup> The criminal case N008120316002; according to the information provided to the Public Defender's Office of Georgia by the Ministry of Internal Affairs of Georgia in a letter #992255 from, dated 21 April 2016, a citizen E.D. was transferred to the criminal investigation unit of the Interior Ministry's Tbilisi patrol police department to be interrogated as a witness concerning the fact of projecting a pornographic creative work onto a wall of the administrative building of the Georgian government.

ers of the Constitutional Court of Georgia were to go beyond the model of control of provisions and carry out the constitutional control on the basis of a real appeal to examine the constitutionality of individual legal acts and enforced decisions of common courts. It is worth noting that according to the initiative, it would be permissible as an exception, during one year of the adoption of the law, to appeal enforced decisions of common courts taken after 24 August 1995. This exception would be a sort of reflection of the demand of society for the restoration of justice. Unfortunately, the Parliament of Georgia limited itself to the consideration of this issue within the committee and did not endorse the further consideration of such a significant legislative proposal.

The study into the high profile case of so-called “cables” in the reporting period revealed the problem of legal certainty which endangered the principle of “no penalty without a law.” Consequently, to eliminate this problem, the Public Defender of Georgia submitted a friend-of-the-court opinion to the Constitutional Court. In the friend-of-the-court opinion, the Public Defender discussed the ambiguity of incriminated act – misspending, which allows for broad interpretation, does not meet the principle of legal certainty and requires a clear definition.

2016, much like previous years, saw violations of the right of a person to have his/her criminal case heard by a court within a reasonable time established by law. The importance of exercising this right increases when a person is in custody.

The 2015 report to the Parliament highlighted a systemic problem of violating by one of district courts of timeframes established by law for the delivery of reasoned decisions to convicts and forwarding appeals against these decisions, along with corresponding criminal cases, to a higher court. Unfortunately, 2016 saw the violation by a court of appeal of the timeframe prescribed by the law for consideration of a convict’s appeal and the delivery of ruling without a reason. Instances of violating consideration timeframes were observed in civil and administrative cases too. In this regard, the Public Defender of Georgia applied to the High Council of Justice with the recommendation to determine sufficient number of judges in courts. This issue still remains unsolved.

## 6. RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

Offences committed in 2016 were distinguished for the abundance of violations of the right to respect for private and family life. Over several months, footages featuring private lives of public figures were regularly released on social networks and other websites. Audio recordings of telephone or private conversations have been repeatedly released too.

The Public Defender repeatedly condemned this trend in his public statements and called on the Prosecutor’s Office of Georgia to conduct a proper, comprehensive and timely investigation. In March 2016, the Public Defender of Georgia launched a campaign “Timer is turned on,” thereby underscoring the high public interest towards the investigation into these offences.

Although more than 230 days have passed since turning on the timer, the prosecution of Georgia has not established the persons who released those videos. Nor has it undertaken adequate measures to prevent the circulation of torture videos released in August. Easy availability of these videos on the Internet is degrading to people featured in them and inflicts moral pain on them.

The Public Defender continues the study into the mentioned cases and reiterates that effective and timely investigation of each of such offences is critical to strengthen the sense of security of private life among society and to eliminate the syndrome of impunity.

It is worth noting that on 14 April 2016, the Constitutional Court of Georgia, taking into account a possibility of unrestricted intrusion into private life, declared unconstitutional those provisions which give the state security service a virtually unfettered access to real time communication; also entitle it to store information on who calls whom, when, through which technical device, from which location and how long the communication continues. The mentioned ruling requires fundamental legislative changes and the Constitutional Court set 31 March 2017 as a reasonable deadline for the adoption of changes. Although the Parliament of Georgia has not taken any steps for drafting these legislative changes, the Public Defender expresses hope that a working group will be set up within a short time span, involving all relevant entities,

the Public Defender and civil society, and will draft a package of legislative amendments to implement the ruling of the Constitutional Court.

Questions regarding the use of the institution of so-called ODR (officers of active reserve) continue to be raised after the adoption of changes to the law and suspicions about the illegal activity occurring in this area persist. It should be noted that despite Public Defender's recommendation, the Parliament of Georgia has not set up a temporary investigative commission yet, which would study these issues thoroughly and comprehensively and would provide exhaustive answers to all questions existing among society.

## 7. FREEDOM OF RELIGION

Although a number of systemic problems exist in terms of freedom of religion, tolerance and equality, the state has not taken any effective steps to eliminate them in the current year either.

A key challenge that still remains is the absence of adequate and effective response by the state to offences committed on the ground of religious intolerance. The majority of such crimes are committed against Jehovah's Witnesses. Besides, not a single offence committed against Muslims in recent years has been prosecuted.

The unequal and unfair rule of funding religious associations has been applied in 2016 too.

Religious minorities still face barriers from local self-government bodies in receiving construction permits for the construction of religious or other type of building. Construction of a new cult building remains an unsolved problem for Muslims living in Batumi as the only mosque in the city cannot ensure the Muslims with sufficient space for praying.

The state has not taken steps to prepare legislative regulations for the restitution of property seized from religious associations during the Soviet times. A clear proof of the need for legislative regulation of this issue is the failure to take a decision on the transfer of a disputed building in the village of Mokhe to a Muslim community. It is important to have communities directly involved in consideration of and decision making on such issues; however, such involvement was not ensured by the commission working on the issue of mosque in Mokhe.

## 8. ETHNIC MINORITIES

The implementation of programs envisaged in the State Strategy for Civil Equality and Integration and its Action Plan in the sphere of protection of rights of ethnic minorities and civil integration has continued in 2016.

A poor involvement of ethnic minorities in discussions about important developments in the country and issues directly affecting the minorities as well as in decision-making process has remained a serious challenge in 2016.

Another serious challenge is the provision of information about developments in the country to ethnic minorities. The Public Broadcaster regularly produces news programs on the languages of ethnic minorities, also, provides the regions densely populated by ethnic minorities with the simultaneous translation of news program Moambe at 18:00 and 20:00 into Armenian and Azerbaijani languages. This novelty must be assessed as a positive step. However, this measure still fails to fulfill the aim of informing the regions densely populated with ethnic minorities partly because only a small segment of the target population has so-called set-top-boxes which are necessary to receive digital broadcasting.

