Public Defender of Georgia

Written submission to the 111th Session of the Human Rights Committee

By the National Human Rights Institution – Public Defender (Ombudsman) of Georgia

Pursuant to Article 2 of the Organic Law of Georgia on Public Defender, Ombudsman of Georgia oversees the observance of human rights and freedoms on the territory of Georgia and within its jurisdiction. The mandate of the Public Defender covers civil and political as well as social, economic and cultural rights.

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

The submission follows the list of issues posed by the Committee.

I. Constitutional and legal framework within which the Covenant is implemented (Art. 2)

Observations with respect to issues posed in paragraph 2 in the list of issues:

Abkhazia and South Ossetia remain a black hole in terms of human rights monitoring and protection. Issues such as passport enforcement, property expropriation, ethnic discrimination, abductions and other human rights violations pose serious problems to the local population.

Georgia adopted Law on Occupied Territories immediately after the armed conflict of August 2008. The law establishes special regime on the occupied territories of Abkhazia and South Ossetia in terms of free migration, economic activities and real estate transactions. According to the law, foreign nationals and persons without citizenship cannot enter occupied territories from northern borders, via Russia, unless they are recognized as legal customs points by Georgia. Violation of this requirement leads to criminal responsibility and sanction of up to two years imprisonment. The law also stipulates that special permission might be issued by the government of Georgia to enter occupied territories if the purpose of the visit is of a humanitarian nature, protection of state interests of Georgia, promotion of peaceful conflict resolution, de-occupation or confidence building. Number of organizations were issued such permission, including Human Rights Watch and International Crisis Group.

Although, Georgian government’s approach is homogenous with regard to Abkhazia and South Ossetia, the situation on the ground is different. International humanitarian and development organizations are relatively well represented in Abkhazia, due to the fact that Abkhazian de-facto authorities allow the access to the territory from Georgian side. Refusal of South Ossetian de-facto authorities on the presence of such institutions in South Ossetia is of particular concern for Public Defender of Georgia. There are no
international organizations present there, save from International Committee of the Red Cross (ICRC), which runs its office from Vladikavkaz, Russia.

Therefore, Public Defender deems that there is an urgent need to establish a mechanism that will effectively address the human rights and security violations in the region and provide an effective international monitoring presence. A human rights mission or a roving team under the auspices of UN, OSCE or CoE should be allowed to access the occupied territories in order to monitor human rights situation there.

Public Defender of Georgia welcomes the amendments to the Law of Georgia on Occupied Territories, (initiated by the Government of Georgia in 2013) which partially decriminalize the entry into occupied territories via Russia. The European Commission for Democracy through Law, better known as Venice Commission also reviewed the applicable draft amendments and welcomed the proposed changes; however, they are still pending in the Parliament. Hence, Public Defender urges the Parliament of Georgia to adopt government initiated amendments as soon as possible.

II. Non-discrimination, equality between men and women, prohibition of advocacy of national, racial or religious hatred (Arts. 2, 3, 20 and 26)

Observations with respect to issues posed in paragraph 5 in the list of issues:

The legislation of Georgia guarantees equal political, civil and cultural rights of men and women. However, low level of women’s participation in political, economic and social fields are particularly acute in Georgia. Gender imbalance considerably defines stereotyped mentality and attitude of Georgian multi-cultural society to the role of women and girls in the family and the general public. Negative stereotypes and low level of awareness on gender issues are main obstacles to achieve gender equality in Georgia.

Key challenge for gender equality is low rate of women’s involvement into political life of the country. For 2013, women’s share in the parliament was 11 %, 21 % - in the Cabinet of Ministers and 10 % - in local self-government bodies.

Despite the fact that after the Parliamentary Elections of 2012 women’s representation in the legislative body has been increased by 5%, Georgia still remains in the list of the countries where women’s representation on a decision-making level is still low. As to the women’s representation in executive branch, from 2011 through 2012, their number did not exceed 16% (three women ministers), and in 2013 number of women ministers made 21%; as of today, there are only 4 women ministers in the Cabinet.

Women’s participation in execution of local self-government has been decreasing during the last decade. As a result of the elections of 1998, women made 14% of local self-government bodies, and after the elections of 2010 – only 10%. The index of women’s participation is particularly low in the self-government bodies of the municipalities settled by ethnic minorities. Out of 148 elected members in Akhalkalaki, Ninotsminda, Gardabani, Marneuli and Tsalka Sakrebulos, only 4 are women, which make only 2.7% of total deputation and legs behind the total index (10%).

Public Defender of Georgia welcomes measures taken in 2013 for facilitation of women’s political participation. In particular, on July 29, 2013 paragraph 71 was added to article 30 of the Organic Law of Georgian on Political Unions of Citizens, which provided for additional 30% on party funding in case, 30% of every ten members would be opposite sex in the party list submitted. Nevertheless, gender statistics published by the election administration of Georgia in 2014 show that these changes are not incorporated in practice; in particular: there were only 2 women out of 14 in the list of Tbilisi mayoral elections of 2014; As per registered candidates for Mayors in the self-government bodies 8 are women and 65 - men. The distribution of election candidates in the party list also shows regrettable figures: there are only 427 women out of 1129 candidates. As to the gender composition of candidates registered by the party in the majority system of elections, there are only 846 women out of 5707 total candidates.
It shall be outlined, that in 2013, the assistant to the Prime Minister on the issues of human rights and gender equality, and the advisor to the Minister of Regional Development and Infrastructure in gender issues were appointed. However, no structural units in the public bodies to support gender mainstreaming have been established yet. Furthermore, it is of utmost importance to promote leader women on local self-government level and to strengthen the engagement of women from ethnic minorities and rural areas in local decision making processes.

