Article 22 of the Constitution of the ILO

Report for the Period 2010 to 2012

Prepared by the Government of Georgia

on the

Abolition of Forced Labour Convention, 1957 (No. 105)

(Ratification registered on 1996)

Direct Request, C E A C R, published 100th ILC Session (2011)

Communication of texts

Committee Request

The Committee notes the Law on Public Service, 1997 (No. 45), communicated by the Government with its report. ***The Committee again requests the Government to supply, with its next report, a copy of any laws or regulations governing labour discipline in merchant shipping.***

GoG[1] Response

The GoG provides a copy of regulations governing labour discipline in merchant shipping (see Annex 1).

[1] GoG – Government of Georgia

Article 1(a) of the Convention. Sanctions involving compulsory labour as a punishment for expressing political views.

Committee Request

The Committee previously noted that, under section 226 of the Criminal Code, organization of group actions violating public order and participation in such actions is punishable with socially useful work or correctional work or deprivation of freedom for a term of up to three years (which involves compulsory prison labour). It has also noted that penal sanctions of correctional work or limitation of freedom may be imposed under section 347 of the Criminal Code for the violation of procedures related to the organization of meetings and manifestations by the organizers of such actions, if the violation entails grave consequences caused by negligence. ***While noting the Government's indication in the report that no court decisions have been recorded under the above penal provisions during the reporting period, the Committee again requests the Government to provide information on the application of sections 226 and 347 in practice, as soon as such information becomes available, supplying sample copies of the court decisions defining or illustrating their scope, in order to enable the Committee to assess their conformity with the Convention.***

GoG Response

The GoG applied to Tbilisi City Court and Kutaisi City Court requesting provision of sample copies of the court decisions under Articles 226 and 347 of the Criminal Code of Georgia.

The Tbilisi City Court and Kutaisi City Court notified the GoG, that there are no court decisions recorded under Article 347 of the Criminal Code of Georgia during the reporting period. As for the court decision recorded under Article 226 of the Criminal Code, see Annex 2.

Article 1(c). Penal sanctions applicable to public officials.

Committee Request

The Committee notes the information on the application in practice of section 342(1) of the Criminal Code ("the non-performance or improper performance by public officials of their duties as a result of a negligent attitude"), including copies of the court decisions annexed to the Government's report.

GoG Response

The GoG provides copies of the court decisions reported under section 342 (1) of the Criminal Code of Georgia (see Annex 3).

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Article 1(d). Penal sanctions involving compulsory labour for participating in strikes.

Committee Request

The Committee previously noted that section 348 of the Criminal Code provides for sanctions of correctional work or limitation of freedom as a punishment for the violation of strike procedures by the organizers of strikes, if the violation entails grave consequences caused by negligence. The Committee notes the Government's indication in the report that the above section is applicable to cases of abuse of the right to strike, if such abuse has caused "serious damage", which means the situation when human life or health are endangered. The Government also indicates that no court decisions have been recorded under this penal provision during the reporting period.

While duly noting these indications, the Committee hopes that measures will be taken with a view to amending section 348 of the Criminal Code, so as to ensure that no penalties involving compulsory labour can be imposed for having participated in peaceful strikes, in order to bring legislation into conformity with Article 1(d) of the Convention. Pending the adoption of such measures, the Committee requests the Government to provide information on the application of section 348 in practice, as soon as such information becomes available, supplying sample copies of the relevant court decisions and indicating the penalties imposed.

GoG Response

The right to strike is enshrined in Georgian law and practice as fundamental right Georgian citizens enjoy. The GoG supports the right to strike as a measure by which employees and their associations, including trade unions, may legitimately promote and defend their economic, social and labor interests.

Georgia's labor laws equip and enable trade unions for defending workers' socio-economic and occupational interests and to use this right to strike to enforce their position in the search for solutions regarding labor relations and terms and conditions of employment.

In order to further enhance the right to strike, in May, 2012 the Government of Georgia submitted to the Parliament of Georgia legislative amendment to the Labour Code in order to remove 90-day limitation on strike (it should be emphasized that 90-day limitation on lockout[2] has left unchanged). The amendment was adopted by the Parliament of Georgia and is enacted from June, 2012. Accordingly, an asymmetric approach was introduced in favor of an employee by the above-mentioned amendment.

The GoG would like to provide additional information, the legal context, and clarifications regarding Article 348 of the Criminal Code.

The Article 348 of the Criminal Code is in compliance with Article 1(d) of the Convention, as a peaceful strike cannot be punished by civil and penal sanctions. Sanctions can be applied to the abuse of the right to strike by the strike organizer provided that such abuse caused serious damage (Article 348 of the Criminal Code of Georgia). **Serious damage means a situation, when human life and health, natural environment or property of the third party is damaged**. Accordingly, Article 348 of the Criminal Code of Georgia implicitly states that this sanction cannot be applied to a peaceful strike.

According to abovementioned, the sanction stipulated by the Article 348 of the Criminal Code of Georgia is necessary and proportionate, because it applies to situations when human life and health, national environment and property of the third party are damaged.

As for the court decisions under Article 348, the GoG applied to Tbilisi City Court and Kutaisi City Court requesting provision of sample copies of the court decisions under Article 348 of the Criminal Code of Georgia. The Tbilisi City Court and Kutaisi City Court notified the GoG, that there are no court decisions recorded under Article 348 of the Criminal Code of Georgia during the reporting period.

[2] Lockout - Lockout is a temporary voluntary refusal of the employer to fully or partially comply with liabilities specified by the labor agreement with the view of settling accompanying relations within the limits of labor dispute (Labour Code of Georgia, Article 49, Paragraph 2).

Article 22 of the Constitution of the ILO

Report for the Period 2010 to 2012

Prepared by the Government of Georgia

on the

Minimum Age Convention, 1973 (No. 138)

(Ratification registered on 1996)

Direct Request, C E A C R, published 100th ILC Session (2011)

Article 9(3). Keeping of registers by employers.

Committee Request

Noting the Government's indication that employers are required to keep records on personal information such as the name, age and other details of his/her employees, including those under the age of 18 years, the Committee had previously requested the Government to indicate the legal provisions which lay down the above requirement. The Committee notes the Government's information that employers are obliged to keep a registry of documents, such as the birth certificates and the identity cards of employees, including young persons, for taxation purposes. ***The Committee requests the Government to indicate whether these records for taxation purposes are the same as those mentioned by the Government in its previous report, regarding records to be kept by employers containing personal information of employees. It also requests the Government to indicate the legal provisions which lay down the requirement for employers to keep records containing the name and age of their employees, including those under the age of 18 years.***

GoG Response

As for obligation of employers to keep a register of employees under 18 years of age, according to paragraph 3 of article 9 of Convention: "National laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer; such **registers or documents** shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or who work for him and who are less than 18 years of age". Accordingly, this article of the Convention allows "registers or other documents".

The employers keep the registry of the documentation (name, surname, ID number) of the employed for the taxation purposes. It should be emphasized, that according to the Georgian legislation ID number is granted from 14 years old. Therefore, employers keep records on personal information (name, age, date of birth and other) of the employee. These records for taxation

purposes are the same as those mentioned by the GoG in its previous report regarding records to be kept by employers containing personal information of employees.

Therefore, employers hold the information of employed under and above the 18 years (in case those under 18 years old are employed according to the provisions allowed by the legislation).

As for the legal provisions which lay down the requirement for employers to keep records containing the name and age of their employees, including those under the age of 18 years, the Order of the Minister of Finance No. 996 includes such provision obligatory for all kind of taxpayers.

Article 22 of the Constitution of the ILO

Report for the Period 2010 to 2012

Prepared by the Government of Georgia

on the

Minimum Age Convention, 1973 (No. 138)

(Ratification registered on 1996)

Observation, C E A C R, published 100th ILC Session (2011)

Article 2(1) of the Convention and Part V of the report form. Minimum age for admission to employment and application of the Convention in practice.

Committee Request

In its previous comments, the Committee had noted the comments made by the GTUC that according to UNICEF estimates, 30 per cent of children between the ages of 5–15 years worked in Georgia and that there were reports of children between the ages of 7–12 years working on the streets of Tbilisi, in markets, carrying or loading wares, selling goods in underground carriages, railway stations, etc. Moreover, based on the information provided by the Trade Union of Agricultural Workers, the GTUC alleged that child labour is widespread in the agricultural sector at harvest time in several regions of Georgia.

The Committee had noted the Government's statement that allegations by the GTUC were based on unverified sources and that UNICEF was planning to conduct a study on street children which would help to assess the actual situation of child labour in the country. The Committee, further noting the child labour estimates from the Multiple Indicator Cluster Survey (MICS), UNICEF 2005, indicating an important drop in the percentage of children involved in labour, from 30 per cent in 1999 to 18 per cent in 2005, had requested the Government to pursue its efforts to ensure that no child under the age of 15 years performed child labour in any sector of economic activity. It had also requested the Government to provide recent statistical information on the employment of children and young persons, in particular children working on the streets and in the agricultural sector.

The Committee notes the Government's information that education is one of its priorities and that it has taken a number of steps to strengthen the educational system and the school attendance of children. In 2008, the expenditure on general education had doubled from that of 2004, and in 2009 this expenditure increased by 23.1 per cent and by 20.9 per cent in primary education. The major state programmes in the educational sector aimed at the renovation and rehabilitation of the education infrastructure. It notes the Government's indication that in 2009, under the "Public Schools Rehabilitation Programme", more than 300 public schools were renovated. The Committee further notes the Government's information that in order to make primary education accessible for children from the families living below the poverty line, the Government developed the "State

Assistance Programme for the First Year Pupils from the Families below Poverty Line". Under this programme, in 2009–10, one-time assistance to cover the costs related to schooling was provided for children from poor families.

The Committee notes that according to the UNICEF statistics on education, in Georgia, the gross primary school enrolment rate in 2008, was 100 per cent for males and 98 per cent for females. ***The Committee requests the Government to provide recent statistical information on the employment of children and young persons, in particular children working in the streets and in the agricultural sector.***

GoG Response

It should be emphasized that Georgia has a strong tradition of education with almost universal primary school enrollment rates across the country. Most recent survey of UNICEF[3] reports that 99% of girls and 95% of boys attend primary school, while boys and girls at the age of 12-16 attending school are 93% and 94% respectively. **Considering the UNICEF statistics, as school enrollment rates are very high, child labor cannot be considered as wide-spread and systemic problem in Georgia's social life.**

The GoG pays vital attention to ensuring the rights of a child. In order to ensure further compliance of Georgia's laws with ILO Convention No. 138, the GoG explores the possibility to:

- More precisely address the minimum age for employment in Georgia's labor laws.
- Further enhance provisions regarding restrictions on working hours for child labor.
- More precisely determine the age of admission to hazardous work.

Article 4 of the Labour Code of Georgia stipulates that child labour is permissible with the agreement of a legitimate representative or the body of the trustee if labour relations do not conflict with the minor's interests, does not cause damage to his/her moral, physical and mental development and does not limit his/her right and ability to obtain elementary, compulsory and basic education. Other forms of child labour are considered unlawful and are a subject of legal liability.

[3] UNICEF, Georgia and the Convention of the Rights of the Children, 2011

According to the Labour Code, it is prohibited to conclude the labor agreement with the under-age person regarding gambling business, night entertainment establishments, pornographic production, pharmaceutical or toxic substances production, forwarding or selling activities. It is prohibited to conclude the labor agreement on hard or hazardous activities with an under-age person as well as the pregnant or breast-feeding woman. The Minister of Labour, Health and Social Affairs of Georgia adopted Order No. 147/N, 3 May 2007 which provides for a list of heavy, hazardous and harmful works.

For further strengthening educational system and school involvement of children, the GoG invested substantial resources in school infrastructure - 137 ml USD in 2006-2011. Parallel to investment in physical infrastructure and renovation of schools throughout Georgia, from the 2010-2011 school year, the Government started distribution of netbooks to 3000 first-graders, which contain educational programs in foreign language, Georgian language, mathematics, logic, educational and cognitive games. **This initiative was aimed at increase of computer literacy in the country.**

It should be underlined once again, that development of educational system is one of the priorities of the GoG. The level of school involvement is rather high as it was mentioned above. High level of school involvement of children in Georgia reduces possibility of employment of children and young persons on the streets.

The GoG pays a vital attention to street children as a main risk group for forced labor. In order to ensure wellbeing of the street children the Inter-Agency Commission was created composed of relevant ministers and deputy ministers. Inter-Agency Commission elaborated a new Strategy, which will be followed by the National Action Plan. The activities envisaged by the National Action Plan will be obligatory to implement for all relevant state authorities.

The GoG has worked actively in cooperation with international or11ganizations, NGOs and foreign aid agencies to improve the welfare of children and address the plight of street children. The GoG implemented a voucher system for street children, enabling them to receive support.

The GoG finances shelters and day-time services for street children. The GoG finances also Crisis Centers in Tbilisi, the aim of which is psycho-social rehabilitation of such children, provision of vocational education, and eradication of academic backwardness. For efficient functioning of the

Crisis Centers, social workers, physiologists, and teachers are hired by the Crisis Centers in order to ensure educational and vocational development of street children.

It should be emphasized that on May 31, 2010, the Joint Order of the Minister of Labor, Health and Social Assistance, Minister of Interior and Minister of Education and Science on the Child Referral Mechanism was adopted, which defines procedures for children, subject to any form of violence, including labor exploitation, reactive measures and responsible authorities.

It should be emphasized, that in case of children subject to the trafficking, they are located at shelters of State Fund for Protection and Assistance of Victims of Human Trafficking.

In November 2011, MOLHSA initiated formation of the Interagency Steering Committee, which will be the major decision-maker and supervisory body of the state policy towards highly vulnerable children. It will define state approaches, vision and policies towards highly vulnerable children and attract all possible resources for its implementation.

The Steering Committee includes representatives of MoLHSA, Social Service Agency, MIA, Ministry of Justice, MoES, Ministry of Finance, Public Defender's Office, Tbilisi Municipality, State Fund for Protection and Assistance of Victims of Human Trafficking, the EU Delegation and UNICEF. In the framework of this cooperation, a Project on Street Children was elaborated, which envisages:

1. Renovation of equipment of three new crisis/drop-in/day-care centers. The staff of the centers will be trained to provide qualified service. The service running costs will be financed by the GoG.

2. Recruitment and training of four mobile teams to provide service primarily for street children.

3. Enhancement of the technical capacity of Social Service Agency to manage, coordinate and monitor services for highly vulnerable children.

The Code on Administrative Offences of Georgia empowers the courts to levy sanctions against employers found in violation of child labor laws (Article 424). It should be emphasized that not-performance of obligations of parent or guardian of minor related to education of minors is punishable by fine (Article 172 of Code on Administrative Offences). The Article 171 of the Criminal Code of Georgia provides sanctions for persuading a minor

to beg and involving or employing a minor in prostitution. The Criminal Code prohibits the trafficking of minors and the possession, production, sale, distribution or promotion of child pornography. Stringent penalties on persons convicted of committing these crimes are imposed by the Criminal Code (Articles 255 and 255[1]).

