

**Organization for Security and Co-operation in Europe**

ENGLISH only

**Special Representative and Co-ordinator  
for Combating Trafficking in Human Beings****Foreword**

On 17-19 June 2019, I had the pleasure of paying an official visit to Georgia to hold consultations with high-level government officials, law-enforcement, and judiciary as well as representatives of civil society and international organizations involved in the field of anti-trafficking.

The objectives of the visits were to identify promising practices for combating trafficking in human beings (THB) as well as to promote the full implementation of the OSCE commitments in the field of anti-trafficking, notably holistic and comprehensive actions aiming to better prevent and respond to human trafficking and to protect and support its victims. I greatly appreciated the constructive discussions held and I was pleased to observe the strong political will of the Government of Georgia and the inspiring commitment of practitioners to further anti-trafficking responses in the country.

The Report was presented to the Delegation of Georgia on 18 February 2020. The Delegation submitted its final comments on 24 April 2020.

Georgia represents one of the promising examples in the OSCE region of a victim identification mechanism that allows for granting official victim status through the criminal justice system or through a multi-agency committee. I was also delighted to learn of the plans of the Georgian Ministry of Justice to conduct external monitoring and evaluation of the implementation of National Action Plan of 2017-2018. Since the visit, Georgian authorities have also started recruitment of new labour inspectors to increase the national response to prevent labour exploitation. The adoption by the Parliament of Georgia of the law on anti-money laundering and terrorism financing in October 2019 will support the work of relevant institutions and agencies in conducting effective financial investigations into THB.

By encouraging relevant authorities to implement the comprehensive set of recommendations made in this report, I look forward to deepening our established collaboration and to furthering our future co-operation in the best interest of the most vulnerable and disadvantaged members of society.



Valiant Richey

OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings

## **Report by the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings following the country visit to Georgia 17-19 June 2019<sup>1</sup>**

1. This report presents the main findings and recommendations of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Valiant Richey<sup>2</sup> (hereinafter referred to as the Special Representative) following his country visit to Georgia between 17-19 June 2019.<sup>3</sup>
2. The purpose of the visit was to hold consultations with government officials and experts from state institutions and civil society to discuss ways to support and advance ongoing efforts to prevent trafficking in human beings, assist trafficked persons and protect their rights, as well as bring perpetrators to justice in line with OSCE commitments and relevant international standards.
3. In the course of the visit, the Special Representative engaged in direct consultations with high-level government officials, including the Deputy Minister of Justice, the Secretariat of the Inter-Agency Council on Combating Trafficking in Human Beings, the Ministry of Internal Affairs, the General Prosecutor's Office, the Labour Inspectorate Department and LELP Social Service Agency of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs, judges of Tbilisi City Court, the State Fund for Protection and Assistance of Victims of Human Trafficking, the Financial Monitoring Service of Georgia and the Public Defender's Office. In Batumi, the Special Representative met with the Anti-Trafficking Task Force of Adjara region, Judges of Batumi City Court and visited the crisis centre of the State Fund in Batumi.

The Special Representative also held consultations with the anti-trafficking NGOs: People's Harmonious Development Society and "Tanagdoma" – Centre for Information and Counselling on Reproductive Health in Tbilisi.

Finally, the Special Representative met with the representatives of international organizations based in Tbilisi, including the International Organization for Migration (IOM) and International Centre for Migration Policy Development (ICMPD), and the Embassy of the United States to Georgia.

4. The Special Representative wishes to thank the Georgian authorities, and in particular, the Permanent Delegation of Georgia to the OSCE and the Secretariat of the Inter-Agency Council on Combating Trafficking in Human Beings under the Ministry of Justice for their co-operation, commitment and assistance in organizing and facilitating the visit. He also wishes to thank all interlocutors, including civil society and international organizations in Georgia, for their willingness to share their knowledge and insights.

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<sup>1</sup> The Report was finalized on 17 February 2020

<sup>2</sup> Although the visit was conducted by Mr. Valiant Richey in his then capacity as the Acting Co-ordinator, the Report is presented in his current capacity as the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings.

<sup>3</sup> The Special Representative was accompanied by the Associate Country Visit Officer, Tarana Baghirova and Associate Officer, Radu Cucos

5. Consultations during the visit focused on the situation of trafficking in human beings (THB) in the country and the ongoing policy, legislative, and practical responses to it. More specifically, discussions focused on: the identification and provision of assistance to victims of all forms of trafficking, particularly of child victims of trafficking; prosecutions and convictions of perpetrators; the protection of victims' rights; efforts in the area of prevention and countering the demand for sexual and labour exploitation of both Georgian nationals and foreigners; and co-operation with civil society organizations.
6. Over the course of the visit, the Special Representative noted with appreciation that government officials and civil society representatives demonstrated significant awareness and understanding of trafficking in human beings as a serious violation of fundamental rights, knowledge of trafficking in human beings trends and emerging patterns in the country, and a readiness to tackle new threats.
7. The Special Representative stresses the importance of maintaining the prevention and combating of THB as one of the key priorities on the government's agenda. He notes that a decline in high-level attention to the problem could jeopardize the important results already achieved.

#### **Legal, policy and institutional framework**

8. The Special Representative commends Georgia for being a party to major international instruments providing high standards in the fight against trafficking in human beings, such as the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol), ratified on 5 September 2006, and the Council of Europe Convention on Action against Trafficking in Human Beings, ratified on 14 March 2007.

The country has also ratified a number of Conventions addressing slavery and forced labour such as the ILO Forced Labour Convention No.29, ratified in 1993, the ILO Convention on the Abolition of Forced Labour No.105, ratified in 1996 and the ILO Convention on Worst Forms of Child Labour No.182, ratified in 2002.

Georgia ratified the UN Convention on the Elimination of All Forms of Discrimination against Women in 1984 and the UN Convention on the Rights of the Child in 1994. The Optional Protocols on the involvement of children in armed conflict and on the Sale of Children, Child Prostitution and Child Pornography were ratified in 2010 and 2005, respectively.

Georgia ratified the Cyber Crime Convention of the Council of Europe (Budapest Convention) in 2012. This convention serves as a good initial base for investigation of technology-enabled trafficking in human beings, including sexual exploitation of children and promote international co-operation. Nevertheless, the Special Representative highlights the need for additional legislation and policy action, which would guide the State to effectively address technology-facilitated human trafficking.

9. The Special Representative recommends that Georgia sign and ratify the ILO Convention 189 concerning Decent Work for Domestic Workers, which serves as an

effective instrument for the prevention of THB for labour exploitation, especially for domestic servitude.<sup>4</sup> The ratification of this Convention will guide Georgia to identify, prevent and address any exploitation of domestic workers in the country.

10. The Special Representative recommends that Georgian authorities sign and ratify the Protocol of 2014 to the Forced Labour Convention of 1930, which aims to advance prevention, protection and compensation measures against all forms of forced labour.
11. The Special Representative further recommends that Georgian authorities sign and ratify the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. The ratification of this Convention is of particular importance to enhance protection mechanisms in the context of the increasing flows of migrant workers into the country.
12. Likewise, as a participating State to the OSCE, Georgia has pledged to implement the commitments it has undertaken in the OSCE framework, in particular the recommendations contained in the 2003 Action Plan to Combat Trafficking in Human Beings, as well as its 2005<sup>5</sup> and 2013<sup>6</sup> Addenda.
13. Domestically, trafficking in human beings was first criminalized through the Criminal Code Article 143<sup>1</sup> in 2003 which was amended several times to align it with the international definition and provisions for combating trafficking in human beings. The amendment made in 2014 expanded the exploitative purposes for trafficking to include acts such as inducing a person to perform labour or other services, provide sexual services, engaging a person in criminal activities, prostitution, pornographic and other anti-social activities, removing, transplanting or using an organ or tissue of the human body by force or deception and subjecting a person to practices similar to slavery for material gain or other benefits. The Criminal Code was last changed in May 2018 to criminalize the committing of the offence by a group of persons with preliminary agreement as an aggravated circumstance. The Special Representative positively notes the expansive list of exploitative purposes enshrined in the law and believes that such a broad definition creates an enabling environment to address various forms of human trafficking in the country.

The Special Representative positively notes the expansive list of trafficking “means” listed under the definition, which includes force, threat, coercion, abduction, fraud, deception and abuse of position of vulnerability or power, and giving or receiving of payment or benefits to achieve the consent of a person having control over another person. Trafficking in human beings is punishable with a prison term of seven to 12 years, and in the presence of the aggravating circumstances, set out in paragraphs 2-4 of Article 143<sup>1</sup>, the punishment ranges from nine to 20 years of prison sentence.

The Special Representative notes the explicit definition of modern-day slavery which is defined in the Note 1 (e) to Article 143<sup>1</sup> as a condition when a person with or without payment, or with inadequate payment, carries out labour or provides any other service

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<sup>4</sup> OSCE, Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude, Occasional Paper Series No. 4, 2010. Available at <http://www.osce.org/cthb/75804>

<sup>5</sup> OSCE Permanent Council Decision No. 685 [Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special needs of Child Victim of Trafficking for Protection and Assistance](#), PC.DEC/685

<sup>6</sup> No.1107 [Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later](#), PC.DEC/1107/Corr.11

for another person and he/she is unable to change the condition because of his/her dependence on such person. Dependence constitutes but is not limited to acts such as depriving, controlling or intentionally damaging a person's identity document; restricting a person's freedom and ability to communicate; and the creating of a coercive or intimidating environment.

14. Child trafficking is criminalized under Article 143<sup>2</sup> and is punishable with a prison term from eight to twelve years. In the presence of aggravating circumstances, the sentencing is set from 11 to 20 years of imprisonment. If the offence is committed by a legal person, the punishment is a deprivation of the right to carry out activities or with liquidation and a fine. Additionally, Article 172 of the Criminal Code criminalizes trafficking of minors for illegal adoption punishable by fine or imprisonment for up to one year, while the sale or any other unlawful transaction with regard to a child with the same purpose is punishable by imprisonment for a term of two to five years. Article 171 of the Criminal Code criminalizes the act of involving minors into anti-social activity punishable by: corrective labour for a period of 170 to 240 hours; or by corrective labour for the term not in excess of two years; if the act is committed repeatedly, the offender shall be punished by imprisonment for a term of three to six years.
15. Article 143<sup>3</sup> of the Criminal Code was introduced in 2007 to criminalize the users of services of trafficked persons, punishable with imprisonment for a period of three to five years. In cases where the act is committed repeatedly, by abuse of official position, or against a pregnant or vulnerable person, the punishment is imprisonment for a term of five to seven years with the deprivation of the right to hold an official position or to carry out a particular activity for up to three years. The punishment is 12 to 15 years with the deprivation of the right to hold an office or to carry out activities for up to three years in cases when the crime is committed by an organized group, Further aggravated cases when the act is committed against two or more persons or by use of violence that poses a threat to a person's life or health the punishment is increased to imprisonment from seven to 12 years with deprivation of the right to hold an official position or to carry out a particular activity for up to three years. The provision was amended in 2015 to encourage the reporting of the using of services of trafficked person and frees a user from criminal liability if before the investigation begins, the person voluntarily provides information to the investigation in writing and co-operates with the investigation and if his/her actions do not contain elements of any other crime.
16. A dedicated Law on Combating Trafficking in Persons (Anti-Trafficking Law) was adopted in 2006 and amended in 2012 following the recommendation provided by GRETA's evaluation to improve the social and legal protection, assistance and rehabilitation of child victims. The Law defines the legal and institutional framework for preventing and combating trafficking in human beings, outlines the roles and competencies of different national agencies involved in anti-trafficking work and provides for procedures for co-ordination of their activities by establishing the Inter-Agency Co-ordination Council on the Implementation of Actions against Trafficking in Human Beings. (see para 20 for more details). The Law further envisaged the establishment of the State Fund for Protection and Support of Victims and Persons affected by Human Trafficking.

