



GRETA

GROUP OF EXPERTS
ON ACTION AGAINST
TRAFFICKING IN HUMAN
BEINGS

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**Report concerning the implementation
of the Council of Europe Convention
on Action against Trafficking in Human Beings
by Georgia**

SECOND EVALUATION ROUND

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Preamble

The Group of Experts on Action against Trafficking in Human Beings (GRETA) has been set up pursuant to Article 36 of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention"), which entered into force on 1 February 2008. GRETA is composed of 15 independent and impartial experts coming from a variety of backgrounds, who have been selected on the basis of their professional experience in the areas covered by the Convention. The term of office of GRETA members is four years, renewable once.

GRETA is responsible for monitoring the implementation of the Convention by the parties and for drawing up reports evaluating the measures taken by each party. In accordance with Article 38, paragraph 1, of the Convention, GRETA evaluates the implementation of the Convention following a procedure divided into rounds. At the beginning of each round, GRETA selects the specific provisions on which the evaluation procedure is to be based and defines the most appropriate means to carry out the evaluation. GRETA adopts a questionnaire for each evaluation round which serves as the basis for the evaluation and is addressed to all parties.

The first evaluation round was launched in February 2010 and the questionnaire for this round was sent to the parties according to a timetable adopted by GRETA, which reflected the time of entry into force of the Convention for each party. GRETA organised country visits to all parties in order to collect additional information and have direct meetings with relevant actors, both governmental and non-governmental.

Following the first round of monitoring, which provided an overview of the implementation of the Convention by each party, GRETA launched the second evaluation round of the Convention on 15 May 2014. During this new evaluation round, GRETA has decided to examine the impact of legislative, policy and practical measures on the prevention of trafficking, the protection of the rights of victims of trafficking, and the prosecution of traffickers. The adoption of a human rights-based approach to action against trafficking in human beings remains at the centre of the second evaluation round. In addition, particular attention is paid to measures taken to address new trends in human trafficking and the vulnerability of children to trafficking. The questionnaire adopted by GRETA for the second evaluation round is sent to all parties which have undergone the first evaluation round, following a timetable approved by GRETA.

GRETA's reports are based on information gathered from a variety of sources and contain recommendations intended to strengthen the implementation of the Convention by the party concerned. In its recommendations, GRETA has adopted the use of three different verbs - "urge", "consider" and "invite" - which correspond to different levels of urgency of the recommended action for bringing the party's legislation and/or practice into compliance with the Convention. GRETA uses the verb "urge" when it assesses that the country's legislation or policy are not in compliance with the Convention, or when it finds that despite the existence of legal provisions and other measures, the implementation of an obligation of the Convention is lacking. In other situations, GRETA "considers" that it is necessary to make improvements in order to fully comply with an obligation of the Convention. By "inviting" a country to pursue its efforts in a given area, GRETA acknowledges that the authorities are on the right track.

As regards the procedure for the preparation of reports, GRETA examines a draft report on each party in a plenary session. The process of confidential dialogue with the national authorities allows the latter to submit, within two months, comments on GRETA's draft report with a view to providing additional information or correcting any possible factual errors. These comments are taken into account by GRETA when establishing its final report. The final report is adopted by GRETA in a plenary session and transmitted to the party concerned, which is invited to submit any final comments. At the expiry of the time-limit of one month GRETA's report, together with eventual comments by the party concerned, is made public and sent to the Committee of the Parties to the Convention.

I. Introduction

1. The first evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention") by Georgia took place in 2011-2012.¹ Following the receipt of the Georgian reply to GRETA's first questionnaire on 10 September 2010, an evaluation visit was organised on 11-14 April 2011. The draft report on Georgia was examined at GRETA's 11th meeting (19-23 September 2011) and the final report was adopted at GRETA's 12th meeting (6-9 December 2011). Following the receipt of the comments of the Georgian authorities, GRETA's final report was published on 7 February 2012.

2. In its first report, GRETA noted that the Georgian authorities had adopted a specific law to combat THB and had set up structures for the identification and assistance of victims of trafficking in human beings (THB). GRETA urged the authorities to step up their efforts to address the vulnerability to THB of internally displaced persons (IDPs) and children. GRETA stressed the need to take additional measures to protect and safeguard the best interests of child victims of trafficking, including through legal guardianship, appropriate accommodation, education and support programmes. Further, GRETA urged the Georgian authorities to ensure that victims of trafficking were systematically informed about the recovery and reflection period and had effective access to compensation. GRETA also called on the Georgian authorities to address the significant reduction in the number of prosecutions and convictions of traffickers since 2010.

3. On the basis of GRETA's report, on 13 November 2012 the Committee of the Parties to the Convention adopted a recommendation to the Georgian authorities, requesting them to report back on the measures taken to comply with this recommendation by 13 November 2014.² The report submitted by the Georgian authorities was considered at the 15th meeting of the Committee of the Parties (5 December 2014). The Committee of the Parties decided to transmit the authorities' report to GRETA for consideration and to make it public.³

4. On 3 September 2014, GRETA launched the second round of evaluation of the Convention in respect of Georgia by sending the questionnaire for this round to the Georgian authorities. The deadline for submitting the reply to the questionnaire was 3 February 2015,⁴ date on which Georgia submitted its reply.

5. In preparation of the present report, GRETA used the reply to the questionnaire by the Georgian authorities, the above-mentioned report submitted by them to the Committee of the Parties and information received from civil society. An evaluation visit to Georgia took place from 22 to 26 June 2015 in order to hold meetings with relevant actors, collect additional information and examine the practical implementation of adopted measures. The visit was carried out by a delegation composed of:

- Mr Olafs Bruvers, member of GRETA;
- Ms Rita Theodorou Superman, member of GRETA;
- Mr David Dolidze, Administrator in the Secretariat of the Convention.

¹ Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Georgia, first evaluation round:

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680631c34>

² Recommendation CP(2012)5 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Georgia, adopted at the 8th meeting of the Committee of the Parties on 13 November 2012: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680631c08>

³ Report submitted by the Georgian authorities on measures taken to comply with Committee of the Parties Recommendation CP(2014)20 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680631c33>

⁴ Reply from Georgia to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties, second evaluation round: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680641bc8>

6. During the visit, the GRETA delegation met the Secretariat of the Inter-Agency Council on Combating Trafficking in Human Beings and officials from relevant ministries and public bodies, including the Ministry of the Interior, the Ministry of Justice, the Ministry of Labour, Health and Social Affairs, the Ministry of Education and Science, the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees, and the Chief Prosecutor's Office. Further, meetings were held with representatives of the Public Defender's Office.
7. In Adjara region, the GRETA delegation met judges of the criminal law chamber of Batumi City Court and members of the regional Anti-Trafficking Task Force composed of representatives of the regional police and Prosecutor's Office.
8. The delegation held separate meetings with representatives of non-governmental organisations (NGOs) and officials from the local offices of the International Organization for Migration (IOM) and the United Nations Children's Fund (UNICEF).
9. In the course of the visit, the GRETA delegation visited two shelters for victims of human trafficking operated by the State Fund for the Protection and Assistance of Victims of Trafficking, respectively in Tbilisi and Batumi.
10. The list of the national authorities, NGOs and other organisations with which the delegation held consultations is set out in the Appendix to this report. GRETA is grateful for the information provided by them.
11. GRETA wishes to place on record the co-operation provided by the Georgian authorities and in particular by Ms Ketevan Khutsishvili, contact person appointed by the authorities to liaise with GRETA, as well as the Secretariat of the Co-ordination Council for Combating Trafficking in Persons.
12. The draft version of the present report was approved by GRETA at its 24th meeting (16-20 November 2015) and was submitted to the Georgian authorities for comments on 21 December 2015. The authorities' comments were received on 22 February 2016 and were taken into account by GRETA when adopting the final report at its 25th meeting (7-11 March 2016). The report covers the situation up to 11 March 2016; developments since that date are not taken into account in the following analysis and conclusions. The conclusions summarise the progress made since the first report, the issues which require immediate action and the other areas where further action is needed (see pages 43-48).

II. Main developments in the implementation of the Convention by Georgia

1. Emerging trends in trafficking in human beings

13. Georgia remains primarily a country of origin of victims of trafficking in human beings (THB) and, to a lesser extent, it is also a country of destination for persons trafficked for the purpose of sexual exploitation. According to statistical information provided by the authorities, 6 persons were identified as victims of THB in 2011, 6 in 2012, 39 in 2013, 12 in 2014 and 16 in 2015.⁵ Among them 40 were women, 35 men and four children. The vast majority of the identified victims were Georgian nationals. A total of 24 foreign victims were identified in the period 2011-2015. Most of the identified victims (49) were subjected to transnational THB and 30 were trafficked within Georgia. The predominant form of exploitation was labour exploitation (43 victims), followed by sexual exploitation (34 victims). There were two cases of sale or purchase of infants. No cases of THB for the purpose of removal of organs have been detected.

