

# ACCESS TO JUSTICE FOR CHILDREN: GEORGIA

*This report was produced by Child Rights International Network (CRIN) in January 2015. CRIN takes full responsibility for any errors or inaccuracies in the report.*

## **I. What is the legal status of the Convention on the Rights of the Child (CRC)?**

### **A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?**

International treaties become an integral part of Georgian legislation upon ratification,<sup>1</sup> and have the authority of national law. Georgia ratified the CRC in 1994, acceded to the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography in 2005 and to the Optional Protocol to the CRC on the involvement of children in armed conflict in 2010.<sup>2</sup>

### **B. Does the CRC take precedence over national law?**

According to the Constitution of Georgia, an international treaty and agreement takes precedence over national law unless it contradicts the Constitution or the Constitutional Agreement.<sup>3</sup> Moreover, Georgia has ratified the Vienna Convention on the Law of Treaties, and is therefore bound by the obligation to give priority to international law over conflicting national legislation. Furthermore, international treaties are part of Georgian normative acts.<sup>4</sup> The Law of Georgia on Normative Acts explicitly determines the hierarchy of normative acts, and international treaties and agreements are mentioned in third place after the Constitution and the Constitutional Agreement of Georgia.<sup>5</sup> Moreover, Georgian Constitutional Agreement must be in compliance with internationally recognised principles and norms, in particular, in the sphere of human rights and fundamental freedoms.<sup>6</sup>

### **C. Has the CRC been incorporated into national law?**

The Law of Georgia on International Treaties determines that the provisions of the promulgated international treaties, which set forth concrete rights and obligations and do not require the enactment of national normative acts for specification, have direct effect in Georgia.<sup>7</sup> Georgia follows the monist approach and therefore, the CRC automatically became part of national law upon ratification. Furthermore, the Constitution deems universally recognised human rights and freedoms as “directly acting law”.<sup>8</sup>

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<sup>1</sup> Law of Georgia on International Treaties, Article 6. Available at: [https://matsne.gov.ge/index.php?option=com\\_ldmssearch&view=docView&id=33442](https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=33442).

<sup>2</sup> <http://indicators.ohchr.org/>.

<sup>3</sup> Constitution of Georgia, Article 6. Available at: [http://www.parliament.ge/files/68\\_1944\\_951190\\_CONSTIT\\_27\\_12.06.pdf](http://www.parliament.ge/files/68_1944_951190_CONSTIT_27_12.06.pdf).

<sup>4</sup> Law of Georgia on Normative Acts, Article 7(1). Available at: [https://matsne.gov.ge/index.php?option=com\\_ldmssearch&view=docView&id=90052&lang=ge](https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=90052&lang=ge).

<sup>5</sup> Ibid., Article 7(3).

<sup>6</sup> Ibid., Article 7(4).

<sup>7</sup> Law of Georgia on International Treaties, Article 6.

<sup>8</sup> Constitution, Article 7.

#### D. Can the CRC be directly enforced in the courts?

As the CRC has automatically been incorporated into national law and sets forth concrete rights and obligations, its provisions are self-executing and can be directly enforced in court.

#### E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

Comprehensive analysis of court judgements in terms of applying the CRC has not been conducted in Georgia. However, the CRC is sometimes referred to in certain decisions. For example, in its judgement as-1213-1064-2010 related to child adoption the Supreme Court of Georgia relied on the CRC as well as national legislation, reaffirmed that the best interests of the child should be a primary consideration, and referred to Articles 20 and 27 of the Convention.<sup>9</sup>

Moreover, having considered the private complaint regarding restraint of parental rights and determination of a child's place of residence, Tbilisi Appellate Court in its decision No2b/1117-14 referred to Articles 3 and 5 of the CRC and affirmed that the best interests of the child should be a primary consideration.<sup>10</sup>

The CRC, and in particular the best interests of the child principle, is also frequently referred to in cases concerning international child abduction falling under the 1980 Hague Convention on Civil Aspects of International Child Abduction.<sup>11</sup>