Despite number of positive steps taken towards legislative regulation of employment domain, the issues of women’s promotion, their equal participation in economic development and adequate pay are still problematic. Feminization of poverty and high rate of violence against women caused low economic activity of women. Despite the fact that more women are employed, their average pay differs from average pay of men, which is caused by employment of women on low pay positions and so called “glass ceiling” in labor relations, which prevents their career promotion.

Observations with respect to issues posed in paragraph 7 in the list of issues:

Decriminalization of homosexuality in 2000 in Georgia has been accompanied by elimination of the discriminatory approaches in the legislation and enhancement of legal guarantees of LGBT persons. Public Defender particularly welcomes the decision of the Constitutional Court of Georgia of February 4, 2014, by which the Court declared non-constitutional certain provisions of Orders of Minister of Labor, Health and Social Affairs of Georgia #241/6 №1, 05.12.2000 and #282/6 , 27.09.2007 which regulated “homosexuality” as the indicator against donation of blood and its component;

Despite the fact that Georgian legislation is not discriminatory towards LGBT persons, its practical enforcement is not adequately guaranteed. The incidents of discrimination of LGBT persons in labor, health, social and economic relations are quite frequent. They suffer violence and unequal treatment in different areas of life, in families and communities. In most cases they do not apply to law enforcement bodies for restoration of infringed rights, due to the lack of trust and fear of becoming victims of homophobic treatment. Public Defender is particularly concerned with frequent cases of domestic violence against LGBT persons as it forces them to conceal their gender identity and sexual orientation. The attitude of family members is often negative and there are forceful attempts aimed at changing their identity and orientation.

Necessary medical service, required for re-designation of gender is not affordable to majority of transgender persons. Besides, there are no established procedures for the medical facilities providing such service. The sequence/order of the procedures for re-designation of gender is not established as well. Transgender persons further face problems when making the entry into the Civil Acts Registry on changed gender, which is an impediment for education and employment prospects.

III. Violence against women, including domestic violence (arts. 2, 3, 6, 7 and 26)

Observations with respect to issues posed in paragraph 9 in the list of issues:

Despite legislative and institutional safeguards, criminalization of domestic violence as well as number of conducted awareness raising campaigns by different stakeholders, people still live in the community of stereotypes, where in most cases violence against women is justified.

Public Defender of Georgia welcomes the criminalization of domestic violence by decision of Parliament of Georgia in June 2012. In particular, Articles 11\textsuperscript{1} and 126\textsuperscript{1} were incorporated in Criminal Code of Georgia in order to determine domestic violence as criminal offence and define the responsibility measures.

Methods to identify cases of domestic violence were strengthened in 2012. This is confirmed by receipt of reports from victims. According to the information sought from the Ministry of Internal Affairs of Georgia, 257 restraining orders were issued in 2011; this number was increased to 307 by the end of 2012.

\textsuperscript{1} The judgment of the Constitutional Court of Georgia on case “citizens of Georgia Levan Asatiani, Irakli Vacharadze, Levan Berianidze, Beka Buchashvili and Gocha Gabodze vs the Minister of Labor, Health and Social Affairs of Georgia” February 4, 2014 http://constcourt.ge/index.php?lang_id=GE&sec_id=22&id=824&action=show;

\textsuperscript{2} Materials for study of transgender persons' needs in healthcare sector, organization “Identoba”, 2012;
Nevertheless, this trend has been weakened during 2013. According to the data of the Ministry of Internal Affairs of Georgia, total number of domestic conflict calls/reports received by the operational management center of LEPL “112”, emergency assistance during the period of 01/01/2013–30/12/2013 was 5 447; among them, 358 cases were identified as domestic violence, but, Restrictive Order was issued only on 212 cases. Among the registered cases, following indicators of violence were registered: physical - 139; psychological - 188; economic – 18 and coercive - 13. No facts of sexual violence were identified.

The growing number of cases of femicide is particularly alarming. According to the data of the Ministry of Internal Affairs of Georgia, 21 cases of female murder were registered in 2013 in Georgia; among these cases, 8 were committed by husbands against wives, 1- by a child against the mother. In 2014 approximately 10 cases of female murder were identified, mainly committed by husbands or partners.

Interagency coordination of domestic violence issues and implementation of effective measures for protection of victims of domestic violence are still very problematic. To this end, it is essential to give special importance to enhance monitoring over enforcement of Restrictive and Protective Orders and to coordinated operation of the Ministry of Internal Affairs of Georgia and social workers from the Social Service Agency in order to identify cases of domestic violence, monitor the enforcement of Restrictive and Protective Orders, including among such vulnerable groups as persons with disabilities, persons of old age and those below the poverty line, and to assist the victims of violence. Public Defender further expresses his deep concern about an increased tendency of murders of women mentioned above and urges the Minister of Internal Affairs of Georgia to act immediately and to introduce a special emergency strategy in shortest possible time which not only concentrates on the effective investigation of facts of violence, but also pays a special attention to setting up of preventive measures.