17. The legislation in Georgia does not criminalise prostitution. However, Article 172<sup>3</sup> of the Code of Administrative Violations envisages administrative liability, punishable by a warning or a fine up to one half of the minimum wage. Article 254 criminalizes the act of “providing a venue for prostitution” by a fine or imprisonment for a term of two years. This provision was amended in 2018 to allow law enforcement to use special investigative techniques. (see para 42 for further details). According to interlocutors met during the visit, Article 254 appears to be used frequently as an alternative to the trafficking statutes to prosecute offenders.
18. The Georgian law provides for irrelevance of consent under the Note 2 to Article 143<sup>1</sup> and 143<sup>2</sup>. Nevertheless, the Special Representative notes that a number of interlocutors raised concerns that trafficking cases were not being identified nor further investigated due to a perception that women in particular identified in prostitution had consented to the situation they were in and to their exploitation.
19. Overall, the Special Representative positively notes Georgia’s robust legal framework to prevent and combat human trafficking and the commitment of the Government to align it further to relevant international standards, as evidenced by recent changes made to legislative frameworks. Nevertheless, he recommends that Georgian authorities focus on implementing the provisions of the Criminal Code and Anti-Trafficking Law in particular in addressing the trafficking of foreign women into prostitution and trafficking in minors for the purpose of begging as described in further paragraphs of the present report.
20. With regard to the institutional anti-trafficking framework, an Interagency Co-ordination Council on the Implementation of Actions against Trafficking in Human Beings (hereinafter referred to as the Co-ordination Council) was established in 2006 and is chaired by the Minister of Justice. The Co-ordination Council members include the Ministry of Internal Affairs, the General Prosecutor’s Office, the Ministry of Foreign Affairs, the Ministry of Internally Displaced Persons from the Occupied Territories, the Ministry of Labour, Health and Social Affairs, the Ministry of Economy and Sustainable Development, the Ministry of Education, Science, Culture and Sports, LEPL State Fund for the Protection and Assistance of (statutory) Victims of Trafficking and the Public Defender’s Office. Civil society organizations such as Georgian Young Lawyers Association (GYLA), “Tanadgoma”, “Anti-Violence Network of Georgia”, “Civil Development Agency” and international organizations, such as IOM and ICMPD, are also represented on the Council.

The Co-ordination Council meets once a year to coordinate anti-trafficking efforts. Temporary working groups can be convened to discuss emerging issues. Such a working group was established in 2016 to look into the issue of increasing numbers of children living and working in the street. The working group comprising child rights agencies and international organizations identified a number of issues ranging from the lack of identification documents to the lack of access to services and education for this group of children and proposed an amendment to the legislation to enhance the child protection system (see para 24 for more details). While commending the work of the Co-ordination Council and its efforts to address current and emerging issues related to combating human trafficking, the Special Representative recommends that Co-ordination Council establish working groups to look closer at issues related to

exploitation of prostitution and labour exploitation in order to develop targeted actions to prevent and tackle these phenomena, in particular exploitation of foreign citizens. Additionally, ad-hoc working groups should be considered to elaborate on the role of technology in trafficking in human beings and prevention of trafficking in supply chains and public procurement. Various interlocutors acknowledged the presence of ICT-facilitated exploitation and the current lack of efforts to address it; an ad-hoc working group could trigger necessary responses.

The competencies of the Co-ordination Council also include monitoring and evaluation of the trafficking situation and developing policy guidance and strategies on anti-trafficking. It also manages the integrated database on trafficking in human beings. Comprised of three persons, the Secretariat of the Co-ordination Council is the main unit that conducts monitoring and evaluation, however a lack of human resources often impedes a regular and robust monitoring and comprehensive assessment of the situation, thus limiting it to an analysis of the reports provided by various agencies tasked to implement the actions outlined under the National Plan. While stressing the importance of independent monitoring and evaluation of anti-trafficking measures, the Special Representative underlines the role of a National Rapporteur or equivalent national monitoring and reporting mechanisms as a means to collect and utilize and accurate and evidence-based data on THB. In this regard, he highlights the need for a critical assessment and monitoring of the scope of trafficking, the effectiveness of the anti-trafficking measures taken by the State, and, drawing from this data collection and analysis, the desirability of producing recommendations for the government and the parliament<sup>7</sup>. The Public Defender's Office (Office of the Ombudsman) is also involved in data collection and analysis related to trafficking trends and efforts to tackle it. The Public Defender's report to Parliament includes a section on combating trafficking in human beings based on an analysis of information provided by various state agencies and civil society and on the analysis of cases received by the Ombudsman directly. Nevertheless, recalling information shared by a number of interlocutors met during the visit, the Special Representative notes that a thorough determination of the trends and scope of trafficking in Georgia will be challenging in the absence of a comprehensive assessment and research.

To this end, in line with international best practices and OSCE Ministerial Council Decision 14/06, the Special Representative recommends that Georgian authorities consider separating the co-ordination work from that of monitoring and evaluation by establishing an independent National Rapporteur<sup>8</sup> and initiate and support research studies into various patterns of human trafficking, including into the risks of trafficking among women in the sex trade, migrant workers involved in the construction, hospitality and agricultural sectors and trafficking of persons for committing crimes.

21. Since 2007, the Inter-Agency Co-ordination Council for Implementation of Measures against Human Trafficking (Inter-Agency Co-ordination Council) under the Ministry of Justice has developed and implemented seven National Action Plans (NAP) on Combating Human Trafficking. With life cycle of two years, the current NAP was adopted in December 2018 and covers the period of 2019-2020. The NAP is structured around the 4 Ps framework, but also includes actions related to data collection, research

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<sup>7</sup> OSCE Action Plan for Combating Trafficking in Human Beings, Chapter IV, para 1, p17

<sup>8</sup> OSCE, Ministerial Council Decision No. 14/06 "Enhancing Efforts to Combat Trafficking in Human Beings, including for Labour Exploitation, through a Comprehensive and Proactive Approach", MC.DEC/14/06, 5 December 2006

and capacity-building; it is envisioned that the latter action be carried out by a large number of stakeholders in the course of the NAP's implementation. A report on the implementation of the NAP is published by the Inter-Agency Co-ordination Council on a biennial basis and details the progress made in each of the action points.

22. Civil society organizations (CSOs) play a crucial role in Georgia's anti-trafficking agenda. The Special Representative commends the role of civil society organizations in the work of the Co-ordination Council and its Permanent Group to give a victim status to trafficked persons, as well as in developing and leading prevention work. Nevertheless, the Special Representative would like to highlight that CSOs can provide even more prominent input beyond just offering mere technical support when requested or permitted by the State and should be included all stages of anti-trafficking work, including policy development and from the very outset of outreach and identification of victims. This is also recommended by the recently-published OSCE report on "the Critical Role of Civil Society in Combating Trafficking in Human Beings".<sup>9</sup>

### **Identification, referral and assistance for victims of trafficking**

23. The absence of comprehensive data makes it difficult to assess the exact scope and magnitude of trafficking in human beings in Georgia. It is not uncommon for States to conclude that, because the number of identified victims is small, the scale of the problem must also be small. However, abundant research indicates that the number of identified victims in a country typically represents a tiny fraction of the true number of victims. Data collected and information provided during the visit from both Georgian authorities and civil society organizations indicate that Georgia is a country of origin, transit and destination for various forms of human trafficking. As a country of origin, Georgian women are reportedly trafficked to Turkey and the United Arab Emirates for sexual exploitation, while Georgian men are trafficked for labour exploitation in Turkey, UAE, Iraq and Cyprus. According to interlocutors, Poland is increasingly becoming a new destination country for trafficking of Georgian men for forced labour.

Georgia is also a country of destination, a status that has been contributed to by an increasing number of entertainment facilities in the Adjara region. Reportedly, a continuing demand for sexual services is one of the underlying factors contributing to trafficking of women primarily from Azerbaijan and Central Asia (especially Uzbekistan) for prostitution. These women are lured to Georgia with the false promise of jobs in the hospitality sector and often end up being trafficked for sexual exploitation in saunas, night bars, motels and private houses around the tourist areas in Adjara region of Georgia and along the border with Turkey.

24. Although there is no baseline data on child trafficking in Georgia, nor statistics provided by state agencies to reflect the scale of the issue, children are reportedly trafficked for various exploitative purposes in Georgia. Estimates suggest that 1,000 to 2,000 children earn a living by begging, primarily caused by poverty or domestic violence.<sup>10</sup> Referring to the results of its recently launched survey, UNICEF concludes

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<sup>9</sup> Available at <https://www.osce.org/secretariat/405197?download=true>

<sup>10</sup> US Department of Labour, 2018 Findings on the Worst Forms of Child Labour, Georgia <<https://www.dol.gov/agencies/ilab/resources/reports/child-labor/georgia>>



that while thirty percent of these children are of Roma ethnicity and the Azerbaijani Kurds, seventy percent of children living and working in the streets are Georgians who are moved from one city to another with their families. According to Social Services Agency some number of these children are also Moldovan citizens. This is reportedly caused by an increasing the poverty rate in Georgia, especially in the share of children living below the minimum subsistence level. According to the UNICEF survey, every fifth child lives in a household in which the basic needs of household members are not met.<sup>11</sup> In addition to being exploited by their parents to beg in the streets, these children are also at high risk of trafficking for sexual exploitation, including for prostitution, by fellow street youths, caretakers, and other adults, however, prevalence estimates are not available. To address the situation, Georgian authorities took various measures to assess the risks surrounding the phenomenon and empower agencies to tackle the issue. These measures include establishing six Mobile Teams, each comprising of a psychologist, peer educator and logistics officer by the LEPL Social Service Agency (SSA), which mapped and identified areas where children live and/or work in the streets in Tbilisi, Kutaisi and Rustavi. In 2014-2019 the state senior social workers of Social Service Agency<sup>2</sup> have reached and identified 1837 children living or working in the streets and 1355 children used the serviced of day care centres and shelters. In 2014, the Inter-agency Council established a Special Working Group composed of the representatives of all relevant ministries, international and civil society organizations to identify risks faced by this group of children and propose effective measures to address them. The work of the working group resulted in the amendment of ten legal acts, which among other things, provided identity documents to these children and strengthened the social workers' role to separate minors from a family situation that is exploitative.<sup>12</sup> Notwithstanding the efforts of Georgian authorities, according to numerous interlocutors met during the visit at risk children living and working in the streets continues to be serious issue and requires further urgent action from the authorities including an enhanced regional co-operation to prevent children who are moved across borders between Azerbaijan and Georgia with the purpose to beg. In this regard, the Special Representative recommends that Georgian authorities enhance their efforts to prevent and address the issue of children living and working in the streets by urgently conducting country-wide research to identify the scale of the issue including by studying the push and pull factors that contribute to the phenomenon; mapping the areas where children are likely to be exploited in begging, and developing recommendations for improving its child protection system, including the identification and assistance to children trafficked for various exploitative purposes.