## II. What is the legal status of the child?

#### A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

The Constitution of Georgia guarantees every person's right to apply to a court for the protection of his or her rights and freedoms.<sup>12</sup> Furthermore, an individual has the right to challenge the constitutionality of a normative act or its particular provisions in the Constitutional Court of Georgia if his or her rights have been infringed or may be infringed.<sup>13</sup>

Moreover, the Code of Civil Procedure ensures the right of every person to protect his or her rights in civil proceedings.<sup>14</sup> As for criminal proceedings, having received the information about a crime the investigator or the prosecutor is obliged to launch an investigation.<sup>15</sup> Disputes against administrative bodies are regulated according to the Code of Administrative Procedure of Georgia. People can challenge administrative legal

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<sup>9</sup> Available at: [www.supremecourt.ge](http://www.supremecourt.ge).

<sup>10</sup> Available at: <http://library.court.ge/judgements/66742014-07-02.pdf>.

<sup>11</sup> Information provided to CRIN by the Georgian government.

<sup>12</sup> Constitution, Article 42.

<sup>13</sup> Organic Law of Georgia on Constitutional Court of Georgia, Article 39. Available at: [http://www.constcourt.ge/index.php?lang\\_id=ENG&sec\\_id=91](http://www.constcourt.ge/index.php?lang_id=ENG&sec_id=91).

<sup>14</sup> Code of Civil Procedure, Article 2. Available at: [https://matsne.gov.ge/index.php?option=com\\_ldmssearch&view=docView&id=29962&lang=ge](https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=29962&lang=ge).

<sup>15</sup> Code of Criminal Procedure, Article 100. Available at: [https://matsne.gov.ge/index.php?option=com\\_ldmssearch&view=docView&id=90034&lang=ge](https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=90034&lang=ge).

acts or administrative agreements, and seek remedies for injuries derived from administrative bodies.<sup>16</sup>

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

The Code of Criminal Procedure stipulates that if a person who has attained the age of 14 provides information about crime, he or she is warned about the criminal responsibility in case of false statement.<sup>17</sup> The law does not explicitly determine the age attainment of which is a necessary precondition for providing information about a crime to the investigator, and it can be assumed that persons of any age can report. Information about crimes can be provided in written, oral or any other form. Investigations can be launched even based on statements provided by anonymous persons.<sup>18</sup>

The Code of Civil Procedure sets forth that full legal capacity is obtained at the age of 18. The person can also obtain full legal capacity if he or she marries before attaining the age of 18.<sup>19</sup> The rights and interests of children between the ages of 7 and 18 are protected through parents, adoptive parents or legal guardians. Parents are the legal representatives of their children and act on their behalf in court.<sup>20</sup> However, the court is obliged to involve children in legal proceedings.<sup>21</sup> The same rules are applicable to administrative proceedings.<sup>22</sup>

Notably, a child who has attained the age of 14 has the right to bring a case in court and start civil proceedings in order to protect his or her rights and interests in certain cases determined by law. In this case the court assigns a procedural representative. The child plaintiff has the right to disagree to the appointment of a representative and protect his or her rights by themselves. The court is obliged to involve guardians in legal proceedings.<sup>23</sup>

The right of the 14-year-old child to address the court is guaranteed in cases of domestic violence.<sup>24</sup>

C. In the case of infants and young children, how would cases typically be brought?

A child under the age of seven years (an infant) does not have legal capacity.<sup>25</sup> Their rights and interests are protected through their parents, adoptive parents or legal guardians. At the request of the legal representative the court may involve the infant in

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<sup>16</sup> Code of Administrative Procedure, Article 2. Available at:

[https://matsne.gov.ge/index.php?option=com\\_ldmssearch&view=docView&id=16492&lang=ge](https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=16492&lang=ge).

<sup>17</sup> Code of Criminal Procedure, Article 101.

<sup>18</sup> Ibid.

<sup>19</sup> Code of Civil Procedure, Article 81.

<sup>20</sup> Ibid., Article 1198.

<sup>21</sup> Ibid., Article 81.

<sup>22</sup> Code of Administrative Procedure, Article 1.

<sup>23</sup> Code of Civil Procedure, Article 81.