Another important topic that Public Defender would like to underscore is the low level of public awareness on issues of women’s harassment and low public activism for identification and elimination of such harmful practices. Often, forms of harassment such as harassment in street, offensive behavior in public transport are not considered to be violent or illegal. Public often demonstrates no tolerance against the victims of harassment and such person suffers from double discrimination. In number of cases, the victim fails to perceive the violence executed against her or decides to endure it in order to avoid public blaming.

Public Defender identified facts of harassment of women in public places, which was demonstrated in degrading acts against them; during examination of these cases, Public Defender found that proper attention was not paid to the issue of gender equality by the Ministry of Internal Affairs of Georgia. It is important to discuss such violations as gender-based violence demonstrated in forms of harassment against women together with violation of public order, at all stages of investigation and case management.

Furthermore, Public Defender of Georgia finds frequent cases of sexual harassment at workplaces particularly striking; There are reports about the cases of sexual harassment, but absence of sufficient amount or content of documentation and surveys prevents development of effective strategies. Public opinions impede identification of such facts and adequate legal response. It is important that the state authorities take all necessary measures to eliminate women’s harassment and provide protection of victims. To this end, it is essential to consider restriction of sexual harassment by legislation and to develop adequate system of sanctions. Furthermore, Public Defender deems that protective measures in public and civil areas must be enhanced.

Particular attention shall be given to ratification preparation work undertaken in 2012 for the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) of 2011. In particular, with the initiative of Inter-Agency Council on combating domestic violence and support from the UN Women, working group for preparation of ratifying the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence was established.

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3 Letter №138331, 22.01.2014 of the Ministry of Internal Affairs of Georgia.
The working group analyzed Georgian legislation in terms of compatibility and harmonization with the convention and prepared the relevant legislative amendments, in particular: to the Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Domestic Violence Victims; to the Administrative Procedure Code of Georgia; to the Criminal Procedure Code of Georgia; to the Criminal Code of Georgia; to the Law of Georgia on Legal Status of Foreigners; to the Law of Georgia on Refugee and Humanitarian status. In addition, the study was conducted on compatibility of Georgian service to victims of domestic violence with the requirements of the Convention. In spite of the positive steps carried out in terms of harmonizing national legislation with the requirements of the convention, the document has not been ratified yet. Therefore, the Public Defender of Georgia urges the Parliament of Georgia to commence this process as soon as possible.

IV. Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment, liberty and security of person, and treatment of persons deprived of their liberty (Arts 6, 7, 9 and 10)

Observations with respect to issues posed in paragraph 10 in the list of issues:

Office of Chief Prosecutor of Georgia launched investigation of human rights violations perpetrated during August 2008 armed conflict in 2008. In accordance with information disseminated through media outlets in 2013, Chief Prosecutor established an investigation group composed of 8 members, which has been mandated to study alleged crimes committed during armed conflict of 2008. Nevertheless, the group has not provided any findings yet.

In spite of the fact that investigatory bodies of Georgia study facts of disappearance during and after armed conflict of 2008, no final decisions have been adopted on these cases. In order to make investigation of disappeared individuals more effective and to comply Georgian legislation, in particular Criminal Code of Georgia with international standards, Public Defender of Georgia urged the President of Georgia, Minister of Foreign Affairs of Georgia and Parliament of Georgia to launch ratification process of UN Convention for the Protection of All Persons from Enforced Disappearances of 2006. However, the government of Georgia does not take any measures to start relevant legal procedures. Meanwhile, Public Defender addressed Chief Prosecutor of Georgia with recommendation to carry out effective and rapid investigation on alleged crimes, including disappearances, committed during and after armed conflict of 2008.

Observations with respect to issues posed in paragraph 11 in the list of issues:

Preliminary investigation on criminal case #073060138 - attempt to disorganize work of Penitentiary Department was launched on March 25, 2006 at the Investigation Department of the Ministry of Justice of Georgia.

2 cases were singled out from the above criminal case:

1. Criminal case on excess of official authority by officers of Penitentiary Department (Article 333 of the Criminal Code of Georgia), - July 21, 2006;


On July 1, 2013, investigation on criminal case #074010713801 against Bachana Akhalaia and others was launched separately from the criminal case on excess of official authority by officers of Penitentiary Department. By the Decision of October 28, 2013 the court established the fact of inhuman treatment against inmates: Platon Mamardashvili, Zurab Vibliani, Giorgi Avaliani and Lasha Tsindeliani by Bachana Akhalaia, Megis Kardava, David Chakua and Revaz Charbadze and found them guilty pursuant to5
Article 144<sup>3</sup> Paragraph 2, sub paragraphs “a”, “b”, “d”, “e”, “g” (Degradating or inhuman treatment) of the Criminal Code of Georgia.