25. Although statistics provided by the Inter-Agency Co-ordination Council reflect low numbers of detected cases of trafficking for labour exploitation--primarily reported to consist of trafficking of Georgian men for labour exploitation in Turkey and Iraq--interlocutors met during the visit expressed their concern that there was an increasingly conducive environment for labour exploitation in Georgia involving migrant workers. Such an environment is reportedly fostered by the involvement of third-country nationals in rapidly increasing large-scale construction projects and the growing agricultural sector. Another major risk factor is connected to the widespread operation of private recruitment and/or employment agencies, which are involved in both

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<sup>11</sup> UNICEF, The well-being of children and their families in Georgia, Georgia Welfare Monitoring Survey Fifth Stage 2017, 2018 <<https://www.unicef.org/georgia/media/1266/file/WMS%202017%20ENG.pdf>>

<sup>12</sup> The legal amendments were adopted by the Parliament of Georgia on 22 June 2016

facilitating employment of Georgians abroad and bringing migrant labour to Georgia. (see para 52 for further information).

26. Identification, referral and assistance including return and repatriation procedures are set out in the National Victim Referral and Assistance Mechanism (NRM) developed by the Inter-Agency Co-ordination Council.<sup>13</sup> It sets out rules and defines the roles of agencies authorised to identify potential trafficking victims. The NRM was revised in 2014 to set standard procedures for the identification of victims in two stages: initial screening and the granting of final victim status. In this regards, the Special Representative positively notes that Georgian Anti-Trafficking Law provides for a dual procedure for identification of trafficked persons: “victim identification” and “statutory victim identification”. With regard to the first procedure related to victim identification, the law established the Permanent Group of the Co-ordination Council on Combating Trafficking in Human Beings (“the Permanent Group”) as a competent authority for identifying and granting the status of victim of THB. For a person to be identified as a victim, three special mobile group established by the State Fund for Protection of and Assistance to Statutory Victims of Trafficking in Human Beings interview the potential victim of human trafficking according to a questionnaire. This questionnaire is then sent to the Permanent Group to examine the case and decide on granting victim status within 48 hours. The Special Representative positively notes this dual procedure for identification of trafficked persons in Georgia and believes that availability of granting victim status to all persons identified as such, independent of their co-operation with criminal justice actors, is essential in recognizing and facilitating their access to rights and assistance measures provided by the Anti-Trafficking Law.
27. In addition to the Permanent Group’s victim identification procedure, law enforcement can also grant a victim status to a trafficked person during criminal proceedings. The status of a “statutory” victim of trafficking is granted by law enforcement authorities in accordance with Criminal Procedure Code of Georgia and is linked with the victim’s co-operation with the criminal proceedings. To guide the law enforcement agencies in their outreach to identify trafficked persons, in 2015, the Ministry of Interior adopted a Standard Operative Procedures (SOPs) to identify trafficked persons, which also includes indicators for various exploitative purposes. Detection and identification of trafficked persons are conducted by four police mobile groups of the Division for Combating Human Trafficking and Illegal Migration of the Ministry of Interior’s Criminal Police Department. Since September 2019, the number of police mobile groups has increased from four to six aiming to enhance the proactive identification of THB.
28. According to statistical data provided by the authorities, the number of victims identified by the Permanent Group were 29 in 2013, 5 in 2014, 8 in 2015, 1 in 2016, 4 in 2017, 2 in 2018 and 4 in the first half of 2019. The number of statutory victims of THB identified by law enforcement were 10 in 2013, 7 in 2014, 8 in 2015, 2 in 2016, 8 in 2017 and 7 in 2018.

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<sup>13</sup> The NRM was created through the adoption of Governmental Decree No. 284 on Identification of a Victim and Granting a Status of Victim of Trafficking in Human Being.

29. While commending the dual procedure for granting victim status to trafficked persons and thus enabling their access to assistance and support scheme, the Special Representative is concerned about the low identification rate, in particular the fact that the number of victims identified by the Permanent Group has decreased considerably in recent years. Additionally, the numbers of the last few years are quite low compared to global estimates of the number of victims and the scale of risks associated with human trafficking. Such a low number reflects a lack of outreach activities to identify trafficked persons, including online. The identification procedure as it practiced by both the Permanent Group and law enforcement, depend heavily on victims' self-identification or third-party information and does not maximize the well-intended purposes of the dual identification mechanism. In this regard, the Special Representative recommends that the Permanent Group of the Co-ordination Council on Combating Trafficking in Human Beings enhance the identification of trafficked persons by assessing the effectiveness of the mobile groups scheme with a view to improving proactive identification of victims and including outreach to identify trafficked persons in areas prone to exploitation such as tourism, hospitality, construction and agricultural sectors. Additionally, the long-standing experience of civil society organizations should be utilized with proper financial and technical support to assist in outreach and the initial screening of potential trafficking victims.
30. With regard to the assistance and protection of trafficked persons, pursuant to Article 9(5) of the Anti-Trafficking Law, Georgia established the State Fund for Protection of and Assistance to Victims of Trafficking in Persons (hereinafter referred to as the State Fund) in 2006 under the Ministry of Labour, Health and Social Affairs. The main tasks of the State Fund is to provide shelters, legal, psychological and medical assistance and rehabilitation and reintegration measures to trafficked persons. Assistance for a period of time is available in the State Fund without the Permanent Council's formal identification. However, if the trafficked person needs and wants longer-term assistance and shelter, then formal victim status is necessary. In 2006, the State Fund opened two shelters in Tbilisi and Batumi and established a hotline. The shelters are regulated by the Internal Regulation of the Shelter for Victims of Human Trafficking established in 2014<sup>14</sup> and amended in 2015 to include further assistance to trafficked persons and their children. The victims can stay in the shelter for three months and depending on the case, the duration can be extended to nine months upon the decision of the director of the State Fund (which is informed by the advice of the shelters' multidisciplinary team). According to statistics provided by the crisis centre met during the visit, the shelter accommodated 15 victims of THB in 2015, three victims in 2016, 10 victims in 2017 and four victims in 2018. The State Fund is also mandated to work on the issue of domestic violence and gender-based violence and operates five shelters and five crisis centres,<sup>15</sup> however, trafficked victims can be accommodated in shelters in Tbilisi and Batumi, while other shelters serve the victims of violence. In this regard, the Special Representative notes that the shelters only accommodate those victims referred to them by the State Fund or by law-enforcement, and self-referrals can be accommodated in Tbilisi crisis centre for the duration of 12 days during which the case is referred to the Permanent Group for examination. With regard to the mixed accommodations, the Special Representative recommends that Georgian authorities conduct a thorough risk assessment and due diligence in all cases due to the differing

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<sup>14</sup> Approved by Order No. 07-70 of the Director of the State Fund of 29 April 2014

<sup>15</sup> 5 shelters in Batumi, Tbilisi, Gori, Kutaisi and Signaghi and 5 Crisis Centers in Tbilisi, Kutaisi, Gori, Marneuli, and Ozurgeti

needs and risks associated with trafficked persons and victims of domestic or gender-based violence.

31. The new Child Protection Referral Mechanism was approved in 2016, which expanded the list of responsible agencies for the referral of cases of violence against children and set a mandatory rule that all possible cases of violence against children must be referred to the Social Service Agency and the police. Presently, six day-centres and six shelters operate in Georgia with the aim of assisting children/families living and or working on the streets.

Furthermore, in order to implement the action envisaged in the NAP to protect and prevent trafficking and exploitation of this group of children, the Social Service Agency is drafting a concept paper, which will structure and organize the work assisting children living and working on the streets. While acknowledging the efforts of the Social Service Agency to tackle the issue of children living and working on streets, the Special Representative shares the concern of stakeholders consulted during the visit that the Agency's mandate and limited capacity hampers timely removal of the child from the street as the Agency is not permitted to remove the child without the consent of the child or the child's guardian. Guided by the principle of protection of the best interests of the child, the Special Representative recommends enhanced action on child protection, law enforcement agencies to conduct outreach, identify and refer children to immediate assistance and care to prevent the continuum violence and exploitation against children. He also recommends Georgian authorities to develop special capacity-building programmes to train all agencies involved in child protection scheme with the focus on ensuring the best interest of the child in assistance and support activities.

32. The reflection period for trafficking victims is enshrined in Article 12 of the Anti-Trafficking Law and provides for a 30-day reflection period, which commences from the date when a person applies to the service agency for victims of trafficking in human beings, to a law enforcement body or another appropriate agency. In its first and second evaluation reports, GRETA criticized the limited scope of the provision, which contemplates only reflection and not the recovery. According to Article 61 of the Law on Legal Status of Aliens, removal of a foreign victim of trafficking during the reflection period is not permitted. Similarly, Article 12 (3) of the Anti-Trafficking Law exonerates the victim of trafficking from any liability under Criminal Code Article 371 during the reflection period. The Special Representative highlights that Article 13 of the Council of Europe Convention requires that all state parties provide for both a recovery and reflection period of at least 30 days in their domestic legislation, which should be sufficient for the person concerned to recover and escape from the influence of traffickers. Similarly, the UNODC Toolkit to Combat Trafficking in persons states that "granting a reflection period, followed by a temporary residence or permanent residence permit, would ideally be granted to victims of trafficking regardless of whether the person is able or willing to give evidence as a witness". In this regard, the Special Representative notes with regret that the reflection period as provided for in the Anti-Trafficking Law does not appear to fully achieve its core purpose of providing for both a period for a trafficked person's recovery from a trauma endured and give a decision whether or not to co-operate with law enforcement. He strongly recommends that Georgian authorities revise the legislation to include the right to recovery for trafficked persons.

33. Articles 15 and 16 of the Law on the Legal Status on Aliens and Stateless Persons entered into force in 2014 and provides for provisions for granting temporary residence permits to trafficked persons. The permit is issued by the Public Service Development Agency (PSDA) under the Ministry of Justice for the duration of six years with the possibility of extension at the request of an institution providing services to victims of trafficking or a law enforcement agency.
34. As stated in para 30, the State Fund is responsible for managing the overall assistance and protection scheme for trafficked persons. In addition, it is also responsible for the one-off compensation to be paid to victims of THB. The compensation in the amount of 1000 GEL (450EUR) is paid to all victims regardless of their co-operation with the criminal proceedings. Article 16 of the Anti-Trafficking Law provides that victims and persons affected by trafficking in human beings shall have the right to request reimbursement for moral, physical or property damages incurred due to the crime of trafficking in human beings, under Georgia's civil procedure and criminal procedure legislations. If this reimbursement cannot be made, victims are eligible to receive compensation from the State Fund. The Special Representative was informed that only one victim (a minor) was awarded compensation for the damages incurred because of trafficking in human beings. In this regard, the Special Representative shares the concern of the interlocutors met during the visit that implementing the victims' right to compensation is yet to be acted upon by Georgian authorities. While acknowledging the enabling legal framework on compensation, the Special Representative notes that access of victims to compensation is also hampered by the difficulties faced by authorities in enforcing compensation orders, the non-identification of perpetrators or lack of prosecution, and the actual seizure and confiscation of traffickers' assets. To this end, the Special Representatives recommends that Georgian authorities monitor and review the practical implementation of victims' access to compensation, including by conducting regular and targeted training of prosecutors, judges and other relevant actors to ensure compensation is awarded.