<sup>24</sup> Law of Georgia on Combating Domestic Violence, Protection of and Support to Victims, Article 14.

Available at:

[https://matsne.gov.ge/index.php?option=com\\_ldmssearch&view=docView&id=26422&lang=ge](https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=26422&lang=ge).

<sup>25</sup> Civil Code of Georgia, Article 12. Available at: [http://humanrights.ge/files/code\\_civil.pdf](http://humanrights.ge/files/code_civil.pdf).

legal proceedings.<sup>26</sup>

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

The Law of Georgia on Legal Assistance ensures the right of an indigent person to state-funded legal assistance in civil, administrative and criminal proceedings if they meet certain conditions determined by the Government.<sup>27</sup>

Under the newly adopted Juvenile Justice Code which comes into force on 1 January 2016, children who are involved in criminal proceedings as a defendant of the victim of a crime will be entitled to free legal aid (whether they are indigent or not). A child witness, however, will only be entitled to legal aid if indigent.<sup>28</sup>

Moreover, if the accused is a child the involvement of a lawyer is mandatory in criminal proceedings. If he or she does not have a lawyer, the expenses of the defence are paid by the State.<sup>29</sup>

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

Georgian legislation does not prescribe any other conditions or limits on children or their chosen legal representatives bringing cases.

### **III. How can children's rights violations be challenged before national courts?**

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

The Common courts of Georgia are district (city) courts, courts of appeals and the Supreme Court of Georgia.<sup>30</sup> Depending on the type of violation, the legal challenge can be brought through civil, administrative or criminal proceedings. Notably, as already mentioned above, a constitutional challenge can be brought in the Constitutional Court of Georgia if the normative act violates the rights and freedoms guaranteed by the Constitution or is likely to violate them in the future.

Furthermore, legislation guarantees the right to lodge a complaint or file an application at the office of the Public Defender of Georgia about a particular course of action or legal act of a public body or public official which violates the rights and freedoms guaranteed by the Constitution as well as by international treaties.<sup>31</sup> The Child Rights

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<sup>26</sup> Code of Civil Procedure, Article 81.

<sup>27</sup> Law of Georgia on Legal Assistance, Article 5.

<sup>28</sup> Juvenile Justice Code, Article 15(1) and Law of Georgian on Legal Assistance, Article 41. Information provided to CRIN by the Georgian government.

<sup>29</sup> Code of Criminal Procedure, Articles 45-46.

<sup>30</sup> Organic Law of Georgia on Common Courts, Article 2(1). Available at: <http://www.refworld.org/docid/3ae6b5370.html>

<sup>31</sup> Organic Law of Georgia on the Ombudsman of Georgia, Article 13. Available at: [https://matsne.gov.ge/index.php?option=com\\_ldmssearch&view=docView&id=33034&lang=ge](https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=33034&lang=ge).

Centre established under the Public Defender is focused on the protection and promotion of child rights and is authorised to consider complaints and applications submitted by the child, his or her parent or relative, or by any other third party.<sup>32</sup> After considering the application or complaint, the Public Defender has the right to submit observations, recommendations and proposals to relevant bodies.<sup>33</sup> However, the assessment of the Center initiated by UNICEF revealed that the organisation has a very limited structural capacity. In particular the Center is lacking both human and financial resources.<sup>34</sup>

The European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.<sup>35</sup> Any individual, group of individuals or an NGO who is a victim of a violation of one of these rights may submit a complaint to the Court,<sup>36</sup> but the complaint will be admissible only if all domestic remedies have been exhausted.<sup>37</sup> Anonymous complaints are not permitted.<sup>38</sup> The procedural rules for the Court do not make any child-specific provisions. Persons may initially present an application themselves or through a representative, however, all applicants must be represented at hearings thereafter.<sup>39</sup> After examining the case, the Court renders a judgment which is binding on the State<sup>40</sup> and also has powers to award monetary compensation to the victims of human rights abuses.<sup>41</sup> It is also worth noting that the Court has an established practice of referring to other international human rights instruments, including the CRC, as guides to interpretation of the European Convention.