14. Turkey is the main country of destination of Georgian victims of THB, both for the purpose of sexual and labour exploitation. In 2015, five Georgian victims were identified as being trafficked to Iraq. There have been reports on suspected cases of labour exploitation of Georgian nationals in Afghanistan and Iraq, but they have not led to the identification of victims of THB or prosecutions (see paragraph 101). As regards trafficking of foreign nationals into Georgia, it has concerned mostly women from Kyrgyzstan, Tajikistan and Uzbekistan trafficked for the purpose of sexual exploitation, mainly to Black Sea resorts in the Adjara region. Unemployed women, people from socially vulnerable groups, such as internally displaced persons (IDPs), and children living and working in streets are among the most vulnerable to trafficking in human beings in Georgia.

2. Developments in the legal framework

15. As a follow-up to GRETA's recommendations made in the first evaluation, the Government of Georgia initiated amendments to the Law on Combating Trafficking (hereinafter "Anti-Trafficking Law"). As the result of these amendments, adopted on 10 April 2012, a new chapter concerning the social and legal assistance to child victims of THB and their rehabilitation was added to the Anti-Trafficking Law (see paragraph 119).

16. Further, on 29 May 2014, amendments were made to Articles 143¹ and 143² of the Criminal Code (CC), which criminalise THB, defining the terms "exploitation" and "dependence on a person" (see paragraph 159).

17. Moreover, the amendments made to Articles 143¹ and 143² of the CC increased from one to three years the sanction of deprivation of the right to hold a public position or pursue a particular activity. Further, on 4 August 2015, Article 143³ of the CC was amended to allow for not punishing a person who knowingly uses the services of a victim of trafficking, in case the former co-operates with the investigation.

18. In addition, on 1 September 2014, a new Law on the Legal Status on Aliens and Stateless Persons entered into force. It contains, *inter alia*, provisions on granting temporary residence permits to victims of THB (see paragraph 142).

⁵ These figures include both "statutory victims", i.e. persons identified as victims of trafficking by law enforcement authorities or prosecution in the context of a criminal investigation, and persons granted the status of a victim of trafficking by the Permanent Group.

3. Developments in the institutional framework

19. The Interagency Co-ordination Council for Carrying out Measures against Trafficking in Human Beings (the "Co-ordination Council"), set up in 2006, continues to be responsible for the co-ordination of anti-trafficking activities in Georgia. The Co-ordination Council is chaired by the Minister of Justice and its composition has been expanded to include representatives of the Ministry of Economy and Sustainable Development, the Ministry on Diaspora Issues, the Chief Prosecutor's Office and the Parliamentary Secretary of the Government of Georgia. Even though a representative of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees no longer participates in the work of the Co-ordination Council, the Ministry has been assigned the task of disseminating information about THB among internally displaced persons and potential migrants.

20. Along with the public bodies, a number of non-governmental and international organisations participate in the work of the Co-ordination Council, in particular the Georgian Young Lawyers Association (GYLA), "Tanadgoma", "Anti-Violence Network of Georgia", "Civil Development Agency", "Women's Information Centre", "Migration Centre", "Save the Children", "Caritas Georgia", IOM and UNICEF.

21. The Co-ordination Council meets twice a year in full composition, including representatives of international organisations and NGOs, and may be convened additionally if necessary. The Co-ordination Council may establish working groups on specific matters. Thus in 2012-2014, working groups were set up on the following subjects: amending legislation to define the term "exploitation" in the CC; developing guidelines for law enforcement officers for investigating and prosecuting cases of THB (see paragraph 135); developing Standard Operative Procedures (SOP) for the identification of possible victims of THB (see paragraph 94); and identification of risks of THB among children working and living in the streets and adoption of relevant measures. In 2015 the Co-ordination Council met on 23 December in full composition. Further, five meetings of the Working Group on children working and living in street situations were organised, as well as three meetings of the Working Group on legal amendments and five other *ad hoc* meetings at expert level.

22. The Secretariat of the Co-ordination Council is provided by four persons from the Department of Public International Law of the Ministry of Justice.

23. The Permanent Group of the Co-ordination Council on Combating Trafficking in Human Beings ("the Permanent Group"), established in 2006 pursuant to the Anti-Trafficking Law, remains competent for identifying and granting the status of victim of THB, where they are not identified as "statutory victims" in criminal proceedings (see paragraph 94). The latest composition and rules of procedure of the Permanent Group were approved by the Co-ordination Council on 14 November 2014. At present, the Permanent Group is composed of representatives of IOM and the NGOs GYLA, "Tanadgoma", "Civil Development Agency" and "Anti-Violence Network".

24. The State Fund for the Protection and Assistance to Victims of Trafficking, which was established in 2006 in accordance with Article 9 of the Anti-Trafficking Law, is subordinated to the Ministry of Labour, Health and Social Protection. It remains responsible for the provision of support to victims of THB in Georgia, including through the provision of one-off compensation. The State Fund operates two shelters for victims of THB, in Tbilisi and Batumi. The annual budget of the State Fund, covering the cost of running the two shelters and the one-off compensation paid to victims of THB, was equivalent to €100 380 in 2012, €80 800 in 2013, €100 810 in 2014 and €127 000 in 2015.

4. National Action Plan and other relevant policy documents

25. The National Action Plan (NAP) on Combating Trafficking in Persons for 2015-2016 was adopted by the Co-ordination Council in November 2014. It sets out as main objectives the prevention of THB; identification of victims of THB among children working and living in the streets and informing them regarding the risks of trafficking; protection of victims, including efficient functioning of shelters; voluntary and safe return of victims of THB and support in their rehabilitation; and proactive investigation and prosecution of THB offences. The NAP envisages activities aimed at capacity building and training of relevant professionals, such as law enforcement officers, the judiciary and employees of the State Fund. The NAP also envisages regular reporting on the implementation of the activities, strengthening of partnerships with civil society and further development of international co-operation on THB.

26. The budget for the implementation of the NAP is provided by the ministry or agency responsible for the implementation of specific activities or through external funding. As noted in paragraph 24, the budget of the State Fund covers the costs of victim assistance provided by the two shelters and one-off compensation payments.

27. In its first evaluation report GRETA, noted that the Georgian authorities had planned to commission an independent evaluation of the 2011-2012 NAP. The evaluation was carried out by the NGO "Women Information Centre". The main recommendations resulting from this evaluation were to introduce more detailed regulations regarding the issuing of residence permits to victims of THB, to better inform victims of THB about the right to compensation, to improve the labour legislation, and to ensure supervision of employers in order to protect employees' health and provide them with secure labour conditions. The authorities have stated that these recommendations had been taken into consideration in the new NAP. The Ministry of Justice requests information every six months from the other ministries and agencies on the implementation of the activities under their responsibility and a report is published twice a year on the Ministry's website⁶.

28. On 30 April 2014, the Parliament of Georgia approved the National Strategy for the Protection of Human Rights in Georgia for 2014-2020. Additionally, on 9 July 2014 the Government approved the Action Plan on the Protection of Human Rights for 2014-2015, with the view to setting out specific objectives and providing guidance to public bodies in their fields of competence for the implementation of the National Strategy. The National Strategy refers to the protection of migrants from human trafficking and the identification of victims of THB among migrants. The Action Plan contains a sub-chapter which deals with action against THB in a more comprehensive manner, addressing the prevention, protection and prosecution aspects, as well as internal and international partnerships. The Prime Minister's Office submits reports on the implementation of the Human Rights Action Plan to Parliament.

5. Training of relevant professionals

29. Combating THB is among the topics covered in the curriculum of the Police Academy. During the mandatory basic training, future police officers are trained on victim identification and conducting interviews and other procedural actions with victims of THB, bearing in mind their psychological sensitivity. Training on detecting trans-border trafficking and identifying of potential victims of THB and suspected offenders is also provided to patrol police officers and border guards.

