****

**Info Submission to the**

**the Office of the United Nations High Commissioner for Human Rights**

**The rights of the child and family reunification**

**Submitted by**

**The Public Defender (Ombudsman) of Georgia**

**October 2021**

**Correspondence should be addressed to:**

Office of Public Defender (Ombudsman) of Georgia

David Agmashenebeli Avenue 80

0102 Tbilisi

Georgia

mtavdgiridze@ombudsman.ge

info@ombudsman.ge

**Background**

The Public Defender (Ombudsman) of Georgia is a **constitutional institution** **(NHRI with “A” Status)**, which oversees the observance of human rights and freedoms within its jurisdiction on the territory of Georgia. It advises the government on human rights issues and scrutinizes the state’s laws, policies and practices, in compliance with international standards, and provides relevant recommendations. **It identifies human rights violations and contributes to the restoration of the violated rights and freedoms**. *The Constitution of Georgia*, *the Organic Law of Georgia on Public Defender of Georgia* and other legislative acts regulate the Public Defender’s status and competencies.

The Public Defender of Georgia studies the facts of human rights violations both on the basis of the received applications and on its own initiative. The Public Defender studies the cases relating to:

* Decisions of public institutions;
* Violations of human rights and freedoms during the court proceedings;
* Violations of the rights of detainees, prisoners or individuals whose liberty had been otherwise restricted;
* Compliance of normative acts with the Second Chapter of the Constitution of Georgia;
* Constitutionality of the norms regulating the referendums and elections, as well as the elections (referendum) held or to be held on the basis of these norms.

Besides, the Public Defender is authorized to examine the cases of human rights violations guaranteed by the Georgian legislation and international treaties and agreements, to which Georgia is a party.

In order to ensure the protection of human rights and freedoms, the Public Defender of Georgia:

* **Submits proposals, comments and recommendations** concerning the Georgian legislation and draft laws to **the Parliament of Georgia or other relevant bodies**;
* **Addresses the state agencies, local self-government bodies, public institutions and public officials with proposals and recommendations** concerning the restoration of the violated human rights and freedoms;
* **Addresses relevant investigative authorities** with proposals to launch investigation and/or criminal persecution;
* **Addresses relevant agencies with proposals concerning disciplinary or administrative responsibilities** of the individuals, whose actions caused violations of human rights and freedoms;
* **Performs the *amicus curiae* function** at Common Courts and the Constitutional Court of Georgia;
* Submits constitutional claims to the Constitutional Court;
* **Appeals to the President and Prime Minister** in writing, if s/he considers that the means in disposal of the Public Defender are not sufficient;
* In special cases, appeals to the Parliament of Georgia to set up a temporary investigative commission and consider a specific issue.

**The Public Defender of Georgia performs function of the National Preventive Mechanism** under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In this capacity, the Public Defender regularly checks the situation and treatment of the detainees, prisoners or individuals whose liberty had been otherwise restricted, convicts, as well as the inmates of psychiatric institutions, houses for older persons and orphanages.

Moreover, on 27 October 2014, the Public Defender of Georgia was named as the **structure for ensuring implementation, promotion and protection of the Convention on the Rights of Persons with Disabilities.**

Additionally, together with the *Organic Law of Georgia on Public Defender of Georgia*, the *Law of Georgia on Gender Equality* (Article 14(1)) **empowers the Public Defender to protect gender equality**, monitor the given field and respond to the violations of gender equality within the framework of its competencies. The Public Defender contributes to the elimination of gender inequality through effective and accountable management of cases and monitors the compliance of government and public institutions with national and international obligations on human rights and gender equality. Activities of the Public Defender in the field of gender equality cover both, internal institutional development, as well as contribution to the process of achieving gender equality. **Public Defender is also a Femicide Monitoring Watch in the country.**

The mandate of the Public Defender was further strengthened by the adoption of *the Law of Georgia on Elimination of All Forms of Discrimination* by the Parliament of Georgia on 2 May 2014 (hereinafter the “Anti-Discrimination Law”), which authorizes the Public Defender to supervise the implementation of the Anti-Discrimination Law and eliminate all forms of discrimination and ensure equality (Article 6). It also determined the Public Defender and courts of general jurisdiction as legal remedies for the right to equality. It is noteworthy that following recent legislative amendments the Public Defender is entitled to refer to the national courts and **demand the** **enforcement of the recommendations addressed to both - public authorities/institutions and legal persons of private law**, in cases where the perpetrator fails to take into consideration and fulfil the recommendation of the Public Defender.