Ensuring comprehensive education of children who attend schools in minority languages remains a serious challenge. The most problematic in this regard is the training of teachers and provision of quality textbooks. The issue of bilingual textbooks and the training of bilingual teachers continue to be a problem.

Materials of discriminatory and stereotyping nature can still be found in various textbooks, although this problem is highlighted in the State Strategy for Civil Equality and Integration and its Action Plan. Textbooks should reflect the diversity of our country on a broader scale.

It is necessary to continue and enhance the state language education programs in the regions largely populated with ethnic minorities; to this end, it is important to motivate teachers and the target population and create favorable conditions for education.

2016 saw the introduction of native language teaching of smaller ethnic minority groups. Consequently, schools in ethnic minority settlements began to teach Udi, Assyrian, Chechen, Avar/Khunz, and Ossetian languages. The lack of qualified teachers and textbooks impedes the teaching of Kurdish/Kurmanji language. It is a welcome fact that the Ministry of Education and Science of Georgia has given an opportunity to smaller minority groups to learn their native languages, but this process is somewhat impeded by the lack of trained teachers and quality textbooks. The Ministry of Education and Science should joint efforts with donor organizations to make the training of teachers of smaller minority languages possible and to support the publication of relevant textbooks.

In 2016, after many years of waiting, the Ministry of Culture and Monument Protection took effective steps towards supporting the rehabilitation of Petros Adamian Tbilisi State Armenian Drama Theatre. According to the available information, the rehabilitation works will start in the foreseeable future. However, the issue of rehabilitation and normal functioning of Heydar Aliyev State Azerbaijani Drama Theatre remains unsolved. It is important to start its rehabilitation in the near future too.

The protection of rights of vulnerable groups, including Roma, remains a serious challenge in Georgia. This issue is reflected in the State Strategy for Civil Equality and Integration, but the corresponding Action Plan does not properly specify concrete activities designed to facilitate the decision-making on issues such as integration of Roma and other vulnerable groups, their access to education, health care, social assistance and many other issues.

## 9. FREEDOM OF EXPRESSION

There have not been any violations of material and systemic nature observed in ensuring freedom of expression, though separate cases, including those attracting heightened public interest, require attention and adequate response.

The reporting period saw the attack on Tabula journalists by private persons. Also, there were facts of interfering with journalists' duties during the events in Tbilisi State University. All these facts need to be timely and effectively investigated and all culprits must be punished accordingly.

The court dispute around Rustavi 2 TV Company has remained a topical issue during the current year. As of now, the court of appeal made a judgment and the dispute now continues in the Supreme Court. The Public Defender commented on the delivery of the appeal court's decision to a party to the dispute, which was done in breach of existing norms. According to the law, in civil disputes, a party to the dispute is required to arrive at the court to collect a copy of the ruling within a specified period of time after the ruling has been declared. In the Public Defender's opinion it is inadmissible for a court to act in a manner and take such decisions that give society the impression of selective justice, and to seek its powers outside the law and use them selectively and unjustifiably.

In terms of freedom of information, a problem was observed regarding the access to certain information about top officials; this problem needs to be resolved on the level of legislation. At the same time, there still is the need to adopt a new law on freedom of information as well as to ratify Council of Europe Convention on Access to Official Documents of 18 June 2009.

## 10. FREEDOM OF ASSEMBLY AND MANIFESTATION

A number of large scale rallies were held by the opposition political party United National Movement in the reporting period. They were monitored by representatives of the Public Defender. The rallies were held peacefully.

Especially disturbing were the events that unfolded in the village of Kortskheli during the interim self-government election in Zugdidi municipality on 22 June 2016, when a group of different political affiliation

offended members of the United National Movement who were gathered outside a polling station of a single-mandate constituency. Although the investigation into this incident was promptly instituted and a court leveled charges against six persons, detained on 1 July 2016, who were released on bail from pretrial detention, the investigation of the case still continues and concrete persons have not been held liable yet.

In 2016, the International Day against Homophobia and Transphobia was not marked on 17 May in the form of a large scale public assembly and manifestation. This is due to past negative experience when lives and health of participants in the assembly were seriously endangered as law enforcement bodies failed to ensure the protection of participants in the peaceful manifestation from aggressive participants of counter-manifestation. In 2016, separate LGBT activists marked this day with various small-scale, spontaneous events. A segment of activists were detained because of their efforts to stencil various places. The Public Defender called on relevant entities to investigate and respond firmly to the abuse of power and use of homophobic language by law enforcement officers during the detention of these activists and the neglect by law enforcement officers of their obligation to explain to the detainees their rights. Measures undertaken in this regard have not yet been made known to society.

In the reporting period, the public attention was also caught by the events having unfolded at the Tbilisi State University, when groups of students put forward the demands concerning the implementation of systemic changes in the education sphere. Several facts of violence took place during assemblies and rallies while the police and the security service of University failed to prevent those facts, on the one hand, and on the other, to react to them effectively. Interference with the professional duties of journalists were also observed. Each such incident must be responded immediately and effectively; however, society has not been informed of any concrete result so far.

## 11. PROHIBITION OF DISCRIMINATION

A challenge which still remains in the fight against discrimination is the procedural shortcomings in the Law of Georgia on the Elimination of All Forms of Discrimination. These shortcomings impede the effective enforcement of the law. To eliminate the shortcomings, the Public Defender of Georgia submitted a legislative proposal to the Parliament of Georgia on 11 February 2015. However, amendments have not been introduced yet. The amendments in the legislative proposal envisage imposing an obligation on persons in private law to provide information to the Public Defender as well as report the results of implementation of Public Defender's recommendation/general proposal; extending the term set for the application to a court; enabling the Public Defender to continue the study into a case when an administrative proceeding is underway on the same case.

The practice of the Public Defender also revealed material and technical shortcomings of the Law, which may prevent the Public Defender from reacting to a number of issues. In particular, the Law does not provide for *denial of reasonable accommodation*, *harassment* and *segregation* as separate forms of discrimination. The Law does not either fully reflect the notions of *instruction to discrimination* and *victimization*.

Of total discrimination-related cases submitted to the Public Defender, 55 percent concerns the private sector while 45 percent concerns the public sector. Some 18 percent of applicants complain about discrimination in labor relations on the ground of political or other opinions; eight percent of applicants claim to be discriminated against on the ground of sexual orientation and gender identity; 17 percent of applicants allege being discriminated on the ground of religion and faith whilst seven percent of applicants complain about the discrimination on the ground of disability.