⁶ <http://www.justice.gov.ge/Ministry/Department/309>

30. A number of training sessions, study visits and seminars have been provided to Georgian law enforcement bodies by IOM. By way of example, on 28-30 May 2013 training on identification of victims of THB and effective investigation was organised for five prosecutors and 19 investigators. On 1-2 July 2013, another training was held at the Police Academy of the Ministry of the Interior, with the participation of 16 law enforcement officers. On 28-29 September 2013, training was held in Signaghi (Eastern Georgia) for seven prosecutors and 10 investigators from Tbilisi, Adjara, Kakheti and Kvemo Kartli regions as part of the IOM project "Enhancing Operational Contacts between Georgian and Turkish Law Enforcement Structures to Combat Trafficking in Persons". Further, on 1-2 March 2014, training on combating trafficking and domestic violence was conducted for 13 victim and witness co-ordinators by representatives of the prosecution, the State Fund, the NGO "Sakhli" and IOM.

31. IOM is currently implementing a project entitled "Reinforcing the Capacities of the Government of Georgia in Border and Migration Management (More-for-More)", funded under the Eastern Partnership Integration and Co-operation Programme as a follow-up to the recommendations of the third assessment report of Georgia's implementation of the European Union (EU) Visa Liberalisation Action Plan (see also paragraph 88). Under this project, a training course was provided to judges in May 2015 and a seminar for prosecutors and judges took place in December 2015 on the application of Articles 143¹, 143² and 143³ of the CC. Further, two training sessions were given to Patrol Police officers and prosecutors on effective law enforcement approaches to combating exploitation of children for begging in streets and other types of exploitation in July 2015, and a workshop was held in July 2015 on the approach of Romania to combating exploitation of street children in begging and other activities.

32. On 20-21 September 2013, a seminar regarding court practice and the methods of combating THB was organised for 13 judges by the High School of Justice, the State Fund and IOM. Similar trainings for police officers, prosecutors and judges covering THB and related issues were held in Tbilisi and regions of Georgia in the course of 2014.⁷

33. In addition, training and information meetings for different target groups are conducted by the State Fund. By way of example, in April 2013 consular staff attended a meeting on the provision of assistance to victims and potential victims of THB and methods for combating this crime.

34. Training needs and topics are selected by experts participating in the working groups of the Co-ordination Council on the basis of the objectives set out in the NAP, taking into account legislative amendments, new trends of THB and staff changes. Training is funded by the responsible public bodies, IOM, EU, and the Department of State of the United States of America.

35. The Georgian authorities have referred to some 20 different training activities concerning THB, each lasting between two and seven days, which were organised in the course of 2015 for staff of the Division for Combating THB and Illegal Migration, the Central Criminal Police Department, the Patrol Police, the Border Police, the Migration Department, the State Fund, prosecutors, lawyers, social workers, labour inspectors, medical professionals, employees of various ministries and journalists. Topics covered by the training included identification of victims of THB, providing legal and psychological assistance to victims, proactive methods of investigation of labour exploitation cases, identification of children forced into begging, and THB in the context of migrant smuggling. Trainings were delivered by representatives of the State Fund, international experts and representatives of international organisations (ILO, IOM, ICMPD) and were conducted in co-operation with relevant ministries and competent NGOs (in particular, "Tanadgoma" and the Civil Development Agency).

36. Despite the above-mentioned training efforts, according to civil society representatives, staff turnover among police officers is not always followed by training of new staff members. There appears to be lack of awareness among police officers as regards the identification of victims of trafficking among children living and working in streets.

⁷ For more details, see the reply to question 6 of the Reply of Georgia to GRETA's Questionnaire for the 2nd Evaluation Round: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680641bc8>

37. **GRETA welcomes the training provided to relevant professionals and considers that the Georgian authorities should continue their efforts to regularly provide specialised training on THB, in particular to police officers, prosecutors, judges, lawyers, labour inspectors, medical professionals, social workers and professionals working with children, with a view to improving their knowledge and skills to enable them to identify victims of trafficking, protect and support them, and assist them in claiming compensation. The training should cover, *inter alia*, the role and responsibilities of these actors in the National Referral Mechanism.**

6. Data collection and research

38. The Information and Analytical Department of the Ministry of the Interior collects data related to the offence of THB, including on victims, offenders and on-going cases, and maintains a protected database accessible by relevant government agencies. In parallel, the Secretariat of the Co-ordination Council collects a broad range of information concerning THB from different agencies and maintains a different database, which is in compliance with the regulations regarding the protection of personal data. The collected data includes information about persons identified by the police as "statutory victims" of THB in the context of the criminal investigation, as well as persons identified by the Permanent Group as victims of THB outside criminal proceedings. It does not reflect data on victims of THB detected and assisted by NGOs who were not referred to the authorities.

39. In August 2015 the existing statistical information concerning THB was integrated into a single database which currently contains information on "statutory victims" of THB and victims of THB identified by the Permanent Group, disaggregated by nationality, sex, age, type of exploitation, country of exploitation and services provided by the State Fund, as well as on offenders, disaggregated by nationality, age and sex, number of investigations, prosecutions, cases taken to court and convictions for THB, disaggregated by forms of exploitation. The database also reflects information on police co-operation in the framework of mutual legal assistance in criminal matters and incoming and outgoing requests for legal assistance and extradition.

40. **GRETA welcomes the setting up of a unified database containing information on victims of THB, as well as offenders, which is disaggregated by nationality, sex, age, type of exploitation and country of exploitation. GRETA invites the Georgian authorities to ensure that this database is maintained by compiling reliable statistical data from all main actors, including specialised NGOs, on measures to protect and promote the rights of victims as well as on the investigation, prosecution, convictions and compensation in human trafficking cases. This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database.**

41. Several research projects have been carried in recent years by NGOs. In 2014, the NGO "Save the Children Georgia" published a report "Chance for a Better Life". The main objective of the report was to study the current programmes for children working and living in the streets and to provide a practical guide for relevant stakeholders. The report was drafted on the basis of interviews with government officials, representatives of NGOs and local experts. It found that the legal framework did not adequately protect the rights of children living and working in the streets. Further, the NGO "World Vision Georgia" has collected and published empirical data gathered through their work in the field of protection and assistance of vulnerable children, in particular children living and working in the street.⁸ In addition, in August 2015, the Secretariat of the Co-ordination Council analysed the above-mentioned database of THB cases to identify trends, profiles of perpetrators and victims, services provided to victims, and methods of exploitation.

⁸ For more information, visit www.wvi.org/georgia

42. When it comes to research on THB, the Georgian authorities have referred to a Master's programme in public international law at Tbilisi State University which includes a two-semester course on THB, a PhD thesis written in 2011 and later edited as a guidebook on the criminological overview of human trafficking, and another PhD thesis in 2015, entitled "Legal aspects of human trafficking, methods to fight against THB, experience and vision". Further, Tbilisi State University has concluded a Memorandum of Understanding with the Migration Commission of Georgia concerning co-operation in the field of research on issues of migration, which covers prevention of THB.

43. **GRETA considers that the Georgian authorities should conduct and support further research on THB as an important source of information for future policy measures. Areas where research is needed in order to shed more light on the extent of human trafficking in Georgia include trafficking in children, trafficking for the purpose of labour exploitation, and trafficking of foreign nationals into Georgia.**

III. Article-by-article findings and recommendations

1. Prevention of trafficking in human beings

a. Measures to raise awareness of THB (Article 5)

44. On 12 February 2014, the Co-ordination Council approved the Common Information Strategy on combating THB, which consists of a series of information meetings to be organised on the risks of THB with different target groups, such as pupils, students, children in street situations, minorities, IDPs and the rural population⁹. The authorities envisage continuing with such meetings under the NAP for 2015-2016. The Secretariat of the Co-ordination Council, in co-operation with IOM, developed questionnaires to assess the efficiency of these meetings. The evaluation showed the age of the audience was from 14 to 61 years and participants included teachers, journalists, NGO representatives, students and school pupils. Most participants demonstrated awareness of the threats of THB, were able to identify the means of exploitation, the links between THB and migrant smuggling and the consequences of irregular migration.

45. The Georgian authorities have indicated that when designing new awareness-raising activities, the relevant public bodies analyse the results of previous activities with the aim of identifying shortcomings and new challenges to address. Such analysis showed that more awareness-raising measures were necessary in rural areas.

46. On 27 March 2014 the Ministry of Justice announced a grant competition for NGOs and other civil society actors to implement educational projects, aiming at raising awareness of THB. The NGO "Migration Centre", which won this competition, produced information leaflets explaining the nature of THB as a crime, indicating risks and preventive measures to be taken by people when travelling abroad. In 2015 the Ministry of Justice gave grants of the overall amount of 10000 GEL (€3800) two NGOs by for the purpose of carrying out awareness-raising activities in Adjara and Imereti regions, where most of the victims of THB were recruited in recent years. Awareness-raising activities consisted of information meetings, attended by a total of 700 people, and production and dissemination of information leaflets (8000 in total) in Georgian, English, Russian and Turkish.