Currently, investigation on the fact of excess of official authority by officers of Penitentiary Department during prison disturbance is ongoing at the investigatory unit of the Chief Prosecutor’s Office of Georgia. Staff of Penitentiary Department #1 and #5, as well as those inmates who were held in Prison #5 during the disturbance are interrogated. Pursuant to the information provided by the Prosecutor’s Office of Georgia, investigation faces certain difficulties due to dismantling of former building of prison #5. **Public Defender reiterates the importance of effective and prompt investigation and urges relevant authorities to take all necessary measures in this regard.**

Public Defender welcomes steps taken to improve situation of freedom of association and assembly in Georgia. However, in number of instances law enforcement officers carried inadequate measures for the protection of freedom to assembly and manifestation, used excessive force or violated police ethics.

Pursuant to information provided by the Chief Prosecutor’s Office of Georgia, 3 cases are under investigation in relation to human rights violations during the rally of May 26, 2011. In particular,

1. Investigation on excess of official authority by the officers of the Ministry of Internal Affairs of Georgia (crime envisaged by Article 333 (1) of the Criminal Code of Georgia);
2. Investigation on excess of official authority by police officers during detaining Nika Makharadze, participant of the rally at Rustaveli Avenue (crime envisaged by Article 333 (1) of the Criminal Code of Georgia);
3. Investigation on death of Nikoloz Kvintradze and Suliko Asatiani at Rustaveli Avenue (crime envisaged by Article 115 of the Criminal Code of Georgia).

Ivane Merabishvili, former Minister of Internal Affairs of Georgia was found guilty for the excess of official authority on the case of May 26, 2011, crime envisaged by Article 333 (Par. 3, “b”, “c”) of the Criminal Code of Georgia. In spite of the fact that Public Defender of Georgia addressed Chief Prosecutor’s Office of Georgia for the timely investigation of the abovementioned cases, the final decision on facts of massive violation of human rights during the assembly and manifestation of May 26, 2011 has not been adopted yet.

**Observations with respect to issues posed in paragraph 12 in the list of issues:**

In spite of the fact that torture, threat of torture, degrading or inhuman treatment is criminalized by articles 144<sup>1</sup>-144<sup>3</sup> of the Criminal Code of Georgia, several reports of the Public Defender of Georgia state that in certain instances these acts were qualified as an excess or abuse of official authority. According to the statistical data, number of criminal cases examined under Articles 144<sup>1</sup>-144<sup>3</sup> of the Criminal Code of Georgia was low; nevertheless, release of video footages in September 2012 evidenced an established practice of torture and ill-treatment in Georgian penitentiary institutions. Moreover, in August 2013, Ministry of Internal Affairs of Georgia found several video recordings made before October 2012, which indicated to the systemic character of such acts, including outside the penitentiary system. Public Defender welcomed the decision of the Ministry of Internal Affairs to destroy all illegal recordings and enable the independent experts, including the Public Defender, to fully participate into this process.

Numerous applications were submitted to the Public Defender of Georgia in 2013 on torture, inhuman or degrading treatment by Police and staff of penitentiary department before October 2012. Office of Public
Defender of Georgia reported all these applications to the Chief Prosecutor’s Office of Georgia, where investigation on most of the cases has been launched under Articles 144<sup>1</sup>-144<sup>3</sup> and Article 333 of the Criminal Code of Georgia.

In accordance with the information provided by the Chief Prosecutor’s Office of Georgia, between October 2012 (after the release of prison footage) and August 31, 2013, investigation under Article 144<sup>1</sup> of the Criminal Code of Georgia was launched on 28 cases and investigation under Article 144<sup>3</sup> - on 118 cases. Out of these cases 23 individuals were found guilty of the offence. Other cases are still pending at Batumi, Zugdidi, Gori, Rustavi, Kutaisi and Tbilisi City Courts. Investigation has not been launched on cases of threat of torture, crime envisaged by Article 144<sup>2</sup> of the Criminal Code of Georgia. Public Defender welcomes steps undertaken to bring alleged perpetrators of torture and other forms of ill-treatment to justice; however, during examination of several cases Public Defender found violation of international standards against convicts for torture, inhuman and degrading treatment by the Prosecutor’s Office and Courts of General Jurisdiction of Georgia in terms of imposition of criminal responsibility and execution of the judgment.

Public Defender would like to bring inadequate sentences envisaged by the Criminal Code of Georgia for crimes under Articles 144<sup>1</sup>-144<sup>3</sup> to the attention of the Committee. In particular, the maximum sentence for crimes committed under articles above comprised of 7 years of imprisonment, or in certain instances to 6 months of imprisonment, which is undoubtedly inadequate sentence for torture and other forms of ill-treatment. This was mainly an outcome of plea bargain agreements which were concluded with several accused and the enforcement of Law of Georgia on Amnesty (adopted on December 28, 2012) on all the crimes mentioned above. **Public Defender considers that it is essential to amend Article 218 (8) of the Criminal Procedural Code of Georgia and to prohibit the conclusion of plea agreements with convicts as well as the accused for crimes envisaged by Articles 144<sup>1</sup>, 144<sup>2</sup> and 144<sup>3</sup> of the Criminal Code of Georgia without any exception.** Public Defender underlined this problem in his annual report for 2013; however no significant steps have been carried out by the Parliament of Georgia yet.