People face discrimination on the ground of disability in various spheres both from public and private persons. For example, the Public Defender recognized a private person renting an apartment as well as police officers and a municipal transport driver as persons having committed discrimination on the ground of disability.

Besides, in recent times, there were instances of public entities discriminating on the grounds of religion, citizenship, sexual orientation, economic standing and membership of association. Also, frequent cases of discrimination by private persons were observed in labor and pre-contractual relations.

Negative stereotypes existing in society must be eradicated as they largely contribute to discrimination. In this regard, the Public Defender carries on the awareness raising campaign.

## 12. RIGHT TO PROPERTY

Similarly to previous years, instances of violation of the right to property and risks of such violations in the reporting period were associated with shortcomings existing in registration of ownership right.

A number of problems remain unsolved with regard to the registration of land/immovable property. The process of initial registration of ownership right on immovable property has not been completed yet. Not all the persons with documents certifying their ownership right on/lawful possession of concrete immovable property have registered their ownerships rights in the Public Registry yet. Main reasons of that include the improper issuance of these documents (not indicating exact location and size of land plots, et cetera), grave economic situation and lack of sums for registration (registration fee, cost of cadastral survey drawing). It should be noted that the Georgian legislation does not envisage any allowances for economically disadvantaged persons in this regard - something which must be assessed as a negative approach. At this stage, there is no proper mechanism in place to identify immovable property owned/legally held by private persons and this creates risks of the same property being registered as owned by other persons, including the state.

A number of cases studied by the Public Defender's Office prove that after an immovable property has been registered as state owned property, the National Agency of Public Registry denies the registration of ownership right to private persons even when they present corresponding documentation certifying their right.

The process of verification of LEPL Public Registry data and elimination of shortcomings, systematization of documents certifying ownership - the so-called paper versions and their transfer into electronic format have not been completed yet and therefore, so-called overlapping/duplicate registration remains a problem.

The reporting period saw the adoption of the Law on the Perfection of Special Rule and Cadastral Data on Land Rights Systemic and Sporadic Registration within the State Project and relevant legislative changes. The Law aims at ensuring the creation of comprehensive data on ownership and cadastral rights on land plots within the state project. The Law is in force until 1 July 2018. On the basis of this law, a pilot project has been launched and within the framework of this project a systemic registration of land ownership rights will be carried out in 12 settlement of Georgia, which were selected by criteria of geographic diversity. The mentioned law will allow to register the ownership right in the Public Registry irrespective of certain types of flaws in the documents establishing the right. We have not yet studied the implementation of this Law in practice. We hope that the work on the elimination of existing systemic problems will continue in the future too.

## 13. RIGHT TO ELECTION

The Public Defender's Office implemented a project on the monitoring of 2016 parliamentary election. In the Public Defender's assessment, no such gross violations were revealed on the polling day, which could affect the results of the vote. Violations observed in the process of casting ballots may be largely attributed to the lack of qualification of members of precinct electoral commissions.

Violations on the polling day included delays in opening polling stations, not giving timely access to journalists to several polling stations, incorrect filling out of control sheets, presence of unauthorized persons inside polling stations, rude interference of observers in the activity of commissions.

Facts of blocking the distribution of promotional materials, damaging posters, billboards and other promotional materials were seen in the pre-election period.

The pre-election period also saw altercations between supporters of political movements in the village of Didinedzi and village of Kortskheli in Zugdidi municipality. Three days before the election, the car of a

member of United National Movement and incumbent parliamentarian Giorgi (Givi) Targamadze was blown up in the central part of Tbilisi, outside the office of the political party. On the polling day, violence was seen at four polling stations in three regions of Georgia. The Public Defender's Office keeps tabs on the progress of corresponding criminal proceedings.

## 14. RIGHT TO PROTECT CULTURAL HERITAGE

The right to protect cultural heritage is not properly exercised in the country. When coming in confrontation with large economic interests, the issue is always decided against the cultural heritage. The investigation into the destruction of ancient Sakdrisi-Kachagiani gold mine has not arrived at any concrete result yet. Nor has the destruction of archeological sites during the construction of Ruisi-Rikoti road been investigated. Separate provisions of law are not observed in practice, for example, the Ministry of Culture and Monument Protection is not always involved in processes before decisions are taken on the implementation of large-scale land works. Systemic problems are seen in the legislation too. Involvement of society in decision making on cultural heritage, including on constructions, is not properly ensured. According to the law, certain types of liabilities for conducting works on a monument of cultural heritage or violating rules of its maintenance do not apply to those objects which are owned or held by religious confessions.

## 15. RIGHT TO WORK

A problem which persists in 2016 as well is the absence of effective mechanism for the monitoring of labor right and safe working environment. This requires immediate appropriate steps on the part of the Parliament of Georgia and the government.

The issue of fair remuneration of employees is a serious problem. According to Paragraph 4 of Article 30 of the Constitution of Georgia, fair remuneration shall be determined by the organic law. Nonetheless, the labor legislation of Georgia does not provide for the size of minimum wage. This is specified in the Presidential decree №351 and comprises 20 GEL per month, almost eight times lower than the minimum subsistence level<sup>3</sup> established by the state. Thus, the effective legislation fails to ensure the right of employees to receive fair remuneration.

The reporting period saw strikes of Tkibuli mine workers and workers of ongoing construction of Khashuri-Zestaponi rail tunnel; they demanded the improvement of working conditions, creation of safe working environment and fair remuneration. In both above cases, the employers ignored labor rights, which manifested in malfunctioning and outdated machinery, absence of overtime pay, inadequate gear, violation of the rule of paid leave, et cetera. Persons working on the construction of rail tunnel in the village of Kvishkheti, Khashuri municipality, also complained about the absence of minimal working condition standards.

There was an accident in the reporting period, in which an employee in Tkibuli's Mindeli mine died when performing his duty.<sup>4</sup>

Although tens of people die or sustain injuries in mines or on construction sites, the government has not undertaken effective measures so far<sup>5,6</sup>; the Labor Inspection – a mechanism to oversee labor safety and working conditions has not been established, which would minimize the number of deaths and injuries at work and prevent such accidents.