⁹ For more details, see the reply to question 23 of the Reply of Georgia to GRETA's Questionnaire for the 2nd Evaluation Round: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680641bc8>

47. Further, the Ministry of Justice, the Ministry of the Interior and the State Fund, in co-operation with NGOs, such as the "Civil Development Agency" and "Migration Centre", and with financial support from IOM, EU, the US Department of State and the Swiss Agency for Development and Co-operation (SDC), produced leaflets containing information about legal migration, agencies and entities to contact abroad, the rights of migrants in Turkey and Greece, telephone hotlines for victims of domestic violence and victims of THB, as well as the assistance measures available to them. These information leaflets were disseminated during public meetings (including with IDPs) in the course of 2014,¹⁰ which were organised in Tbilisi and 32 other locations throughout Georgia. The distribution of information brochures is planned to continue in 2015-2016 through the Georgian National Tourism Administration. The Co-ordination Council has not yet assessed the impact of these awareness-raising activities.

48. The Georgian authorities have referred to the Migration Strategy for 2013-2015 as being relevant to prevention of THB.¹¹ According to this strategy for the developing of legal migration the government plans to take special measures, including public awareness-raising campaigns, as well as facilitating access to education programmes abroad. Further, a new Migration Strategy for 2016-2020 and an Action Plan for 2016-2017 were adopted in December 2015, which also covers action against THB in the context of combating illegal migration. The objectives of the Migration Strategy for 2016-2020 include proactive identification of trafficking and migrant smuggling, improving criminal prosecution, monitoring and evaluation of the programmes for protection, rehabilitation and reintegration of victims of trafficking, and adapting these programmes as necessary. Training of relevant professionals on issues of migrant smuggling and human trafficking is also planned in the new Migration Strategy.

49. In the course of the evaluation visit, the GRETA delegation was informed about an agreement between the NGO "Civil Development Agency" and the Ministry of Justice to provide information, including on trafficking, in six out of 30 community centres located in villages on migration issues and to evaluate the effectiveness of these services. As part of this pilot initiative, information and consultation services on migration were set up in the six community centres concerned. Community centre employees received training in the field of migration management and manuals concerning labour migration to Greece and Turkey were produced and disseminated. Overall about 300 persons attended the information meetings and 30 individual consultations were provided on migration issues. If this initiative is successful, the information network will be broadened and the Ministry of Justice will fully take over ownership over this initiative. The Migration Strategy for 2016-2020 envisages introducing migration information services in other community centres of Georgia.

50. Despite the above-mentioned measures, in the opinion of representatives of the Public Defender's Office and NGOs, there is insufficient awareness of THB among the general public. **GRETA considers that the Georgian authorities should increase their efforts to inform the general public about THB and the different forms of exploitation, both abroad and within the country. Future actions should be designed in the light of impact assessment of previous measures, focussing on identified needs and target groups.**

¹⁰ For more details, see replies to questions 23 and 59 of the Reply of Georgia to GRETA's Questionnaire for the 2nd Evaluation Round:

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680641bc8>

¹¹ See Annex 15 to the Reply of Georgia to GRETA's Questionnaire for the 2nd Evaluation Round:

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680641bb5>

b. Measures to prevent trafficking for labour exploitation (Article 5)

51. In its first evaluation report, GRETA urged the Georgian authorities to increase their efforts in preventing and detecting THB within Georgia, as well as to step up their action to combat THB for the purpose of labour exploitation.

52. Measures to prevent THB for labour exploitation are part of the Information Strategy on Combating THB (see paragraph 44). Some of the information leaflets distributed during meetings contain advice on actions a potential labour migrant should take in order to avoid being subjected to labour exploitation, such as verifying that an employer actually exists by establishing contact prior to departure, ensuring he/she has a working visa for the country in question, ensuring that travel is arranged with authentic documents, receiving an employment contract in a language he/she understands prior to leaving the country, and not giving his/her passport or other travel document to unauthorised persons.

53. The NAP for 2015-2016 foresees further information campaigns in order to increase public awareness regarding THB for the purpose of labour exploitation, both within Georgia and abroad. These campaigns will target the most vulnerable groups, such as IDPs, children and potential migrants.

54. The Georgian Labour Inspectorate was abolished in 2006 and the responsibility for monitoring the observance of labour legislation was given to the police. GRETA notes that UN Committee on the Elimination of Discrimination against Women (CEDAW)¹² as well as the International Labour Organization (ILO)¹³ have repeatedly requested the Georgian authorities to establish an effective supervisory mechanism, such as a labour inspectorate for effective labour law reporting and enforcement mechanisms. In the course of the evaluation visit, the GRETA delegation was informed that legislation envisaging the reintroduction of the Labour Inspectorate was adopted in March 2015 (Governmental Decree No. 81). The Labour Inspectorate Department was subsequently set up and currently employs 25 main and 25 reserve labour inspectors. The tasks of the Labour Inspectorate Department include inspecting labour conditions and reporting any suspected cases of forced labour and labour exploitation to the law enforcement authorities. While GRETA welcomes these developments, it is concerned that the human resources of the Labour Inspectorate Department are not insufficient to enable it to fulfil its mandate in an efficient manner.

55. The Georgian authorities informed GRETA about the adoption of the Law on Labour Migration on 22 April 2015 (in force since 1 November 2015), which makes mandatory the registration of legal persons and individual entrepreneurs providing or facilitating employment abroad. Such entities are obliged to verify the information about the employment offered abroad and to inform candidates of the requirements and procedures for labour migration to the foreign country, as well as the contacts of relevant bodies in Georgia and Georgian diplomatic missions and consular offices. Further, the Ministry of Labour, Health and Social Affairs has adopted a number of by-laws defining the competent authority to review cases of administrative violations in the field of labour migration, containing rules of accessing data among public institutions and defining mechanisms for verification of information on foreign employers. Recent amendments to the Law on Entrepreneurs make it mandatory for private companies to inform the National Agency for Public Registry if they engage in labour migration activities or provide jobs abroad. Until the adoption of the Law on Labour Migration, private employment agencies offering jobs abroad were not regulated or licensed and were not held responsible for verifying the reliability of foreign employers and the authenticity of labour contracts. According to NGOs, some Georgian nationals accepting employment offers through such intermediaries have ended up in exploitative situations.

¹² Concluding observations on the combined fourth and fifth periodic reports of Georgia, adopted by the Committee at its fifty-eighth session (30 June – 18 July 2014):

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGEO%2fCO%2f4-5&Lang=en

¹³ Direct Request (CEACR) - adopted in 2013, published at 103rd ILC session (2014):

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID:3141491:NO

56. In addition, on 7 August 2015 the Government adopted Resolution No. 417 approving the rules of employment by local employers of foreign workers and performance of paid work by such workers, which entered into force on 1 November 2015. Pursuant to this resolution, in case of employment of foreign workers, the employer is obliged to inform the Social Service Agency within 30 days.

57. The authorities have referred to a draft governmental decree, prepared by the Ministry of Labour, Health and Social Affairs, approving the State Programme on monitoring labour conditions. Among the goals of this programme are prevention of forced labour and raising awareness on THB issues among employees and employers. The Decree entitled "On approving the rules for State supervision/labour inspection of forced labour and labour exploitation" was adopted on 7 March 2016.

58. **GRETA considers that the Georgian authorities should:**

- **continue developing targeted measures to build awareness about THB for labour exploitation;**
- **introduce a mechanism of effective monitoring of private employment agencies and other intermediaries involved in facilitating employment of Georgian nationals to ensure the authenticity of job offers they promote;**
- **enhance the capacity of the newly established Labour Inspectorate Department to ensure that it has sufficient human resources to effectively detect and refer possible victims of THB for labour exploitation.**

c. Measures to prevent trafficking in children (Article 5)

59. In its first evaluation report, GRETA urged the Georgian authorities to pay increased attention to prevention and protection measures addressing the particular vulnerability to trafficking of children, in particular those without parents.