### **Investigation and prosecution of human trafficking**

35. The investigation of human trafficking offences is conducted by the Division for Combating Trafficking and Illegal Migration of the Criminal Police Department of the Ministry of Interior (MIA), established in 2013. In 2019, the number of mobile police groups were increased from four to six each consisting of two investigators to conduct operational activities for the detection and investigation of trafficking cases and identifying victims.
36. Additionally, a special Task Force to Combat Trafficking in Human Beings was set up in the Adjara region's Central Criminal Police department in 2014 based on the Memorandum of Understanding signed between the IOM, the Ministry of Interior and the Prosecutor's Office. Composed of seven investigators and five prosecutors, the Task Force is mandated with the detection and investigation of trafficking in human beings cases in that region. The Special Representative positively notes the inclusion of two female investigators in the Adjara Task Force, which was reported to have enhanced the effectiveness and capacity of the Task Force. The Task Force meets

regularly as a working group to discuss investigations and develop investigatory measures and training activities as necessary.

37. To enhance proactive investigations, in 2017, the Co-ordination Council approved the revised Guidelines for the Law-enforcement on the investigation and prosecution of trafficking cases and treatment of victims and statutory victims of trafficking adopted in 2014. The revision was made to ensure the guidelines are reflective of the legislative amendment made to the Criminal Procedure Code and to incorporate the case law of the European court of Human Rights (ECHR) in the standards. Similar Guidelines on identification of victims of trafficking along the borders were also developed for border police and customs officers.
38. Reportedly, the misuse of technology for committing trafficking offences is a new pattern for Georgia. A Special Cybercrime Unit was set up in 2012 to prevent and combat crimes committed in cyberspace. According to the criminal police force, there have been a few joint investigations conducted between Cybercrime and Anti-Trafficking Units, including one involving a case of a mother exploiting and distributing her child's pornographic images online. The case also involved international co-operation with Israel. In this regard, the Special Representative positively notes the initial examples of collaboration, but highlights the need for closer and stronger co-operation between respective law enforcement agencies to map and detect online marketplaces for sexual exploitation (in particular websites and social media accounts offering commercial sex services) and to identify online platforms which are used for livestreaming of online child sexual exploitation and those that facilitate recruitment of persons for labour exploitation. To this end, the Special Representative invites the Georgian authorities to review the OSCE's Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings' forthcoming paper on Technology and Human Trafficking to be published in early 2020.
39. To ensure the compliance of investigations with human rights commitments and recommendations provided by international organizations, the MIA has established a Human Rights Department composed of former investigators and prosecutors. The Department monitors and evaluates all investigations uploaded into the intranet against possible shortcomings, e.g. misconduct or abuse of power by investigators. The Department also observes legislative changes and their implementation including recommendations aimed at improving investigations and conducts public awareness activities.
40. In his assessment of investigations into trafficking in human beings cases, the Special Representative notes that investigations are often hampered by a heavy reliance on victims to come forward and self-identify. Although the dual system of identification is present to ensure victims are identified and granted victim status independent of their co-operation with criminal proceedings, the identification rate has declined. Reportedly, a challenge in the last three years has also been the reluctance of identified victims to stay in the shelter provided to them. In the Adjara region, the Task Force reported challenges due to inconsistent testimonies of victims where a victim's testimony during initial interviewing differed from the one given during trials. Along these lines, the Special Representative notes that this issue is not unique to Georgia and practitioners from other OSCE participating States report that due to high levels

of trauma, particular life circumstances, interference from traffickers or their associates, or various dependencies, victim testimony can occasionally be of diminishing value over the life of a case. In this regard, the Special Representative strongly encourages the exploration of strategies and tactics to enhance the collection of corroborating evidence beyond the victim's testimony, including recordings, technology-based evidence, financial evidence, additional witness statements, etc.

41. The Special Representative notes the statistical information provided by the Ministry of Justice, which reflects the prevalence of investigations into sexual exploitation cases. From 2013 to the first half of 2019, police investigated 76 cases of trafficking for sexual exploitation of adults. Out of these four cases are related to both sexual and labour exploitation of adults and one case is related to the sexual exploitation of adult and minor, two cases of sexual exploitation of minors, 17 cases of trafficking for labour exploitation of adults, and 11 cases of labour exploitation of minors. In addition, during the mentioned period, six investigations started on alleged selling of minor. The Special Representative urges the police involved in anti-trafficking to increase their efforts to conduct proactive investigations into all sectors prone to exploitation and to emphasize diverse methods to collect evidence beyond victim testimony.
42. Georgian law allows law enforcement to use special investigation techniques to detect THB, such as the use of surveillance, undercover investigations, and interception of communication and monitoring of suspicious persons by technical means (Article 12 of the Criminal Code). These techniques may be used upon the decision of the prosecutor or may be subject to the court's examination within 24 hours. As noted in para 17 of this report, the Special Representative positively notes the change in the Criminal Procedure Code provision in 2018, which provides for the law enforcement's use of special investigative means in cases falling under Article 254 (providing a venue for prostitution) and enables the detection of trafficking cases in massage parlours and night bars that are prone to promoting prostitution. According to stakeholders met in Batumi, this change has led to a number of successful investigations, although some cases that were suspected to be trafficking lacked evidence to prove the necessary elements. Nevertheless, the permission to use the specific investigative means has assisted the investigation and prosecution of cases under Article 254.
43. As noted in para 15 of the present report, Article 143<sup>3</sup> of the Criminal Code criminalizes the users of services of trafficked persons. The provision was introduced in 2015 to encourage the reporting of the using of services of trafficked person by including a provision that would free a user from criminal liability if--before the investigation begins--the person voluntarily provides information to the investigation in writing and co-operates with the investigation and if his/her actions do not contain elements of any other crime. The Special Representative was not provided with the data on the initiated investigations and prosecution of users of services of trafficked persons, however, the indications were that implementation of the criminalization of users was negligible. In this regard, the Special Representative believes that implementation of the law criminalizing the knowing use of services of a trafficked person is crucial to reduce the demand for trafficking of persons for sexual and labour exploitation. He recommends that Georgian authorities review and analyse the application of Art 143<sup>3</sup> of the Criminal Code in criminalizing the users of services of trafficked persons with a focus on its robust implementation. Furthermore, he recommends that Georgian criminal justice practitioners enhance their efforts to

investigate and prosecute all individuals who use of the services of trafficked victims and contribute to demand for sexual exploitation of vulnerable persons.

44. The Special Representative is pleased to note that Academy of the Ministry of Internal Affairs provides training on trafficking in human beings. Additionally, the Co-ordination Council also delivers trainings to criminal justice practitioners on new trends observed in trafficking in human beings across the country. Of note, the new NAP 2019-2020 includes a number of action points to increase the capacities of the Central Criminal Police Department, district police officers, patrol police officers and regional police units in their investigation of THB cases.
45. As regards the prosecution and adjudication of human trafficking, THB cases are heard by six judges in Tbilisi City Court and seven judges of Tbilisi Court of Appeals with a narrow specialization in trafficking. Overall, the Special Representative notes that the conviction rate is reflective of the low detection rate. Georgian authorities prosecuted five cases of sexual exploitation in 2013, five in 2014, five 2015, one in 2016, four sexual exploitation cases in 2017 and three cases of labour exploitation and three cases of sexual exploitation of adults, two persons for forced begging of children and two persons for selling of minor in 2018. In 2019 in total three persons were convicted for human trafficking. Out of three, one was convicted for sexual exploitation of an adult and two persons were convicted for forced begging of minors. The Special Representative notes positively that in all cases, perpetrators received strict penalties proportionate to the gravity of the offence.
46. As regards financial investigations, Financial Monitoring Service of Georgia (FMS) is an equivalent of a Financial Intelligence Unit (FIU), which receives and analyses suspicious transaction reports (STRs). The suspected predicate offence detected during analysis is sent to the police. According to the FMS the number of suspicious transaction reports submitted has been decreasing in the last five years due to the reduction of compliance requirement for financial institutions. The FMS also reported that the decrease is due to the improved identification of red flags and eliminating irrelevant reports. For instance, the number of STRs was 2500 in 2014, but this number was only 800 in 2018. While 67 percent of the triggered STRs related to terrorism financing, only two were linked to trafficking in human beings; in both of these cases, the link was not entirely clear. According to FMS, a draft law on anti-money laundering and terrorism financing is currently in progress, which will introduce new requirements for risk assessments, restrict anonymous money transactions and improve exchange of information with foreign countries and public institutions, including law enforcement agencies.
47. On the issue of confiscation and recovery of proceeds of trafficking, the Special Representative highlights the need to conduct financial investigations into trafficking in human beings parallel to criminal investigation as an important tool to disrupt the business model of perpetrators as well as to enhance use of corroborating evidence in prosecutions. In addition to being used as a punitive measure against traffickers, financial investigations can also used for protecting victims of THB in relation to their reparation and compensation. He notes that interlocutors acknowledged very limited use of financial investigations in relation to THB and that no assets of trafficking offences were recovered pursuant to Article 52 of the Criminal Code, which envisages assets forfeiture. Such an absence is reportedly due to the challenges to track and



identify perpetrators assets/funds. In this regard, the Special Representative takes note of the discussion with the FMS on the need to conduct risk assessment of STRs using the trafficking indicators and welcomes the initiative of the General Prosecutor's Office to establish a platform for discussions among FMS, financial entities, law enforcement agencies on financial investigations into THB. He wishes to receive further information on the work of this platform once established. To this end, the Special Representative recommends that Georgian authorities (1) develop trafficking specific indicators and guidance for FIUs and financial entities to identify trafficking risks when analysing STRs; and (2) further develop collaboration between Financial Monitoring Service and anti-trafficking police with a view to conducting financial investigations. For this purposes, he invites them to make the use of the recent publication of the OSR/CTHB on "Following the Money: Compendium of Resources and Step-by-Step Guide to Financial Investigations into Human Trafficking".<sup>16</sup>

48. Article 15 of the Georgian Anti-Trafficking Law provides for the non-punishment principle in relation to trafficking victims. However, the provision is restricted only to offences related to irregular entry (Criminal Code Article 344), making, procuring and use of fraudulent travel documents (Criminal Code Article 362), prostitution (Code of Administrative Offences Article 1723) and for unlawful residence in Georgia (Code of Administrative Offences Article 185). Nor shall they be held liable for participating in illegal acts, if they had to commit the offence due to their being victims of or persons affected by human trafficking." Therefore, even though the mentioned article specifies some of the illegal acts, the statutory victims of human trafficking are exonerated from liability for participating in any illegal act, if they committed the act due to being (statutory) victims of THB. The Special Representative positively notes the expanded provision of the principle which is in line with the recommendation of the OSCE paper on "Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking" which recommends the participating States to adopt an open-ended list of offences typically related to trafficking in human beings for which victims of trafficking will not be punished or penalized.<sup>17</sup>

### **Prevention of human trafficking**

49. Georgia is an attractive tourist destination. Approximately 71.8% of Georgia's service sector revenue comes from tourism.<sup>18</sup> While tourism sector development is essential in creating more jobs and generating more income to the country's economy, flourishing entertainment and hospitality sectors may also be misused to exploit vulnerable women, men and children. The tourism and hospitality sector is among the high-risk sectors for trafficking in human beings and forced labour.<sup>19</sup>
50. The commercial sex industry carries perhaps the highest risk of human trafficking and is often linked to the tourism industry. Pursuant to Art 1722 of the Code of Administrative Offences, prostitution is an administrative offence in Georgia and carries a warning or a fine of up to half of the minimum wage.<sup>20</sup> This is, however,

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<sup>16</sup> OSCE, Following the Money: Compendium of Resources and Step-by-Step Guide to Financial Investigations into Human Trafficking", 2019 < <https://www.osce.org/secretariat/438323?download=true>>

<sup>17</sup> OSCE, Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking, 2013 p. 32

<sup>18</sup> Georgian Tourism In Figures, Structure and Industry Data, Annual Report 2018 available at < <https://gnta.ge/statistics/>>

<sup>19</sup> <https://www.osce.org/secretariat/371771?download=true>, p.19.