The study of applications received in the reporting period revealed that certain decisions on the dismissal of public servants from the public service were unsubstantiated, they were taken without studying the circumstances of case and infringed the rights of employees. Violations of legal requirements were also

<sup>3</sup> 157.3 GEL as of June 2016.

<sup>4</sup> An investigation into this accident is going on under Article 240 of the Criminal Code of Georgia (breach of safety rule when performing mining, building or other work that has caused a person's death).

<sup>5</sup> Ratification of International Labor Organization's conventions №81 (on labor inspection), №129 (on labor inspection in agriculture), №155 (on occupational safety and health) and Article 3 of the European Social Charter (the right to safe and healthy working conditions) to ensure workers with healthy and safe working environment.

<sup>6</sup> A draft law on Labor Safety and Health has not been initiated yet.

observed in the conduct of attestations and competitions in public service, whereby it was impossible to find out what were the particular grounds which decisions of the competition-attestation commission were based on. The issue of recording overtime and corresponding pay in public service is also problematic.

## 16. RIGHT TO LIVE IN HEALTHY ENVIRONMENT

The environmental legislation is distinguished for its significant shortcomings. The government must make systemic changes to environmental legislation, actively engage specialists of the field in this process and timely initiate/approve a draft law developed in accordance with their recommendations. The existing system of environmental impact assessment, which does not apply to a significant number of activities, needs to be changed. Involvement of society in environmental decision making process is not properly ensured. With regard to construction of hydro power plants, the law allows the state to sign a memorandum with a potential investor before the environmental impact assessment is conducted. The abovementioned issues adversely affect the right of people to live in the healthy environment and translate into practice, including when constructing hydro power plants and other infrastructure projects.

A problem has been seen in relation to special zonal agreements. In particular, decisions taken by self-governments regarding the increase in the construction intensity index (number of floors) do not provide a concrete justification and leave unclear why the change in urban development parameters was considered appropriate. Such practice causes significant damage to the right to live in healthy environment.

Noise pollution and lack of effective mechanisms to combat it undermine the healthy environment. The legislation does not provide for any measure for such cases and therefore, this situation needs to be put to rights.

## 17. RIGHT TO HEALTH CARE

A serious problem in terms of the right to health care is that the state program of universal health care is not fully accessible for those persons who, as of 1 July 2013, were engaged in private insurance schemes. In particular, they enjoy only a minimal package covering only a small portion of services, which is not sufficient. That a concrete person no longer enjoys private insurance after 1 July 2013 makes no change. Such a regulation of the issue is discriminatory and this restriction must be abolished.

Cases studied by the Public Defender's Office also revealed certain shortcomings in the work of State Regulation Agency for Medical Activities – procedural violations in considering submitted complaints.

One should also note that the process of improving the effective legislation on tobacco control has been procrastinated. Let alone that the local legislation in the field of tobacco control falls short of international standards, there is a serious incompliance between the effective legislation and the practice. Consumption of tobacco in public places and public transport is not fully prohibited yet, thereby posing a very serious problem and risk to the health and lives of citizens.

## 18. CHILDREN'S RIGHTS SITUATION IN GEORGIA

Among legislative changes introduced in the area of children's rights in the reporting period one should note the law on Early and Preschool Education, adopted by the Parliament of Georgia; also, on 12 September 2016, the government of Georgia approved the Ordinance №437 On the Approval of Referral Procedures for the Protection of Children regulating the measures of identifying, protecting and assisting child victims of violence and unprotected children, providing for a broader circle of public entities responsible for the issue and imposing an obligation on self-government bodies in the field of referral of violence against children. Along with implemented changes, it is of utmost importance to facilitate efficient enforcement of these changes in practice.

The Public Defender continues intensively studying children's rights situation in family-type homes, boarding schools, preschool and general educational institutions and establishments for juvenile delinquents throughout Georgia. Moreover, the Public Defender's Office investigates individual cases of breach of children's rights and pays a great deal of attention to facts of domestic violence against children, provision of adequate educational conditions for children with disabilities, restoration and protection of rights of groups of vulnerable children.

The analysis of cases studied in 2016 by the Center of Child's Rights of Public Defender's Office showed that poverty and inadequate living conditions among children remain a problem. Often children cannot be ensured with sufficient nutrition due to grave economic conditions of families. Families and the state cannot ensure minors with adequate living conditions, thereby putting children's safe development at risk. In their applications, citizens often complain about the protraction of their engagement in a concrete state program and receipt of services envisaged under that program; this undermines the efficiency and timeliness of child care and social programs.

The problem which persisted in the reporting period was the implementation of necessary measures by relevant responsible entities for the prevention of and decrease in the mortality of under-five children. The study of cases revealed that risks of infant mortality include problems related to geographic access to medical service, timely provision of quality medical care, quality of antenatal services, equipment of intranatal care institutions with proper medical devices and infrastructure; also, one should note problems concerning the system of patronage of pregnant women, qualification of obstetricians and medical personnel, quality of perinatal service, low awareness of parents which relates to the right to receive information, et cetera. To prevent the abovementioned issues, on 23 February 2016, the Public Defender applied to the government of Georgia with a proposal requiring to undertake measures necessary for the prevention of and decrease in the mortality of under-five children. According to the proposal, in order to prevent/decrease child mortality, the state needs to develop a strategy and special action plan, to improve the access to and quality of medical service, upgrade qualification of personnel and undertake other relevant measures.

Moreover, the consideration of cases and the monitoring conducted by the Center of Child's Rights of Public Defender's Office revealed again a great number of facts of alleged violence against children. A persisting problem in this regard is the issue of identification of child victims of violence, their rehabilitation and protection. Involvement of professionals working with children is of high importance to ensure that any alleged violence against a child is timely reported to relevant bodies. Bullying in educational institutions remains a problem. In this regard, adequate preventive measures must be undertaken and facts of bullying exposed and recorded.

An especially serious issue is the protection of street children from violence. As observed, the response undertaken by relevant entities is, on certain occasions, ineffective and belated. There is a need to increase the number of mobile groups working under a sub-program on the provision of shelter to unprotected children; this would enable the program to respond to such cases during night hours too, which, at this stage, is problematic. Yet another important aspect is the raising of awareness of issues concerning the protection of street children among patrol police employees; this would facilitate the coordination between law enforcement agencies and the Social Service Agency and consequently, the implementation of timely and adequate response.