#### B. What powers would courts have to review these violations, and what remedies could they offer?

The Constitutional Court of Georgia has the power to declare a normative act or its specific provisions unconstitutional, which means that they cease to have legal effect upon the promulgation of the judgment.<sup>42</sup> The judgment of the Constitutional Court is final, and failure to observe it is punishable by law.<sup>43</sup>

In case of domestic violence, the court can issue a protective order as a temporary measure for protecting the victim.<sup>44</sup> In order to provide a prompt response to domestic violence, an authorised member of the police can issue a restraining order as a

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<sup>32</sup> <http://ombudsman.ge/ge/bavshvis-uflebebs-centris-sheaxe>.

<sup>33</sup> Organic Law of Georgia on the Public Defender of Georgia, Article 21.

<sup>34</sup> The working group of national and international non-governmental organisations in Georgia, 'Implementation of the Convention on the Rights of the Child in Georgia: an Alternative Report', August 2007, p.7. Available at: [http://unicef.ge/uploads/Alternative\\_CRC\\_Report\\_Georgia.pdf](http://unicef.ge/uploads/Alternative_CRC_Report_Georgia.pdf).

<sup>35</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights"), 1950, Articles 19 and 32, available at: [http://www.echr.coe.int/Documents/convention\\_ENg.pdf](http://www.echr.coe.int/Documents/convention_ENg.pdf).

<sup>36</sup> Ibid., Article 34.

<sup>37</sup> Ibid., Article 35.

<sup>38</sup> Ibid.

<sup>39</sup> Rules of Court, July 2014, Rule 36, available at:

[http://www.echr.coe.int/documents/rules\\_court\\_eng.pdf](http://www.echr.coe.int/documents/rules_court_eng.pdf).

<sup>40</sup> European Convention on Human Rights, Article 46.

<sup>41</sup> Ibid., Article 41.

<sup>42</sup> Organic Law of Georgia on Constitutional Court of Georgia, Article 25.

<sup>43</sup> Ibid.

<sup>44</sup> Code of Administrative Procedure, Article 21.

temporary measure.<sup>45</sup>

In administrative proceedings, the court can repeal administrative legal acts,<sup>46</sup> order the administrative body to issue certain administrative acts,<sup>47</sup> or order it to carry out or stop a certain course of action.<sup>48</sup>

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

Georgian legislation does not guarantee the possibility of challenging an action without naming a specific victim. However, the Public Defender of Georgia is allowed to challenge a normative act or its particular provisions without naming a specific victim if he or she considers that the human rights and freedoms determined by the Constitution are violated.<sup>49</sup>

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Organic law on Constitutional Court of Georgia does not preclude the possibility of group litigation by several individuals, however, legal action without naming victims or potential victims is not allowed.

Similarly, several plaintiffs can start group litigation in civil cases<sup>50</sup> as well as administrative cases.

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

Georgian legislation ensures the right of every individual or legal entity (including non-governmental organisations) to submit written opinions regarding the specific case, i.e. to participate as friends of the court in the Constitutional Court of Georgia<sup>51</sup>. The right to participate as interested parties (*amicus curiae*) is also guaranteed in criminal proceedings.<sup>52</sup>

If the violation of child rights constitutes a crime, any person can provide information to the investigator, including non-governmental organisations. The law does not specify the kinds of individuals who have the right to report to the police.

As for civil and administrative cases, the court commences consideration of the case upon the submission of the application by the person who aims to protect his or her own right or legal interest.<sup>53</sup> Therefore, non-governmental organisations are not permitted to

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<sup>45</sup> Ibid.

<sup>46</sup> Code of Administrative Procedure, Article 32.

<sup>47</sup> Ibid., Article 33.

<sup>48</sup> Ibid.

<sup>49</sup> Organic Law of Georgia on Constitutional Court of Georgia, Article 39.

<sup>50</sup> Code of Civil Procedure, Article 86.

<sup>51</sup> Law of Georgia on Constitutional Litigation, Article 14. Available at:

[https://matsne.gov.ge/index.php?option=com\\_ldmssearch&view=docView&id=32986&lang=ge](https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=32986&lang=ge)

<sup>52</sup> Code of Criminal Procedure, Article 55.