**The Public Defender’s Office is financed from the State Budget of Georgia** to the extent necessary for its effective functioning. It should be emphasized, that the Public Defender enjoys considerable budgetary security. In this regard, according to Article 25(3) of the *Organic Law of Georgia on Public Defender of Georgia:* “the amount of labour remuneration provided in the relevant article of the State Budget of Georgia for the Public Defender’s Office of Georgia may be reduced compared to the corresponding amount of the previous year only with the prior consent of the Public Defender of Georgia.”

Moreover, in 2019 the Public Defender was determined as the institution responsible for **monitoring the protection of rights of a child and implementation of supporting programs under the new Code on the Rights of the Child** (entered into force in September 2020).

**The rights of the child and family reunification**

According to the information received from relevant state agencies, in Georgia, there are a few identified cases of unaccompanied children. Nevertheless, in such cases, Georgian legislation obliges the relevant authorities to inform the State Care Agency to ensure the appointment of a guardian/caregiver/supporter to an unaccompanied child. The child whose parents are unknown should benefit from special protection. The child is provided with a legal representative from the State Care Agency who ensures the application of international protection. Additionally, the unaccompanied child is immediately transferred to state care and the Ministry of Internal Affairs of Georgia shall, by taking into account the best interests of a child, immediately find the family members of a child left without a legal representative. Therefore, an immediate response to such cases and ensuring the protection of children’s best interests, including immediate family reunification, if applicable, is crucial. Additionally, an application for international protection of a child submitted to the Ministry of Internal Affairs of Georgia should be immediately registered, and a certificate of an asylum seeker shall be issued. In this procedure, a child will receive the assistance of a legal representative and a translator, as needed. The child shall also receive representation, legal assistance, and if required, a service of an interpreter in criminal proceedings.

Moreover, Georgian legislation strictly defines the requirements for a person's detention, especially in terms of a child. Detention of an asylum seeker is allowed only when there is a threat that he/she may go into hiding, and/or may evade cooperation with an authorized official, he/she cannot be identified, and there are sufficient grounds to believe that he/she may endanger the state security. In such cases, a child shall be placed separately from adults, unless they are family members. The integrity of the family shall be maintained unless other grounds require, for security purposes, the separation of family members.

Although Georgia does not have many cases of children separated from their families in cross-border situations, there are shortcomings in providing children who are seeking asylum or are already granted the status of international protection, with necessary assistance. For instance, although children have access to education, general healthcare, and protection, the resources allocated for them are not sufficient. PDO was informed by the administration and teachers of public schools where migrant children are enlisted, by the administration of reception center for migrants, and even by children’s parents, that children have stressful, traumatic experience that affects their wellbeing, behavior, and form of interaction with others, especially with peers. Therefore it is crucial to provide children with sufficient, long-term, and result-oriented psychological and rehabilitation services. In addition to this, it is important to inform the children on violence protection mechanisms, as well as, rehabilitation and support services in the country.

However, shortcomings in the Social Protection System of children in the country, including scarcity of programs, insufficient number of professionals for child support, challenges regarding psychosocial services fail to guarantee stringent protection and fulfillment of rights of children on the territory of Georgia, including those of children under international protection. Therefore, the Social Protection System, to meet the individual needs of various vulnerable groups of children, should be considerably strengthened, both in terms of creating additional services and allocating required resources. In addition, awareness-raising activities among various groups should have a positive effect on children’s social interaction as well.

Since 2015 within the framework of the joint project with UNHCR, the Office of Public Defender (Ombudsman) of Georgia has been conducting monitoring of the human rights situation of migrants, including asylum seekers, persons with international protection, and stateless persons. One of the components of assessing the situation is the monitoring of protection of the best interest of a minor, security, well-being, social protection, and other interests that are determined per international standards. The Public Defender (Ombudsman) of Georgia is currently conducting an assessment, which is aimed at identifying the challenges concerning legislation and detecting shortcomings on an executive level. After the analysis of the research has been carried out, the Office of Public Defender (Ombudsman) of Georgia will be able to provide detailed information on the rights of the child and family reunification.