The monitoring conducted in 2015-2016 showed the need for a greater attention on the part of the state to the improvement of rights of beneficiaries of foster care and reintegration service. In this regard, it is of utmost importance to protect reintegrated families from a relative poverty, to regularly provide retraining to foster parents and to protect children engaged in services from any type of violence.

It should also be noted that in the reporting period, 150 minors were placed under state care because of their labor exploitation.<sup>7</sup> Instances of employment of minors were revealed in six private organizations.<sup>8</sup> Microclimate and sanitary-hygienic norms were not observed in these organizations while the risk of occupational diseases was high.<sup>9</sup> As regards extreme forms of labor, it is worth noting that in 2016, the Ministry

---

7 The Ministry of Labor, Health Care and Social Affairs of Georgia, correspondence N01-70670, 19/09/2016.

8 Ibid.

9 Ibid.

of Internal Affairs of Georgia initiated investigations into three cases of alleged involvement of minors in illegal production and distribution of pornographic video or other objects of pornographic nature.<sup>10</sup>

## 19. WOMEN'S RIGHTS SITUATION AND GENDER EQUALITY IN GEORGIA

Despite steps taken by the state in the area of women's rights and gender equality, challenges remain and require a great deal of attention and efforts.

Unfortunately, the Council of Europe Convention on preventing and combating violence against women and domestic violence of 2011, has not been ratified yet. It would greatly contribute to the existing mechanisms of combatting violence against women and domestic violence. According to the data of the Chief Prosecutor's Office of Georgia, over the period between 1 January and 31 July 2016, investigations were launched into 20 criminal cases of murders of women or attempted murders. Among these, 10 criminal cases (seven murders and three attempted murders) showed signs of domestic violence; the remaining 10 criminal cases (eight murders and two attempted murders) had other motives. Over the period between 1 January and 31 July 2016, one criminal proceeding was instituted against one person (a family member) for causing intentional injuries to a woman that led to her death. Also, one criminal proceeding was instituted against a husband for torturing his wife.<sup>11</sup>

Evaluation of a risk of repeat violence and development of individual action plan for ensuring victim's safety remain problematic for law enforcement agencies. Law enforcers still find it difficult to identify psychological violence and intimidation. The role and involvement of social workers in the investigation of cases of domestic violence is still ambiguous.

Effective response and implementation of preventive measures against **early marriages** remain a serious challenge. According to the Ministry of Education and Science,<sup>12</sup> during six-month (January-July), as many as 43 schoolchildren dropped secondary schools because of early marriage. At the same time, one should note a positive trend of increase in the indicators of response of Social Service Agency and law enforcement agencies. However, against the existing challenges, the indifference of society, including professionals working with children, remains a serious impediment as they often do not view early marriage as a problem.

A welcome step is a legislative amendment, introduced on the basis of Public Defender's legislative proposal, which revised the rule of registering marriages of 17-18 year old persons; starting from 1 January 2016, such a marriage can be registered only under a court permit.

Women still suffer from unequal treatment and discrimination in various spheres of life; this becomes even more apparent when assessing their degree of participation in **decision-making processes**.

With the 2016 parliamentary election approaching, surveys were conducted on women participation and their analysis<sup>13</sup> showed that women among single-seat candidates comprised only 17 percent. On party lists, the number of women candidates stood at 37 percent. This is a clear example of political parties again failing to allocate places to women in their party lists. This is yet another proof of the need to introduce compulsory gender quotas.

No less important is the study of practice and challenges in the area of **gender mainstreaming**. The results of the study by the Public Defender's Office made it clear that the majority of employees in the executive branch – ministries as well as state ministers' offices – are women though they are poorly represented in managerial positions.

In the area of **human trafficking**, one should underline the evaluation report on Georgia, published by Council of Europe's Group of Experts on Action against Trafficking in Human Beings, or GRETA, which reflects progress achieved by the country. It is noteworthy that this second evaluation report uses results of

<sup>10</sup> The Ministry of Internal Affairs, correspondence N2426109, 27/09/2016.

<sup>11</sup> Letter N 13/53417 of the Chief Prosecutor's Office of Georgia, dated 15 August 2016.

<sup>12</sup> Letter of the Ministry of Education and Science N MES 5 16 00962255, dated 15 August 2016.

<sup>13</sup> The information is available at: [https://www.ndi.org/files/NDI\\_Statement\\_WomensParticipation\\_Georgia2016\\_Final\\_GE.pdf](https://www.ndi.org/files/NDI_Statement_WomensParticipation_Georgia2016_Final_GE.pdf) [Last accessed on October 13, 2016].

the monitoring of shelters of victims of trafficking, which was conducted by the Public Defender of Georgia. GRETA shares the Public Defender's opinions about the improvement of services and believes that in planning preventive measures, the state lacks gender sensitive approach to the implementation of the policy.

No effective steps were seen in the area of protection of **women's labor rights and economic empowerment**. Even worse, the Parliament of Georgia turned down a bill to provide a definition of sexual harassment and establish liability for sexual harassment, including any undesirable (verbal or physical) behavior in labor relations. The International Labor Organization's Convention №183 on maternity protection has not been ratified yet.

An important development in the area of **sexual and reproductive health and rights** is a 2017-2020 action plan, proposed by the World Health Organization, focusing on the development of national policy, strategy and programs. The action plan also covers the education about sexual and reproductive health, which was underlined in the 2015 parliamentary report of the Public Defender too. In this regard, corresponding awareness raising trainings/seminars should be introduced and conducted for youth and adults.

Practice of **female genital mutilation**, which was revealed in Kvareli municipality, is alarming. Unfortunately, population lacks information about the complexity of the issue, associated risks and ensuing complications. Nor are they aware of the aim such practice pursues. Female genital mutilation is an extreme form of violation; it violates the rights of women to health, security, physical inviolability and protection against torture. Such practice is mainly applied with the aim to gain control over women and their bodies. When carried out at home, female genital mutilation may cause multiple complications.

## 20. LGBT RIGHTS SITUATION

The observation of the Public Defender of Georgia shows that the steps taken by the state to improve LGBT rights situation are not sufficient.