<sup>53</sup> Code of Civil Procedure, Article 2.

challenge violations of other's rights.

The law stipulates that, in case of domestic violence, the person who provides legal assistance to the victim can address court only with the consent of the victim,<sup>54</sup> which can be under the auspices of a non-governmental organisation.

**IV. Practical considerations.** Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

A legal case can be brought in the court of first instance or in the Constitutional Court of Georgia depending on the nature of the claim. The initial filing process is described in part II.B.

B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

As mentioned in part II.D, the Law of Georgia on Legal Assistance ensures the right of an indigent person to state-funded legal assistance in civil, administrative and criminal proceedings if they meet certain eligibility criteria.<sup>55</sup> Legal assistance includes filing legal documents, and representation in court in civil, administrative and criminal proceedings.<sup>56</sup>

In civil proceedings the plaintiff is released from the obligation of paying court costs if the case is related to the violation of child rights.<sup>57</sup>

Furthermore, court costs are not payable in administrative proceedings related to domestic violence.<sup>58</sup>

C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

There are certain organisations which offer free legal assistance in Georgia, such as: Transparency International Georgia,<sup>59</sup> Article 42 of the Constitution,<sup>60</sup> and Georgian

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<sup>54</sup> Code of Administrative Procedure, Article 21.

<sup>55</sup> Law of Georgian on Legal Assistance, Article 5.

<sup>56</sup> Law of Georgia on Legal Assistance, Article 2.

<sup>57</sup> Code of Civil Procedure, Article 46.

<sup>58</sup> Code of Administrative Procedure, Article 9.

<sup>59</sup> Transparency International Georgia, 'Free legal aid centres in Georgia', available at: <http://transparency.ge/en/free-legal-aid-centers-georgia>.

<sup>60</sup> Available at: <http://article42.blogspot.co.uk>.

Young Lawyers Association.<sup>61</sup>

D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

According to the Civil Code of Georgia the statute of limitations in terms of contractual claims is three years,<sup>62</sup> and the general statute of limitations is 10 years.<sup>63</sup> In terms of the claims deriving from a tort the statute of limitations is three years.<sup>64</sup>

In terms of challenging the individual administrative legal act, the statute of limitations is one month, and in terms of a normative act, it is three months.<sup>65</sup>

Georgian legislation does not set forth special provisions that allow young adults to bring cases about the violations of their rights that occurred when they were children.

E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

In criminal proceedings, the following types of evidence are considered: testimony, material evidence, documents. Their consideration is based on their relevance, admissibility and reliability.<sup>66</sup>

The Code of Criminal Procedure sets forth special provisions regarding the interrogation of children: A child can be interrogated if he or she is capable of providing information relevant for the case in verbal or other form. Interrogation is conducted in the presence of a legal representative or a psychologist. Interrogation of a child who has not attained the age of 14 is only permitted with the consent and the presence of a legal representative. If the child is a witness or victim of sexual exploitation and violence, his or her testimony can be recorded and demonstrated at trial.<sup>67</sup> Furthermore, if the accused is a child, the hearing is conducted behind closed doors.<sup>68</sup>

As for civil proceedings, the interrogation of children who have not attained the age of 14 as well as children between 14 and 18 years (if the court deems necessary) can be conducted in the presence of a teacher. Parents, adoptive parents or guardians can also be present if necessary, and can ask questions with the consent of the court.<sup>69</sup> Children who have not attained the age of 16 give unsworn testimony.<sup>70</sup>

Despite the provisions above, child victims of sexual crime (and their parents) prefer not to engage in the justice system as the adversarial system, particularly the

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<sup>61</sup> Available at: <http://gyla.ge>.

<sup>62</sup> Civil Code of Georgia, Article 129.

<sup>63</sup> Ibid., Article 128.

<sup>64</sup> Ibid., Article 1008.

<sup>65</sup> Code of Administrative Procedure, Article 22.

<sup>66</sup> Code of Criminal Procedure, Chapter X.

<sup>67</sup> Ibid., Article 116.