Scope of application

Committee Request

The Committee had previously noted the Government's indication that self-employment was not regulated by the legislation of Georgia. It had also noted section 4(2) of the Labour Code, which permits the employment of children below 16 years on the condition that such work is not against his/her interests, does not damage his/her moral, physical or mental development or limit their right and ability to obtain elementary, compulsory and basic education and upon the consent from his/her legal representative, tutor or guardian. The Committee had further noted the Government's reference to the data provided by the Department of Statistics of Georgia, that 95 per cent of employees in agriculture were engaged in small-scale farms and household cultivated lands, which did not use hired labour. The Committee reminded the Government that, by virtue of the minimum age specified by it, children under 15 years of age shall not be permitted to work, regardless of the type of work performed, and whether it is paid or not, with the exception of light work, which can only be carried out under the conditions laid down in Article 7 of the Convention.

The Committee notes the comments made by the GTUC that the Labour Code applies only to hired labourers. As such children working on family farms, or in the agricultural sector are not afforded the protection guaranteed under the Convention. Furthermore, with the abolition of the labour inspectorate by the Labour Code of 2006, there exists no public authority to observe the implementation of labour legislation, including child labour provisions.

The Committee notes that the Government refers to Article 5(3) of the Convention which provides for the possibility of limiting the scope of application of the Convention to certain branches of economic activity, "excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers". The Government further states that children's work in the agricultural sector is not hired work and therefore their activities cannot be considered as incompatible with the Convention, as it is excluded under Article 5(3) of the Convention. The Committee reminds the Government that by virtue of Article 5(1) and (2) of the Convention, a Member whose economy and administrative facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, initially limit the scope of application of this Convention, and each Member which avails of this provision shall specify in a

declaration appended to its ratification, the branches of economic activity or type of undertakings to which it will apply the provisions of the Convention. The Committee observes that at the time of ratification, Georgia did not avail itself of this provision and therefore the provisions of the Convention apply to all branches of economic activity, including family undertakings and small-scale holdings, and cover all types of employment, whether hired or self-employed. **The Committee therefore once again requests the Government to take the necessary measures to ensure that children working in the agricultural sector, whether paid or unpaid, as well as those working on their own account, are entitled to the protection afforded by the Convention. In this regard, it requests the Government to envisage the possibility of re-establishing the labour inspection services, including in the informal sector, in order to ensure the effective implementation of the provisions giving effect to the Convention.**

GoG Response

The GoG would like underline once again, that in order to further enhance the rights of a child the GoG explores the possibility to:

- More precisely address the minimum age for employment in Georgia's labor laws.
- Further enhance provisions regarding restrictions on working hours for child labor.
- More precisely determine the age of admission to hazardous work.

As for the re-establishment of the labour inspection services, it should be emphasized **that the protection of minors' right is coordinated by various relevant state authorities in order to ensure identification/reaction/rehabilitation of all types of children's right violence:** the GoG's prosecutor's office, Ministry of Internal Affairs (hereafter MIA, Special Operations Department within MIA), the Interagency Anti-Trafficking Coordination Council, the Ministry of Labor, Health and Social Assistance (and MOLHSA's Social Service Agency and Department of Social Protection).

The competencies of Patrol Police Department and District Police Units are divided according to regions/districts of Georgia. **Within the MIA, the Patrol Police and the District Police are responsible for detection and response to the facts of children's right violation.**

The district police inspectors have information on minors, who are in the areas of their coverage and they implement individual work with them. The district police inspectors visit families and have regular conversations with children and their parents on their rights.

It should be emphasized, that in the framework of mutual project of the MIA and MoES, the district police inspectors with school teachers give lessons at schools on children's right and infringement.

Taken into account children's psycho-social specificities, the police inspectors working with children are obliged to have special knowledge in pedagogic-psychology related issues. For this purpose, the fundamental course of the Police Academy of the MIA envisages detailed training and acquaintance of police inspectors with the essentials of the Convention on Children's Rights, other relevant international conventions and Georgia's laws related to the children's right.

The staff of the Division on Fight against Trafficking and Illegal Migration of Special Operative Department within the MIA has permanent trainings on investigation issues of infringements related to the labor exploitation, trafficking in minors, as this Department leads criminal investigations of labor exploitation and trafficking in minors. During 2009-2011, the Division on Fight against Trafficking investigated six cases of labor exploitation out of which one case was related to forced labor of minor.

The Interagency Anti-Trafficking Coordination Council for the Implementation of Measures against Human Trafficking coordinates government efforts against trafficking in persons and children. The Coordination Council includes representatives from state agencies and non-state entities.

The Department of Social Protection within MOLHSA focuses on policy recommendations related to child adoption, foster care and the rights of children, including child labor. The Social Issues and Programs Division is responsible for developing policies to protect children from illegal labor. The Division, among others, receives and forwards complaints of child labor violations to the Social Service Agency (within MOLHSA) and law enforcement agencies for investigation and

potential prosecution.

The Social Service Agency implements the policies of the Department of Social Protection and assesses cases of actual and potential child victims and determines how to proceed either through consulting, oversight or placement of the child in special facilities.

In 2010, the Government of Georgia's Prosecutor's Office registered two alleged offenses for involving children in begging or prostitution.

In this context, the Office of Rescore within the MoES should be mentioned. **The Office of Rescore is responsible for monitoring of security of school pupils.** In some cases, the rescores provide legal consultations to teachers, pupils and their parents.

The GoG pays a vital attention to street children as a main risk group for forced labor. **In order to ensure wellbeing of the street children the Inter-Agency Commission was created composed of relevant ministers and deputy ministers.** Inter-Agency Commission elaborated a new Strategy, which will be followed by the National Action Plan. The activities envisaged by the National Action Plan will be obligatory to implement for all relevant state authorities.

The GoG has worked actively in cooperation with international or11ganizations, NGOs and foreign aid agencies to improve the welfare of children and address the plight of street children. The GoG implemented a voucher system for street children, enabling them to receive support.

The GoG finances shelters and day-time services for street children. The GoG finances also Crisis Centers in Tbilisi, the aim of which is psycho-social rehabilitation of such children, provision of vocational education, and eradication of academic backwardness. For efficient functioning of the Crisis Centers, social workers, physiologists, and teachers are hired by the Crisis Centers in order to ensure educational and vocational development of street children.

It should be emphasized that on May 31, 2010, the Joint Order of the Minister of Labor, Health and Social Assistance, Minister of Interior and Minister of Education and Science on the Child Referral Mechanism was adopted, which defines procedures for children, subject to any form of violence, including labor exploitation, reactive measures and responsible authorities.

It should be emphasized, that in case of children subject to the trafficking, they are located at shelters of State Fund for Protection and Assistance of Victims of Human Trafficking.

In November 2011, MOLHSA initiated formation of the Interagency Steering Committee, which will be the major decision-maker and supervisory body of the state policy towards highly vulnerable children. It will define state approaches, vision and policies towards highly vulnerable children and attract all possible resources for its implementation.

The Steering Committee includes representatives of MoLHSA, Social Service Agency, MIA, Ministry of Justice, MoES, Ministry of Finance, Public Defender's Office, Tbilisi Municipality, State Fund for Protection and Assistance of Victims of Human Trafficking, the EU Delegation and UNICEF. In the framework of this cooperation, a Project on Street Children was elaborated, which envisages:

1. Renovation of equipment of three new crisis/drop-in/day-care centers. The staff of the centers will be trained to provide qualified service. The service running costs will be financed by the GoG.
2. Recruitment and training of four mobile teams to provide service primarily for street children.
3. Enhancement of the technical capacity of Social Service Agency to manage, coordinate and monitor services for highly vulnerable children.

The Code on Administrative Offences of Georgia empowers the courts to levy sanctions against employers found in violation of child labor laws (Article 42^4). It should be emphasized that not-performance of obligations of parent or guardian of minor related to education of minors is punishable by fine (Article 172 of Code on Administrative Offences). The Article 171 of the Criminal Code of Georgia provides sanctions for persuading a minor to beg and involving or employing a minor in prostitution. The Criminal Code prohibits the trafficking of minors and the possession, production, sale, distribution or promotion of child pornography. Stringent penalties on persons convicted of committing these crimes are imposed by the Criminal Code (Articles 255 and 255^1).

Article 7(1) and (3). Light work and determination of light work.

Committee Request

The Committee had previously noted the comments by the GTUC that the hours of work of young workers are not limited. It had noted that as per section 14 of the Labour Code, if parties do not agree otherwise, a working week shall not exceed 41 hours, which is also applicable to young workers. The Committee had further noted section 18 of the Labour Code which prohibits night work (10 p.m. to 6 a.m.) by young persons and section 4(2) which lays down the conditions of employment of children between 14 and 16 years. Observing that the Labour Code does not contain provisions which prescribe the number of working hours during which young persons may work, the Committee had requested the Government to take the necessary measures to determine light work activities and to prescribe the number of hours during which light work may be undertaken by young persons of 14 years of age and above, in conformity with the Convention.

The Committee notes the comments made by the GTUC that the regulation on the work of young persons under the Labour Code does not guarantee sufficient protection to minors in employment relations. The GTUC further added that it is important to restrict the working hours of young persons and to also include provisions for rest periods, breaks and holidays.

The Committee, while once again noting the Government's reference to section 18 of the Labour Code, observes that this provision only prohibits night work, which makes it possible for young workers to work from 6 a.m. to 10 p.m. The Committee also observes that section 18, read with section 4(2) of the Labour Code which lays down the condition that work by children below 16 years of age shall not limit their right and ability to obtain elementary, compulsory and basic education, implies that children may work for about eight hours per day, excluding school hours and night work. In this context, the Committee draws the attention of the Government to Paragraph 13(1)(b) of the Minimum Age Recommendation, 1973 (No. 146), that in giving effect to Article 7(3) of the Convention, special attention should be given to the strict limitation of the hours spent at work in a day and in a week, and the prohibition of overtime, so as to allow enough time for education and training (including the time needed for homework related thereto) for rest during the day and for leisure activities.

With regard to the determination of light work activities, the Committee notes the Government's reference to section 4(3) of the Labour Code that the employment contracts of persons under 14 years of age may be concluded only in the sphere of arts, sports, cultural or for advertisement activities. The Committee observes, however, that the Labour Code allows children between 14 and 16 years of age to perform light work under the conditions specified under section 4(2***). In this context, the Committee urges the Government to take the necessary measures to determine light work activities permitted for children between 14 and 16 years of age and to prescribe the number of hours during which and the conditions in which light work may be undertaken by such persons.***

GoG Response

In order to ensure the protection of the rights of a child and implementation of the ILO CEACR recommendations, the GoG explores the possibility for further enhancement of provisions regarding restrictions on working hours for child labor.

Besides the above-mentioned, the GoG would like to provide additional information, the legal context and clarifications in this regard.

According to Article 4 of Labor Code of Georgia, the labor agreement can be concluded with a 14-year-old under-age person only for fulfilling cultural, cognitive, sports or arts-related labor activities or advertising activities and only with permission of a legal guardian of the minor, provided that those activities do not contradict the interest of the underage person, harm his/her moral, physical and mental development and do not limit his/her rights and ability to get a basic education. Other forms of child labor are considered unlawful and are a subject to legal liability. According to the Labor Code, it is prohibited to conclude a labor agreement with an under-age person regarding gambling business, night entertainment establishments, pornographic production, pharmaceutical or toxic substances production, forwarding or selling activities. It is prohibited to conclude a labor agreement concerning work on hard or hazardous activities with an under-age person.

Article 8. Artistic performances

Committee Request

The Committee had previously noted information contained in the Government's report to the Committee on the Rights of the Child (CRC/C/41/Add.4, 1997, paragraph 13) that, under certain conditions, children under 15 years of age may be engaged in artistic activities, such as the circus or the cinema. It had also noted the Government's statement that the working conditions of young persons in all spheres, including artistic performances, are well protected under the Labour Code and therefore no separate method of issuance of permits for artistic performances has been set up. Noting the provisions under section 4(3) of the Labour Code which states that a labour contract can be concluded with a child below 14 years only for work related to sport, art, cultural and advertising activities, the Committee had requested the Government to indicate the measures taken or envisaged to ensure that approval for young persons below 15 years of age to take part in artistic activities is granted in individual cases, and that permits so granted shall prescribe the number and hours during which, and the conditions in which, such employment or work is allowed. While noting the Government's reference to section 18 of the Labour Code which prohibits the hiring of minors for night work (10 p.m. to 6 a.m.) and section 14 of the Labour Code which restricts the working hours to 41 hours per week, including for young workers, the Committee observes that these provisions do not limit the number of working hours or set maximum working hours or conditions for employment of young persons who participate in artistic performances. ***Recalling that Article 8 of the Convention allows exceptions to the specified minimum age of admission to employment or work for such purposes as artistic performances only by permits granted by the competent authority in individual cases and that such permits so granted shall limit the number of hours during which, and prescribe the conditions in which, such employment or work is allowed, the Committee once again requests the Government to take the necessary measures to ensure that children under 15 years of age who participate in artistic performances benefit from the protection laid down by this provision of the Convention.***

GoG Response

The Labour Code sets restrictions on the volume of working hours of minors: Article 18 prohibits hiring minors for night work and restricts the work during 10 pm to 6 am. Accordingly, the number of hours during which such employment or work may be undertaken by young person is from 6am to 10 pm. It should be emphasised, that according to the Labour Code, a working week shall not exceed 41 hours, which is also applicable to under-age workers, if parties do not agree otherwise.

Moreover, the same article lists light jobs related to sport, art and cultural sphere. The labour agreement can be concluded with the 14-year-old under-age person only for fulfilling the cultural, cognitive, sports or arts related labor activities or advertising activities.

Article 4 of labour Code explicitly provides for the conditions of employment of under-age persons: "Labour capacity of an underage below 16 shall arise under the permissiom from his/her legal representative, tutor and guardianship bodies, if it is not against his/her interests, does not damage his/her moral, physical or mental development and does not limit him/her right and ability to obtain elementary, compulsory and basic education". Accordingly, labour agreement can be concluded with the under-age person for fulfilling work only with permission of a legitimate representative of minor. Accordingly, the activities in which employment or work may be permitted is determined and the number of hours during which such employment or work may be undertaken is defined in permission of minor's legal representative, tutor and guardianship bodies.

According to the Labour Code, it is prohibited to conclude the labor agreement with the under-age person regarding gambling business, night entertainment establishments, pornographic production, pharmaceutical or toxic substances production, forwarding or selling activities. It is prohibited to conclude the labor agreement on hard or hazardous activities with an under-age person as well as the pregnant or breast-feeding woman. The Minister of Labour, Health and Social Affairs of Georgia adopted Order No. 147/N, 3 May 2007 which provides for a list of heavy, hazardous and harmful works.

Article 9(1) and Part III of the report form. Penalties and labour inspection.

Committee Request

In its previous comments, the Committee had noted the Government's statement that the labour inspectorate stands abolished according to the Labour Code of 2006 and had requested the Government to indicate the effective manner in which the provisions giving effect to the Convention are enforced.

The Committee notes the comments made by the GTUC that with the abolition of the labour inspectorate, there exists no public authority to observe the implementation of labour legislation, including child labour provisions.