60. Raising awareness of THB forms part of the national school curricula for 2011-2016. Textbooks for 9th and 10th grade cover THB under the themes "The essence of the person, free will and decisions, human rights and responsibilities" and "The citizen and law, human dignity, children's rights, rights and liberties". Efforts are also made to inform children about threats of THB and protective measures through information meetings.¹⁴

61. Children living and working in the streets include Georgian Kurds and Roma, Moldovan Roma and children arriving from Azerbaijan. Many of them can be seen begging in the streets of larger towns, like Tbilisi, Rustavi and Kutaisi, and in the summer months they move to the seaside town of Batumi. These children are particularly vulnerable to THB.¹⁵ GRETA notes that the identification of victims of THB among children working and living in the streets is one of the objectives of the NAP for 2015-2016. A special working group was set up under the Co-ordination Council in November 2014 with the purpose of developing a conceptual document setting out activities aiming at protecting children working and living in streets from THB. It is planned that this document will, *inter alia*, address the problem of children not having identity documents, and the lack of authority of social services to remove children subjected to abuse and exploitation from their parents or other influential adults.

¹⁴ For more details, see the reply to question 8(b) of the Reply of Georgia to GRETA's Questionnaire for the 2nd Evaluation Round:

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680641bc8>

¹⁵ Katarzyna Wargan, Larry Dershem, *Don't Call me a Street Child: Estimation and Characteristics of Urban Street Children in Georgia*, Save the Children, USAID, UNICEF, ACT Marketing Research Consulting, March 2009. Available at: http://pdf.usaid.gov/pdf_docs/Pnado657.pdf

62. Mobile groups set up under the Ministry of Labour, Health and Social Affairs are in charge of identifying the needs of and providing assistance to children living and working in streets, including assisting them in acquiring identity documents. In the experience of these groups, about 40% of their beneficiaries are not in possession of documents and it takes from three to six months to obtain them if their parents are not registered.

63. The authorities have referred to the programme "Second chance education for children left outside the learning process in Georgia", implemented by the Ministry of Education and Science, which provides children living in street situations with access to education on the basis of an individual approach, carried out in co-ordination with the Social Service Agency. Further, the Ministry is implementing the programme entitled "Social inclusion", which aims at supporting the integration of vulnerable groups, including Roma children, into education. As a result of this programme, the number of children attending schools has increased.

64. GRETA was informed that social service agencies responsible for the protection of children are not authorised to remove children from exploitative situations. They can notify the police, but because the police lack specialisation in child protection, the protection of such children remains extremely difficult. It is planned to address this problem by adopting a Governmental decree establishing detailed procedures concerning referral and assistance to child victims of violence, including exploitation, once the relevant amendments to the Law on Social Services, the Administrative Procedural Code, the Law on Domestic Violence and the provisions of the Civil Code as regards parent/child relationship have been adopted. GRETA was informed that on 23 December 2015 the Co-ordination Council approved several legislative amendments aiming at creating a legal framework for providing children living and/or working in the streets with identification documents, improving the child protection referral mechanism and strengthening the role of social workers. On 15 January 2016 the Government approved these draft legislative amendments which were submitted to the Parliament. **GRETA would like to be kept informed about the adoption of this legislation by the Parliament.**

65. The Public Service Development Agency (which fulfils the role of civil registry agency) is responsible for the registration of all children born in Georgia regardless of the nationality of the parents. To increase the geographical coverage of state services, including child registration at birth, new service centres of the Public Service Development Agency have been opened in different regions, including small towns and villages. If a child is born in a hospital, the person in charge of the medical institution must notify the agency responsible for birth registration within five days from the date of birth. GRETA was informed that children from disadvantaged social groups and ethnic minorities are often born in home settings. In most cases, neither they nor their parents have birth registration or identity documents due to several factors, among which are lack of information on local registration procedures, reluctance to deal with public bodies and lack of finances to pay for registration documents.

66. A Working Group composed of representatives of relevant ministries, NGOs and international organisations has been established under the Co-ordination Council to draw up a national referral mechanism for child victims of violence, which will be adopted by a Governmental Decree. The new national referral mechanism will provide concrete measures to be taken in respect of children at risk and victims of violence. The adoption of the Government Decree, which will enlarge the list of public bodies responsible for referral of child victims of violence, is expected to take place within one month from the adoption of legislative amendments currently submitted to the Parliament (see paragraph 64).

67. GRETA was also informed that draft amendments to the law regulating social programmes for the assistance and protection of children outside shelters had been developed. In particular, the sub-programme of "Social rehabilitation and child care" provides homeless children with shelter and assists children living and working in streets.¹⁶ In the course of 2015 four mobile street teams were operating under the programme, composed of a social worker, a psychologist and a peer educator serving as a mentor and making initial contact with children. The programme funded three day care centres, two 24-hour crisis intervention centres and two transitional centres to prepare children for long-term care. Since 2014, mobile teams have been in touch with 643 children living and working in streets; 274 children have benefited from state services (day centres, crisis centres and transitional centres).

68. GRETA considers that the Georgian authorities should enhance their efforts to prevent trafficking in children by:

- **endowing the agencies specialised in the protection of children's rights with necessary authority to intervene and act in the best interests of the child whenever there are reasonable grounds to believe that a child is subject to any form of exploitation;**
- **improving the co-ordination between child-protection agencies, mobile groups and the police in order to ensure prevention of trafficking among children working and living in the streets;**
- **taking further measures to facilitate birth registration;**
- **issuing documents to children working and living in the streets so that they can access assistance and protection measures.**

d. Social, economic and other initiatives for groups vulnerable to THB (Article 5)

69. In its first evaluation report, GRETA urged the Georgian authorities to ensure that gender mainstreaming is reflected in all elements of Georgia's anti-trafficking policy. The Georgian authorities have stated that gender-specific aspects are taken into account in the drawing up and implementation of anti-trafficking policies. A representative of the Gender Equality Council of Georgia, who is a Member of Parliament, has a participatory status in the Co-ordination Council. Further, gender-related issues are reflected in training conducted for law enforcement bodies.

¹⁶ In April 2016, the crisis intervention centres and the transitional centres were transformed into one type of centre called 24/7 shelter.

70. According to information provided by the Georgian authorities in the report submitted to the Committee of the Parties on 17 November 2014, one of the main goals of the government is promoting socio-economic integration and improving the living conditions of IDPs.¹⁷ From August 2013 to March 2014 the Ministry of Internally Displaced Persons carried out registration of all IDPs, with an estimated 258 775 persons going through this process across the country. The registration questionnaire contained questions on socio-economic conditions, aiming to identify IDPs' needs as regards housing and livelihood opportunities. To establish minimum standards of living conditions for IDPs and provide them with durable housing, the Ministry of Displaced Persons adopted in August 2013 the "Guiding Principles, Criteria and Procedures for a Durable Housing Solution". Between October 2012 and November 2014 about 8000 IDPs were provided with housing in accordance with this policy and the process was on-going. The state budget provided for the purpose of housing of IDPs doubled in 2013 and was further increased in 2014 to reach 50 million GEL (approximately €19 million). The Georgian authorities acknowledge that the provision of housing to IDPs remains a burning issue, with more than 35 000 families being in urgent need of housing in November 2014. According to information provided by the authorities, out of 86 970 families of IDPs by the end of 2015 housing was provided to 34 323 families.

71. The major goal of the IDP Livelihood Strategy and respective Action Plan, drawn up in May 2014, is to improve socio-economic conditions of IDPs through joint efforts of state institutions, donors, international organisations, local and international NGOs, as well as the private sector. Pursuant to a decision of the Ministry of Displaced Persons in July 2014, IDP families are helped to improve their livelihood through cultivating their own land plots, thus decreasing their dependence on state assistance.

72. In order to support socially vulnerable people, the government is implementing the State Programme on Assisting Socially Vulnerable Population. A new methodology for assessing the socio-economic conditions of vulnerable families (known as Targeted Social Assistance) was approved by Governmental Decree No. 758 of 31 December 2014, enabling them to receive subsistence allowance if they have no income or income generating property and are under the poverty line.

73. Further, GRETA notes the vulnerable situation of persons displaced within the country due to natural disasters (known as "eco-migrants"), highlighted in a recent report by the Commissioner for Human Rights of the Council of Europe.¹⁸ A definition of "eco-migrant families"¹⁹ was provided by Ministerial Decree No. 779 of 13 November 2013 which also defined the resettlement procedures for families affected by natural disasters and established the Regulatory Commission on the issues of the victims of natural disasters and families subjected to resettlement.

74. In the course of the evaluation visit, the GRETA delegation was informed about a pilot project on circular migration,²⁰ carried out in co-operation with relevant German authorities, involving 40 Georgian nationals. According to the project, these persons are expected to work for a certain time in the tourism and service sectors in different regions of Germany and are then expected to return to Georgia. Another labour migration project entitled "Piloting temporary labour migration of Georgian workers to Poland and Estonia" has been planned by the Ministry of Labour, Health and Social Affairs and is funded and implemented by IOM. According to the authorities, the added value of these projects is establishing legal and safe channels of labour migration and helping potential labour migrants to take well informed decisions, thus decreasing their vulnerability to exploitation and trafficking.