<sup>68</sup> Ibid., Article 317.

<sup>69</sup> Code of Civil Procedure, Article 152.

<sup>70</sup> Ibid., Article 153.



cross-examination of children, is not deemed to be victim-friendly.

F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

Consideration of a constitutional claim by the Constitutional Court of Georgia must not exceed nine months. Under exceptional circumstances the time limit can be extended by no longer than two months.<sup>71</sup>

In criminal cases, investigation is conducted within a reasonable timeframe.<sup>72</sup>

The legislation of Georgia does not provide specific provisions regarding the timeframe when the child is involved in a case.

G. Appeal. What are the possibilities for appealing a decision to a higher court?

In criminal cases, the judgment of the court of first instance can be appealed in the Appellate Court.<sup>73</sup> The judgment of the Appellate Court can be further appealed in the Supreme Court of Georgia.<sup>74</sup>

Similarly, in civil cases, the judgment of the court of the first instance can be appealed in the Appellate Court,<sup>75</sup> and the judgment of the latter can be further appealed in the Supreme Court.<sup>76</sup> A similar right is guaranteed in terms of administrative legal proceedings.<sup>77</sup>

Judgments of the Constitutional Court of Georgia are final and cannot be appealed.<sup>78</sup>

H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

There does not appear to be a possibility for political backlash or repercussions from a positive decision in Georgia.

I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

According to the annual report of the Public Defender, there are certain defects in enforcing the court judgments related to the determination of the residence of the child. In particular, the Public Defender identified the following issues: the non-involvement of a qualified psychologist and the lack of essential services which are necessary to comply with the principle of the best interests of the child; the failure to identify the physical/psychological violence in the process of enforcing the judgment and incapacity

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<sup>71</sup> Organic Law of Georgia on Constitutional Court of Georgia, Article 22.

<sup>72</sup> Code of Criminal Procedure, Article 103.

<sup>73</sup> Ibid., Article 292.

<sup>74</sup> Ibid., Article 300.

<sup>75</sup> Code of Civil Procedure, Article 364.

<sup>76</sup> Ibid., Article 391.

<sup>77</sup> Code of Administrative Procedure, Article 34.

<sup>78</sup> Organic Law of Georgia on Constitutional Court of Georgia, Article 25.

to respond to it.<sup>79</sup>

**V. Additional factors.** Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

The Constitution provides that the rights of the child shall be protected by law.<sup>80</sup> However, Georgia has not adopted a comprehensive legislative act concerning children's rights; rather, children's rights are recognised and guaranteed in certain subject-specific laws.<sup>81</sup> Therefore, one of the areas of concern in terms of child rights is the absence of systematised and logically unified legislation related to child welfare as activities targeted at the well-being of children are scattered across different laws.<sup>82</sup>

One of the major issues related to child rights is child abuse, neglect and violence. Although the legislation ensures the protection of children against violence, in practice there are certain gaps. In particular, there is a lack of information in society about the consequences of violence against children. Generally violence is not considered as a crime and is deemed an ordinary thing. In many cases children bear violence for a long period of time with no hope that society will react adequately.<sup>83</sup> Notably, the Government of Georgia has prepared a draft of the National Strategy on Prevention of Violence which deals with different types of violence, their causes, preventive mechanisms and existing challenges.<sup>84</sup>

As for the improvement of the condition of children, an important step taken was the adoption of a Juvenile Justice Strategy and Action Plan for 2009 to 2013 guiding the reform in this sector in order to deal with children in conflict with the law.<sup>85</sup> As a result, individualised plans for convicted juveniles were determined which support their rehabilitation and reintegration into society.<sup>86</sup> Furthermore, 500 legal professionals - judges, prosecutors and lawyers - have been trained in juvenile justice issues.<sup>87</sup>

In March 2014, a revised strategy on Justice for Children was approved by the Criminal Justice Reform Inter-Agency Council. The main goal of the strategy is to establish a child-friendly justice system for all children in contact with the law, including: child victims and witnesses; children participating in civil proceedings; children in the administrative violations system; children in conflict with the law in the context of the criminal justice system; children under the minimum age of criminal responsibility; and

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<sup>79</sup> 'The Report of the Ombudsman of Georgia on the Situation of Human Rights and Freedoms in Georgia', 2012, p. 678. Available at <http://ombudsman.ge/ge/saparlamento-angarishebi>.