**Observations with respect to issues posed in paragraph 13 in the list of issues:**

During 2013 the Office of Public Defender of Georgia examined approximately 40 applications from citizens complaining on ill-treatment and degrading treatment by the police at the time of their detention. Analysis of applications received by the Public Defender of Georgia as well as the data provided by the temporary detention isolators revealed that ill treatment is a serious problem at Marneuli, Tbilisi, Gori, Zugdidi, Batumi, Mtskheta, Telavi and Kutaisi isolators. Due to the increase of crimes allegedly committed by police, on May 29, 2013 the Public Defender of Georgia addressed the Ministry of Internal Affairs of Georgia, Ministry of Justice of Georgia and Chief Prosecutor of Georgia to take preventive measures in order to avoid violations of detainees’ rights and to carry out effective and prompt investigation of the alleged crimes. In accordance with the information received from the Chief Prosecutor’s Office of Georgia, the commitment of criminal acts was not proved in 2 out of 9 cases indicated in the Public Defender’s Proposal of May 29, 2013 and therefore the investigation was stopped. The rest of the cases are under investigation.

The analysis of similar cases examined by the Office of Public Defender of Georgia show that no criminal persecution is launched or final decisions adopted against concrete law enforcement officials. This is also endorsed by the Prosecutor’s Office of Georgia. Unfortunately, the tendency of qualifying cases of excessive use of force or facts of ill-treatment by police under Article 333 of the Criminal Code of Georgia is still ongoing. **Therefore, it is of utmost importance to establish a special group for regular, prompt and efficient investigation of the facts of torture, inhuman and degrading treatment; to establish an independent body which will be only authorized body to carry out investigation into alleged crimes of 7**
torture, ill-treatment, death, degrading and humiliating treatment committed by the law enforcement officials (including those of Ministry of Justice of Georgia, Ministry of Penitentiary and Probation of Georgia, Ministry of Internal Affairs of Georgia, Chief Prosecutor’s Office of Georgia); to launch investigation and not the official inspection upon receiving information about the alleged crime. The official investigation carried out by the general inspections of the relevant Ministries shall not be considered as a preliminary stage of investigation.

Observations with respect to issues posed in paragraph 15 in the list of issues:

There are 37 temporary detention isolators in Georgia. Among them two are located in Tbilisi and the rest - in various regions of the country. The vast majority of temporary detention isolators located in the regions have no ventilation system. The small size windows do not provide proper natural ventilation and appropriate lighting. The cells are not properly heated. Most of the walking yards do not function as well.

In his previous parliamentary reports, the Public Defender noted that the infrastructure of temporary detention isolators is not adapted to the prisoner’s allocation. Therefore, Public Defender of Georgia addressed relevant authorities with the recommendation to construct adequate administrative detention establishments, fully adapted to a prisoner’s prolonged detention.

In addition, for several years already Public Defender urged the Parliament of Georgia to develop a new draft Code of Administrative Offences and to amend 90 days period of administrative detention. Nevertheless, Public Defender would like to underscore that the draft law "On amendments to the Code of Administrative Offences", reflecting the reduction of administrative detention has not been elaborated yet.

V. Right to fair trial and independence of the judiciary (arts. 2, 14 and 24)

Observations with respect to issues posed in paragraph 19 in the list of issues:

Public Defender welcomes the amendment to the Organic Law on Common Courts of Georgia enacted on March 1, 2014. The amendment differently regulates the distribution of cases in common courts; namely pursuant to Article 58¹, the cases are distributed among the judges automatically, by the electronic system, which implies the distribution of cases based on the sequence of their entry in district (city) courts and courts of appeals. In spite of such a positive development, Article 30 (5) of the Organic Law on Common Courts of Georgia remains problematic. According to this provision, in order to avoid delays in the administration of justice, the chairman of the court may assign the judge to proceed with the case hearing within other specialized collegiums of the same court; the magistrate judge may be assigned to proceed with the case hearing outside its territorial jurisdiction - in district (city) court. Unfortunately, such regulation puts the independence of judge in decision making as well as the transparency of the justice system under question. To this end, Public Defender considers it essential to revise the provisions of the Organic Law on Common Courts of Georgia and the rule of distribution of cases in common courts, including, the relevant authority of the chairman of the court.

Public Defender welcomes a significant decrease of usage of imprisonments as a measure of restraint in 2013 compared with the practice of frequent application of imprisonments by common courts in previous years. However, Public Defender considers that the court’s rulings are often not properly substantiated, especially when imprisonment is applied as the measure of restraint.
VI. Freedom of movement and rights of internally displaced persons (arts. 2, 12 and 26)

Observations with respect to issues posed in paragraph 23 in the list of issues:

Crossing administrative border has become a problem for Georgian citizens since the control on the dividing line was straitened by the occupational forces. Cases of detention of Georgian citizens have drastically increased by the end of 2013 and in 2014. Population of so called ABL villages (Administrative Borderline) is detained on a daily basis for crossing the borderline, in spite of the fact that there are no signs, fences or other kind of barriers for people to know that they are crossing the administrative line. People are released as soon as a fine is paid to de-facto authorities. Increasing number of detention cases raises serious issues of safety and protection for the ABL population. Public Defender expresses his deep concern regarding existing situation and addresses all relevant stakeholders to take effective steps to prevent violation of the right of liberty of individuals and to ensure that the ABL population fully exercise their rights and freedoms provided to them by international law and Georgian legislation.