The Committee notes the Government's indication that the police is responsible for the monitoring of infringements related to child labour. While noting that the Government's report contains information on the activities of the police with regard to crime prevention, child abuse and the protection of minors with unusual social behaviour, the Committee observes that these do not relate to infringements of the Labour Code related to child labour. The Committee observes with concern that there exists no public authority to monitor the implementation of the child labour related provisions in the country. In this regard, the Committee recalls that, by virtue of Article 9(1) of the Convention, all necessary measures shall be taken by the competent authority, including the provision of appropriate penalties, to ensure the effective enforcement of the provisions of the Convention. ***The Committee therefore urges the Government to take the necessary measures to ensure the effective monitoring and implementation of the provisions giving effect to the Convention. It also requests the Government to provide information on the types of violations detected by the competent authority with regard to child labour, the number of persons prosecuted and the penalties imposed.***

GoG Response

As it was mentioned above, the protection of minors' right is coordinated by various relevant state authorities in order to ensure identification/reaction/rehabilitation of all types

of children's right violence: the GoG's prosecutor's office, Ministry of Internal Affairs (hereafter MIA, Special Operations Department within MIA), the Interagency Anti-Trafficking Coordination Council, the Ministry of Labor, Health and Social Assistance (and MOLHSA's Social Service Agency and Department of Social Protection).

The competencies of Patrol Police Department and District Police Units are divided according to regions/districts of Georgia. Within the MIA, the Patrol Police and the District Police are responsible for detection and response to the facts of children's right violation.

The district police inspectors have information on minors, who are in the areas of their coverage and they implement individual work with them. The district police inspectors visit families and have regular conversations with children and their parents on their rights.

It should be emphasized, that in the framework of mutual project of the MIA and MoES, the district police inspectors with school teachers give lessons at schools on children's right and infringement.

Taken into account children's psycho-social specificities, the police inspectors working with children are obliged to have special knowledge in pedagogic-psychology related issues. For this purpose, the fundamental course of the Police Academy of the MIA envisages detailed training and acquaintance of police inspectors with the essentials of the Convention on Children's Rights, other relevant international conventions and Georgia's laws related to the children's right.

The staff of the Division on Fight against Trafficking and Illegal Migration of Special Operative Department within the MIA has permanent trainings on investigation issues of infringements related to the labor exploitation, trafficking in minors, as this Department leads criminal investigations of labor exploitation and trafficking in minors. During 2009-2011, the Division on Fight against Trafficking investigated six cases of labor exploitation out of which one case was related to forced labor of minor. The Interagency Anti-Trafficking Coordination Council for the Implementation of Measures against Human Trafficking coordinates government efforts against trafficking in persons and children. The Coordination Council includes representatives from state agencies and non-state entities.

The Department of Social Protection within MOLHSA focuses on policy recommendations related to child adoption, foster care and the rights of children, including child labor. The

Social Issues and Programs Division is responsible for developing policies to protect children from illegal labor. The Division, among others, receives and forwards complaints of child labor violations to the Social Service Agency (within MOLHSA) and law enforcement agencies for investigation and potential prosecution.

The Social Service Agency implements the policies of the Department of Social Protection and assesses cases of actual and potential child victims and determines how to proceed either through consulting, oversight or placement of the child in special facilities.

In 2010, the Government of Georgia's Prosecutor's Office registered two alleged offenses for involving children in begging or prostitution.

In this context, the Office of Rescore within the MoES should be mentioned. **The Office of Rescore is responsible for monitoring of security of school pupils.** In some cases, the rescores provide legal consultations to teachers, pupils and their parents.

The GoG pays a vital attention to street children as a main risk group for forced labor. In order to ensure wellbeing of the street children the Inter-Agency Commission was created composed of relevant ministers and deputy ministers. Inter-Agency Commission elaborated a new Strategy, which will be followed by the National Action Plan. The activities envisaged by the National Action Plan will be obligatory to implement for all relevant state authorities.

The GoG has worked actively in cooperation with international organizations, NGOs and foreign aid agencies to improve the welfare of children and address the plight of street children. The GoG implemented a voucher system for street children, enabling them to receive support.

The GoG finances shelters and day-time services for street children. The GoG finances also Crisis Centers in Tbilisi, the aim of which is psycho-social rehabilitation of such children, provision of vocational education, and eradication of academic backwardness. For efficient functioning of the Crisis Centers, social workers, physiologists, and teachers are hired by the Crisis Centers in order to ensure educational and vocational development of street children.

It should be emphasized that on May 31, 2010, the Joint Order of the Minister of Labor, Health and Social Assistance, Minister of Interior and Minister of Education and Science on the Child Referral

Mechanism was adopted, which defines procedures for children, subject to any form of violence, including labor exploitation, reactive measures and responsible authorities.

It should be emphasized, that in case of children subject to the trafficking, they are located at shelters of State Fund for Protection and Assistance of Victims of Human Trafficking.

In November 2011, MOLHSA initiated formation of the Interagency Steering Committee, which will be the major decision-maker and supervisory body of the state policy towards highly vulnerable children. It will define state approaches, vision and policies towards highly vulnerable children and attract all possible resources for its implementation.

The Steering Committee includes representatives of MoLHSA, Social Service Agency, MIA, Ministry of Justice, MoES, Ministry of Finance, Public Defender's Office, Tbilisi Municipality, State Fund for Protection and Assistance of Victims of Human Trafficking, the EU Delegation and UNICEF. In the framework of this cooperation, a Project on Street Children was elaborated, which envisages:

1. Renovation of equipment of three new crisis/drop-in/day-care centers. The staff of the centers will be trained to provide qualified service. The service running costs will be financed by the GoG.
2. Recruitment and training of four mobile teams to provide service primarily for street children.
3. Enhancement of the technical capacity of Social Service Agency to manage, coordinate and monitor services for highly vulnerable children.

The Code on Administrative Offences of Georgia empowers the courts to levy sanctions against employers found in violation of child labor laws (Article 424). It should be emphasized that not-performance of obligations of parent or guardian of minor related to education of minors is punishable by fine (Article 172 of Code on Administrative Offences). The Article 171 of the Criminal Code of Georgia provides sanctions for persuading a minor to beg and involving or employing a minor in prostitution. The Criminal Code prohibits the trafficking of minors and the possession, production, sale, distribution or promotion of child pornography. Stringent penalties on persons convicted of committing these crimes are imposed by the Criminal Code (Article 255 and 255[1]).

Article 22 of the Constitution of the ILO

Report for the Period 2010 to 2012

Prepared by the Government of Georgia

on the

Forced Labour Convention, 1930 (No. 29)

(Ratification registered on 1993)

Direct Request, C E A C R, published 100th ILC Session (2011)

Communication of the GTUC

Committee Request

The Committee notes a communication dated 3 September 2010, received from the Georgian Trade Union Confederation (GTUC), which contains comments on the application of the Convention by Georgia. It notes that this communication was transmitted to the Government, on 30 September 2010, for any comments it may wish to make on the matters raised therein. **The Committee hopes that the Government will provide such comments with its next report, so as to enable the Committee to examine them at its next session.**

GoG Response

The GoG did not receive any communication dated as 3rd of September, 2010. However, the GoG received the communication of the GTUC sent to the ILO dated as 18th of March, 2010 which contains comment on application of the Convention 29 by Georgia.

The GoG would like to provide comments on the above-mentioned communication, namely:

- **Definition of forced labour** – GTUC states that: "… Georgian Labour Code does not provide the definition of forced labour". It should be emphasized, that **'forced labour' is defined by the Georgian legislation,** namely: Law of Georgia on Fighting against Trading with Persons (Trafficking) stipulates that forced labor is any work or service received by means of physical or mental exaction of a person by use of threat or blackmail against him/her or by use of his/her vulnerable situation (Article 3, Paragraph 'e').

  Moreover, **use of forced labour is prohibited by the Criminal Code of Georgia as sanctions envisaged in Articles 143[1] and 143[2] of Criminal Code of Georgia are applied to all kinds of forced or compulsory labour.**

  According to the article 143[1] of Criminal Code, buying or selling human or subjecting him/her to other forms of illegal deals, as well as, by use of threat, coercion or other forms of coercion,

stealing, blackmail against him/her, by deception of human, by use of his/her vulnerable situation or abuse of power, enticing, conveying, hiding, hiring, transporting, handing over, harboring **or receiving a human for the purpose of <u>exploitation,</u> is punishable by the deprivation of liberty from 7 to 12 years, with deprivation of the right to occupy certain position or practice a profession for 1 year.**

According to the note of Articles 143^1 and 143^2 of Criminal Code, for the purposes of Articles 143^1 and 143^2, (a) **exploit of humans by the aim of forced labor or service**, (b) engaging them in criminal or anti-society activities or prostitution, sexual exploitation or to provide other kind of service, (c) putting the persons in slavery-like conditions or conditions of contemporary slavery, (d) also forcing humans to use their organs or parts of organs **are considered as exploitation.**

Accordingly, forced labour as one of the forms of exploitation is prohibited by the Georgian legislation.

- **Insubstantial amendments of the employment agreement** – The GTUC states, that: "… employer without agreement constitutes the duration of working time".

The GoG explores the possibility to reformulate the provisions concerning an employer's right to make "insubstantial" amendments to an employment agreement in order to avoid misinterpretation of the provision and to ensure that an employer cannot force employees to work overtime without their consent or remuneration.

In this context, the GoG would like to provide additional information, the legal context and clarifications in this regard:

1) employers may change the check in and out times of the employment by up to 90 minutes, but **<u>this change cannot exceed the number of daily working hours</u>**. Accordingly, Article 11 of the Labor Code does not allow employers to force employees to work overtime.
2) Article 11(3) of the Labor Code, specifically, gives an employer the right to make "insubstantial" amendments to the employment agreement if they are not within labor agreement. For instance, if the employment agreement defines or regards making

"insubstantial" amendments to the employment agreement in a different manner, then the employer cannot make any amendments to the employment agreement.

3) Also, per Article 11(3), unless otherwise envisaged by the labor agreement, the following conditions are considered as 'insubstantial' amendments to labor agreement:

   a) An employer's change of an employee's indicated workplace if travel to and from the new workplace by public transport does not require more than 3 hours each day and, at the same time, does not lead to disproportionate expenses.

   b) A 90-minute change in start time or finish time of work

   c) A change required by an amendment of law that makes it impossible to fulfill the agreement as precisely written, but does not change a major aspect of the agreement.

   According to the Article 11 (4), **any change of two conditions simultaneously** envisaged by Article 11 (3) should be discussed as **a substantial amendment** of the terms of the agreement. **A substantial amendment to the employment agreement is possible <u>only</u> if both parties agree.**

- **Overtime work –** The Labour Code of Georgia explicitly defines overtime work: "Fulfilling the work by the employee within the timeframe the duration of which exceeds the working time defined by the employment agreement is considered overtime work. If the employment agreement does not specify the working time, fulfilling the work within the period of time whose duration does not exceed 41 hours a week or the working time defined by the employer within the limits if 41 hours in accordance with part 1, article 14 of the present Code, is considered as overtime work". It should be emphasized, that according to the Labour Code overtime work of a pregnant woman or a woman in the post-natal period shall be inadmissible without her consent.

Article 2(2)(a). Compulsory military service.

Committee Request

The Committee notes the Government's statement in its report that military personnel is used for a work which is of purely military character. ***The Committee requests the Government to indicate, in its next report, what guarantees are provided to ensure that services exacted for military purposes are used for purely military ends.***

GoG Response

Military personnel is used for a work which is of purely military character as military commander does not have right to give an order or instruction which is not linked to military purposes or is illegal according to Article 24, Paragraph 3 of the Law of Georgia on Status of Military Servant. Accordingly, an order of military commander which is not linked to military service is deemed as an illegal order. Pursuant to the Resolution of President No. 111 adopted on February 10, 2006 on Charter of Military Internal Discipline of Military Forces of Georgia, it is prohibited to give an illegal order to a military servant.

Article 2(2)(c). Prison labour.

Committee Request

The Committee notes the Government's indications in the report that the new Imprisonment Code was adopted on 9 March 2010 and the Law on Imprisonment of 1999 has been repealed. The Government indicates that, according to section 110(3) of the new Code, convicted prisoners can be employed in public or private enterprises within the territory of a penitentiary institution. The Committee also notes the Government's indications concerning conditions of work of convicted prisoners (occupational safety, hours of work and overtime work) (section 112 of the Code), as well as their wages, which is governed by the labour legislation (section 110(5) of the Code).

The Committee recalls that Article 2(2)(c) of the Convention expressly prohibits that convicted prisoners are hired to or placed at the disposal of private individuals, companies or associations, in a sense that the exception from the scope of the Convention provided for in this Article for compulsory prison labour does not extend to work of prisoners for private employers, even under public supervision and control. In fact, under this provision of the Convention, work or service exacted from any person as a consequence of a conviction in a court of law is excluded from the scope of the Convention only if two conditions are met, namely: (i) that the said work or service is carried out under the supervision and control of a public authority; and (ii) that the said person is not hired to or placed at the disposal of private individuals, companies or associations. The Committee has always made it clear that the two conditions are applied cumulatively; that is the fact that the prisoner remains at all times under the supervision and control of a public authority does not in itself dispense the Government from fulfilling the second condition, namely that the person is not hired to or placed at the disposal of private individuals, companies or associations.

However, while Article 2(2)(c) of the Convention strictly prohibits that prisoners be hired to or placed at the disposal of private enterprises, the Committee has considered, as explained in paragraphs 59 and 60 of its General Survey of 2007 on the eradication of forced labour, that work for private enterprises can be compatible with Article 2(2)(c) only where prisoners voluntarily enter a normal employment relationship with private employers and perform work in conditions approximating a free employment relationship. This arrangement necessarily requires the informed, formal consent of the person concerned and, in the light of the circumstances of the consent, that is

the basic obligation to perform prison labour, and other restrictions on the prisoner's freedom to take up normal employment, there must be further guarantees and safeguards covering the essential elements of a labour relation, such as wages and social security. If the above conditions are complied with, the work of prisoners will be removed from the scope of Article 2(2)(c) of the Convention, since no compulsion is involved.

The Committee therefore hopes that, in the light of the above considerations, the Government will take the necessary measures in order to ensure that the work of prisoners for private enterprises, both inside and outside prison premises, is carried out only with their voluntary consent, such consent being free from the menace of any penalty, including the loss of rights or privileges. The Committee also requests the Government to supply a copy of the new Imprisonment Code referred to above, as well as sample copies of contracts concluded between private enterprises and penitentiary institutions concerning the work of convicted prisoners.

GoG Response

The Law on Imprisonment was abolished and new Imprisonment Code was adopted by the Parliament of Georgia in March 9, 2010. **The separate chapter of the Imprisonment Code of Georgia is dedicated to the labour conditions of convicted prisoners.**

- **A prisoner has a right to be ensured by work and work safety** (Article 14, Paragraph 1, Sub-paragraph a.a of the Code on Imprisonment). Accordingly, **the prisoner has a right to work and not obligation;** this means that the work of prisoners is carried out only with their **voluntary consent.**

- **It is explicitly prohibited to force a prisoner to assign labour which abases his/her dignity** (Article 110, Paragraph 1 of the Code on Imprisonment).

- **Prisoners' work is carried out under the supervision and control of a public authority – penitentiary institution as prisoners are assigned labour tasks within the territory of a penitentiary institution** (Article 110, Paragraph 2 of the Code on Imprisonment). Prisoners

also can be employed in public or private enterprises existed **within the territory of a penitentiary institution** (Article 110, Paragraph 3 of the Code on Imprisonment).

- **A prisoner receives wage in compliance with Georgian labour legislation** (Article 110, Paragraph 5 of the Code on Imprisonment).