¹⁷ Report submitted by the Georgian authorities on measures taken to comply with Committee of the Parties Recommendation CP(2012)5 on the implementation of the Convention on Action against Trafficking in Human Beings: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680631c33>

¹⁸ Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe following his visit to Georgia from 20 to 25 January 2014 (CommDH(2014)9, published on 12 May 2014).

¹⁹ "A family should be considered as eco-migrant if its whole house was destroyed or damaged and cannot be recovered and/or the house is not destroyed, but natural disasters on adjacent territory pose a threat to people living there, their lives, health and property caused by landslide, mudflow, snow-slip or river erosion."

²⁰ "Circular migration" is a temporary and usually repetitive movement of a migrant worker between home and host areas, typically for the purpose of employment.

75. According to representatives of the Public Defender's Office, Georgia is facing challenges relating to feminisation of migration and not enough is done to support women in rural areas, including among IDPs and other vulnerable groups. In general, the efforts to prevent THB in Georgia are lacking a gender-sensitive approach and gender mainstreaming.

76. While welcoming the measures taken by the authorities to improve the economic and social conditions of IDPs through appropriate housing and opportunities for income-generating activity, GRETA considers that the Georgian authorities should maintain their efforts to strengthen the prevention of THB through social, economic and other measures for vulnerable groups, including IDPs. Further efforts should be made to promote gender equality, combat gender-based violence and stereotypes, and support specific policies for the empowerment of women as a means of combating the root causes of THB.

e. Measures to prevent trafficking for the purpose of organ removal (Article 5)

77. GRETA notes that while human trafficking for the purpose of organ removal as defined by the Convention and organ trafficking as defined by Articles 4 to 8 of the Council of Europe Convention against Trafficking in Human Organs²¹ are two distinct crimes, they bear certain similarities and share similar root causes, such as shortage of organs to meet demand for transplantation and poor economic and other conditions that put persons in a vulnerable position. Therefore, measures to prevent organ trafficking can help prevent trafficking for the purpose of organ removal and the reverse is also true.²² Among the necessary preventive measures, GRETA underlines the importance of a robust and transparent domestic system for the removal and transplantation of human organs and the need for training of health-care professionals. GRETA also stresses the importance of conducting a thorough investigation of each case where there is information or suspicion of trafficking for the purpose of organ removal, paying attention to the abuse of the vulnerability of the "donor" and ensuring that "donors" are treated as victims of trafficking in human beings.

78. Trafficking in human beings for the purpose of organ removal is penalised under Article 143¹ of the CC. Trade in human organs is a punishable offence under Article 135¹ of the CC. Further, the Law on Transplantation of Human Organs prohibits the trade in human organs by virtue of its Article 52. Transplantation of an organ would be illegal if the physician was aware that the organ was taken with violation of the Law.

79. The Law on Transplantation of Human Organs lays down the conditions for the removal of organs from a living donor.²³ The requirements to be met include the full legal capacity of the donor who has to give his/her written consent, be a relative of the recipient, and be provided with full information concerning the consequences of the donation. The Transplantation Law also obliges the medical institution holding a transplantation license to adhere to specific standards and conditions relating to the use of technologies, registration of possible donors and recipients, ensuring information exchange between medical institutions following up the possible recipient and compiling medical documents with the indication of the identification number (code) of the transplanted organ.

80. There have been no known cases of THB for the purpose of organ removal in Georgia or involving Georgian nationals.

81. GRETA considers that, as part of their training, medical staff and other relevant professionals should be sensitised about THB for the purpose of organ removal.

²¹ Opened for signature in Santiago de Compostela on 25 March 2015,

²² See Council of Europe/United Nations, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*, 2009, in particular pages 55-56; OSCE, *Trafficking in human beings for the purpose of organ removal in the OSCE region*, OSCE Occasional Paper No. 6, 2013.

²³ For more details, see the reply to question 21 of the Reply of Georgia to GRETA's Questionnaire for the 2nd Evaluation Round: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680641bc8>

f. Measures to discourage demand (Article 6)

82. As noted in GRETA's first report, Article 143³ of the CC criminalises the use of services of a victim of THB, with the knowledge that the person has been trafficked. According to the authorities, the criminal liability for the use of services of victims of THB is reflected in multi-language leaflets developed and disseminated during awareness-raising activities. Further, the preventive measures and information campaigns referred to in paragraph 48 have addressed the demand for services of victims of THB for sexual exploitation and forced labour and aimed at discouraging the use of such services. Information meetings and leaflets produced by NGOs under the grant project of the Ministry of Justice in Adjara and Imereti regions (see paragraph 46) also included information on the criminal liability for the use of services of victims of THB. **GRETA welcomes the measures taken to increase awareness about the criminalisation of the use of services of a victim of THB, with the knowledge that the person has been trafficked, in order to discourage demand on services of victims of THB.**

83. However, GRETA notes that discouraging demand for services of victims of THB for different forms of exploitation remains insufficient. In this respect, **GRETA considers that the authorities should take additional practical measures to increase awareness about adverse effects of the use of services of victims of THB for labour exploitation by providing relevant guidance to labour inspectors and other relevant services.**

84. **Further, GRETA considers that the authorities should continue raising awareness about THB for the purposes of sexual exploitation, including tackling demand in particular in Tbilisi and tourist areas, such as the Black Sea coast, as well as take additional measures to alert the general public about THB within Georgia for different forms of exploitation.**

g. Border measures (Article 7)

85. Border police officers receive specialised anti-trafficking training, including on verifying the authenticity of travel documents and visas. In the course of 2015, five training sessions were given to overall 37 police officers, of which two were patrol police officers working on check points, 10 employees of the Migration Department and 17 representatives of the Interpol department, Tbilisi police department and the border police department. To allow for timely identification of false documents special software has been installed at every border crossing point, which links their database with other databases of the Ministry of the Interior. A system of "live" verification of persons entering or leaving Georgian territory is also operational at every border crossing.

86. Police officers from the Unit on Fighting against Trafficking and Illegal Migration of the Central Criminal Police Department are involved in every case when a false document is detected. They monitor border control establishments (International Airport, Sarpi border point) round the clock and in case of a suspicion that a person is a victim of THB, they interview him/her.

87. A Division for Combatting THB has recently been established in Adjara region within the local Ministry of the Interior. It is responsible for the identification of victims of THB and regularly interviews Georgian nationals deported back to Georgia and arriving through the Sarpi border crossing point (border with Turkey) and Tbilisi international airport.

88. IOM is currently implementing a project entitled "Reinforcing the Capacities of the Government of Georgia in Border and Migration Management (More-for-More)", funded under the Eastern Partnership Integration and Co-operation Programme. The project started on 15 December 2013 and is envisaged to last until June 2017. Its overall objective is to enhance capacities in the area of border management and migration, in line with the EU Visa Liberalisation Action Plan. The project consists of a series of capacity-building activities aimed at improving border and migration management and the institutional approach to border control. This includes improved inter-agency co-operation and upgraded co-operation with civil society, strengthened border checks and border surveillance procedures and operations, in particular along Georgia's land and sea borders. Particular attention is paid to the border with Turkey. Another component of the project is strengthening the migration governance framework, which aims at improving the capacity to reduce irregular migration, promote reintegration of Georgian returnees and fight cross-border crime, including THB. Under this project, several training courses have been organised (see paragraphs 30-32).

89. According to information provided by the authorities, in 2012-2015 eight Georgian nationals deported from other countries were detected by border police officers as possible victims of THB upon their return to Georgia. Further, in 2013-2014 officers of the anti-trafficking division identified eight Georgian nationals as victims of THB for labour exploitation returning from Turkey via Tbilisi airport and the Sarpi border crossing point.

90. **GRETA considers that the Georgian authorities should take additional measures to strengthen the capacity of border guards to detect and identify possible child victims of THB.**

2. Measures to protect and promote the rights of victims, guaranteeing gender equality

a. Identification of victims of THB (Article 10)

91. As was the case during the first evaluation, there is a dual system of victim identification in Georgia. A person may be granted the status of a victim of THB by the Permanent Group (see paragraph 23) or be recognised by law enforcement bodies and prosecution as a "statutory victim" (i.e. injured party) of the offence of THB under the CC.²⁴

92. Since GRETA's first evaluation report, the National Referral Mechanism (NRM) for identification and assistance to victims of THB has been reviewed. Pursuant to Governmental Decree No. 284 of 11 April 2014 on approval of unified standards for identification of victims of human trafficking, the identification of victims consists of (i) preliminary identification, carried out by a special mobile group comprised of a psychologist and a lawyer who conduct an identification interview; and (ii) the competent body taking a final decision on granting victim status (the Permanent Group). Three mobile groups have been set up under the State Fund to interview possible victims of THB, one operating in the East part of Georgia and two in the West of Georgia. These groups are in charge of filling in an identification questionnaire during the interview with the possible victim of THB and transmitting it to the Permanent Group for formal identification.