Another important issue that Public Defender would like to underscore is the privatization process of collective centers and involvement of IDPs in decision making processes concerning them. According to the Action Plan for the implementation of the State policy on IDPs (Adopted by the Decree #62 of the President of Georgia, 2009), one of the significant forms of durable housing process of IDPs is the transfer of ownership over the space currently occupied by IDPs in the collective centers (Privatization Process). This process is going slowly and with several drawbacks. In addition to the flaws in the privatization process, there are many cases when IDPs have no information about the process itself. Lack of awareness among IDPs about ongoing process concerning them still remains as an issue that needs to be tackled. As inclusion of IDPs in the decision-making is not often ensured, state authorities shall take all necessary measures and provide IDPs with exhaustive information about the privatization process and subsequent rights and obligations.

Prior to the return to the permanent places of their residence, state priority is still to provide IDPs with durable housing and to ensure their socio-economic integration. Pursuant to the Order No 320 of August 9, 2013 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, the rules and criteria for durable housing of IDPs and the Charter of the Special Commission on IDP issues was approved. State policy towards the forced eviction has changed for last 3 years and there were no cases of forced evictions in 2012, 2013 and 2014. However, issue of the so called “compensated” IDPs who have been forcefully evicted from the collective center in Adjara region still remains problematic. These IDPs received compensation of 7000 US Dollars which was not sufficient to obtain the property. Public Defender is particularly concerned with state refusal to further discuss this issue.

Problems of access to transportation, medical services, water and sanitation, land and employment-generating activities are particularly acute for internally displaced persons living in the cottage type settlements in Shida Qartli Region.

A draft law on the Internally Displaced Persons from the Occupied Territories of Georgia was prepared and adopted in 2014. Public Defender considers the adoption of the new Law indisputably as a step-forward in the protection of human rights of IDPs. Apart from the internal displacement from the occupied territories, “cases of mass human rights violations” were also added as a pre-condition for receiving IDP status. The new Law is much closer to international standards than the preceding one; nevertheless, some gaps remain which might hinder effective implementation of the new Law in the existing realities. In particular, Public Defender is mainly concerned with issues of the definition of IDPs and IDP allowances.
Furthermore, no state program of restitution of housing for IDPs as well as lack of participation of IDPs in the decision making process, adoption of laws, programs and policies still remains one of the important problems when it comes to IDP rights situation in Georgia.

VII. Freedom of conscience and religious belief, freedom of expression, peaceful assembly, freedom of association, right to participate in public life and rights of minorities (arts. 2, 18, 19, 21, 22, 25, 26 and 27)

Observations with respect to issues posed in paragraph 24 in the list of issues:

The issue of restitution of the so called disputed churches still remains acute. In his Annual Parliamentary Reports Public Defender indicated to the importance of restitution of the property confiscated from religious associations in the soviet period and proposed the Government of Georgia to establish the Commission composed of the representatives of the Public Defender and non-governmental organization to study the so called restitution issues.

Protection of religious freedom in public schools and implementation of the Law on General Education still remains a problem. It shall be noted that level of reporting of cases relating to religious discrimination in public schools is low. However, according to the information provided by the members of the Council of Religions under the auspices of the Public Defender of Georgia, exhibition of religious symbols for non-academic purposes, proselytism, indoctrination and discrimination often takes place at public schools. To this end, Public Defender deems it necessary to establish a special group, involving Public Defender and other interested parties, which will monitor the implementation of Law on General Education at public schools and provide relevant response to violations.

Public Defender is often addressed by various religious minorities regarding the facts of their verbal and physical abuse on religious grounds. The analysis carried out by the Public Defender of Georgia revealed problems in legal qualification of religious based crimes. In particular, such offences are mostly not qualified under those provisions which establish responsibility for crimes committed on religious grounds. Office of Public Defender of Georgia studied individual cases relating to physical and verbal abuse of Jehovah’s Witnesses, based on their religious beliefs as well as to the intentional destruction of Kingdom Hall of Jehovah’s Witnesses. During 2012, the Public Defender of Georgia received 11 applications on violations of freedom of religion where only two cases related to violence. On the other hand 17 applications were examined in 2013 for alleged discrimination and harassment on religious grounds of Jehovah’s Witnesses.

During 2013, investigations under Articles 156 (Persecution), Article 155 (Illegal Interference in the Right to Perform Religious Rituals) and Article 125 (Beating) of the Criminal Code of Georgia were initiated on 6 out of 8 cases. Individuals were found guilty in 2 cases. Investigation is ongoing on 3 facts of obstruction of religious buildings; however, investigation was terminated in 3 cases due to the fact that act committed was not a crime.

It shall be noted that since the end of 2012, intolerance and violence against Muslims were the main problems in terms of freedom of religion. Violation of rights of Muslims, in particular illegal interference in the right to perform religious rituals, threat and physical and verbal abuse, were mainly identified in Nigvziani, Tsintskaro, Tsikhisdziri and Samtatskaro villages.

Public Defender is particularly concerned with the destruction of Minaret in the village Chela, by the decision of Revenue Service. It is of utmost importance that religious minorities enjoy their rights without any hindrance and to carry out effective and prompt investigation of the crimes committed. However, Public Defender welcomes the later decision of the local municipality of Adigeni to allow the
Muslim community of mentioned village to re-erect Minaret of the mosque.