<sup>20</sup> The Code of Administrative Offences of Georgia available at <<https://matsne.gov.ge/en/document/view/28216?publication=381>>

different in practice, according to numerous interlocutors met during the visit, prostitution is in fact neither controlled nor penalized but rather tolerated. According to governmental agencies and civil society organizations met during the visit, prostitution primarily exists in Tbilisi and in the Adjara region, and involves mainly women from Central Asia. While there is no official data on the number of women engaged in prostitution in the country, civil society organizations claim approximately 5000 women from Uzbekistan, primarily from the Andijan and Samarkand regions, are involved in prostitution in night bars, massage parlours, casinos in Adjara region and along the border with Turkey.

51. The Special Representative notes that any measures seeking to address trafficking for sexual exploitation should recognise that victims “can be hidden within mixed population of independent, exploited and coerced prostitutes and in mixed migration flows”.<sup>21</sup> While acknowledging the efforts of the Anti-Trafficking Task Force of Adjara to identify trafficked persons, the Special Representative recommends that: Georgian authorities enhance their efforts to identify victims of trafficking among persons in prostitution; significantly increase and support prevention efforts by focusing on the demand that fosters all forms of trafficking; closely monitor the entertainment facilities, including casinos and hotels, as well as other places which tend to experience higher rates of commercial sexual services, such as the Internet; and enforce the penalties against users of the services of THB victims as provided under Art 143<sup>3</sup> of the Criminal Code. He further recommends that such measures should also include adoption of appropriate legislative, educational, cultural and social measures to discourage demand and that strict monitoring is needed if the tourism industry is to prevent exploitation of women in the entertainment industry.

Additionally, numerous legally and politically-binding commitments at the international level direct States to take action to address the demand that fosters all forms of trafficking including both Article 9(5) of the Palermo Protocol and Article 6 of the Council of Europe Convention, which call for State Parties to adopt legislative or other measures including educational, social and cultural measures to discourage demand; and the OSCE Action Plan for Combating Trafficking in Human Beings which urges countries of destination to take measures to effectively address demand as a key element in their strategies. The Special Representative was informed about the prevention work organized with the support of the US Embassy targeting the truck drivers along the Georgia-Turkey border to reduce the demand for sexual exploitation and recommends enhancing such efforts to tackle the demand side of trafficking in human beings.

52. Trafficking of Georgians for labour exploitation has been largely linked to labour migration. According to one report, a specific feature of Georgian labour migration is that it is largely undocumented and irregular.<sup>22</sup> Accordingly, Georgian migrants usually rely on an unofficial and often illegal migration industry and end up in exploitative working conditions. Reportedly, private employment agencies have played a major role in the recruitment of Georgian nationals in finding jobs abroad. While the adoption of the Law on Labour Migration in 2015 improved the situation of regulation of private employment agencies offering jobs abroad, some stakeholders have expressed concerns over the operation of private recruitment agencies with regard

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<sup>21</sup> European Commission, Study on the gender dimension of Trafficking in human beings, p.2

<sup>22</sup>[https://www.etf.europa.eu/sites/default/files/m/1A3D930B985289BCC1257E9A002CEA88\\_MISMES%20Georgia.pdf](https://www.etf.europa.eu/sites/default/files/m/1A3D930B985289BCC1257E9A002CEA88_MISMES%20Georgia.pdf)

to, inter alia, their practice of charging fees. The operations of these agencies are important in bringing labour to Georgia. In this regard, the Special Representative recommends the Ministry of Labour, Health and Social Affairs and other relevant agencies to ensure an adequate monitoring mandate and enforce stricter monitoring over operations of private recruitment agencies to deter any abuse and curb fraudulent recruitment.

53. After its abolishment in 2006, the Department of Labour Inspection was re-established in 2015 under the Ministry of Labour and Health and Social Affairs. The competencies of the Department includes monitoring of occupational safety and forced labour. Upon being established, the Inspectorate signed a Memorandum of Understanding (MOU) with the criminal police to refer the suspected cases of forced labour and labour exploitation to the criminal police. The 2019 Law on Occupational Safety grants labour inspectors the ability to enter any place of business for occupational health and safety reasons without prior notification, commencing as of late 2019. The inspections are conducted by 40 inspectors country-wide and the number of inspectors is expected to increase to 80 by the end of 2019 to align with the changes introduced to occupational safety law. Since relaunch, the inspectorate checked 99 companies in 2016, 113 in 2017, 154 in 2018 and 127 in 2019. As a result of the inspections, three cases suspected of human trafficking was referred to the criminal police and was later dismissed due to lack of THB elements. Nevertheless, service and construction sectors increasingly involve migrant workers and are widely considered to be prone to instances of exploitation. While the Special Representative was informed of the plans of the Inspectorate to enhance the focus on these sectors with the support of an international organization, he notes that such inspections are not made into the informal economy, which largely leaves out the agricultural sector, some of the entertainment facilities, and households. Reportedly, there is no labour inspection force in the Adjara region, which impedes inspection of workplaces in that region. He notes the plan of Georgian authorities to elaborate guidelines to assist labour inspection in their work as envisaged in the NAP. The Special Representative strongly recommends that Georgian authorities enhance labour inspection throughout the country and in all workplaces including in informal sectors to prevent the exploitation of workers and ensure these works are free of child labour. To this end, he recalls that the ILO's Labour Inspection Convention No. 81 (1947) defines the role of labour inspectorates in three areas: prevention, advisement and enforcement<sup>23</sup> and believes that the application of these roles requires proper mandate, adequate resource and staffing. He further recommends that labour inspectors are provided with a sufficient mandate and trained regularly to identify trafficking in human beings and play a frontline role in detecting and referring cases of labour exploitation in workplaces. Once a clear mandate is established through policy, labour inspectors can play an important role in prevention, dispute resolution and labour law enforcement, and through the application of civil penalties on offenders.

54. As noted in para 25 of the present report, Georgia's swiftly-developing economic projects, in particular those related to construction, are expected to draw a large number of migrant workers to the country from China, Japan and Turkey. The Special Representative notes the concerns voiced by some stakeholders on the absence of any requirement to obtain work permits for foreigners' employment in Georgia.

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<sup>23</sup> Model Guidelines on Government measures to prevent trafficking for labour exploitation in supply chains, OSCE, 2018

Nevertheless, Government Resolution No. 417 amended in 2019 provides that companies which employ foreigners are required to register and report on the number of non-citizen employees to the to the Ministry of IDPs from the Occupied Territories, Labour, Health and Social Affairs (MOLHSA) or to the LEPL – „State Employment Support Agency“ within 30 days upon entering into force of the labour contract. Upon the receipt of the report, the Migration Office interviews the employee and employer separately and inspects the workplace.

The Special Representative notes that Georgian legislation does not include provisions on requiring businesses to exercise due diligence or leveraging public procurement to prevent trafficking for labour exploitation in supply chains. The new NAP action point 4.1.3 envisages the elaboration of guidelines on identification of cases of forced labour and labour exploitation for the staff of the Labour Inspection Department. To this end, he recalls the recommendations of the OSCE MC Decision 6/17 and recommends that Georgia develops policies, in complementarity with their national legislation, that take into account whether businesses and public sector agencies are taking appropriate and effective steps to address the risks of trafficking in their supply chains, including with regards to their subcontractors and employees when considering the awarding of government contracts for goods and services.

55. In conclusion, while positively noting the commitment and numerous steps taken in the prevention and combating of trafficking by the Government of Georgia, particularly in the area of its robust institutional framework, the Special Representative encourages authorities to continue their efforts and invites them to consider the following recommendations to enhance the implementation of OSCE anti-trafficking commitments, in particular the OSCE Action Plan to Combat Trafficking in Human Beings and its Addenda.<sup>24</sup> The Special Representative and his Office stand ready to provide technical assistance, if requested, to national and local authorities, as well as civil society, and welcomes further dialogue and co-operation to promote an appropriate follow-up of these recommendations.

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<sup>24</sup> OSCE Permanent Council, Decision No. 557/Rev.1 *OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005); OSCE Permanent Council, Decision No. 1107 *Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later* (Vienna, 6 December 2013).

## **Recommendations**

### **1. Enhance the legal, policy and institutional framework by:**

- Ratifying ILO Convention 189 concerning Decent Work for Domestic Workers.
- Ratifying the Protocol of 2014 to the ILO Forced Labour Convention of 1930.
- Ratifying the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families of 2003.
- Establishing working groups or *ad-hoc* groups within the Co-ordination Council to focus on the commercial sex industry (including proactive identification of victims and addressing users of services of trafficked victims), trafficking for labour exploitation including its prevention in business supply chains and government's public procurement, and the role of technology for trafficking in human beings for various exploitative purposes to fill the current gap of knowledge and data in these areas of concern.
- Improving monitoring and evaluation of anti-trafficking action by separating the National Rapporteur function from the Co-ordination Council to ensure the independent assessment and reporting of anti-trafficking actions and their effectiveness; initiating and supporting research studies into various patterns of human trafficking, including into the risks of trafficking among women in prostitution, migrant workers involved in the construction, hospitality and agricultural sectors and trafficking of in human beings for committing crimes including for terrorist purposes.

### **2. Enhance victim identification, assistance and protection by:**

- Revising the mandate and tasking of the Mobile Groups of the State Fund for Protection of and Assistance to Victims of Trafficking in Persons to conduct outreach activities in areas prone to trafficking in human beings such as the tourism, hospitality, construction and agricultural sectors.
- Enhancing the role of civil society organizations in all stages of anti-trafficking agenda, in particular in outreach and identification of trafficked persons.
- In co-operation with civil society organizations and academia conducting research and mapping online platforms, including websites, social media, public and private groups in messaging applications, where the risk of human trafficking is high and developing indicators to identify potential human trafficking cases online and conducting pro-active identification and outreach in this regard.
- Enhancing measures to identify victims of trafficking among persons involved in the commercial sex industry; reviewing existing practices of identifying means in THB cases including by expanding the focus on other subtle means of trafficking such as deception, abuse

of position of vulnerability and the various forms of coercion that are used to control vulnerable persons, in particular foreign women.

- Finalizing and putting into practice the child protection strategy paper with particular attention to children living and working on the streets; monitoring and evaluating the effectiveness of the current child protection system including by ensuring the mandate of Social Services Agency permits early intervention and removal of children from an exploitative situation on the streets;

- Urgently conducting country-wide research to identify the scale of the children living and working in the streets including by studying the push and pull factors that contribute to the phenomenon; mapping the areas where children are likely to be exploited in begging, and developing recommendations for improving its child protection system, including the identification and assistance to children trafficked for various exploitative purposes and by training front line officers and child protection authorities.

- Finalizing and putting into practice the Guidelines for identification of forced labour and labour exploitation to ensure labour inspectors are equipped and trained to detect and address labour exploitation in sectors at risk of the exploitation of foreign migrant workers, such as the construction, agriculture and tourism and hospitality sectors.