- It should be emphasized, that **a prisoner has a right to choose appropriate work for him/her from proposed list of jobs suggested by the administration of penitentiary institution** (Article 111, Paragraph 3 of the Code on Imprisonment).

- **Administration of penitentiary institution as well as an employer is obliged to provide safe work conditions for the prisoner** (the Article 112, Paragraph 1 of the Code on Imprisonment). It should be emphasized, that overtime work and work on holidays is possible only with the consent of a prisoner. Working time should not exceed 8 hours per day (Article 112, Paragraph 3 of the Code on Imprisonment).

Accordingly, guarantees and safeguards covering the essential elements of a normal employment (for example: wages, work safety, right to choose appropriate work) are ensured by the Georgian legislation.

The GoG provides a copy of the Code on Imprisonment referred to above (see Annex 4).

Articles 1(1), 2(1) and 25 Penal sanctions for the illegal exaction of forced or compulsory labour. Trafficking in persons.

Comment Request

The Committee notes the information provided by the Government concerning the application in practice of sections 143^1 and 143^2 of the Criminal Code punishing human trafficking, including copies of the court decisions annexed to the Government's report.

Referring to its earlier comments, the Committee notes the Government's statement that, in accordance with Georgian legislation, all cases of the illegal exaction of forced or compulsory labour are considered as trafficking. The Government further states that, consequently, penal sanctions provided for in sections 143^1 and 143^2 of the Criminal Code concerning trafficking in persons are applied for all cases of the illegal exaction of forced or compulsory labour. ***While noting these indications, the Committee hopes that the Government will continue to provide, in its future reports, information on the application in practice of sections 143^1 and 143^2 referred to above, in relation to punishment of the illegal exaction of various forms of forced or compulsory labour, including those not necessarily connected with cross-border trafficking or with such means of coercion as restriction of the freedom of movement or retention of passports.***

GoG Response

The GoG provides a copy of the court decisions and information on the application in practice of sections 143^1 and 143^2 (see Annex 5).

Article 22 of the Constitution of the ILO

Report for the Period 2010 to 2012

Prepared by the Government of Georgia

on the

Holidays with Pay Convention, 1936 (No. 52)

(Ratification registered on 1993)

Observation, C E A C R, published 100th ILC Session (2011)

Articles 2 and 6 of the Convention. Right to annual holidays with pay.

Committee Request

The Committee notes the observations made by the Georgian Trade Union Confederation (GTUC) concerning the application of the Convention. The GTUC indicates that, in practice, there are cases in which employees work on the basis of a one-month renewable employment contract, thus never becoming eligible for annual holidays with pay. The GTUC considers that this situation is in practice tantamount to relinquishing the workers' entitlement to annual paid leave and therefore such contracts should be considered null and void. The GTUC also indicates that, as a matter of frequent practice, many employees are dismissed before they take paid leave to which they are entitled, and the legislation makes no provision for the payment of monetary compensation for any unused portion of annual leave upon termination of employment. ***Recalling that the GTUC had communicated similar comments in 2008, which the Government has so far failed to address, the Committee requests the Government to transmit any comments it may wish to make in reply to the new observations of the GTUC.***

[The Government is asked to reply in detail to the present comments in 2012.]

GoG Response

The statement of the GTUC that: "… in practice, there are cases in which employees work on the basis of a one-month renewable employment contract, thus never becoming eligible for annual holidays with pay" is not supported with any statistics or evidences.

It should be emphasized that an employee can be granted paid leave <u>any time</u> if so is agreed between parties. According to the Article 22, Paragraph 1 of the Labor Code, the right of asking for paid leave emerges for the employee after 11 months. **Based on the agreement between the parties paid leave can be granted even before the above-mentioned term expires.**

It should be emphasized, according to the Article 21, Paragraph 3 of the Labour Code the labor agreement may envisage terms and conditions different from the present article which shall not deteriorate the condition of the employee.

Article 22 of the Constitution of the ILO

Report for the Period 2010 to 2012

Prepared by the Government of Georgia

on the

Worst Forms of Child Labour Convention, 1999 (No. 182)

(Ratification registered on 2002)

Direct Request, C E A C R, published 100th ILC Session (2011)

Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering a child for the production of pornography or for pornographic performances.

Committee Request

The Committee had previously requested the Government to supply a copy of sections 255 and 255[1] of the Criminal Code, as amended. The Committee notes that, according to the information provided by the Government, section 255 criminalizes the offences related to the production or keeping, offering, transferring, disseminating, selling or making available a pornographic work, including visual or audio material, depicting a minor. Section 255[1] further makes it an offence to involve a minor in the illegal production of pornographic material and dissemination, promotion or sale of such material. ***The Committee once again requests the Government to supply a copy of sections 255 and 255[1] of the Criminal Code as amended, along with its next report.***

GoG Response

The GoG provides a copy of Articles 255 and 255[1] of the Criminal Code. The amended sections of Articles 255 and 2551 of the Criminal Code are bolded in order to easily identify them.

The Article 255 of Criminal Code on illicit production or sale of pornographic piece or other item is stipulated in the following manner:

"*1. Illicit production, distribution or promotion of a pornographic work, printed material, image or other item of pornographic nature as well as trade with such item with the aim to sell or distribute it,*

- shall be punishable by fine or by corrective labour for up to a two-year term or by imprisonment similar in length.

2. Acquisition, keeping, offering, distribution, transfer, promotion of a pornographic work containing the image of a minor or making otherwise available such material –

- shall be punishable by fine or by corrective labour for up to two years in length or by imprisonment up to three years *(the amendment was adopted on 24.09.10).*

Note: A pornographic work containing the image of a minor shall mean the visual or audio material made by any method presenting by different means the participation of a particular minor in real or simulated sexual scenes, using his/her voice or depicting the minor's genitalia for sexual satisfaction of the user.

3.Production or sale a pornographic work containing the image of a minor –

- shall be punishable by fine or by imprisonment from three to five years *(the amendment was adopted on 24.09.10).*

Note:

1. A pornographic work containing the image of a minor shall mean the visual or audio material made by any method presenting by different means the participation of a minor or a person having representation of a minor in real or simulated sexual scenes as well as in sexual scenes generated by computer technologies, depicting the minor's genitalia for sexual satisfaction of the user. Work produced for medical, scientific, cultural or other legal purposes shall not be deemed as pornographic.

2. ***Legal person committing a crime envisaged by this Article shall be fined, deprived of a right to carry business or be liquidated and fined*** *(the amendment was adopted on 24.09.10)".*

The Article 255[1] of Criminal Code on involvement of a minor in illegal production or sale of a pornographic work or other item was added to the Criminal Code on 25.07.06 and is stipulated in the following manner:

"Involvement of a minor in illegal production of a pornographic work or other item of pornographic nature or in dissemination, promotion or sale of such material,-

- **shall be punishable by imprisonment from 2 to 5 years.**

Note: For the action stipulated by this article a legal entity is punished by fine, with deprivation of the right to engage in a particular activity or by liquidation and fine."

Article 3 of the Convention. Worst forms of child labour. Clause (c). Use, procuring or offering of a child for illicit activities.

Committee Request

In its previous comments, the Committee had requested the Government to supply a copy of section 171 of the Criminal Code as amended in 2006. The Committee notes the Government's indication that, according to section 171 of the Criminal Code as amended in 2006, persuading a minor into begging or any other anti-public activity, or involving a minor into abuse of toxic or any other medical substances shall be punishable. ***The Committee once again requests the Government to supply a copy of section 171 of the Criminal Code as amended, along with its next report.***

GoG Response

The GoG provides a copy of Article 171 of the Criminal Code. The amended sections of Article 171 of the Criminal Code are bolded in order to easily identify them.

Article 171 of Criminal Code on involving minor into anti-public activity was wholly amended on 28.04.2006 in order to increase length of punishment measures. Article 171 is formalized in the following manner:

"1*. Persuading a minor into begging or any other anti-public activity -*

shall be punishable by social work from one hundred seventy to two hundred forty hours or corrective work for up to two years in length or by imprisonment for up to two years in length.

2. Involving a minor into abuse of toxic or any other medical substances -

shall be punishable by restriction of freedom for up to three years in length or by imprisonment for up to three years in length.

3. Involving a minor in prostitution with threat of violence or deception, or without violence,

***- shall be punishable by imprisonment from two to five years in length.*"**

Article 5. Monitoring mechanisms. 1. Police and district inspectors.

Committee Request

Following its previous comments, the Committee notes the Government's information that the protection of minors from participating in the worst forms of child labour is one of the priorities of the Ministry of Internal Affairs (MIA) and that the activities to this end are being implemented by the police and district inspectors. It notes the Government's information that the MIA has a systematic approach in dealing with child protection and has implemented measures to improve the ability of the police in dealing with minors. It also notes the Government's indication that, to date, 957 policemen were trained and specialized in dealing with minors. Similarly, district inspectors carry out regular conversations with children, increasing their awareness about the adverse consequences of harmful habits and constantly controlling their attendance at school. The Committee further notes the Government's indication that, in March 2009, 48 workers of the MIA undertook training on the topic, Minors and the Law, and Minors and Harmful Habits and, in April, conducted 520 lectures in 186 schools on these topics.

Furthermore, the Committee notes the Government's indication that the MIA signed a Memorandum of Cooperation with the NGO, World Vision International, to cooperate within the framework of the project entitled "Protection of the Rights of Child Victims of Trafficking in Georgia". Within the framework of this project, the MIA conducted training courses on child trafficking for the workers of the division dealing with combating trafficking and illegal migration. To date, 15 workers of the MIA undertook this training. ***The Committee requests the Government to provide information on the impact of the activities undertaken by the MIA within the framework of the project, Protection of the Rights of Child Victims of Trafficking in combating child trafficking.***

GoG Response

Advancement of training relating to the issues of TIP targeting the respective professionals is constantly on the high agenda of the Georgian authorities. The planning of the new phases of training are based on the respective needs assessments. The 2011-2012 NAP as well as training

curricula of all the institutions concerned include the provision of advanced trainings in line with the evolving nature of the crime of TIP in their yearly action plans. The last such training programme prepared by Paul Holmes on the request of the GoG, who visited Georgia for this purpose second time with the assistance of IOM, was held on 6-8 December, 2011 with a total of 29 participants representing Special Operations Department, Patrol Police Department, Police Academy, Office of the Chief Prosecutor within the "look beneath the surface". For the demonstration purposes it is apt to mention briefly that three separate modules were covered as listed herewith: Trafficking for sexual exploitation – monitoring of the sex industry, Investigation of child trafficking cases, Investigation of labour trafficking cases.

Specific measures have been taken to ensure that the identification, protection, assistance and rehabilitation of child victims of TIP are carried out ensuring the human rights based approach respecting the best interests of all victims, as: the special trainings have been conducted for the professionals, social workers working with the State Fund, the members of the Permanent and Mobile Groups, staff of the State Fund, Police, prosecutors, judges and education sector professionals were particularly trained in identification and referral mechanisms.

Along with that special attention was devoted to the particular vulnerabilities of orphans, children working and living in the street and internally displaced children by providing tailored awareness campaigns for them and the educators having dealt with child day centers and other child institutions.

The GoG held trainings for different target groups. The trainings were concentrated on the discussions of current legislation, mechanisms for identification of human trafficking victims, techniques of conducting interviews with victims (paying particular attention to interviews with especially vulnerable group - children), special methods of investigation, collection of evidence, prosecution, cooperation with NGOs with the view of ensuring effective fight against trafficking in persons.

In 2009-2011, the GOG held trainings for different target groups, with the specific focus on judges, prosecutors and Police throughout Georgia, often in cooperation with local and international partners. The trainings concentrated on the comprehensive laws covering Trafficking in Persons, making particular emphasis on child victims, mechanisms for proactive identification of human

trafficking victims, techniques for conducting interviews with victims (paying particular attention to interviews with especially vulnerable groups like children), special methods for investigation, collection of evidence, and prosecution, and cooperation with NGOs. The trainings involved the clarification how important it is to partner with NGOs, social workers and psychologists in interviewing the victims and providing to them assistance prescribed by the Law. The role of the State Fund is always underlined during the trainings and a representative of the State Fund does always attend such trainings to improve the synergies in the work.

Public prosecutors.

Committee Request

The Committee had previously noted the role of public prosecutors in the fight against trafficking in persons. Following its previous comments, the Committee notes the Government's information that, in the first half of 2010, four cases of trafficking in persons were investigated, of which none of them involved minors. In 2009, out of 33 cases investigated, 40 persons were prosecuted and 37 persons were convicted with imprisonment for an average of 21 years. Out of the 33 cases investigated in 2009, 24 cases were in relation to trafficking in minors, and court decisions were taken in 21 cases against 33 persons. In 2008, 14 cases of trafficking in persons were initiated, out of which two cases were related to trafficking in minors, ten cases resulted in convictions with a sentence of 14–15 years' imprisonment. ***The Committee requests the Government to continue providing information on the number of violations detected, investigations, prosecutions, convictions and penal sanctions applied with regard to the trafficking of children.***

GoG Response

Investigation – trafficking in persons

2011: the government initiated 16 trafficking investigations

2010: the government initiated 11 trafficking investigations

2009: the government initiated 33 trafficking investigations

Prosecution - trafficking in persons

2011: the government prosecuted 4 individuals for trafficking

2010: the government prosecuted 5 individuals for trafficking

2009: the government prosecuted 40 individuals for trafficking

Convictions- trafficking in persons

2011: there were 5 trafficking convictions

2010: there was 1 trafficking conviction

2009: there were 37 trafficking convictions

Protection - trafficking in persons

2011: at least 18 victims were assisted

2010: 19 victims were identified and assisted (out of which two were minors).

2009: 48 victims were identified (out of which two were minors).

Georgia has introduced a new mandatory referral mechanism aimed to identify and report cases of violence against children. This new mechanism applies to members of the police, educators and social workers, requiring them to report cases of violence against children to social workers for follow up and assistance. This mandatory referral mechanism could play a role in detecting cases of trafficking in children. Nevertheless, it does not replace the need to provide special training and consideration for the identification of child victims of trafficking. The Social Services Agency is responsible for appointing a legal guardian to child victims of trafficking. This is notified to the State Fund, which starts an individual plan for the provision of assistance and services to the child.

Article 6. Programmes of action to eliminate the worst forms of child labour. National Action Plan on the Fight against Trafficking in Persons.

Committee Request

The Committee notes the Government's indication that a new Action Plan on the Fight against Trafficking 2009–10 was adopted at the beginning of 2009. The Committee notes that this new National Action Plan envisages various important measures to be taken for the fight against trafficking in minors, such as:

– raising awareness of minors regarding the risk of trafficking through educational programmes;

– conducting studies and research on trafficking in minors, particularly looking at the reasons of trafficking;

– training law-enforcement officials on trafficking in minors; and

– training lawyers/attorneys on the protection of victims of trafficking in minors.

The Committee also notes that this National Action Plan also pays special attention to the principles of prevention of trafficking in persons, protection of the victims of trafficking and prosecution of the offenders and envisages a clear monitoring system whereby each state agency is obliged to report once in three months to the Coordination Council on the measures taken for the implementation of the action plan. The Committee further notes the Government's indication that the Ministry of Labour, Health and Social Protection along with the Ministry of Education and Science are the main state institutions responsible for specific programmes aimed at protecting child victims of trafficking. ***The Committee requests the Government to provide information on the implementation of the National Action Plan 2009–10. It also requests the Government to provide information on the impact of the measures taken in combating the trafficking of children.***

GoG Response

The National Action Plan on Combating Trafficking for 2009-2010 was adopted by Presidential Decree # 46 on 20 January, 2009 with the purpose to prevent trafficking in persons in Georgia, protect trafficked persons and to effectively implement provisions of the Criminal Code against traffickers; to improve the legal base and practice in this field and to continue an effective fight against trafficking in persons.