Because of homophobic attitude and rampant hate in society, LGBT activist were not able to exercise the right guaranteed by the Constitution and to mark the International Day against Homophobia and Transphobia in an open air on 17 May 2016. According to a statement of an independent group of LGBT activists, because of anticipated violence and the absence of guarantees of security of an event, they refrained from holding a public manifestation. Moreover, early morning on 17 May, some 10 LGBT activists were detained for stenciling and disobeying lawful demands of police officers. The detainees told representatives of the Public Defender that when being detained police officers applied rude forms and homophobic language and did not provide detainees with any explanations about the reason of detention.

Prevention of hate-motivated violent acts and homophobia remains a serious challenge; a clear proof of it is a violent act committed against a transgender woman on 14 October 2016. It is important for the investigation to consider an alleged hate motive and find out what type of investigative measures were undertaken to identify this motive.

One should note a particular importance of situation of GBT inmates' rights in penitentiary facilities. Unlike other prisoners, GBT inmates are not involved in rehabilitation, educational, sport, and cultural or other activities conducted in the facilities. Despite repeated recommendations, no measures have been undertaken to raise awareness of prison employees and to increase acceptability among prisoners.

A legal recognition of sex of transgender persons remains a key challenge. It is important inasmuch as legal documents contain data identifying name and sex of a person. Consequently, when transgender persons are not allowed to change a record about their sex in civil document, the use of these documents increases the risk of their discrimination.

## 21. PWD RIGHTS SITUATION

2016 is the second anniversary of ratification by Georgia of the UN Convention on the Rights of Persons with Disabilities. At the same time, the issue of ratification of optional protocol of the Convention still remains on the agenda.

Establishment of effective mechanism for the implementation of the abovementioned international treaty remains a challenge in the reporting period. The final formation of this mechanism is important to coordinate issues related to its enforcement.

In 2016, the activity of the Public Defender's Office as the body to monitor the promotion, protection and implementation of the Convention, has been intensive. Taking into account opinions of the Consultative Council, various activities were planned.

Despite amendments to the law, the legal capacity reform showed systemic problems of blanket nature of allocating support, full deprivation of legal capacity and plenary guardianship. Common court judgments about the recognition of a person as a receiver of support are conventional and lack reasoning.

The monitoring conducted by the Public Defender's Office showed that the degree of protection of the rights of beneficiaries in territorial units of the LEPL State Fund for Protection and Support of Victims of and Persons Affected by Human Trafficking, namely, children's houses and boarding houses for PWDs fall short of standards established under the UN Convention on the Rights of Persons with Disabilities, other international documents and national legislation. Existing problems lead to the violation of various rights of beneficiaries, including the right to life. In the reporting period, three beneficiaries dies in the state care institutions.

Access to physical environment, infrastructure, transport or information has remained a problem for PWDs in 2016.

According to the information received from the Central Electoral Commission, 1,115 adjusted polling stations were ensured across the country for the 8 October 2016 parliamentary election; this comprised only one third of all polling stations (3,634 in total)

One of significant challenges faced by the state is social protection, realization of the right to adequate housing and employment of PWDs.

The process of inclusive education is being implemented with flaws. A substantial segment of children with disabilities are not engaged in this process. Moreover, the quality of education and its continuity remain problematic.

The country does not maintain necessary statistics about PWDs and does not collect research data which will ensure the development and implementation of policy necessary for the effective implementation of convention.

## 22. HUMAN RIGHTS SITUATION OF OLDER PERSONS

The situation with the protection of rights of older persons in the country still does not meet modern requirements and international approaches.

In the reporting period, the Parliament of Georgia adopted the State Policy Concept on Aging of the Population in Georgia which outlines main directions and objectives of the state policy concept on the aging of Georgia's population.

Although according to the abovementioned document, the executive branch was tasked to draft and approve the national action plan for 2016-2017 until 1 August 2016, the action plan has not been approved yet, thereby adversely affecting the rights situation of older persons.

The analysis of applications submitted to the Public Defender in 2016 shows that the majority of older people lives in grave socio-economic conditions. Allocation of state assistance after registering them in a common database of socially vulnerable families is especially problematic.

The majority of older persons have no access to adequate living conditions, social services and defense mechanisms; as a result these people face a threat of poverty, homelessness and isolation. Existing state programs do not envisage alternative care services for older persons; targeted programs are not developed; it is problematic to ensure social welfare of these people on the level of local self-governments.

## 23. RIGHT TO ADEQUATE HOUSING

To set up a housing fund, it is planned to build social houses within the limits of local budgets of several municipalities to accommodate homeless families in accordance with the established criteria. Local governments assist people with construction materials, which is also a commendable step. The so-called Lilo settlement, which was set up in 2015, continued functioning in 2016 too.

However, such individual activities cannot solve systemic problems existing in terms of the exercise of the right to adequate housing. One should especially emphasize the passivity of the central government. Separate efforts undertaken by several municipalities fail to bring a radical change to the situation. The problems that remain unsolved are: shortcomings of the legislative framework, including the absence of definition of homeless person; lack of statistical data on homeless persons and consequently, unknown scale of homelessness; absence of infrastructural resources in this area and small allocation of financial means, et cetera. A procedure of registration of homeless persons is not, as a rule, drawn up on the local self-government level, with the exception of a few municipalities.

Providing people having illegally occupied various facilities with safe living conditions and basic infrastructure, with the access to electricity, drinking water, sewerage system represent a serious problem. Under the law, they are also denied the registration in a common database of socially vulnerable families and consequently, the access to social assistance.

Solving the problem of homelessness is not a priority of the state. A proof of this is the Action Plan of the Government of Georgia on the Protection of Human Rights for 2016-2017, which does not include even a single activity designed to ensure homeless people with adequate housing.

Much like previous years, the problem of so called cardboard settlement in Batumi has not been solved in 2016 either. Living conditions in this settlement are unbearable, especially for small children and persons with disabilities. The government of Adjara Autonomous Republic and the local government have been studying the issue since 2012, though have not taken a single effective step yet.

## 24. RIGHT TO SOCIAL SECURITY

A practical application of a new methodology of assessing social and economic situation of families has revealed a number of shortcomings. According to the new methodology, a flooring material – parquet in an apartment is assigned a high coefficient which unreasonably increases the amount of rating scores and does not allow a proper identification of vulnerable group. Also, a formula developed within the methodology contains a fixed value of minimum consumer basket which remains unaltered regardless of the fact that this value changes monthly.