- Conducting a thorough risk assessment of mixed accommodations and due diligence in all cases when trafficked persons are placed due to the differing needs and risks associated with trafficked persons and victims of domestic or gender-based violence.

- Revising Article 12 of the Anti-Trafficking Law to include an explicit reference to the recovery period along with the envisaged reflection period.

- Reviewing the mechanism for issuing residence permits for trafficked persons and individually assess cases with residence requests, in addition to the mandatory requirement under criminal proceedings.

- Developing simple and effective procedures to enable trafficked persons' access to compensation, including by monitoring and evaluating the current practices of compensation procedures, and providing training for law enforcement and the judiciary on victims' right to compensation.

### **3. Enhance the criminal justice response to all forms of trafficking in human beings by:**

- Prioritizing proactive investigations and prosecutions which do not solely rely on the testimony of a victim, as well as by making the best use of special investigative tools, including wiretapping, surveillance and undercover operations, and developing capacity-building activities for investigators and prosecutors to advance victimless investigations.

- Developing closer co-operation between cybercrime and anti-trafficking units of the MIA and the civil society organizations to detect and investigate human trafficking offences facilitated and enabled by technology.

- Enhancing measures to investigate trafficking in children for begging and criminal activities.

- Reviewing and analysing the application of Art 143<sup>3</sup> of the Criminal Code in criminalizing the users of services of trafficked persons with a focus on robust implementation of the law and enhancing the criminal justice response to investigate and prosecute all individuals who use of the services of trafficked victims and contribute to demand to sexual exploitation of vulnerable persons.

- Developing trafficking specific indicators and guidance for FIUs and financial entities to identify trafficking risks when analysing STRs; further developing collaboration between Financial Monitoring Service and anti-trafficking police with a view toward conducting financial investigation.

#### **4. Enhance prevention of trafficking in human beings by:**

- Increasing and supporting prevention efforts by focusing on the demand that fosters all forms of trafficking, including adoption of appropriate legislative, educational, cultural and social measures to discourage demand and by closely monitoring the places and websites offering prostitution services to prevent the exploitation in the commercial sex industry.

- Adopting legislation and policies on due diligence and public procurement to ensure that businesses and public agencies are regulated and guided to address the risks of human trafficking, including with regards to their subcontractors and employees, when considering the awarding of government contracts for goods and services, in line with OSCE commitments.

- Establishing and enhancing labour inspectorate agencies throughout the country and ensuring their mandate is expansive enough to permit inspection of all workplaces including informal sectors to prevent the exploitation of workers.

- Taking preventive measures, aimed at eradicating deceptive and exploitative practices regarding the recruitment of migrant workers in sectors prone to exploitation through providing the regular inspection of work places, as well as using joint operations and investigations with other relevant agencies, including by enforcing stricter monitoring over operations of private recruitment agencies to deter any fraudulent recruitment.

- Enforcing the penalties prescribed by the Anti-Trafficking Law on legal entities committing offences and applying relevant provisions of the Law to hold employers accountable for violating the rights of migrant workers.

**ANNEX I****Programme of the visit**

<b>Monday, 17 June 2019</b>	
09:00-11:00	<b>Meeting with anti-trafficking NGOs (4 NGOs TBC)</b>
11:00-12:30	<b>Meeting with International Organizations</b>
13:30-14:00	<b>Meeting with the Deputy Minister of Justice, Deputy Chairperson of the Inter-Agency Council on Combatting Trafficking in Human Beings</b>
14:00-15:00	<b>Meeting with the representatives of Ministry of Justice (Secretariat of the Inter-Agency Council on Combatting Trafficking in Human Beings)</b>
15:00- 16:20	<b>Meeting with the representatives of the Ministry of Internal Affairs</b>
16:20-17:40	<b>Meeting with the representatives of the General Prosecutor's Office of Georgia</b>
17:40-19:00	<b>Meeting with the Labour Inspectorate Department (LDI) of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs</b>
<b>Tuesday, 18 June 2019</b>	
09:00-10:15	<b>Meeting with the Judges of Tbilisi City Court</b>
10:45-12:00	<b>Meeting with the LELP State Fund for protection and assistance of (statutory) victims of Human Trafficking and Tour in the THB shelter</b>
12:20-13:30	<b>Meeting with the LELP Social Service Agency of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Protection of Georgia</b>
13:30-14:30	<b>Meeting with the Ministry of Education, Science, Culture and Sports</b>
15:00 – 16:15	<b>Meeting with the Financial Monitoring Service of Georgia</b>
16:15-17:30	<b>Meeting with IOs and NGOs – members of the Permanent Working Group operating under the Interagency Council on Combating Human Trafficking</b>
18:00-19:00	<b>Meeting with Public Defender's Office</b>
<b>Wednesday, 19 June 2019</b>	
10:00-11:00	<b>Visit at the shelter and meeting with the Administration of the shelter in Batumi</b>
11:30-13:00	<b>Meeting with the THB Task Force of Batumi</b>
14:00-15:00	<b>Meeting with the Judges of Batumi City Court</b>



## ANNEX II.

### **Comments of the Government of Georgia on Report by the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings following the country visit to Georgia 17-19 June 2019**

*(received on 24 April 2020)*

The Government of Georgia (hereinafter – the GoG) expresses its sincere gratitude to the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings and its delegation for the visit to Georgia on 17-19 June, 2019 and cooperation during the monitoring process.

Combating trafficking in Human Beings (THB) remains one of the key priorities for the Government of Georgia. Assessment and recommendations of OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings are highly worthwhile and beneficial to further develop Georgian counter-trafficking policy. Herewith Georgia would like to submit the comments and additional information with regard to the following paragraphs of the presented Report.

#### ***Para. 14***

*“Child trafficking is criminalized under Article 143<sup>2</sup> and is punishable with a prison term from eight to twelve years. In the presence of aggravating circumstances, the sentencing is set from 11 to 20 years of imprisonment.”*

*“Additionally, Article 172 of the Criminal Code criminalizes trafficking of minors for illegal adoption punishable by fine or imprisonment for up to one year while the sale or any other unlawful transaction with regard to a child with the same purpose is punished by imprisonment for a term of two to five years.”*

*“Article 171 of the Criminal Code criminalizes the act of involving minors into anti-social activity punishable by: corrective labour for a period of 170 to 240 hours; or by corrective labour for the term not in excess of two years; if the act is committed repeatedly, the offender shall be punished by imprisonment for a term of three to six years.”*

#### **GOG comment:**

GOG notes that apart from the mentioned sanctions, if trafficking in minor is committed by an organized group or THB resulted in death of a child or any other grave result, an offender may be sanctioned to life imprisonment.

As for Article 172 of CCG, purchase (and not trafficking as mentioned in the report) of a minor or any other unlawful transaction with respect to a minor for the purpose of their adoption is punished by a fine or imprisonment for up to one year.

GOG respectfully clarifies that apart from the mentioned sanctions, Criminal Code of Georgia considers imprisonment for up to two years as one of the sanctions for involving minor into anti-social activity (Article 171 of CCG).

**Para. 15**

*“The provision was amended in 2015 to encourage the reporting of the using of services of trafficked person and frees a user from criminal liability if before the investigation begins, the person voluntarily provides information to the investigation in writing and co-operates with the investigation and if his/her actions do not contain elements of any other crime.”*

**Para. 43**

*“As noted in para 15 of the present report, Article 1433 of the Criminal Code criminalizes the users of services of trafficked persons. The provision was amended in 2015 to encourage the reporting of the using of services of trafficked person by including a provision that would free a user from criminal liability if--before the investigation begins--the person voluntarily provides information to the investigation in writing and co-operates with the investigation and if his/her actions do not contain elements of any other crime.”*

**GOG comment:**

GOG would also like to note that apart from writing form user of the services of trafficked person will not be liable for committing such an act in case he/she notifies the law enforcements by using any technical means of communication.

**Para. 17**

*“Article 254 criminalizes the act of “providing a venue for prostitution” by a fine or imprisonment for a term of two years. This provision was amended in 2018 to allow law enforcement to use special investigative techniques. (see para 42 for further details). According to interlocutors met during the visit, Article 254 appears to be used frequently as an alternative to the trafficking statutes to prosecute offenders.”*

**GOG comment:**

Georgian Authorities would also like to emphasize that Article 254 of the CCG is not an alternative to Articles 143<sup>1</sup>-143<sup>3</sup>. The qualification of the case depends on factual circumstances and the evidences collected during the investigation. If the evidences shows that a person provided the venue for prostitution and there were no signs of human trafficking in the crime committed, then prosecution will start under Article 254.

**Para. 18**

*“The Georgian law provides for irrelevance of consent under the Note 2 to Article 143<sup>1</sup> and 143<sup>2</sup>. Nevertheless, the Special Representative notes that a number of interlocutors raised concerns that*

*trafficking cases were not being identified nor further investigated due to a perception that women in particular identified in prostitution had consented to the situation they were in and to their exploitation.”*

**GOG comment:**

According to Article 143<sup>1</sup> of the CCG, for the purposes of human trafficking in adults and minors, it does not matter whether a person consents to his/her pre-determined exploitation.

Moreover, Criminal Procedure Code of Georgia (CPC) sets grounds for launching investigations. To this end, article 101 of the chapter XIV of CPC, states following:

***Article 101 – Information on crime***

*1. The grounds for initiating an investigation shall be the information provided to an investigator or a prosecutor, or information revealed during criminal proceedings, or information published in the mass media.*

*2. Information on a crime may be reported in writing, orally or in any other way.*

Taking into consideration all-mentioned, if the sign of the exploitation is revealed, police is obliged to launch investigation irrespective of the perception and/or consent of a presumed victim/statutory victim.

Irrelevance of the consent of a person on his/her exploitation is also covered during the trainings organized for law enforcements, judges, labor inspectors and any other target group working on THB issues.

***Para. 20***

*“Comprised of three persons, the Secretariat of the Co-ordination Council is the main unit that conducts monitoring and evaluation, however a lack of human resources often impedes a regular and robust monitoring and comprehensive assessment of the situation, thus limiting it to an analysis of the reports provided by various agencies tasked to implement the actions outlined under the National Plan.”*

**GOG comment:**

In every two years, Interagency Coordination Council on the Implementation of Actions against Trafficking in Human Beings (THB Council) elaborates and approves the National Action Plans (NAP) on combatting THB (Currently, NAP for 2019-2020 is in place). The NAPs are elaborated with the active involvement of all Governmental Agencies, Public Defender’s Office, Parliament of Georgia, NGOs, and International Organizations. Furthermore, during the elaboration process of the draft NAP recommendations of US State Department and International Organizations are taken into consideration and reflected to the NAP. GOG also takes into account the practice of the ECHR and incorporate the standards of the Court case law while designing the Anti-Trafficking policy.

The Secretariat (Public International Law Department of the Ministry of Justice of Georgia) of the THB Council monitors and elaborates the implementation reports of the NAP once a year and publishes them on the official website of the Ministry of Justice of Georgia<sup>25</sup>.

In addition to the monitoring and analysis of the implementation report by the Ministry of Justice of Georgia, GOG acknowledges the importance of the robust monitoring and comprehensive assessment of the situation by independent experts. In this regard, based on the initiative of the Ministry of Justice of Georgia, in close cooperation with ICMPD and financial support of EU it is planned to evaluate the implementation of the Anti-Trafficking National Action Plans for 2017-2018 and 2019-2020 by an independent expert in spring 2020.