Below is a brief outline of the objectives and activities envisaged by the 2009-2010 Action Plan:

a. Legislative measures (analysis of the Georgian legislation and drafting of the respective changes and amendments if the need arises);

b. Continued implementation of mechanisms for the protection, assistance and rehabilitation of trafficked persons, including continued coordination of the activities as envisaged by the National Referral Mechanism, continued elaboration of programmes aimed at assistance to and reintegration of trafficked persons, improvement of cooperation and mechanisms facilitating safe return of trafficked persons to their countries/cities of origin.

c. Carrying out preventive measures, including information and education campaigns: public service announcements, radio and TV programmes, preparation and dissemination of printing materials in Civil Registry Offices, Georgian Consulates, tourist and employment agencies, and at border check points and potential high risk zones for trafficking in persons; organization of public discussions in higher education institutions around the country on trafficking related issues, continuation of special trainings for selected target groups including judges, prosecutors, border officials, social workers, police, carrying out special education activities for minors, with a special emphasis on orphanages.

d. Mutual legal assistance/cooperation with law enforcement agencies of other countries in the process of prosecution – especially Turkey, as well as general cooperation with other states, local NGOs and international organizations.

According to the US State Department trafficking in persons report for 2009 "the government of Georgia fully complies with the minimum standards for the elimination of trafficking. The government significantly increased its victim assistance funding to $250,000 and modestly increased

the number of victims assisted by government-funded programs. Moreover, all convicted trafficking offenders were given adequate prison sentences".

The Action Plan set out three main objectives and supplementing goals, means and ways of reaching the objectives. It also identified the agencies responsible for its implementation, the timeframe for the actions to be undertaken and indicators for the assessment of the achievements, as illustrated in the below extract taken from the Action Plan:

Objective	Goal	Activity	Responsible agency	Period	Indicators
1. Prevention of trafficking	1.To increase awareness on trafficking	1.1 To conduct information and educational campaign (radio and TV programmes)	Coordination Council, State Fund	During the implementation of the Action Plan	Quantity of video clips and TV programs increasing the awareness

The Coordination Council was responsible for coordinating the implementation of the Action Plan. It receives quarterly reports from the respective agencies on the implementation of the activities envisaged in the Action Plan.

2.1. Implementation of the Action Plan 2009-2010 was as follows:

The main objectives of the Action Plan are as follows:

- Prevention of trafficking in persons;

- Protection of trafficked persons;
- Criminal prosecution of persons committing the crime of trafficking in persons.

The following goals were identified to achieve the above-mentioned objectives:

2.2.1. Objective 1: Prevention of trafficking in persons

2.2.1.1. **Increase public awareness on trafficking in persons and means to prevent trafficking in persons**, which include:

Launch of an information campaign, including production of informational video clips and thematic TV and radio programmes. The Coordination Council and the Georgian Public Broadcaster (GPB) (in cooperation with interested non-governmental and international organizations) were responsible for the implementation of this activity. The time period for the implementation was set for the whole duration of the Action Plan (2009-2010). Indicators for assessment of the achievements were set as follows: multiplicity of the topics and number of produced video clips; diversity of the programmes produced and number of calls received while airing these programmes; and number of pleads during the campaign period.

Status of the implementation

Through close cooperation of the Coordination Council and GPB a short video clip was produced. The clip was easy to understand for all age groups and plainly described the threat and nature of trafficking in persons.

The Coordination Council and GPB produced a number of programmes and news reports on the threat of trafficking and the need for prevention.

The Ministry of Education and Science of Georgia with the participation of school pupils produced a short video clip named "Don't trade freedom for slavery". The clip regularly airs on Georgian TV channels. An educational film on trafficking was produced for tenth graders as a part of their educational programme.

IOM and the State Fund for Protection and Support of Victims of Trafficking produced a TV ad on prevention and fight against trafficking.

The nationwide TV station First Channel in its weekly programme organized a discussions on all aspects of trafficking, the need for prevention and described means and ways of fighting against it. The programme also described all services that are provided by the government for trafficked persons and also presented materials on work done to prevent trafficking in persons. The programme also included interviews with persons trafficked for forced labour who had been working in the Russian Federation.

- **Production and distribution of printed informational leaflets.**

The pamphlets were distributed in the offices of the Civil Registry of Georgia, in the Consulates of Georgia, in travel and employment agencies, on border check points of Georgia and in potentially vulnerable/risky regions of Georgia. The Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Foreign Affairs, Ministry of Education and Science and the Fund were responsible for the implementation of this activity.

Status of the implementation

The Civil Registry of the MoJ received and distributed 200,000 informational leaflets from the MFA.

The MIA in cooperation with NGOs produced informational leaflets and distributed them on border check points in Sarpi (border with Turkey), Vale (border with Turkey) and in Tbilisi International Airport.

The State Fund published an informational leaflet – "Let us Fight Trafficking in Persons Together". It will be distributed in the regions of Georgia.

The State Fund in cooperation with the MoJ elaborated another informational leaflet "What should we know about trafficking in persons".

Informational leaflets were produced in cooperation with different international organizations and were distributed on the whole territory of Georgia.

- **Conduct thematic debates on trafficking in the higher and professional education institutions.** The Coordination Council and the Fund were responsible for the implementation of this activity. The time period for the implementation was set for the whole duration of the Action Plan (2009-2010). Indicators for the assessment of the achievements were set as follows: number of

discussions conducted, geographic diversity of the locations, number of participants of the discussions and the results of the awareness tests conducted after discussions.

Status of the implementation

The Coordination Council initiated inclusion of a mandatory course on trafficking for the students of the law faculty of Iv. Javakhishvili Tbilisi State University. The course includes theoretical and practical elements. By the end of the course, after concluding the theoretical part of the course, students have a chance to learn how different ministries and state agencies, as well as NGOs and international organizations deal with the issues related to trafficking in persons, they receive detailed information and gain practical experience on protection and support of trafficked persons.

The State Fund and the Coordination Council organized twelve discussions among youngsters in different regions of Georgia throughout 2009.

The Ministry of Education and IOM with the support of the Coordination Council implemented the project "Georgian secondary education for the prevention of trafficking". One of the main goals of the project is to include educational materials on trafficking into the national curriculum for secondary schools. In the framework of the project a course on trafficking was developed and piloted for 9th graders. Furthermore, a course on trafficking was developed for 10th and 11th graders. A meeting was held with the authors of the textbooks on civic education for 9th and 10th graders and the authors of the textbooks for geography for 11th graders. The purpose of the meeting was to discuss the possible inclusion of the material on trafficking into these textbooks. Special educational material on trafficking was developed to be used while working with young people of various risk groups (children living in orphanages, correctional institutions or those on probation).

- **Advertise the already established unified hot line for victims of trafficking.**

The Fund (in cooperation with interested international and non-governmental organizations) was responsible for the implementation of this activity. The time period for the implementation was set for the whole duration of the Action Plan (2009-2010). Indicators for the assessment of the achievements were set out as follows: number of calls to the hotline and statistics of responses to the calls.

Status of the implementation

Ads were put out in media outlets to popularize the hotline number 100 229. 242 calls were made to the hotline on suspicion of trafficking. In cooperation with "World Vision" billboards were produced and put up in different cities of Georgia in particular in Tbilisi, Khashuri and Marneuli.

- **Update of the information on trafficking on the web sites of the respective agencies and further improvement of these sections**. The Fund, MIA and MoJ were responsible for the implementation of this activity. The time period for the implementation was set for the whole duration of the Action Plan (2009-2010). Indicators for the assessment of the achievements were set out as follows: number of users of the webpage and number of calls made to the hotline with the help of the web page.

Status of the implementation

The Fund designed its own webpage (www.atipfund.gov.ge) dedicated to the description of the services provided to trafficked persons. The webpage also contains information on existing legislation, useful contacts, and other information on combating trafficking.

The information on trafficking on the webpage of the Prosecutor General's Office was regularly updated. On the homepage of the MoJ there is a special banner dedicated to trafficking (http://www.justice.gov.ge/index.php?lang_id=GEO&sec_id=173).

The MIA has launched a new webpage (www.police.ge) where a special banner is dedicated to trafficking named "You are not for sale" (http://www.police.ge/index.php?m=426).

2.2.1.2. Combating trafficking in persons and introduction and implementation of the referral mechanism

- **Conduct special training on combating trafficking in persons for the following groups with consideration of the specific needs of each group**:

a. border guards;

b. policemen;

c. employees of media outlets;

d. employees of the consulates;

e. employees of the Ministry of Education;

f. employees of the MLHSP, including social workers;

g. employees of the penitentiary system;

h. employees of the health sector.

The Fund and appropriate agencies were responsible for the implementation of this activity. The time period for the implementation was set for the whole duration of the Action Plan (2009 -2010). Indicators for the assessment of the achievements were set out as follows: number of the conducted trainings (at least one training every year for each group), materials prepared for the training, number of participants and evaluation test of the participants.

Status of the implementation

The Police Academy of the MIA included trafficking issues in the basic curriculum for the border guards, patrol policemen and precinct policemen. Four hours are dedicated to the issues of trafficking in persons. Students receive general information on trafficking in persons, study Georgian laws and regulations on trafficking and receive instructions on how to treat trafficked persons. The curriculum also includes practical training on trafficking related issues including identification of potential victims and traffickers.

On 28 February 2009 the Police Academy of the MIA with the support of IOM conducted anti-trafficking training for instructors of the Police Academy as well as patrol policemen. The training was interactive and focused on training of instructors and sharing experiences between representatives of the different police units.

On 6 April 2009 the MIA in cooperation with ILO organized a round table discussion on the fight against trafficking in persons, with the participation of representatives of different sub-agencies of the MIA (International Relations Division, Special Operational Department, Border Guard and Police Academy). The round table was moderated by an expert from the OSCE, who presented a study on improved ways to fight trafficking in persons in Georgia.

On 23-24 June 2009 three representatives of the border police attended the international seminar "Fighting against trafficking and its prevention, Swedish experience" in Sweden. The aim of the seminar was to develop a forum to share experiences in anti trafficking measures.

2.2.1.3. Introduce preventive measures against trafficking in minors

- Develop and finalize special programmes against trafficking to:

a. Improve existing standards of anti-trafficking training in the general national educational plans.

b. Train and prepare teachers in modular classes conducted by specially trained experts or trainers, especially in high risk regions.

c. Develop and pilot educational programmes in orphanages.

The Ministry of Labour, Health and Social Protection and the Ministry of Education and Science were responsible for the implementation of these activities. The time period for the implementation was set for the whole duration of the Action Plan (2009-2010). Indicators for the assessment of the achievements were set as follows: number of meetings of the research working group, and its effectiveness in terms of planning future work, number of materials produced, number of thematic researches conducted, number of published materials in relation to the research undertaken and geographical areas where research materials were distributed.

Status of the implementation

The MES and IOM with the support from the Coordination Council implemented a project "Georgian secondary education for the prevention of trafficking".

2.2.1.4. Analysis of the identified trafficking cases in order to further develop the strategy and Action Plan.

For the implementation of this goal the following activities were defined:

- Support the development of the activities of the research group working on trafficking issues;

- Summarize the data provided in the annual reports including a research on the popularity of the TV programmes, identification of tendencies and development of an appropriate plan;
- Conduct research on trafficking in minors, its causes and scale;
- Further develop and finalize the database on cases of trafficking.

The Coordination Council and the Fund were responsible for the implementation of these activities. The time period for the implementation was set for the whole duration of the Action Plan (2009-2010). Indicators for the assessment of the achievements were set as follows: finalized educational programmes, developed educational training/programme module, number of specially trained teachers, number of lessons conducted by them, number of regions where trainings were held, number of pupils attending the lessons, test results on the increase of awareness among those who attended the trainings, number of orphanages where educational activities were conducted and information materials prepared for educational purposes.

Status of the implementation

The State Fund organized meetings to collect existing information and identify needs for research.

The Coordination Council worked with IOM to undertake research activities in 2010 with the financial support provided by the US Department of State. The research activities targeted: analysis of border crossing movements, investigation of trafficking cases, field surveys, as well as the situation of people deported from Turkey and those involved in prostitution in Georgia.

ICMPD in close cooperation with the Coordination Council introduced two databases on trafficking in persons in Georgia: the victim-centered database, which is run by the State Fund, and the trafficker-centred database, which is run by the Ministry of Justice.

2.2.2. Objective 2: Protection of victims of trafficking in persons

1.2.2.1. Reinforce legal measures in order to ensure protection of victims of trafficking.

For the implementation of the goal the following activities were envisaged:

- Analyze the already existing legal base and, if necessary, amend it in order to ensure maximum protection of victims of trafficking.

The Government of Georgia, the Coordination Council and the Fund were responsible for the implementation of these activities. The time period for the implementation was set for the whole duration of the Action Plan (2009-2010). Indicators for the assessment of the achievements were set as follows: carry out an analysis of the existing legal base, prepare amendments and conduct public meetings and discussions on the amendments to the existing legal base.

Status of the implementation

Based on the information provided by the Fund, periodical analysis of the existing legal base is conducted in order to ensure protection of trafficked persons and the appropriate functioning of the support system for trafficked persons.

- **Support in using special protection measures for victims and witnesses of trafficking during and after the trial.**

The MoJ, MIA and the Fund were responsible for the implementation of this activity. The time period for the implementation was set for the whole duration of the Action Plan (2009-2010). Indicators for the assessment of the achievements were set as follows: number of cases where special protection mechanisms were used.

Status of the implementation

The Georgian Criminal Code envisages special protection for victims and witnesses of trafficking but until now there have not been any reported cases yet.

- **Effective implementation of protection, rehabilitation and reintegration measures envisaged in the legal base for identified victims of trafficking.**

The Government of Georgia and the Fund were responsible for the implementation of this activity. The time period for implementation was set for the whole duration of the Action Plan (2009-2010). Indicators for the assessment of the achievements were set as follows: ratio between number of identified victims of trafficking and number of people who benefited from the envisaged rehabilitation and reintegration mechanisms.

Status of the implementation

Based on the information provided by the Fund, rehabilitation and reintegration assistance were provided to four victims. The reintegration measures are still being implemented with three of them.

1.2.2.2. Further development of the national referral mechanism

For the implementation of this goal the following activities were envisaged:

- **Enhance cooperation envisaged by the national referral mechanism**

The Coordination Council and the Fund were responsible for the implementation of these activities. The time period for the implementation was set for the whole duration of the Action Plan (2009-2010). Indicators for the assessment of the achievements were set as follows: number of identified victims of trafficking in persons, list of services provided by the state to the victims and statistics of used services.

Status of the implementation

As envisaged in the national referral mechanism a permanent working group of the Coordination Council is established and working. During 2009 two persons were granted the status of victim of trafficking by the working group.

In addition, with the support of international organizations, four persons were provided with the services envisaged by the reintegration and rehabilitation action plan of the referral mechanism. By December 2009 three victims were participating in this plan.