93. According to Article 3 of the Composition and Rules of Procedure of the Permanent Group, it should take a decision concerning the status of a victim of THB within 48 hours after receiving a victim identification questionnaire. The Permanent Group takes a decision on granting a victim status by 4/5 majority. GRETA was informed that the Permanent Group identified one victim of THB in 2011, four in 2012, 29 in 2013, five in 2014 and eight in 2015.

²⁴ See paragraphs 128-129 of the Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Georgia, first evaluation round:
<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680631c34>

94. The law enforcement authorities in charge of investigating THB offences and prosecutors may identify a person as "statutory victim" (i.e. injured party) of the offence of THB under the CC. The detection of victims of THB is most frequently carried out by one of the four police mobile inspection groups under the Division for Combating Human Trafficking and Illegal Migration of the Criminal Police Department in the Ministry of the Interior. Each of these groups is composed of two police officers. The groups inspect high-risk areas and interview possible victims of trafficking, including persons engaged in sex work. The Standard Operative Procedures (SOPs), adopted by order of the Minister of the Interior in 2015, contain indicators for identifying victims of THB for different forms of exploitation (sexual exploitation, domestic servitude, forced labour, child trafficking).²⁵ Law enforcement authorities identified five victims of THB in 2011, two in 2012, ten in 2013, seven in 2014 and eight in 2015.

95. GRETA was informed that victims of THB referred to the Permanent Group for identification are often unwilling to co-operate with law enforcement agencies and take part in criminal proceedings. In the opinion of members of the Permanent Group, more detailed instructions should be adopted for mobile groups of the State Fund as regards conducting interviews with victims and completing the identification questionnaire. Even though members of the mobile groups usually attend meetings of the Permanent Group, the latter considers that more time and more information is needed to take a well-substantiated decision concerning victim status. A possibility for the potential victim to be interviewed by the Permanent Group would also be useful to consider.

96. Persons identified as victims of THB abroad are not automatically granted victim status but have to undergo identification by the Permanent Group, or, if they are willing to take part in the investigation, by the law enforcement authorities. While both "victims" and "statutory victims" of THB are entitled to assistance and protection under the Anti-Trafficking Law, "statutory victims" are also entitled to measures envisaged for injured parties under CC and the Criminal Procedure Code (CPC).

97. Law enforcement bodies, when informed about the arrival of deported Georgian nationals, systematically interview them at the border in order to detect possible victims of THB. According to statistical information, 1 095 persons were interviewed in 2012, 1 524 in 2013, 1 829 in 2014 and 1 700 in 2015. As a result, seven Georgian nationals were identified as victims of THB for the purpose of labour exploitation in Turkey in 2013 and one in 2014.

98. There are two hotlines, one operated by the State Fund (2 100 229) and another by the Division for Combatting Human Trafficking and Illegal Migration of the Central Criminal Department of the Ministry of the Interior (2 411 714). The authorities consider that operating two separate hotlines is necessary to provide victims with the choice of whether to co-operate with the police or not.

99. In the course of the evaluation visit, the GRETA delegation was informed about practical difficulties in the identification of victims of THB. According to civil society representatives, measures taken by law enforcement agencies to identify victims of THB are not sufficiently proactive. There is a lack of trust of trafficked persons in public bodies, especially the police, and reluctance to self-report. GRETA was informed that there had been no contacts between the police mobile inspection groups and the special mobile groups of the State Fund as regards their respective activities to identify victims of THB and that there is no co-ordination between the activities of these groups. GRETA notes that the sharing of information between the police mobile inspection groups and the special mobile groups of the State Fund should be improved and possible victims of THB who do not wish to co-operate with law enforcement authorities should be referred to the Permanent Group for identification.

²⁵ For more details, see the reply to question 19 of the Reply of Georgia to GRETA's Questionnaire for the 2nd Evaluation Round: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680641bc8>

100. The police mobile inspection group in the West of Georgia (Adjara region) carries out raids in hotels, bars and massage parlours. Police officers informed GRETA that they encountered difficulties in gaining the trust of foreign persons employed on such premises, *inter alia*, due to the lack of a common language, which hampered the identification of victims of trafficking. Further, it was noted that due to staff turnover, there was a need for regular training. In this context, GRETA refers to the Concluding Observations of the UN Committee on the Elimination of Discrimination against Women on the combined fourth and fifth periodic reports on Georgia, which points to the "lack of effective mechanisms to identify women and girls who are victims of trafficking, especially among foreign women in prostitution."²⁶

101. Representatives of NGOs and international organisations have reported recent cases of Georgian nationals allegedly exploited in Iraq and Afghanistan for forced labour and domestic servitude. A group of 22 persons was reportedly returned from Iraq. According to the authorities, investigations were initiated in these cases, but none of the persons concerned wished to co-operate with law enforcement authorities. The Permanent Group granted victim status to two men from this group in 2014 and to four men and one woman in 2015.

102. In the absence of a Labour Inspectorate since 2006, the identification of victims of THB for the purpose of labour exploitation has been the task of the police. In 2015 police mobile groups interviewed 105 persons who used services of companies offering jobs abroad. No cases of THB were discovered as the result of these interviews. GRETA notes that none of the police units are specialised in this domain and no specific proactive measures are taken with the view to identifying instances of THB for labour exploitation in Georgia. Private employment agencies offering jobs abroad have not been regulated or licensed until recently (see paragraph 55).

103. As noted in paragraph 54, the Labour Inspectorate has been re-established following legislation to that effect adopted on 2 March 2015 and will carry out inspections and refer cases of suspected trafficking to relevant law enforcement bodies.

104. On 13 August 2015 the Ministry of Labour, Health and Social Services and the Ministry of the Interior concluded a "Memorandum of Co-operation on Promotion of Detection of Cases of Trafficking in Human Beings", which aims at sharing information and reporting of possible cases of trafficking for labour exploitation. On the basis of this memorandum, the Labour Inspectorate Department provides the Central Criminal Police Department with a list of business organisations considered as represent a heightened risk of using trafficked labour and members of the mobile group have started proactively checking such organisations.

105. Concerning the identification of possible victims of THB among asylum seekers, representatives of the Ministry of Displaced Persons informed GRETA that there had been no such cases during the reporting period. No training on THB has been provided so far to the staff processing asylum applications. The examination of the asylum application and the procedure of identification as a victim of THB would run in parallel and the fact that a person was identified as a victim of THB would not impede the consideration of an asylum application.

106. GRETA notes the steps taken by the Georgian authorities to improve action against THB for labour exploitation, but stresses that at present the identification of victims of THB for labour exploitation is not dealt with in a comprehensive manner and represents a major drawback of the Georgian anti-trafficking system. Further, GRETA notes the lack of co-ordination between different bodies performing identification (police, State Fund, social services), which limits the number of identified victims of THB as well as successful prosecutions of offenders.

²⁶ Concluding observations on the combined fourth and fifth periodic reports of Georgia, adopted by the Committee at its fifty-eighth session (30 June - 18 July 2014): http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGEO%2fCO%2f4-5&Lang=en

107. **GRETA urges the Georgian authorities to take further steps to ensure the timely identification of victims of THB, and in particular to:**

- **effectively disseminate the existing guidelines, indicators and SOPs and ensuring their application in practice;**
- **increase the outreach work of the special mobile groups of the State Fund;**
- **improve co-ordination between the different bodies performing victim identification, the police mobile inspection groups and other relevant entities;**
- **increase efforts to proactively identify victims of trafficking for the purpose of sexual exploitation;**
- **provide interpretation during police interviews of possible victims of trafficking, where necessary;**
- **reconsider the current practice of interviewing possible victims of THB at their place of exploitation;**
- **increase efforts to proactively identify victims of trafficking for the purpose of labour exploitation, by providing the Labour Inspectorate with the resources required and training;**
- **pay increased attention to detecting victims of trafficking among foreign workers, asylum seekers and persons placed in immigration detention centres, including by providing additional training to relevant staff.**

b. Assistance measures (Article 12)

108. In its first evaluation report, GRETA was concerned by the low number of victims agreeing to take part in individual rehabilitation and reintegration programmes and the insufficient number of well-trained social workers involved in the provision of assistance to victims.