As to the matters of taxation, Public Defender considers that current tax code discriminates against religious minority entities. In 2012, Council of Religions under the auspices of **Public Defender of Georgia proposed the Parliament of Georgia to implement appropriate changes to the Tax Code**; however, the issue remains unresolved.

**Observations with respect to issues posed in paragraph 25 in the list of issues:**

The year 2012 was distinguished with unprecedented number of violations of the rights of mass media representatives. One of the main reasons was the strained pre-election period. Public Defender of Georgia studied about 50 cases of prevention and intervention into the journalists’ professional activities. Analysis of the cases examined by Public Defender identified number of key trends. In particular, prevention of journalists’ activities by the public servants, facts of illegal interference in the professional activities of the media as well as physical and verbal assault and threatening of journalists.

During 2012 Public Defender further observed cases of creating unequal conditions for certain categories of journalists compared to other media representatives in the process of performing their professional duties. In particular, several media outlets faced problems in terms of access to different public events and activities, whereas other media representatives carried out their professional duties without any hindrance. On numerous instances Public Defender underscored the role of media as a cornerstone of democracy and a factor for its development. **To this end, it is imperative to secure media freedom using all instruments to promote its normal functioning so that it could perform its role of a “public watchdog” effectively.**

As to the investigations listed in the list of issues (Paragraph 25), Public Defender would like to underscore that the violent dispersal of a peaceful demonstration on 7 November 2007 is being investigated under Article 118 (3) – Intentional less grave damage to health - of the Criminal Code of Georgia. Dispersal of the demonstration on June 15, 2009 is being investigated under Article 226 - Organisation of or active participation in a group activity which disturbs public order – of the Criminal Code of Georgia. Investigation of the dispersal of veterans’ demonstration on January 3, 2011 is ongoing under Articles 147, 333, 125 and 341 of the Criminal Code of Georgia. In spite of the fact that investigations have been commenced on all of these cases, Public Defender is particularly concerned for the lack of any outcome to these cases as well as persecution of any individuals involved.

Public Defender would like to emphasize the positive tendencies in the field of Media environment and dramatically improved situation in this regard in 2013. Public Defender has not registered or documented any serious violations of the rights of journalists or the facts of interferences in their activities by the representatives of state bodies.

**Observations with respect to issues posed in paragraph 26 in the list of issues:**

On 2009 the Government of Georgia adopted the National Concept and Action Plan for Tolerance and Civic Integration, which aims to create an environment of tolerance and respect in Georgia; to promote equal opportunities for all citizens; to ensure effective participation of ethnic minorities in all spheres of life and to create and develop necessary conditions for the preservation of their culture and identity.

In order to study the state language in areas mainly inhabited by the national minority, following projects have been implemented in Georgia: 1. "Georgian Language for Future Success", which aims the deployment of Master students in the national minority areas to study the state language. 2. In the framework of
“Teach Georgian as a second language" program, qualified teachers were sent to various schools of Kvemo Kartli and Samtskhe-Javakheti regions in order to increase the knowledge of Georgian language. Public Defender assesses these programs positively, since they serve the development of knowledge of Georgian language in the local population.

In 2011, textbooks for primary level Georgian language, as a second language were published and distributed to non-Georgian schools. Translation of subject manuals started in 2010 by the following percentage ratio: 70% has been translated into minority languages (Armenian, Azeri, Russian), and 30% in state (Georgian) language. Such approach has changed since 2012; in particular, 70% of texts in published books were translated, though this translation was provided in mixed form (one paragraph - the state language, paragraph 2 - Azeri / Armenian language). According to the teachers, students and teachers in non-Georgian schools are not ready for teaching and learning with bilingual textbooks. Majority of the teachers do not speak national language, therefore, there is clearly negative attitude toward new kind of textbooks in the regions.

In 2011, the Ministry of Education and Science in the framework of the project "Georgian Language Program" allocated funding to Ninotsminda and Akhalkalaki Georgian Language Houses (Samtskhe – Javakheti) and for Georgian Language Centres in Dmanisi, Marneuli, Bolnisi and Gardabani (Kvemo Kartli). “Language houses” operate in regions where national minorities live. From October 1, 2011 Georgian Language Houses (Akhalkalaki, Ninotsminda, Marneuli and Bolnisi) were administered by the Zurab Zhvania School of Public Administration. In 2012, new Georgian language houses were established in Tsalka and Iormuganlo. In 2012, it was decided to employ “teach Georgian as a second language” teachers at language houses. Trainers participating in the program were intensively teaching Georgian language to local teachers in Samtskhe - Javakheti and Kvemo Kartli.

Public Defender is particularly concerned with the fact that from 2013 work of the language houses, in fact, stopped. To take an example of Akhalkalaki language house, 18 groups of public officials and 12 groups for school teachers operated at language houses during 2011-2012. Since 2012, the groups were operational only for school teachers (128 listeners). Out of 128 participants only 111 passed the full course. Participants undertook the final test and were issued certificates. Despite large number of applicants, the teaching process stopped in 2013. Unfortunately, the decision regarding resumption of training courses have not been adopted yet.