1.2.2.3. Enhancing activities of the shelters for victims of trafficking

For the implementation of this goal the following activities were envisaged:

- Periodical monitoring of the shelters.
- Develop assistance services for minor victims of trafficking.

The MLHSP and the Fund were responsible for the implementation of this activity. The time period for the implementation was set for the whole duration of the Action Plan (2009-2010). Indicators for the assessment of the achievements were set as follows: report on outcomes of monitoring and developed recommendations, statistics on use of services, number of qualified personnel and number of rehabilitated victims.

Status of the implementation

According to the information provided by the Fund, by December 2009 fourteen persons were accommodated in the shelters including six children. The reintegration and rehabilitation plan envisaged by the referral mechanism was used for three persons with the support of the Fund and international organizations.

1.2.2.4. Enhancement of the activities of the permanent working group

For the implementation of this goal the following activities were envisaged:

- **Special training for the members of the permanent and mobile working groups to work with minors.**

The Coordination Council and the Fund were responsible for the implementation of this activity. The time period for the implementation was set for the whole duration of the Action Plan (2009-2010). Indicators for the assessment of the achievements were set as follows: number of conducted trainings, number of trained members of the permanent and mobile working groups and materials prepared for training.

Status of the implementation

Training materials were being prepared and trainings for members of the permanent and mobile group were conducted in 2009 and 2010.

1.2.2.5. Support voluntary and safe return of victims to the countries of origin and their reintegration

For the implementation of this goal the following activities were envisaged:

- **Support the return to Georgia of trafficked persons who are citizens of Georgia, stateless persons or permanent residents of Georgia.**

The MFA and the Ministry of Finance (MF) were responsible for the implementation of these activities. The time period for the implementation was set for the whole duration of the Action Plan (2009-2010). Indicators for the assessment of the achievements were set as follows: number of returned victims of trafficking.

Status of the implementation

Assistance was provided to victims in need of such support with close cooperation of the State Fund and IOM.

- **Expand support, rehabilitation and reintegration programme for victims of trafficking.**

The Fund and the MF were responsible for the implementation of this activity. The time period for the implementation was set for the whole duration of the Action Plan (2009 -2010). Indicators for the assessment of the achievements were set as follows: number of rehabilitated victims of trafficking, number of services offered and statistics on the usage of such services.

Status of the implementation

The reintegration and rehabilitation plan envisaged by the national referral mechanism were used for all victims identified.

- **Support the return of foreign citizens/stateless persons who are victims of trafficking to the country of origin.**

The MFA, MF and Fund were responsible for the implementation of this activity. The time period for the implementation was set for the whole duration of the action plan (2009 -2010). Indicators for the assessment of the achievements were set as follows: number of returned victims of trafficking.

Status of the implementation

Based on the information provided by the Fund, with the cooperation of IOM, one victim was returned to the country of origin.

2.2.3. Objective 3: Criminal prosecution of trafficking in persons

2.2.3.1. Further development of trafficking investigation tactics and methodology according to particular forms of trafficking.

For the implementation of this goal the following activities were envisaged:

- **Conduct special trainings on fighting trafficking in persons taking into consideration**: the specificity of trafficking in minors, trafficking for forced labour and sexual exploitation and novelties of criminal prosecution of trafficking in persons. Trainings should be conducted for the following target groups:

a. employees of the MIA;

b. employees of the MoJ;

c. judges.

The MIA, MoJ and High Council of Justice were responsible for the implementation of these activities. The time period for the implementation was set for the whole duration of the Action Plan (2009-2010). Indicators for the assessment of the achievements were set as follows: number of conducted trainings, topics of trainings, materials prepared for the training, number of participants and evaluations of the participants.

Status of the implementation

In the first half of 2009 the Ministry of Justice organized the following seminars on trafficking:

a. On 7-8 April the Office of the Chief Prosecutor of Georgia and ILO conducted a joint training on trafficking in persons for representatives of law enforcement agencies. The training provided information on global and national tendencies of trafficking in persons, issues of labour migration, investigation tactics etc.

b. On 19-20 March the Office of the Chief Prosecutor and the Informational Bureau of the Council of Europe organized training on "Investigation of trafficking in persons and initiation of a criminal case". The seminar was attended by 60 prosecutors and investigators and focused on the criminal pursuit of trafficking.

- **Creation of a database of attorneys working on trafficking cases in order to ensure free legal aid.**

The MIA and the Fund were responsible for the implementation of this activity. The time period for the implementation was set for the whole duration of the Action Plan (2009 -2010). Indicators for

the assessment of the achievements were set as follows: creation of a database of attorneys working on trafficking cases.

Status of the implementation

According to the information provided by the State Fund, the Fund has a roaster of attorneys it uses whenever needed.

- **Training of attorneys working on trafficking cases with a special focus on minor victims.**

The Coordination Council and the Fund were responsible for the implementation of this activity. The time period for the implementation was set for the whole duration of the Action Plan (2009-2010). Indicators for the assessment of the achievements were set as follows: number of trainings, topics of trainings, materials prepared for the training and evaluation test results of the participants.

Status of the implementation

The State Fund and the Coordination Council have worked with the Legal Aid Service on the curriculum of trainings of state funded attorneys. The trainings are planned for 2010.

- **Cooperation with the law enforcement agencies of foreign countries.**

The MIA and MoJ were responsible for the implementation of this activity. The time period for implementation was set for the whole duration of the Action Plan (2009-2010). Indicators for the assessment of the achievements were set as follows: number of requests on legal assistance initiated by Georgia.

Status of the implementation

In 2009 Georgia six times addressed partner countries with a request for legal assistance on three different criminal cases concerning trafficking. In the same period Georgia was addressed by two countries with the request for legal assistance on trafficking related cases. In addition, one person was extradited to Azerbaijan who had been detained in Georgia on trafficking related charges.

- **Sharing international experience and practice on fighting against trafficking.**

The MIA, MoJ, the Coordination Council and the Fund were responsible for the implementation of this activity. The time period for the implementation was set for the whole duration of the Action Plan (2009 -2010). Indicators for the assessment of the achievements were set as follows: sharing general legal information on trafficking with the authorities of foreign countries.

Status of the implementation

In response to the request of the US embassy in Tbilisi, in March 2009, a teleconference was conducted with the representatives of the MFA and MoJ of Kazakhstan and Georgia. The conference was aimed at sharing the Georgian experience with the Kazakh counterparts.

In April 2009 two representatives from the chief prosecutor's office participated in a conference on trafficking for employees of law enforcement agencies organized by IOM.

Two representatives of the MoJ participated in a seminar on prevention and fight against trafficking organized by the Swedish Institute.

On 15-16 October 2009 in Ankara, representatives of the Turkish MoJ participated in the conference "Fighting against Trafficking in the Black Sea Region through Legal Cooperation" organized by the Bar Association in cooperation with IOM.

On 16-17 October 2009 a representative of the main prosecutor's office participated in the seminar "Legal Assistance in Trafficking Cases" organized by IOM and the MoJ of the Republic of Turkey.

On 16-20 November two representatives of the MoJ participated in the seminar "Forced Labour and Human Trafficking: International Instruments and Practical Issues" organized by the International Training Center of ILO.

On 29 March, 2010, there was a meeting held in the Prosecution Service on planning the on-job trainings for Prosecution Service and law enforcement authorities on the subject of TIP throughout 2010. There were no less than 25 trainings held during the year.

During 2010 the Prosecution Service conducted four in-house trainings for the prosecutors from all over Georgia on investigative techniques, identification of a victim and cooperation with the victim service providers. All the interns underwent a separate training on TIP as a part of their preparation to enter Prosecution Service.

GOG in cooperation with IOM, with INL support organized and co-financed trainings for Georgian consular officers in Turkey and Greece.

On 25 - 28 October 2010 trainings were provided to consular officers and the staff of consulates working in Istanbul, Trabzon and Ankara.

On 15-19 November trainings were provided to consular staff in Greece. The trainings were conducted and co-financed by GOG and IOM, with INL support.

Apart from the GOG provided trainings, the GOG officials participated in a number of international training activities, for which both – political and when necessary financial support was readily available from GOG. These included:

On 28-29 June, 2010 training organized by IOM Ankara in close cooperation with Ankara Bar Association on providing assistance to victims of trafficking. The aim of the workshop is creating a network of NGOs and Lawyers in the Black Sea Region and share best practice. Lawyers providing assistance to trafficked people from Romania, Bulgaria, Moldova, Ukraine, Georgia and Turkey participated. The changed trends in trafficking occurrence, as identified in Georgia, were also discussed during that training. IOM and GOG shared participation costs.

On 22-24 September IOM Turkey hosted a Regional Meeting in Istanbul and jointly organised the Conference on Trafficking in Human Beings "the Swedish and Turkish Experiences", together with Swedish Institute and Consulate General of Swedish . The aim of these two and a half days, with participants from Turkey, Georgia, Kyrgyzstan, Moldova, Mongolia, Nigeria, Russia, Turkmenistan and Ukraine was to familiarize participants with best practices from Germany and Sweden and discuss on how to apply similar models in the countries. The focus was be on identification of the victim, cooperation with the governmental authorities, victims' rehabilitation, safe reception and reintegration and NGO cooperation within country and between countries. GOG sent additional participants from the State Fund and funded their participation, as international cooperation in this matter is considered by GOG extremely important.

On 20-21 October training for judges from all over Georgia was held in the High School of Justice. The program was established and training conducted by GOG. The costs were shared by IOM and GOG.

During 2010 612 high school teachers were trained in cooperation with Ministry of Education and Science of Georgia and IOM throughout Georgia on TIP issues.

120 public health providers have been trained in total.

The reporting period was also loaded with trainings for specifically law enforcement officers such as regional training for Special Operations Department staff in Batumi. One 2-day training for SOD staff was held covering 10 participants. Boarder police trainings have been held during the reporting period. In total 4 trainings were held in the following locations: Sarfi (Adjara), Tbilisi (Tbilisi International Airport staff); Sadakhlo and Tsiteli Khidi (Red Bridge). Total number of participants was 30.

5 trainings for State Fund staff have been held in total with 3 trainings held during the current reporting period. In total 39 staff members of the State Fund participated in these trainings.

There were at least 3 PSAs used during the reporting period. One was produced solely with the GOG funds, 2 others were produced in cooperation with IOM and Swiss development Agency. They did address both – potential victims, as well as demand side. PSAs were easy to understand for all age groups and plainly described threat and the essence of trafficking in persons. PSAs were broadcast throughout 2010 on Rustavi-2, Imedi and also on First Channel.

The National Action Plan on the Fight against Trafficking in Persons for 2009-2010 among other actions envisaged, as well as the new Action Plan for 2011-2012, envisage carrying out preventive measures, including information and education campaigns: Public Service Announcements, radio and TV programs, preparation and dissemination of printing materials in Civil Registry Offices, Georgian Consulates, tourist and employment agencies, and at border check points and potential high trafficking in human beings risk zones; organization of public discussions in different higher education institutions around the country on trafficking in human beings related issues, continued special trainings for specifically selected target groups including judges, prosecutors, border officials, social workers, police, carrying out special education activities for minors, with a special emphasis on orphanages.

Coordination Council and Georgian Public Broadcaster produced 8 programmes and news reports on threat of the trafficking and need for the prevention.

Ministry of Education and Science of Georgia (MES) with participation of the school pupils produced short video clip named "Don't trade freedom for slavery", clip regularly airs on Georgian TV outlets. Educational film on trafficking, produced in 2009, was again used for the tenth graders as a part of their educational program.

In January, 2010 State Fund in close cooperation with the Ministry of Internal Affairs produced a pamphlet "Let's fight trafficking together". 8000 of them were distributed by Police in Guria, Shida Kartli, Kakheti, Kvemo Kartli and Samtskhe-Javakheti regions.

4,000 copies of 5 languages (Georgian, Azeri, Armenian, Russian, English) information brochures "Learn, before you leave" were printed by Ministry of Internal affairs, in cooperation with NGO Women for Future. The information brochures were distributed in Shida Kartli, Kvemo Kartli, Imereti and Samtskhe-Javakheti regions.

The State Fund in cooperation with MoJ produced the informational pamphlet "What should we know about trafficking in persons". Civil registry Agency of Ministry of Justice of Georgia distributed 17491 of informational pamphlets, including 8700 – in Tbilisi, 1680 – in Kakheti, 300 – in guria, 1014 – in Samegrelo, 570 – on Shida Kartli, 680 – in Kvemo Kartli, 2005 – in Imereti, 55 – in Racha-Lechkhumi and Kvemo Svaneti, 150 – in Mtskheta-Mtianeti, 1961 – in Ajara and 376 – in Samtskhe-Javakheti.

Coordination Council introduced the mandatory course on trafficking for the students of the law faculty of the Iv. Javakhishvili Tbilisi State University. Course includes theoretical and practical elements. By the end of the course, after concluding theoretical part of the course, students have the chance to learn how different ministries and state agencies, as well as NGOs and international organizations, deal with the issues related to trafficking in persons, they receive detailed information and gain practical experience on protection and support of the victims of the trafficking.

In March, 2010 a student conference was organized together with the Public Defender's Office, which was televised. The Public Defender of Georgia, Vice-Rector of Tbilisi State University,

Director of Legal Aid Service, Director of State Fund for Protection of Victims of Trafficking participated along with students from different universities and other professionals.

There were 14 different discussions held with youngsters in different regions of Georgia, organized by the State Fund and the Coordination Council throughout 2010.

Ads were put out in media outlets to popularize hotline number 100 229. 69 calls were made to the hotline on suspicion of the trafficking. The billboards produced in cooperation with the "World Vision" billboards were putout in different cities of Georgia in particular in Tbilisi, Khashuri and Marneuli.

State Fund designed its own webpage (www.atipfund.gov.ge) dedicated to the description of the services provided to victims of the trafficking. Webpage also contains information on existing legislation, useful contacts, and other information on fighting against trafficking.

Information on trafficking on the web page of the Prosecutor General's Office was frequently updated. On the homepage of the MoJ special banner is dedicated to the trafficking and it is operational (http://www.justice.gov.ge/index.php?lang_id=GEO&sec_id=173)

MIA has concluded working and launched new web page (www.police.ge) where special banner is dedicated to the trafficking named "You are not for sale" http://www.police.ge/index.php?m=426.

Police Academy of the MIA has included trafficking issues in the basic curriculum for the border guards, patrol policemen and precinct policemen. Four hours are dedicated to the issues of trafficking in persons. Students receive general information on trafficking in persons, study Georgian laws and regulations on trafficking, receive instructions how to treat victims of trafficking in persons. Curriculum also includes practical training on trafficking related issues; they are trained to identify possible victims or offenders of the trafficking.

There were at least 7 radio programs on national radio channels devoted to trafficking, where State Fund and Coordination Council representatives together with NGO partners participated.

Employees of the Ministry of Education and Science had participated in the trainings in partnership with IOM.

MES in cooperation with the IOM is running the program called "Georgian School system in the service of the prevention of the trafficking". Program is aimed to include education on trafficking into the national educational plan for schools. Within the program course on trafficking was developed and piloted for the 9th graders, in addition course on trafficking in persons was developed for 10th and 11th graders. Two representatives of the MIA are participating in the program activities.

Special materials were developed and printed to use for the meetings in the orphanages, different risk groups youngsters, other risk groups and organizations. One of thiskind of a meeting was held in the Tbilisi Center for Social Adaptation, and with the young girl and women who are on probation (this meeting was held with support of the Ministry of Corrections and Legal Assistance).