**Para. 22**

*“Nevertheless, the Special Representative would like to highlight that CSOs can provide even more prominent input beyond just offering mere technical support when requested or permitted by the State and should be included all stages of anti-trafficking work, including policy development and from the very outset of outreach and identification of victims. This is also recommended by the recently-published OSCE report on “the Critical Role of Civil Society in Combating Trafficking in Human Beings.”*

**GOG comment:**

GOG acknowledges that combatting THB requires concerted and well-coordinated actions that will include not only Governmental Agencies but also NGOs, International Organizations and in general, civil society. In these regard, Georgian authorities would like to note that civil society organizations are not only the members of the THB Council and the Permanent Working Group for Identification of Victims of THB, but also they are involved in identifying the recent trends and challenges, drafting legislative amendments and elaborating various documents (e.g. future action plans, strategies, guidelines, etc.).

**Para. 23**

*“As a country of origin, Georgian women are reportedly trafficked to Turkey and the United Arab Emirates for sexual exploitation, while Georgian men are trafficked for labour exploitation in Turkey, UAE, Iraq and Cyprus.”*

*“A continuing demand for sexual services is one of the underlying factors contributing to trafficking of women primarily from Azerbaijan and Central Asia (especially Uzbekistan) for prostitution.”*

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<sup>25</sup> The implementation reports are available at <https://www.justice.gov.ge/Ministry/Index/334>

**GOG comment:**

Georgian authorities would like to inform that there have been no Georgian men identified as victims or statutory victims of labor exploitation in United Arab Emirates. There have also been identified no women victims of human trafficking from Azerbaijan.

**Para. 24**

*“Notwithstanding the efforts of Georgian authorities, according to numerous interlocutors met during the visit at risk children living and working in the streets continues to be serious issue and requires further urgent action from the authorities including an enhanced regional co-operation to prevent children who are moved across borders between Azerbaijan and Georgia with the purpose to beg. In this regard, the Special Representative recommends that Georgian authorities enhance their efforts to prevent and address the issue of children living and working in the streets by urgently conducting country-wide research to identify the scale of the issue including by studying the push and pull factors that contribute to the phenomenon; mapping the areas where children are likely to be exploited in begging, and developing recommendations for improving its child protection system, including the identification and assistance to children trafficked for various exploitative purposes.”*

**GOG comment:**

Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, UNICEF, World Vision Georgia and Foundation Open Society Georgia decided to carry out a qualitative research to better study the “street children” phenomenon and related institutional systems to improve relevant policy, services and institutional environment in Georgia.<sup>26</sup>

A steering committee composed of all engaged stakeholders: Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs, former LEPL Social Service Agency, Ministry of Internal Affairs, Ministry of Justice, Ministry of Education, Science, Culture and Sport, UNICEF, World Vision, Open Society Georgia Foundation, Caritas Georgia, Save the Children, ILO and Public Defender’s Office of Georgia has been established to supervise the study. The steering committee approved the description of qualitative study and based on open tender selected a Norwegian research organization (Fafo). The committee was actively engaged in the process of the study and was considering the methodology, interim and final results.

The research provides an in-depth analysis of the street life of children in Georgia to better understand the situation of children living and working on the streets, and to develop recommendations on effective prevention and response mechanisms. The study is based on interviews with children in street situations, their families, service providers, and policy makers. The research highlights the diversity of the children’s backgrounds and outlines many of the drivers

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<sup>26</sup> The research is available at: <https://www.unicef.org/georgia/reports/children-living-and-working-streets-georgia>

and push factors causing them to live and work on the streets. The research also describes the activities children are occupied with in the streets.

Based on the study the Steering Committee elaborated recommendations addressing the findings and challenges linked to children in street situations. One of the main recommendations was to elaborate unified state vision and national policy related to children living and working in the streets. In response to it, Government of Georgia has already started the drafting of stand-alone National Strategy on children in street situations. Before drafting, the Ministry of Justice of Georgia requested and analyzed information from EU and EAP countries on legislative and institutional framework addressing street begging and protection of children in street situations.

**Para. 28**

*“According to statistical data provided by the authorities, the number of victims identified by the Permanent Group were 29 in 2013, 5 in 2014, 8 in 2015, 1 in 2016, 4 in 2017, 2 in 2018 and 4 in the first half of 2019. The number of statutory victims of THB identified by law enforcement were 10 in 2013, 7 in 2014, 8 in 2015, 2 in 2016, 8 in 2017 and 7 in 2018.”*

**GOG comment:**

The mentioned 4 victims identified in 2019 were identified by the law enforcements as statutory victims and not by Permanent Group. GOG would like to ask to correct the statistical information.

In 2019 (from 1<sup>st</sup> of January till 31 December) law enforcements identified in total 29 statutory victims of THB. All of them were children.

**Para. 29**

*“The identification procedure as it practiced by both the Permanent Group and law enforcement, depend heavily on victims’ self-identification or third-party information and does not maximize the well-intended purposes of the dual identification mechanism.”*

*“In this regard, the Special Representative recommends that the Permanent Group of the Co-ordination Council on Combating Trafficking in Human Beings enhance the identification of trafficked persons by assessing the effectiveness of the mobile groups scheme with a view to improving proactive identification of victims and including outreach to identify trafficked persons in areas prone to exploitation such as tourism, hospitality, construction and agricultural sectors.”*

**Para. 40.**

*“In his assessment of investigations into trafficking in human beings cases, the Special Representative notes that investigations are often hampered by a heavy reliance on victims to come forward and self-identify.”*

### **GOG comment:**

Reinforcing proactive identification of the victims is one of top priorities for Georgian Government. Therefore, since 2013, THB inspection mobile groups (as mentioned above, since September, 2019 the number of mobile groups has increased from 4 to 6) composed of representatives of law enforcements agencies (detective-investigators) created under Central Criminal Police Department of the Ministry of Internal Affairs of Georgia regularly operate in the high risk areas (hotels, bars, bathes, casinos, etc.). The mobile groups detect and record trafficking risk-bearing areas, and check and study persons, including persons engaged in prostitution, working in organizations that have suspicious reputation. They also monitor persons and organizations which offer employment in or outside of the country; organizations which ensure transportation for persons leaving the country; travel agencies; enterprises which employ foreigners, organizations and persons provided visa assistance. The mobile groups interview those persons which have been employed outside of the country through employment agencies operating in Georgia. The aim of the interview is to ensure, that each worker has identity cards, they exercised their right to freedom of movement, they have been receiving the full remuneration for their work, and they were engaged in work voluntarily.

In addition, on February 27, 2014 Memorandum of Understanding was signed between the Ministry of Internal Affairs, the Office of the Prosecutor General and the International Organization for Migration on the principles of cooperation in the area of capacity building of law enforcement agencies in combating trafficking of human beings. On the base of the memorandum, the **Task Force** consisted of investigators and prosecutors has been established in Adjara region.

Like the mobile groups, Task Force also proactively checks the risk places, interview the employees there and in case of any suspicion, investigates and prosecutes human traffickers.

In order to reveal the fact of labor exploitation mobile groups and Task force systematically interview deported citizens from Turkey and other countries. Particular attention is paid to interviewing citizens which were deported as a reason of illegal working or prostitution. Law enforcements provide them with full information on human trafficking issues, legislation and rights of victims.

On 19 December, 2017 the THB Council approved the **revised Guideline for the Law Enforcements** on the Investigation and Prosecution of THB Cases and Treatment with Victims and Statutory Victims of THB, which was adopted by the THB Council in February, 2014. The main aim of the revision was to reflect the legal amendments introduced to the Criminal Procedure Code of Georgia and respond the current trends of human trafficking. We have taken into account the practice of the ECHR and incorporated the standards of the Court case law while designing the guidelines. The document was revised by a working group composed of the representatives from the Ministry of Justice, Ministry of Internal Affairs and the Office of the Prosecutor General of Georgia.

Standard Operation Procedures (SOPs) adopted in 2015 is also actively used by the investigators, patrol police officers, staff of migration department and mobile groups of Agency of State Care and Assistance of (Statutory) Victims of Human Trafficking (the former State Fund) (*hereinafter* – Agency of State Care)<sup>27</sup> to proactively identify presumed THB victims and collect all relevant information related to THB case.

Law enforcements are permanently trained in order to develop their skills and promote their capacity building with regard to detection of THB cases. Guidelines and SOPs are the part of each training module devoted to human trafficking.

As a result of **intensive proactive measures, the number of investigations, prosecutions and statutory victims is gradually increasing**. For example, comparing the 2012, the number of **investigations is doubled**, when the number of **prosecution has increased seven times**. The **overwhelming majority of these cases were investigated proactively**.

As for the proactive identification of the victims by the mobile groups of Agency of State Care, it should be noted that the each mobile group of the Agency of State Care consists of 1 lawyer and 1 psychologist. According to the Governmental Resolution N284 on Unified Standards and Rules for Identifying Victims of Human Trafficking approved on 11 April, 2014 if the presumed victim does not want to cooperate with law enforcements and would like to get the official status of the victim of THB, the mobile group must be informed about it by law enforcements, labor inspectors and/or any other organization/institution and interview the presumed victim based on special identification questionnaire. The hotline of the Agency of State Care operating in 8 different languages is also widely disseminated among the population during information campaigns, through TV and Radio shows, thematic materials (leaflets, brochures, bags, t-shirts), etc. aiming at promoting self-identification of the victims of human trafficking.

The mobile groups don't have a mandate to conduct outreach activities in areas prone to trafficking in human beings such as the tourism, hospitality, construction and agricultural sectors for the purpose of detection of presumed victims. According to Georgian legislation this type of activities are carried out by the Ministry of Internal Affairs (Proactive Investigation) and the Department of Labor Inspection. State institutions which may have primary contact with presumed victims of trafficking must inform them about their rights, procedures of granting the status of victim and in case of their agreement apply to the Agency of State Care for their further interviewing by mobile groups.

### ***Para. 30***

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<sup>27</sup> Since 1 February, 2020 LEPL Social Service Agency merged with the LEPL State Fund For Protection and Assistance of (Statutory) Victims of Human Trafficking and formed as one LEPL “Agency of State Care and Assistance of (Statutory) Victims of Human Trafficking.”



*“The State Fund is also mandated to work on the issue of domestic violence and gender-based violence and operates five shelters and five crisis centres, however, trafficked victims can be accommodated in shelters in Tbilisi and Batumi, while other shelters serve the victims of violence. . In this regard the Special Representative notes that the shelters only accommodate those victims referred to them by the State Fund or by law enforcement, and self-referrals can be accommodated in Tbilisi crisis Centre for the duration of 12 days during which the case is referred to the Permanent Group for examination. With regard to the mixed accommodations, the Special Representative recommends that Georgian authorities conduct a thorough risk assessment and due diligence in all cases due to the differing needs and risks associated with trafficked persons and victims of domestic or gender based violence.”*

**GOG comment:**

GOG kindly clarifies that 5 shelters in Batumi, Tbilisi, Gori, Kutaisi and Signaghi and 5 Crisis Centers in Tbilisi, Kutaisi, Gori, Marneuli, and Ozurgeti are being operated under the Agency of State Care. Shelters in Tbilisi and Batumi provide services for victims/statutory victims of THB and in the same way for victims of violence. Other shelters provide services only for victims of violence.