Passing entrance exams by Ossetian graduates is particularly problematic. Public Defender of Georgia addressed the Minister of Education and Science of Georgia to educate Ossetian population and to translate entrance examination tests for higher education institutions in their native language. Since 2012, within the optimization process, the Ministry of Education and Science no longer funds teaching of Ossetian language in 3 schools located in villages (Areshperan, Ponas and Tsitskenaantseri) densely populated by Ossetians. Since 2013, the Ministry of Education and Science of Georgia has cut funding for the Ossetian Sunday School at Tbilisi Public School No 11. 20 students of the Sunday School had the possibility to study Ossetian language, culture, history, folklore, Caucasian dances and songs. The Ombudsman considers it essential to develop Ossetian language standard in the shortest possible period, in order to teach Ossetian language as a subject at schools and to continue its funding at Areshperan, Ponas and Tsitskenaantseri schools. In addition, Public Defender deems it necessary to translate admission tests to higher education institution in Ossetian language. During 2010-2014 school graduates were not given the possibility to pass the tests in Ossetian language since the Law on “Higher Education” was amended several times and the date for passing tests in Ossetian language was postponed to 2015-2016 academic year.

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Problems facing the Roma community were repeatedly highlighted in the reports of the Public Defender of Georgia. In order to improve situation of their rights and facilitate their inclusion in the society, the Public Defender deems it essential to develop and implement special programs in different fields, including reading, writing, academic studies, access to healthcare and social assistance, employment, preservation of cultural traditions and their promotion.

One of the directions of the Public Defender’s activities is to study the situation pertaining to the rights of persons forcefully deported from Georgia by the former USSR in the 40-ies of the 20th century. Despite the fact that there is a relevant legislative framework and the State acknowledges the necessity of repatriation with regards to the forced deportation of people from the Soviet Republic of Georgia by the former USSR in the 40-ies of XX century, there are a number of challenges demanding complex approach. These challenges include, but are not limited to education, knowledge of state language, inclusion of repatriates in state programs and negative stereotypes. In order to ensure integration of population deported from South Georgia in 1944, the Public Defender of Georgia proposed the establishment and adoption of special state program/action plan, which would reflect necessary measures for integration of Meskhetians during and after repatriation process in variety of fields. In addition, Public Defender addressed the Ministry of Education and Science of Georgia with a recommendation to establish programs for repatriates and those who wish to repatriate to learn Georgian language and to carry out targeted programs for access to vocational and higher education programs. Public Defender also addressed Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia to develop information system on various state services, including health, social care, education, insurance, agriculture, economic projects and etc in order to ensure their reintegration into the society.

As final remarks, Public Defender would like to bring to the attention of the Committee steps taken by the Government of Georgia to develop comprehensive human rights policy. In particular, on May 2, 2014, the Parliament of Georgia adopted the Law on Elimination of All Forms of Discrimination. Ombudsman of Georgia welcomed adoption of the Law that will by no means contribute to the establishment of high standards of human rights and the spirit of equality in the society. However, several drawbacks and conflicting provisions that have crucial importance to the effective implementation of the Law should be underlined. Despite repeated requests of the Public Defender’s Office, the gaps in the legislation that might impede effective implementation of the law still remain. In particular, Public Defender will lack the possibility to effectively implement his functions if the discrimination is committed by the private persons. The Law does not oblige private persons to provide Public Defender with necessary materials, documents or information for examination of the case except when they express their good will to cooperate. The Ombudsman also lacks the possibility to apply to the court and ask for the imposition of an administrative penalty (fine) by the court, when the relevant body does not comply with Ombudsman’s findings. Further considerations address lack of additional funding for effective implementation of the authority granted by the Law to the Ombudsman. The legislators also failed to envisage in the Law the necessary preparatory period for the establishment of the structural unit and allocation of staff under the Public Defender’s Office.

Another positive development for setting up a comprehensive framework for the human rights protection was the adoption of the National Human Rights Strategy by the Parliament of Georgia on April 30, 2014. Public Defender welcomed elaboration of the National Human Rights Strategy, a first attempt of the Government of Georgia to develop a comprehensive document and set milestones for the effective protection of human rights and freedoms in the country. The fact, that the Strategy has been adopted by the Parliament gives to the document greater legitimacy and is a welcoming novelty. In the process of elaboration, the Strategy underwent serious changes and became more precise in terms of its goals and objectives. However, in general, the process of the strategy development left more to be desired as regards the engagement of the Public Defender’s Office.

The National Human Rights Strategy envisages a monitoring mechanism, in particular, oversight over the implementation of the aims of the Strategy through Actions Plans that define responsible agencies and...
timeframes. It is a welcoming development that the consolidated report on the implementation of the Action Plans will be presented to the Parliament of Georgia; however, Public Defender deems that the Parliament lacks effective follow up mechanism. Though the monitoring mechanism envisaged by the Human Rights Strategy emphasizes recommendations of the Public Defender - the Ombudsman’s Office will scrutinize the implementation of the obligations undertaken by the public institutions from its side. A process to set up an effective coordination mechanism together with NGOs is underway.

Public Defender welcomes positive developments and deems that considerable efforts have been made by the Georgian authorities to ensure the realization of civil and political rights both on legislative and practical levels. However, significant challenges persist and require further consolidated efforts, targeted and effective actions from the government.

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