<sup>80</sup> Constitution, Article 36.

<sup>81</sup> *Third periodic report of Georgia to the UN Committee on the Rights of the Child*, CRC/C/GEO/3, 22 August 2007. Available at: [http://www.unicef.org/georgia/rights\\_8343.html](http://www.unicef.org/georgia/rights_8343.html).

<sup>82</sup> *Ibid.*, p.6.

<sup>83</sup> The Implementation of the Convention on the Rights of the Child in Georgia, Alternative Report prepared by the Child's Rights Centre of the Office of the Public Defender of Georgia, 2007, p. 20, available at: [http://unicef.ge/uploads/PDO\\_Alternative\\_Report.pdf](http://unicef.ge/uploads/PDO_Alternative_Report.pdf).

<sup>84</sup> [http://government.gov.ge/index.php?lang\\_id=GEO&sec\\_id=405](http://government.gov.ge/index.php?lang_id=GEO&sec_id=405)

<sup>85</sup> UNICEF, 'Georgia and the Convention on the Rights of the Child: An update on the situation of children in Georgia', 2011, p. 44, available at: [http://unicef.ge/uploads/UNICEF\\_Report\\_-\\_Update\\_on\\_the\\_Situation\\_of\\_Children\\_in\\_Georgia\\_in\\_english.pdf](http://unicef.ge/uploads/UNICEF_Report_-_Update_on_the_Situation_of_Children_in_Georgia_in_english.pdf).

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*, p. 45.

children who would benefit from preventive programmes. In particular, the revised strategy considers revision of legislation concerning children, specialisation of justice professionals, creation of child-friendly environments, and establishment of a comprehensive data collection system on children in contact with the law. The strategy will be followed by a detailed implementation plan.<sup>88</sup>

In January 2015, the draft Juvenile Justice Code was presented by the Ministry of Justice for public discussion<sup>89</sup> and was adopted by the Parliament in June 2015.<sup>90</sup> Whilst some of its provisions have already entered into force, the Code will receive full implementation as of 1 January 2016. Overall, the Code intends to prioritise preventive/rehabilitation/re-socialisation approaches over the punitive and repressive approaches. It provides for the following:

- the best interests of the child shall be a primary consideration in juvenile justice matters;
- any measures taken against a juvenile in conflict with law shall be proportionate to the committed act, as well as personality of a juvenile and corresponding to his or her educational, social and other needs;
- life imprisonment of a juvenile shall be prohibited;
- the priority in all cases shall be given to the alternative measures while using imprisonment as a last resort;
- juvenile justice procedure shall be administered only by the authorities specialised in juvenile justice and with relevant specialist training;
- the right to privacy of a juvenile in conflict with law shall be respected at all stages of juvenile justice. The criminal record of a juvenile will be expunged immediately from the moment the sentence is executed. Information on the previous conviction of a juvenile will be confidential and no personal data of a juvenile will be published in any form;
- the participation of a juvenile at any stage of legal proceedings will be guaranteed and juvenile justice procedure will be conducted without any unjustified delay; and others.

*This report is provided for educational and informational purposes only and should not be construed as legal advice.*

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<sup>88</sup> UNICEF, 'New strategy on justice for children now includes all children in contact with the law', 11 March 2014, available at: [http://unicef.ge/44/martlmsajuleba\\_bavshvebisatvis/246/Ingeng](http://unicef.ge/44/martlmsajuleba_bavshvebisatvis/246/Ingeng).

<sup>89</sup> Georgia Today, 'Draft Juvenile Justice Code emphasises specialisation of professionals and use of detention as a last resort', 23 January 2015, available at: [http://www.georgiatoday.ge/article\\_details.php?id=13151](http://www.georgiatoday.ge/article_details.php?id=13151).

<sup>90</sup> See <http://agenda.ge/news/37038/eng>.