17 trainings have been held in 17 institutions throughout Georgia covering 320 institutionalized youth who underwent 1-day trainings on human trafficking and its prevention;

7 Trainings in 7 IDP settlements for CIG (Community Initiative Group) members have been held in Shida Kartli in June-July 2010. In total the project covered 180 CIG members including IDP settlements. CIG members have also been trained in Kakheti, Imereti and Samtskhe-Javakheti – 159 people. 9 of such trainings were held in these areas covering 3 villages in each.

Village level leadership trainings were held in all targeted regions: Adjara, Imereti, Kakheti, Samtskhe-Javakheti, Kvemo Kartli, Shida Kartli – Gori, Mtskheta-Mtianeti –7 meetings. The project managed to cover 368 representatives of local governments all over Georgia. In total 47 meetings were held with local government representatives. 210 participants participated.

There is close cooperation and exchange of information between the Border Police and the Special Operations Department of the MOIA on monitoring the flow of those crossing the Georgian State Border. Following an August 2006 order by the MFA, Georgian consulates and embassies overseas also provide input and analysis in support of the MOIA effort to monitor immigration and emigration.

The Governmental commission on Migration issues was established at the end of 2010 to monitor the entire migration.

During 2010 three 2-day trainings were held covering 75 journalists. Participants represented TV, radio and press, also there were participants (students) from Tbilisi State University, faculty of Journalism. These trainings were held in Tbilisi. Besides, in January 2011 one more training was carried out in Kutaisi attended by 27 journalists (representatives of Imereti region).

On 27 January, 2010, Ministry of Internal Affairs hosted a delegation of the Dutch, Polish and Estonian experts to discuss issues related to irregular movement of people and goods and including TIP. The discussions for cooperation were held with the MIA Main Unit of International Cooperation, Patrol Police, SOD.

On 19-23 July, 2010, for the purpose of improved cooperation at international plane the GOG hosted 12 member Delegation of the Turkish law enforcement officials and NGOs working on TIP in July, 2010, meeting with all the relevant stakeholders in all the governmental sectors, as well as NGOs. IOM and GOG shared costs.

On 23-27 August, UNODC expert was invited to lead a training for the improvement of victim protection. The representatives of MIA, SOD and Prosecution Service participated in the workshop. US Embassy to Georgia supported the event.

On 15-16 September GOG hosted a delegation from Moldova, for a 2-day seminar for representatives from the Ministry of Internal Affairs (Patrol Police and SOD), the Ministry of Justice (Prosecutor's Office) and the State Fund (obviously, the exact participation is to be decided by you). This was an initiative of GOG to advance international cooperation. IOM and GOG shared costs.

On 29 November-10 December, 2010 representative of MIA SOD participated in IOM supported TIP training held in the Academy of MIA in Belarus.

On 20 -22 December 2010, IOM in close cooperation with GOG invited an eight-person governmental delegation from Jordan, visiting Georgia to study the counter-trafficking policies. The delegation, consisting of representatives from the Ministry of Justice, the Ministry of Health and Social Affairs, as well as the Ministry of Internal Affairs of Jordan, was particularly keen to study the system of victim assistance, the operation of the shelters for trafficking victims and how victim assistance structures cooperate with law enforcement as part of the National Referral Mechanism. IOM facilitated meetings for the Jordanian delegation with all relevant Georgian ministries and NGOs and also organized a visit to the Tbilisi-based shelter for trafficked persons. Afterwards the

Jordanians stated that this study visit was very useful in the process of determining what components to introduce in their own counter-trafficking system. The GOG extended best possible cooperation and contributed to the social program of the Delegation.

Article 7(2)(b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration

1. Child victims of trafficking.

Committee Request

The Committee had previously noted that a State Fund for the Protection of, and Assistance to Victims of Trafficking in Persons which provides for the payment of compensation (of 1,000 lari (GEL) per victim) to victims of trafficking and which finances their protection, assistance and rehabilitation measures, had been established in 2006. It had also noted that two shelters which provide services to victims of trafficking were also established in 2006 and 2007.

The Committee notes the Government's detailed information on the process of rehabilitation and social reintegration of victims of trafficking carried out by the State Fund. With regard to child victims of trafficking, this process starts with an individual plan outlined by the State Fund and the concerned social worker based on the needs of the victim. During implementation, this plan may be amended according to the changes in the needs of the victim or availability of services as envisaged in the plan. However, the services needed to meet the minimum requirements for rehabilitation and reintegration are not subject to any changes. It also notes the Government's indication that a child victim of trafficking referred to the State Fund shall receive the following services: shelter, free legal aid, free medical and psychological counselling and treatment, telephone hotline services, compensation, integration and rehabilitation services. In addition, the State Fund provides 24-hour security services and protection to the victims of trafficking placed in the shelters and the Ministry of Education ensures security services for all the institutions that serve child victims of trafficking or violence, or children at risk. The Committee further notes that the Strategy for Rehabilitation and Reintegration into Society of Victims of Trafficking in Persons, approved in 2007, serves as a general guide for the elaboration of the individual age-appropriate rehabilitation plan for each victim of trafficking and, as such, it will meet the concrete needs of the victims, including age-appropriate professional training and other educational programmes. It finally notes the Government's information that, in 2007, two victims of trafficking received compensation from the State Fund, and a girl child of 17 years, who was identified as a victim of trafficking for labour exploitation, was placed in a shelter on 5 November 2009 and provided with psychological and legal assistance. ***The***

Committee requests the Government to continue providing information on the number of child victims of trafficking who have been placed in shelters or other service institutions and rehabilitated.

GoG Response

In 2011, 15 victims were accommodated in the shelters:

- 9 of them are victims of labor exploitation,
- 4 of them are victims of sexual exploitation,
- 2 minors, not victims of trafficking themselves – children of trafficked parents.

The two shelters can accommodate women and men victims of trafficking, as well as child victims and the children of victims of trafficking, who can be housed with their parents. According to information provided by the relevant Georgian authorities, 14 victims of THB were accommodated in the shelters in 2009 and 12 in 2010. Child victims of trafficking were also accommodated in there (one in 2008 and two in 2009). In 2010, two children were accommodated in a shelter as their mothers were victims of trafficking, but the children themselves had not been subject to THB.

The State Fund covers the necessary medical assistance of both victims of trafficking and their children, if they are accommodated together in the shelters.

2. Street children.

Committee Request

The Committee had previously noted the comments by the Georgian Trade Unions Confederation, dated 30 August 2006, that there were reports of children as young as nine years working on the streets of Tbilisi, in markets and sometimes at night, carrying or loading wares and children as young as five years of age working as beggars. It had also noted the Government's statement that the majority of street children are of Roma origin. The Committee notes the Government's information that various laws are in place which prohibit any kind of discrimination in the educational system, which apply to Roma children. The Committee notes, however, that the Committee on the Rights of the Child (CRC), in its concluding observations (CRC/C/GEO/CO/3 of 23 June 2008, paragraph 64) expressed concern at the absence of strategic measures to address the situation of children who live and work on the street and at the plight of these children in view of the risks to which these children are exposed, including trafficking. It further notes the Government's indication, in its report for the period 2007–08 under the Minimum Age Convention, 1973 (No. 138), that UNICEF had plans to conduct a study on street children which would possibly help the Government to evaluate the actual situation and to plan for specific measures. ***The Committee requests the Government to provide information on the findings of the UNICEF study on street children, including statistics on the number of children working and living in the streets. Recalling that street children are particularly exposed to the worst forms of child labour, the Committee urges the Government to take effective and time-bound measures to protect children living and working in the streets, in particular Roma children, from the worst forms of child labour and to provide for their rehabilitation and social integration. It asks the Government to provide information on the measures taken in this regard.***

GoG Response

The GoG pays a vital attention to street children as a main risk group for forced labor. In order to ensure wellbeing of the street children the Inter-Agency Commission was created composed of relevant ministers and deputy ministers. Inter-Agency Commission elaborated a new Strategy, which will be followed by the National Action Plan. The activities envisaged by the National Action Plan will be obligatory to implement for all relevant state authorities.

The GoG has worked actively in cooperation with international organizations, NGOs and foreign aid agencies to improve the welfare of children and address the plight of street children. The GoG implemented a voucher system for street children, enabling them to receive support.

The GoG finances shelters and day-time services for street children. The GoG finances also Crisis Centers in Tbilisi, the aim of which is psycho-social rehabilitation of such children, provision of vocational education, and eradication of academic backwardness. For efficient functioning of the Crisis Centers, social workers, physiologists, and teachers are hired by the Crisis Centers in order to ensure educational and vocational development of street children.

It should be emphasized that on May 31, 2010, the Joint Order of the Minister of Labor, Health and Social Assistance, Minister of Interior and Minister of Education and Science on the Child Referral Mechanism was adopted, which defines procedures for children, subject to any form of violence, including labor exploitation, reactive measures and responsible authorities.

It should be emphasized, that in case of children subject to the trafficking, they are located at shelters of State Fund for Protection and Assistance of Victims of Human Trafficking.

In November 2011, MOLHSA initiated formation of the Interagency Steering Committee, which will be the major decision-maker and supervisory body of the state policy towards highly vulnerable children. It will define state approaches, vision and policies towards highly vulnerable children and attract all possible resources for its implementation.

The Steering Committee includes representatives of MoLHSA, Social Service Agency, MIA, Ministry of Justice, MoES, Ministry of Finance, Public Defender's Office, Tbilisi Municipality, State Fund for Protection and Assistance of Victims of Human Trafficking, the EU Delegation and UNICEF. In the framework of this cooperation, a Project on Street Children was elaborated, which envisages:

1. Renovation of equipment of three new crisis/drop-in/day-care centers. The staff of the centers will be trained to provide qualified service. The service running costs will be financed by the GoG.
2. Recruitment and training of four mobile teams to provide service primarily for street children.

3. Enhancement of the technical capacity of Social Service Agency to manage, coordinate and monitor services for highly vulnerable children.

The Code on Administrative Offences of Georgia empowers the courts to levy sanctions against employers found in violation of child labor laws (Article 424). It should be emphasized that not-performance of obligations of parent or guardian of minor related to education of minors is punishable by fine (Article 172 of Code on Administrative Offences). The Article 171 of the Criminal Code of Georgia provides sanctions for persuading a minor to beg and involving or employing a minor in prostitution. The Criminal Code prohibits the trafficking of minors and the possession, production, sale, distribution or promotion of child pornography. Stringent penalties on persons convicted of committing these crimes are imposed by the Criminal Code (Articles 255 and 255[1]).

Article 22 of the Constitution of the ILO

Report for the Period 2010 to 2012

Prepared by the Government of Georgia

on the

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

(Ratification registered on 1993)

Observation, C E A C R, published 100th ILC Session (2011)

Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination.

Committee Request

The Committee had previously noted that section 11(6) of the Law on Trade Unions and section 2(3) of the Labour Code which prohibited, in very general terms, anti-union discrimination, did not appear to constitute sufficient protection against anti-union discrimination at the time of recruitment of workers and at the time of termination of their employment. In particular, the Committee had noted that, pursuant to section 5(8) of the Labour Code, an employer was not required to substantiate his/her decision for not recruiting an applicant and considered that the application of this section in practice might result in placing on a worker an insurmountable obstacle when proving that he/she was not recruited because of his/her trade union activities. The Committee had also noted that, according to sections 37(d) and 38(3) of the Labour Code, the employer has a right to terminate a contract at his/her initiative with an employee, provided that the employee is given one month's pay, unless otherwise is envisaged by the contract. The Committee considered that, in light of the absence of explicit provisions banning dismissals by reason of union membership or participating in union activities, the Labour Code did not offer sufficient protection against anti-union dismissals. The Committee therefore trusted that the necessary measures would be taken to amend the abovementioned provisions of the Labour Code so as to ensure an adequate protection against anti-union discrimination. It further requested the Government to indicate the form of compensation available to workers, victims of acts of anti-union discrimination, including dismissals, transfers, downgrading, etc.

The Committee notes that the Government reiterates the information it had previously provided by referring to the general prohibition of anti-union discrimination enshrined in the Constitution (articles 14 and 26), the Law on Trade Unions (section 11(6)), the Labour Code (section 2(3)) and the Criminal Code (section 142). The Government considers that the legislation clearly prohibits any type of discrimination, including anti-union dismissals, and sufficiently protects against violations of these rights and is therefore in compliance with the Convention. The Government adds that no application has been submitted to the relevant governmental agencies for the past several years regarding restrictions of trade union rights. With regard to section 5(8) of the Labour Code, the Government indicates that, in practice, an employee becomes a trade

union member after recruitment and that there have been no cases of a person not being recruited because of his/her trade union membership; it therefore considers that this provision is in conformity with the Convention. With regard to section 37(9) of the Labour Code, the Government indicates that this provision does not stipulate that an employer can dismiss a worker without any reason; but rather that one of the grounds for suspending labour relations is the termination of a labour contract, which is possible upon the initiative of one of the parties or on the grounds stipulated by the contract. If a dismissed worker appeals to the court, the employer is obliged to provide arguments and reasons for the dismissal to the court. Furthermore, the Government points out that, according to the Code, in case of termination of employment, an employer is obliged to give at least one-month's pay if higher payment is not envisaged by the agreement between the parties. As to the compensation available to workers, victims of acts of anti-union discrimination, including dismissals, transfers and downgrading, the Government indicates that such workers have the right to request compensation by appealing to the court and indicating the amount of compensation desired; the court makes a final decision regarding compensation and its amount. The Government concludes by indicating that it does not see the need for initiating amendments to the Labour Code.

The Committee notes the information provided by the Government. It notes, in particular, that on the one hand, the Government indicates that there have been no complaints of restrictions of trade union rights, and on the other, that the allegations of violations of trade union rights pending before the ILO supervisory bodies are being examined by the TSPC. It further notes new allegations of dismissals of trade union officers and founding members submitted by the ITUC in its communication dated 10 October 2011. The Committee recalls that, in terms of Article 1 of the Convention, workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. The Committee recalls that such protection should cover hiring, dismissals and discriminatory measures during employment. With regard to the protection at the time of recruitment, the Committee recalls that workers may face many practical difficulties in proving the real nature of denial of employment, especially when seen in the context of blacklisting of trade union members, which is a practice whose very strength lies in its secrecy. Since it may often be difficult, if not impossible, for a worker to prove that he/she has been the victim of an act of anti union discrimination, legislation could provide ways to remedy these difficulties, for instance by stipulating that grounds for the decision of non-

recruitment should be made available upon request. With regard to the termination of employment, the Committee considers that legislation which allows the employer in practice to terminate the employment of a worker on condition that he/she pays the compensation provided for by law in all cases of unjustified dismissal, without any specific protection aimed at preventing anti-union discrimination, is insufficient under the terms of Articles 1 and 3 of the Convention. The Committee underlines that while there exists a variety of systems affording an "adequate" protection against acts of anti-union discrimination, it is essential that the system in place is an efficient one. Thus, would be compatible with the Convention a system establishing preventive machinery by requiring that a dismissal is authorized by an independent body or public authority (labour inspectorate or courts); a system which provides for the reinstatement of an unfairly dismissed worker; or a system providing for compensation for the prejudice suffered as a result of an act of anti-union discrimination and sufficiently dissuasive sanctions imposed on employers found guilty of anti-union discrimination, which also act as an effective deterrent to prevent in practice anti-union dismissals. While noting that general provisions prohibiting discrimination exist in the legislation, in the light of the numerous alleged cases of anti-union discrimination, the Committee considers that the system currently in place in Georgia does not afford an adequate protection. ***The Committee therefore once again requests the Government to take the necessary measures to revise sections 5(8), 37(d) and 38(3) of the Labour Code in consultation with the social partners, so as to ensure that the Labour Code provides for an adequate protection against anti-union discrimination taking into account the principles above. It requests the Government to provide information on the measures taken or envisaged in this respect. The Committee further asks the Government to provide detailed information on the application of the Convention in practice, including statistics on the number of confirmed cases of anti-union discrimination, the remedies provided and sanctions imposed, as requested by the June 2010 Conference Committee.***

GoG Response

Effective prohibition of discrimination is one of the essential policies of the GoG. By bolstering freedom of association, the GoG seeks to ensure protection from

discrimination, including anti-union-discrimination, as abolition of discrimination plays a significant role in the democratic transformation process of the country.