The shelter is available for those persons who have already been granted the status of victim and/or statutory victim, while Crisis Centers have been functioning for presumed victims and victims. The centers can provide anyone (victims/statutory victims/presumed victims of human trafficking and violence) with any kind of information/consultation about THB and State funded services (daily accommodation (except Tbilisi Crisis Center, which operates 24/7).

According to Georgian NRM, if a presumed victim applies by herself/himself (Self-referral) to the Agency of State Care or law enforcements, he/she is granted the status of presumed victim by the Agency of State Care and accommodated in Tbilisi crisis center for no more than 12 working days. Within these period, the Agency of State Care conducts all necessary procedures for referring the case to the Permanent Group in order the latter to grant the official status of victim of THB. In case the presumed victim would like to cooperate with the law enforcements, the Agency of State Care refers the alleged case of THB to the Ministry of Internal Affairs of Georgia to further investigate the case.

The Agency of State Care provides services to all presumed victim, victims and statutory victims of human trafficking based on their will. GOG does not differentiate between persons referred from state institutes or persons who identifies themselves as victims of THB.

***Para. 32***

*“In this regard, the Special Representative notes with regret that the reflection period as provided for in the Anti-Trafficking Law does not appear to fully achieve its core purpose of providing for both a period for a trafficked person’s recovery from a trauma endured and give a decision whether*

or not to co-operate with law enforcement. He strongly recommends that Georgian authorities revise the legislation to include the right to recovery for trafficked persons.”

**GOG comment:**

As mentioned in the report, the Anti-Trafficking Law of Georgia ensures 30-day reflection period for a presumed victim of THB in order the latter to decide whether he/she wants to cooperate with the law enforcements.

According to Article 20 of the Anti-Trafficking Law a foreigner who is a presumed victim of human trafficking may not be expelled from Georgia during the reflection period.

Apart from it, aiming at ensuring the recovery period, since 2017 crisis centers have been functioning under Agency of State Care. Currently, there are 5 crisis centers (in Tbilisi, Kutaisi, Gori, Ozurgeti and Marneuli) that provide the **presumed THB victims** (before having the official THB status) and the depended persons with full package of services, including legal aid, medical and psychological assistance, rehabilitation and reintegration measures, service of interpreter, accommodation in Tbilisi crisis center, safety, etc.

Furthermore, during the reflection period a presumed victim can apply to the Permanent Group in order to be granted the official status of victim and enjoy not only the mentioned services but also the shelter. The services at crisis centers and shelters ensures the recovery of the victim.

These services are provided to the presumed victims/victims/statutory victims by the Agency of State Care.

**Para. 34**

*“Article 16 of the Anti-Trafficking Law provides that victims and persons affected by trafficking in human beings shall have the right to request reimbursement for moral, physical or property damages incurred due to the crime of trafficking in human beings, under Georgia’s civil procedure and criminal procedure legislations. If this reimbursement cannot be made, victims are eligible to receive compensation from the State Fund. The Special Representative was informed that only one victim (a minor) was awarded compensation for the damages incurred because of trafficking in human beings. In this regard, the Special Representative shares the concern of the interlocutors met during the visit that implementing the victims’ right to compensation is yet to be acted upon by Georgian authorities. While acknowledging the enabling legal framework on compensation, the Special Representative notes that access of victims to compensation is also hampered by the difficulties faced by authorities in enforcing compensation orders, the non-identification of perpetrators or lack of prosecution, and the actual seizure and confiscation of traffickers’ assets. To this end, the Special Representatives recommends that Georgian authorities monitor and review the practical implementation of victims’ access to compensation, including by conducting regular and targeted training of prosecutors, judges and other relevant actors to ensure compensation is awarded.”*

### **GOG Comment:**

According to Georgian legislation, there are two ways to get compensation for victims and statutory victims of human trafficking: compensation from the perpetrator claimed through the civil lawsuit and one-off State compensation amounted in 1000 GEL and provided by the Agency of State Care.

Article 16 of the Anti-Trafficking Law states that if a (statutory) victim is not able to get the reimbursement from the trafficker for moral, material or property damage resulted from being trafficked, he/she is entitled to request one-off compensation from the Agency of State Care.

We have two following alternative ways, when it is impossible to reimburse the damage from the trafficker (these ways are approved by the THB Council):

- If, after three months of investigation, it was impossible to identify alleged trafficker and detain him or her;
- For six months after the conviction of a trafficker, it is impossible to enforce the reimbursement of damage from the trafficker.

Currently, the Government of Georgia works on improvement of the system of granting the State Compensation. In particular, the draft legislative amendments to the Anti-Trafficking Law ensures that granting the State compensation to the victims and statutory victims of human trafficking won't be depended on whether the (statutory) victim applies to the court for reimbursement of damages from the trafficker.

### ***Para. 42***

*“As noted in para 17 of this report, the Special Representative positively notes the change in the Criminal Procedure Code provision in 2018, which provides for the law enforcement’s use of special investigative means in cases falling under Article 254 (providing a venue for prostitution) and enables the detection of trafficking cases in massage parlours and night bars that are prone to promoting prostitution”*

### **GOG comment:**

Georgian authorities informs the OSCE that due to legislative changes of 2018 pimping was criminalized (Paragraph 1 of Article 254 of CCG). The aim of the criminalization of pimping was to prevent the sexual exploitation of both adults and minors by their involvement in prostitution. Conducting covert investigative actions have become possible not only for the crime of providing a venue for prostitution, but for pimping as well.

### ***Para. 46***

*“As regards financial investigations, Financial Monitoring Service of Georgia (FMS) is an equivalent of a Financial Intelligence Unit (FIU), which receives and analyses suspicious transaction reports (STRs). The suspected predicate offence detected during analysis is sent to the police. According to*

*the FMS the number of suspicious transaction reports submitted has been decreasing in the last five years due to the reduction of compliance requirement for financial institutions. The FMS also reported that the decrease is due to the improved identification of red flags and eliminating irrelevant reports. For instance, the number of STRs was 2500 in 2014, but this number was only 800 in 2018. While 67 percent of the triggered STRs related to terrorism financing, only two were linked to trafficking in human beings; in both of these cases, the link was not entirely clear. According to FMS, a draft law on anti-money laundering and terrorism financing is currently in progress, which will introduce new requirements for risk assessments, restrict anonymous money transactions and improve exchange of information with foreign countries and public institutions, including law enforcement agencies.”*

**GOG comment:**

It should be noted, that Financial Monitoring Service of Georgia (FMS) is not an investigative authority for financial matters, but rather the results of the analysis is considered to be an intelligence, therefore, for the reader the reference to the financial investigation could be misleading.

GOG would also like to inform that according to Article 34(1) of the Law of Georgia “On Facilitating the Suppression of Money Laundering and Terrorism Financing” FMS shall disseminate the results of the analysis if there are reasonable grounds to suspect money laundering, terrorism financing or other criminal activity and not only predicate offence.

Furthermore, depending on the suspicion the analysis of the results can be sent not only to the police, but also to the Office of the Prosecutor General, the State Security Service of Georgia and/or the Revenue Service.

The report states that according to the FMS the number of suspicious transaction reports submitted has been decreasing in the last five years due to the reduction of compliance requirement for financial institutions. GOG would like to clarify that the reason behind the decrease in STRs is that the quality of the reports increased and obliged entities no longer send the reports that appeared in the past - in nature to be so called “defending reporting”. This is the result of FMS working together with the supervisory authorities, over the years, that resulted in increase of the quality of STRs.

Furthermore, compliance requirement for financial institution has not been reduced over the years. Even more, after adoption of the new Law of Georgia “On Facilitating the Suppression of Money Laundering and Terrorism Financing”, the requirements for financial institutions are more harmonized with FATF standards and Relevant EU directions.

As for statistical information of STR, in 2014 the more precise number of STR was 2497 and in 2018 – 837 instead of 800.

With regard to the cases arising from STRs, FMS would like to emphasize the factual backgrounds of the cases. The both of the cases involved ungrounded purchase of huge amount of plane tickets, by the persons previously caught on other offences such as document falsification and infringement

of immigration rules. FMS believed, that unity of those factors gave a suspicion to the possible cases of THB, as such behavior is commonly used by offenders. Also, please, keep into consideration, that FMS is not an investigative authority; therefore reasonable suspicion is enough to initiate the dissemination of the results of the analysis to the respective Law Enforcement Authorities.

FMS also had some other cases, except ones from STRs, linked to international cooperation, where foreign FIU suspected the group in THB. Here as well, the case concerned purchase of ungrounded amount plane tickets and accusation of other offences, including sex offence. Some other case, involving the information received from foreign FIU, concerned Georgian citizens, who happened to be accused of helping others in illegal crossing of the border of the UK.

With regard to draft law on anti-money laundering and terrorism financing, the latter was adopted in October, 2019 by the Parliament of Georgia, together with the national Risk Assessment report of the country for Money Laundering (ML) and Terrorism Financing (TF), which also, together with other things analyzes (Chapter III, subchapter 3.1.7) the risks associated to THB in Georgia. According to the assessment, money laundering risks associated with trafficking in human beings has been rated as **LOW**.

The mentioned law was drafted according to the FATF standards and EU directive, therefore it sets more comprehensive and stronger framework for ML/TF prevention in Georgia.

**Para. 53**

*“The inspections are conducted by 40 inspectors country-wide and the number of inspectors is expected to increase to 80 by the end of 2019 to align with the changes introduced to occupational safety law. Since relaunch, the inspectorate checked 99 companies in 2016, 113 in 2017, 154 in 2018 and 127 in 2019 As a result of the inspections, three cases suspected of human trafficking was referred to the criminal police and was later dismissed due to lack of THB elements.”*

*“Reportedly, there is no labour inspection force in the Adjara region, which impedes inspection of workplaces in that region.”*

**GOG comment:**

Government of Georgia notes that the number of Labor Inspectors was increased up to 100 in January 2020. The process of recruiting new inspectors has begun and will be completed by the end of 2020;

As for the labor inspection force in the Adjara region, GOG would like to note that even though the Labor Inspectorate Department of the Ministry of IDPs from the Occupied Territories, Labor, Health and Social Affairs of Georgia does not have territorial offices, labor inspectors cover the whole territory of Georgia (except the occupied ones), including Adjara Region.

**Para. 54**

*“Nevertheless, Government Resolution No. 417 provides that companies which employ foreigners are required to register and report on the number of non-citizen employees to the Ministry of IDPs from the Occupied Territories, Labor, Health and Social Affairs (MOLHSA) or to the LEPL – „State Employment Support Agency“ within 30 days upon entering into force of the labour contract. Upon the receipt of the report, the Migration Office interviews the employee and employer separately and inspects the workplace.”*

**GOG comment:**

Government of Georgia underlines that due to legislative changes of 29 November, 2019 instead of the former Social Service Agency, a local employer is obliged to provide information on hired labor immigrants (within 30 calendar days after entering into force of the labor contract) to the Ministry of IDPs from the Occupied Territories, Labor, Health and Social Affairs (MOLHSA) or to the LEPL – „State Employment Support Agency“, which is under the State Control of the Ministry of IDPs from the Occupied Territories, Labor, Health and Social Affairs of Georgia.

Upon the receipt of the report, the Department of Labor Inspection of Ministry of IDPs from the Occupied Territories, Labor, Health and Social Affairs and not Migration Office interviews the employee and employer separately and inspects the workplace.