A serious problem is the practice applied by local self-governments by which they offer various social programs to beneficiaries with lower rating scores alone and ignore the needs of families with higher rating scores. It is worth noting that the latter category of families does not receive even a minimum subsistence allowance.

Separate shortcomings observed in the process of evaluation of social and economic situation of families are related to the authorized representative of the Social Service Agency, namely the entry of inaccurate data in the “family declarations” and violation of the timetable of visits to beneficiary families.

Population lacks information about the standards of the receipt of social assistance, which leads to disagreements with the Social Agency and social agents.

Buildings allocated by local self-government bodies as soup kitchens for socially vulnerable, single and older beneficiaries are often well short of any standard. Such buildings are dilapidated with damaged roofs, walls and flooring; sanitary-hygienic norms are disregarded; several of them lack kitchen utensils, a toilet; water and power supplies are often interrupted; there is no heating system. Consequently, beneficiaries have meals in dangerous and degrading conditions. Local self-government bodies attribute such a state of buildings to the lack of means in local budgets.

The adoption of so-called Mountain Law and the award of the status of mountainous settlement to relevant settlements is a positive development. However, it is ambiguous why some of the settlements located in the same municipality, on the same latitude and in the same geographic area are granted this status whereas others are not. It is necessary to better inform population about the rationale of such decisions.

## 25. IDP RIGHTS SITUATION

Until internally displaced persons (IDPs) return to their homes, the priority of the state remains the provision of long-term housing to them and the support of their social and economic integration. Alike previous years, the process of long-term resettlement of IDPs continued throughout Georgia, which must be assessed as a positive development. Even though a segment of IDPs were removed from a number of dilapidated buildings - an issue which the Public Defender discussed in his annual reports – IDPs still live in such buildings, which represents an acute problem. The state must take appropriate steps to solve this problem through rehabilitating the mentioned buildings, resettling IDPs or any other means.

Apart from providing long-term accommodation, it is necessary to support the integration of IDPs in the places of their resettlement. The state must ensure the access of IDPs to sources of income in order to support their social and economic integration.

A commendable move was the approval of the 2016-2017 Action Plan of the Strategy on Ensuring Source of Income to IDPs. A long-term solution of problems of IDPs requires an approach that is tailored to their needs. The state must facilitate the implementation of measures specified in the above mentioned strategy.

The state must continue the handover of state-owned buildings, transferred to IDPs for their use, into the private ownership of IDPs. Before starting the privatization of living spaces in the buildings of former compact settlements, it is necessary to carry out rehabilitation works on these buildings and transfer only rehabilitated buildings into the ownership of IDPs.

## 26. HUMAN RIGHTS SITUATION OF CONFLICT-AFFECTED PERSONS

2016 continued to be hard for conflict-affected persons. The main problems of residents of villages along the occupational line are difficult living conditions and source of income. The policy developed by the government for 2013-2015 led to significant improvements in social infrastructure, access to education and medical services, etc. in conflict-affected regions (Shida Kartli, Samegrelo). However, the issue of rehabilitation of and corresponding compensation for houses damaged during the 2008 war remains a problem for those families who have not received any assistance from the state.

The situation is further aggravated by problems such as detention of people along the occupation line, restriction of free movement, military drills of de facto armed forces of the Russian Federation conducted in the vicinity of the occupation line, and many others.

According to official statistics, as of 21 October 2016, as many as 116 persons were detained along the dividing line with the so-called South Ossetia (the corresponding indicator in 2015 stood at 148 persons); the number of detained persons along the dividing line with Abkhazia was more than 1,300 (272 persons in 2015), though the likelihood that many more persons were detained along the dividing line with Abkhazia is very high.

Armed forces of the Russian Federation continue to detain minors, pregnant women, patients and older people; inappropriate and degrading treatment is regularly applied toward detainees at Russian military basis, including forced labor, verbal and physical abuse, restriction of food and water, et cetera.

In May 2016, a person was killed at the dividing line with Abkhazia. A young man, G.O., who intended to take products to the Gali district via Khurcha-Nabakevi checkpoint, got into a squabble with a so-called border guard officer. As G.O. was returning back, the armed officer caught up with him and fired several shots at him, killing him on the Georgia-controlled territory. Shortly after the incident, a CCTV footage was released featuring the killing. Liability for this violation of the right to life lies with the Russian Federation as with the state carrying out actual control over the occupied territories and the occupation line.

Following this incident, a meeting of Incidence Prevention and Response Mechanism, which was suspended since 2012, was hastily scheduled in the Gali district. The renewal of meetings was decided in March 2016, during the Geneva International Discussions; this is a welcome fact and in case of actual involvement of the parties to the conflict, it will contribute to the improvement of the protection of rights and security of local population.

Problems remain with the access of people living on occupied territories to education and healthcare, freedom of speech, property right, child's rights and violence against women. However, victims refrain from applying national or international legal mechanisms for the protection of their rights for fears of retaliation against them, their families, relatives, others. Consequently, the Public Defender as well as central government bodies have no possibility to directly respond to violations of the rights committed in the occupied territories.

An important achievement is an agreement between the government of Georgia and de facto authorities of Abkhazia and South Ossetia on the exchange of prisoners according to "all for all" principle. This will make it possible to release those persons who have been illegally detained in the prisons of Tskhinvali and Sokhumi for years. The Public Defender welcomes the dialogue that has been launched to ensure human rights and hopes that the dialogue will continue for the settlement of other problematic issues too.

## 27. HUMAN RIGHTS SITUATION OF ECO MIGRANTS

An important development in 2016 was the functioning of the program which has been implemented for the second year now in the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia and under which the state, within the limits of defined amounts, assists families having suffered from natural disaster in purchasing houses. However, given the scale of the problem of persons displaced by natural disasters, this effort is not sufficient and the issue requires more systemic regulation.

Alike previous years, the problem is the absence of status of persons displaced by natural disasters. To set up a system which would ensure emergency services and resettlement of persons displaced by natural disasters, it is necessary to define the notion of a person displaced by natural disaster and obligations of the state to persons displaced by natural disaster on the level of legislation.

The status of eco migrants is not defined on a legislative level, while a notion of eco migrant family is applied only for resettlement aims. Issues related to such resettlement are regulated by a ministerial decree, though it does not cover other important issues such as social security of eco migrants, rehabilitation of damaged house, etcetera.