In particular, the GoG pays vital attention to the prohibition of anti-union discrimination. The GoG explores the possibility to better address the issue in order to ensure a clear and better articulated prohibition of discrimination based on trade union membership during pre-contractual as well as contractual labor negotiations.

In this context, the GoG would like to provide additional information, legal context and clarifications in this regard.

Georgia's laws provide guarantees of freedom of association and prohibit any kind of discrimination based on membership in any type of association including trade unions. Discrimination based on the membership in trade unions is forbidden by each Georgia's law that regulates labor relations (the Georgian supreme law - the Constitution of Georgia, the Labor Code of Georgia, the Law on Trade Unions of Georgia, and the Criminal Code of Georgia):

a. **Each person shall have the right to form and to join civil associations, including trade unions** (Article 26(1) of the Constitution of Georgia). Because the definition of 'civil association' includes trade unions, all the rights given by the law to civil associations are fully applicable to trade unions without any reservation.

b. **A trade union can be established at any enterprise, institution, organization and in other places of work** (Article 2(3) of the Law on Trade Unions of Georgia).

c. **Discrimination of an employee by an employer, based on membership or non-membership in a trade union, is prohibited** (Article 11(6) of the Law on Trade Unions of Georgia).

d. **Any type of discrimination based on** race, color, ethnic and social category, ethnicity, origin, property and position, residence, age, gender, sexual orientation, disability,

membership in religious or **any other union**, family conditions, political or other opinions **is prohibited in employment relations** (Article 2(3) of the Labor Code of Georgia).

e. In the course of employment relations, the parties shall adhere to basic human rights and freedoms as defined by Article 2(6) of the Labor Code of Georgia. It should be emphasized, that **freedom of the association is one of the basic and fundamental rights of the employee ensured by the Constitution of Georgia** as it was mentioned above in the bullet-point "a".

f. **Infringement of the equality of employees based on membership in trade unions is defined as a criminal offense and is subject to punishment by the Criminal Code of Georgia.** The Criminal Code of Georgia stipulates that infringement of equality of individuals based on, among other conditions, membership in any civil association, is punishable as it violates individuals' human rights. The violation shall be punished by a penalty or by probation for a period of up to one year, or by imprisonment for up to two years (Article 142 of the Criminal Code of Georgia). If an employer hinders an employee's right to join a trade union, the employer will be held criminally liable.

g. **Any illegal impediment to creation or activities of a** political, religious or **civil association by violence, threat or using employment status shall be punishable** by a penalty or by probation for a period of up to one year or by imprisonment for up to two years (Article 166, of the Criminal Code of Georgia).

It is notable that termination of employment and recruitment processes are part of labor relations. Accordingly, prohibition of discrimination in labor relations based on membership in trade unions is applicable both in recruitment and employment termination processes.

There are no reported cases when a person was not recruited based on his/her membership in trade union.

Furthermore, an employer's request to disclose membership in any association including trade unions in the recruitment process is illegal and punishable.

As for the concern related to the Article 37 (d) of the Labor Code of Georgia, the Labor Code does not provide that an employer can dismiss a worker without any reason. According to the Labor Code of Georgia, the ground for suspending labor relations can be termination of the agreement. Termination of the labor agreement is possible on the initiative of one of the parties of the agreement. The reasons of termination of a labor agreement can also be stipulated in the agreement.

According to Georgia's laws, **a dismissed worker can claim unfair dismissal through appealing to arbitration as well as to the court.**

If a dismissed worker considers that the reason of the termination of labor contract is illegitimate, the worker appeals to the Court and **the employer is obliged to provide reasoning of dismissal during the court hearings.**

The parties of court proceedings (a plaintiff and defendant) must provide facts and arguments and burden of proof lies to both of them (Article 102 of the Civil Procedural Code of Georgia). Accordingly**, an employer is obliged to provide facts to justify that the dismissal of a worker was not based on an illegitimate reason.**

During the court proceedings, a plaintiff can ask questions to the employer, including questions regarding the reason for termination of the labor contract. During the questioning procedure, the parties have the right to perform questioning of counterparts regarding important circumstances concerning the case without prior approval by the court. The court only opens the questioning procedure (Articles 127 and 221 of the Civil Procedural Code of Georgia).

Further, during the court proceeding, the judge can ask questions to the parties regarding important circumstances concerning the case (Article 128 of the Civil Procedural Code of Georgia).

Based on the above-mentioned, it should be concluded that during the court proceedings, a plaintiff has the opportunity to obtain information regarding the grounds for the termination of

the contract and an employer is obliged to provide facts that justify that termination of a labor contract was not based on an illegitimate reason.

As for the case law regarding discriminatory treatment, according to the latest ruling of the Supreme Court (Supreme Court, Case No. 343-327-2011, December 1, 2011) in the course of the termination of the labor contract, the fundamental human rights, also prohibition of discrimination envisaged by the Labor Code should be protected and ensured (Article 2, Paragraphs 3 and 6 of the Labor Code). **In case of the dismissal of a worker challenged in the court, it should be meaningfully investigated whether the dismissal was based on discriminating grounds. In this case burden of proof lies on employer. Namely, if employee claims that his/her dismissal was discrimination, the employer must prove that in fact the dismissal does not have discriminating ground.**

It should be emphasized, that most of the cases the GTUC defines and claims as 'discrimination' are filed to the courts not as such. The complaints of trade unions have always been on requesting to abolish the order of dismissal of employee on the legalistic grounds, among others referring to the Article 23, Paragraph 3 of the Law on Trade Unions, stating that for the dismissal of a trade union elected member prior consent of the trade union is needed.

The GoG was able to retrieve 10 cases when trade union members appealed to the court from 2006 to 2012 (the database may not be complete):

- In 2 cases the plaintiffs were resorted in their position and the compensation was granted. 2 cases were forwarded to the court of a higher instance.
- 2 cases were declined.
- In 4 cases the issue was passed to the lower instance court.
- Only one case was on alleged anti-union discrimination, and the court did not find the fact of discrimination.

Article 4. Collective bargaining.

Committee Request

The Committee had previously noted that sections 41–43 of the Labour Code seem to put in the same position collective agreements concluded with trade union organizations and agreements between an employer and non-unionized workers, including as few as two workers. Considering that direct negotiations between an undertaking and its employees, bypassing representative organizations where these exist, run counter to the principle that negotiations between employers and organizations of workers should be encouraged and promoted, the Committee requested the Government to take the necessary measures in order to amend its legislation so as to ensure that the position of trade unions is not undermined by the existence of other employees' representatives or discriminatory situations in favour of the non-unionized staff.

The Committee notes the Government's indication that labour legislation aims at empowering workers to conclude labour agreements to provide for better working conditions and that this Convention has the same objective; accordingly, legislation is in compliance with the Convention. The Government considers that, while the Convention provides for the possibility to carry out collective bargaining between an employer and a trade union, it does not prohibit collective bargaining between an employer and non-unionized workers, even when a trade union exists at the particular undertaking. Consequently, adds the Government, collective agreements concluded with trade unions and agreements between an employer and non-unionized workers enjoy, under the national legislation in force, an equal standing. The Government points out, however, that unionized workers have several privileges over non-unionized workers. For example, an employer is obliged to bargain collectively with a trade union upon the initiative of the latter, but is not obliged to do so with non-unionized workers; trade unions enjoy certain facilities (premises, check-off facilities, etc), which non-unionized workers do not have. The Government further indicates that it promotes collective bargaining in practice and that the biggest companies in Georgia have collective agreements with the respective trade unions. As for the promotion of collective bargaining under Article 4 of the Convention, the Government considers that such "promotion" does not necessarily imply legislative measures. The Government further indicates that the Labour Code and the Law on Trade Unions in no way restrict promotion of collective bargaining, but to the contrary, contain the relevant rules,

conditions and procedures. The Government concludes by emphasizing that, according to the Labour Code, the right to collectively bargain belongs not only to trade unions, which organize only about 12 per cent of the labour force (2008), but also to other unions or groups of employees. This regulation puts non-unionized workers and those organized in trade unions under equal conditions and thus excludes the discrimination based on trade union membership.

The Committee notes the arguments put forward by the Government, but finds it difficult to reconcile the equal status given in law to collective labour agreements concluded with trade union organizations and agreements concluded with a group of non-unionized workers with the ILO principles on collective bargaining, according to which the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations should be encouraged and promoted with a view to the regulation of terms and conditions of employment by means of collective agreements. If, in the course of collective bargaining with the trade union, the enterprise offers better working conditions to non-unionized workers under individual agreements, there is a serious risk that this might undermine the negotiating capacity of the trade union and give rise to discriminatory situations in favour of the non-unionized staff; furthermore, it might encourage unionized workers to withdraw from the union. The Committee therefore once again requests the Government to take the necessary measures in order to amend its legislation so as to ensure that the position of trade unions is not undermined by the existence of other employees' representatives or discriminatory situations in favour of the non-unionized staff and to promote collective bargaining with trade union organizations. It requests the Government to provide information on all measures taken or envisaged in this regard.

The Committee had previously requested the Government to indicate the number of collective agreements concluded in the country and to provide relevant statistics in relation to the private sector. The Committee notes the Government's indication that, while it does not have official statistics regarding collective agreements, the top 20 companies in the country have collective agreements with trade unions and provides, in this respect, examples of five companies. The Committee requests the Government to continue to provide all relevant information in this respect.

GoG Response

In this context, the GoG would like to provide relevant information, the legal context and clarifications in this regard.

a. **Unionized workers have privileges over non-unionized workers regarding collective negotiations per Georgia's labor laws.** An employer is obliged and cannot refuse to carry out collective negotiations with trade unions (including primary trade unions, trade unions, associations of trade unions) on labor, social and economic issues if the later comes up with such an initiative (Article 12(2) of the Law on Trade Unions of Georgia). The employer does not have the same obligation for starting collective negotiations with non-unionized workers in case the latter comes up with such an initiative.

b. **Trade unions' independence from intervention of an employer is ensured by law** (Article 5(1) of the Law on Trade Unions of Georgia). The unions have full autonomy and discretion in their operations, as guaranteed by law. The aims and objectives, rules governing admitting or excluding a member, rights and responsibilities of members, structure, terms of competency and authority of management bodies, sources and rules governing use of revenues and accumulating property, the terms of making amendments to the trade union's operations and activities, the name, venue and territory of operation, as well as other important issues are determined by the statutes of trade unions in accordance with the law (Article 7(1) of the Law on Trade Unions of Georgia).

c. **Unionized workers have privileges over non-unionized workers regarding availability of office space for the fulfillment of the tasks of a trade union.** A trade union and its members are able to hold meetings at work premises granted by the administration of an employer. The administration of an employer, enterprise, establishment or organization is obliged to create the necessary conditions for the activities of a trade union within its material and financial capabilities and provide to the primary trade union office space, equipment, and communication means for job-related use at the expense of the enterprise, establishment or organization (Article 25(1) of the Law on Trade Unions of Georgia). Besides, an employee who is elected in the trade union body and is not free from his main work may be given free time off the enterprise to carry out trade union duties (Article 23(1) of the Law on Trade Unions of Georgia).

d. **The property and financial rights of trade unions are guaranteed by the Georgia's labor laws** (Article 22 of the Law on Trade Unions of Georgia):

- Trade unions and a coalition (association) of trade unions, in accordance with their own statute, may possess, use and manage the property and financial means available to them. The property and monetary means of trade unions are inviolable. No person has the right to use, take away or transfer a trade union's property and financial means without the consent of the collegial (selective) body envisaged by the respective trade union statute.
- A trade union independently manages its property and financial resources, including its salary policy.
- Revenue received from membership fees, voluntary payments and charity, which is used to comply with the statutory objectives of a trade union, is not subject to taxation.
- Financial activities of a trade union, carried out in accordance with its statute, are not subject to reporting towards state bodies.

e. **The GoG covers all costs of traveling and subsistence expenses of the representatives of the GTUC attending the meetings of the Conference or the Governing Body** in accordance with Article 13(2) of the ILO Constitution.

To summarize, the unionized workers have a number of privileges over their non-unionized collogues as described above. The position of trade unions cannot be undermined by the possible or potential existence of other employees' representatives or by situations that could favor non- unionized staff regarding collective negotiations because Georgia's labor laws provide unionized workers privileges over non-unionized workers regarding collective negotiations.

Georgia's labor laws ensure that trade unions are independent of and protected from intervention by an employer or employers' association(s). The independence of the trade unions is linked to the provisions of the freedom of association and the freedom of associations is actively supported by the GoG.

It should be emphasized, that:

a. **Independence of trade unions from intervention of employer is ensured by law.** Trade unions as well as coalitions (associations) of trade unions are: 1) independent from bodies of state and local government, employers, employers' unions (unions, associations), political parties and organizations; 2)are not accountable to them; and 3) are not under their control (Article 5(1) of the Law on Trade Unions of Georgia).

b. **Interference in the autonomy of trade unions is prohibited by the Georgia's labor law.** Any illegal impediment of creation or activities of political, religious or civil association by violence, threat or using employment status shall be punished by a penalty or by probation for a period of up to one year or by imprisonment for up to two years (Article 166, of the Criminal Code of Georgia).

Article 42 of the Code of Administrative Violations stipulates that the violation of labor laws by an authorized official of an enterprise, legal entity, or organization will result in a penalty in the amount of a minimum of 100 times the salary. The same violation committed within one year following the imposition of an administrative penalty will result in a penalty in the amount of a minimum of 200 times the salary.

The GoG does not have official statistics regarding collective agreements. However, the GoG would like to provide a recent example of successful collective bargaining in Georgia. The employees of the LTD "Georgian Manganese" (a mine factory) were on strike in spring 2010. In summer 2010, after effective collective bargaining between representatives of the company and GTUC, the collective agreement was achieved between the management of company and the trade union.

From the perspective of the Collective Bargaining Coverage Rate, which is 25.9% in Georgia according this 2010 study[4], Georgia's percentage is higher than, for example, the United States, Mexico, Chile, Armenia, Estonia, and Poland. According to the above-mentioned study, the reported proportion of the Collective Bargaining Coverage Rate is 17.0%, higher than e.g. 13.3% indicator of United States and higher than several countries in Europe.

[4] The ILO. "Trade Union Density and Collective Bargaining Coverage, International Statistical inquiry 2008-09". ILO's Industrial and Employment Relations Department (DIALOGUE) 2010