A chapter in the Action Plan of the Government of Georgia on the Protection of Human Rights for 2016-2017 is dedicated to the rights of eco migrants, though the list of planned activities covers an extremely narrow circle of issues.

## 28. REPATRIATION OF PERSONS FORCEFULLY RESETTLED FROM GEORGIAN SOVIET SOCIALIST REPUBLIC BY THE SOVIET GOVERNMENT IN THE 1940S

A political importance of repatriation of persons who were forcefully resettled from South Georgia remains a topic of active debate. A legal status of these persons also represents a problem. Although upon joining the Council of Europe Georgia assumed the obligation to repatriate persons deported from Georgian Soviet Socialist Republic by the Soviet government in the 1940s, the fulfillment of this obligation and relevant procedures have protracted too much because of various impeding factors. The only fact that the legislative framework was developed after seven years of assuming the obligation speaks about the attitude of the government towards this issue. In particular, it was not until July 2007 that the Parliament of Georgia adopted the Law on Repatriation of Persons Forcefully Resettled from Georgia by the Former Soviet Union in the 40s of the 20th Century. Until 2014, Georgia did not have a strategy for the dignified repatriation of Meskhetians; therefore, the adoption of that strategy may be regarded as a positive step. However, the action plan of the strategy has not been adopted yet, though some positive movements towards this direction can be observed – a draft action plan has been developed.

One should also note that out of total 5,841 persons seeking the status of repatriate only 1,533 were granted this status whereas in 2015, a procedure of granting status was not carried out at all.

A problem faced by resettled persons is the acquisition of Georgian citizenship. Although they are eligible to a simplified rule of obtaining citizenship, none of 472 persons, who gave promise, have submitted documents certifying the abandonment of citizenship of other country and this, according to law, leads to the abolition of President's decree on granting Georgian citizenship to a person.

## 29. LEGAL STATUS OF FOREIGNERS

The reporting period saw instances of denying foreign citizens the issuance of residence permits, the entry to the country or the citizenship on the ground of security. The law details those instances when this ground can be applied. Nevertheless, the decisions do not specify concrete precondition envisaged by the law which became the ground of such refusal. Such approach undermines the reliability and trustworthiness of the decision and actually deprives a person in question of a possibility to provide a court with counter evidence as he/she is virtually unaware of any reason of even a tiniest argument justifying the decision. It is important to ensure that such decisions are reasoned in accordance with requirements prescribed by the law, indicate a concrete ground (a subparagraph) and inform a person accordingly.

## 30. HUMAN RIGHTS SITUATION OF ASYLUM SEEKERS, REFUGEES AND PERSONS WITH HUMANITARIAN STATUS

The year 2016 was remarkable in terms of improvements to asylum system and its approximation with EU standards. A new draft law on International Protection has been developed, which is more approximated with the 1951 Convention Relating to the Status of Refugees and much like the Convention, regulates the grounds of granting, excluding and denying to grant international protection. Given the principle of a family reunion, it is particularly important that the draft law provides for the definition of "family members" and "derivative status" for family members of a person who has been granted the international protection.

Despite a number of positive changes, the draft law still retains those articles from the effective law, which, we believe, must be changed, for example, timeframes of a procedure for determining refugee or humanitarian status. Even more, the draft law provides for, in exceptional cases, the maximum of 21 months for the consideration of application for international protection, which well exceeds a reasonable time.

The Public Defender of Georgia hopes that the newly elected Parliament will speed up the adoption of the draft law.

## 31. HUMAN RIGHTS SITUATION IN THE DEFENSE SPHERE

Alike the previous year, the rights situation of conscripts has remained a problem in the reporting period. According to the results of the monitoring conducted in the Department of Coordination of Military Mobilization and Draft of the Ministry of Infrastructure and Regional Development, doctors again examine conscripts in groups; confidentiality is not observed; diagnoses are discussed in the presence of other persons. However, there are some positive tendencies too. In particular, conscripts are given shoe covers when they have to move barefoot. Also, in order to place doctors separately, the Ministry of Infrastructure and Regional Development took a decision to carry out reconstruction works on the building of collecting and distributing point.

The monitoring was also conducted on several military units subordinated to the Defense Ministry, where conscripts again serve only as guards. Their functions are again limited to duty of sentinel and fulfillment of various physical and fatigue duties. Bathrooms in residential barracks, which are used both by compulsory as well as contract military servicemen, do not function normally. Also it is problematic to observe hygiene in bathrooms as there is a shortage of disinfectants and utensils.

The quality of clothes of military servicemen represent a problem too. Conscripts are provided with black boots, manufactured in Turkey, which becomes unusable in about a month's time, but nevertheless, they have to continue wearing these boots thereafter too.

The reporting period saw the death of five servicemen, including three contract servicemen and two conscripts. Criminal proceedings have been instituted on all the five incidents, including one proceeding under Article 115 of the Criminal Code of Georgia, two proceedings under Paragraph 1 of Article 116 of the Criminal Code of Georgia and one proceeding under Paragraph 2 of Article 116 of the Criminal Code of Georgia for negligent manslaughter of two servicemen who disappeared in the sea during exercises in the coastal line of the former shooting range in Gonio.

Living conditions of war veterans residing at 71 Ketevan Tsamebuli Street also remain a problem. Their situation is extremely grave. These persons continue to live in dilapidated buildings where their life and health are at risk.



UN JOINT PROGRAMME  
FOR GENDER EQUALITY



UN Women is the UN organization dedicated to gender equality and the empowerment of women. A global champion for women and girls, UN Women was established to accelerate progress on meeting their needs worldwide.

UN Women supports UN Member States as they set global standards for achieving gender equality, and works with governments and civil society to design laws, policies, programmes and services needed to implement these standards. It stands behind women's equal participation in all aspects of life, focusing on five priority areas: increasing women's leadership and participation; ending violence against women; engaging women in all aspects of peace and security processes; enhancing women's economic empowerment; and making gender equality central to national development planning and budgeting. UN Women also coordinates and promotes the UN system's work in advancing gender equality.

*The views expressed in this publication are those of the author(s) and do not necessarily represent the views of UN Women, United Nations or any of its affiliated organizations.*

The publication was prepared in the framework of the UN Joint Programme for Gender Equality with the financial support of the Swedish Government.

© UN Women