109. The NRM sets out the procedures for providing victims of THB with assistance measures provided for under the Anti-Trafficking Law. Victims of THB are entitled to protection and assistance regardless of their co-operation with law enforcement authorities.

110. The State Fund continues to be the main provider of accommodation and assistance to victims of THB, both Georgian and foreign nationals. The offer of assistance has recently been updated through the Internal Regulation of the Shelter for Victims of Human Trafficking, approved by Order No. 07-70 of the Director of the State Fund of 29 April 2014. The assistance includes secure accommodation, food and clothing, medical assistance, psychological assistance (individual and group therapy), legal aid and, if necessary, representation before the court, information in a language understood by the beneficiary and the services of an interpreter, participation in programmes for family and society integration, and facilitating access to education for children. On 7 August 2015 the Director of the State Fund approved a new form on the services provided by the State Fund, in three languages (Georgian, Russian and English). Victims who are referred to the State Fund for assistance are given this form to fill in and indicated the services they would like to use.

111. The State Fund has taken over the legal representation of victims of THB before courts by lawyers contracted on a case-by-case basis. The legal assistance includes consulting on legal issues, as well as preparing necessary legal documents and legal representation in court. Eight victims of THB were provided with legal aid in 2012, 32 in 2013 and seven in 2014. The NGO "GYLA" continues to have a Memorandum of Understanding with the State Fund, which envisages legal assistance in case of need, but in the last five years no such assistance was sought by the State Fund from "GYLA".

112. After one of the three mobile groups of the State Fund submits a completed identification questionnaire to the Permanent Group and before an identification decision is taken, possible victims of THB are provided with emergency accommodation and assistance by one of the four signatories of Memoranda of Understanding concluded with the State Fund (IOM, NGO "Women's Information Centre", NGO "Women for Future" and NGO "Anti-Violence Network"). Once victim status is granted by the Permanent Group or a person is recognised as a "statutory victim", he/she may stay in a shelter for an initial period of three months, which may be extended upon the motion of the director of the shelter. GRETA was informed that the stay of victims in the shelter may continue up to 18 months, depending on individual circumstances.

113. According to statistical information provided by the Georgian authorities, the State Fund provided assistance to all identified victims of THB, i.e. 6 in 2011, 6 in 2012, 39 in 2013, 12 in 2014 and 16 in 2015.

114. There are two shelters for victims of THB funded by the State Fund. The shelter for victims of THB in Batumi is capable of accommodating up to 13 persons, while the shelter for victims of domestic violence and THB in Tbilisi has 14 places. Both shelters provide accommodation and assistance to women, men and children. The GRETA delegation visited both shelters in the course of the visit. Each shelter is staffed by a nurse, a social worker, a lawyer, a psychologist and security officers. Accommodation for different categories of victims is provided in separate sections. There are indoor play areas for the children, but the shelters do not have protected outdoor areas for recreational activities.

115. Georgian victims do not always need to be accommodated in shelters but require other types of assistance (medical and psychological assistance, information about their rights, vocational training, and facilitation of access to employment). In this respect, the possibilities for the State Fund to provide out-of-shelter assistance appear to be limited, especially for victims residing in rural areas. This also includes difficulties in accessing information about their rights, which may partly explain the low rate of self-reporting and lack of trust towards law enforcement authorities among local victims.

116. In its first evaluation report, GRETA recommended that the Georgian authorities address the lack of social workers available to assist victims of THB. Representatives of civil society and international organisations engaged in victim assistance informed GRETA that the situation remained unsatisfactory due to social workers' low remuneration and absence of specialised training. Representatives of the Ministry of Labour, Social Affairs and Family informed GRETA that the current caseload was 60-70 cases per social worker per month. There are 239 social workers in Georgia, with the Ministry envisaging an increase to 306 in the course of 2016. Training on trafficking issues is provided to social workers employed at the State Fund.

117. The report of the Public Defender's Office for 2013-2014 provided an evaluation of assistance measures available to victims of THB. It noted the lack of psychological specialist support in the Tbilisi shelter, the fact that the director of the shelter was a psychologist by specialisation not being considered as sufficient. Further, the need for differentiated approaches to victims of THB and victims of domestic violence accommodated in the shelter was stressed. In addition, shelters were considered not suitable for victims with disabilities and infectious diseases, which was exacerbated by a shortage of medicines. The authorities informed GRETA that as of August 2015 the Tbilisi shelter employs a psychologist. An individual rehabilitation and reintegration plan has been further developed to include additional measures for victims' rehabilitation and reintegration.

118. While welcoming the fact that the two shelters for victims of THB are fully covered by the state budget, **GRETA considers that the Georgian authorities should:**

- **improve access to assistance measures for victims of THB not accommodated in State Fund shelters, including measures to facilitate their reintegration;**
- **provide training on THB to social workers in order to increase their outreach capacity and enable them to effectively assist victim of trafficking;**
- **facilitate the reintegration of victims of trafficking into society by providing them with vocational training and access to the labour market.**

c. Identification and assistance of child victims of THB (Articles 10 and 12)

119. On 10 April 2012 the Anti-Trafficking Law was amended and a new Chapter IV¹ entitled "Social and legal protection, assistance and rehabilitation of child victims and statutory victims of trafficking in persons" was added. Pursuant to Article 21² of the Anti-Trafficking Law, the responsible authorities must take all necessary measures to identify child victims of THB and establish their nationality and identity and the whereabouts of their parents. If the latter are impossible to locate, a representative of the State Fund should be involved and a guardian appointed for the child. The State Fund should notify and involve the Social Services Agency which is responsible for the protection of, and assistance to children, including guardianship, education and family reintegration.

120. Pursuant to Article 21¹(4) of the Anti-Trafficking Law, the law applies to "child victims and statutory victims of trafficking who are citizens of other states or stateless persons without any discrimination." The new Chapter IV¹ contains provisions on the legal and social protection of child victims, their assistance, rehabilitation, and repatriation. **GRETA welcomes the adoption of these amendments which should improve the provision of assistance to child victims of trafficking in Georgia.**

121. As noted in paragraph 13, four children were identified as victims of trafficking in Georgia in the period of 2011-2015. According to representatives of NGOs and international organisations met during the second evaluation visit, there are important gaps in the identification of trafficked children.

122. The police are tasked with detecting cases of abused or exploited children and referring them for assistance, but do not have clear guidelines or procedures to follow and have received little training as regards the protection of children. GRETA was informed that in 2015, the NGO "World Vision" provided training for patrol police officers on identification of vulnerable and abused children in streets, with some 200 police officers from Tbilisi and Rustavi participating.

123. With a view to identifying children working and living in the streets the Ministry of Labour, Health and Social Affairs is operating four mobile groups covering the territory of Georgia. Identified children are provided with emergency assistance, including in day care centres, informal education, and assisted in their inclusion into formal education.

124. The Social Service Agency refers any information about cases of possible child trafficking to the Ministry of the Interior. By way of example, in 2015, such notifications were sent in 12 cases and two children were identified as "statutory victims" of THB. A Memorandum of Understanding was signed in 2015 between the NGO "World Vision" and the Ministry of the Interior, which envisages trainings for multidisciplinary working groups' on child protection issues.

125. NGO representatives referred to two alleged cases of sexual exploitation of children in illegal brothels in Tbilisi which, however, had not led to the identification of victims of THB. According to information provided by the law enforcement authorities, these allegations were not confirmed as THB cases.

126. The identification of child victims of trafficking might be hampered by the fact that the special mobile groups of the State Fund do not include child specialists, even though their members receive training on children's rights. The chances of identification are further decreased due to the social services not being authorised to remove children from exploitative situations, including those in which parents or other adults are involved, and the lack of training and experience among the police, who fail to identify possible child victims of trafficking and refer them to competent bodies.

127. There are plans to amend the referral mechanism for children victims of violence by adopting a new mechanism, which is in the process of preparation and will be approved by a Governmental decree.²⁷ The adoption of this decree is expected to take place in parallel with amendments to the Law on Social Services, the Code of Administrative Procedure, provisions of the Civil Code relating to parent/child relationship and the Law on Domestic Violence, which were being finalised at the time of GRETA's visit.

128. Child victims of trafficking continue sharing accommodation with adults in the two State Fund shelters, as no separate accommodation is available. GRETA notes that the report of the Public Defender's Office (see paragraph 117) highlighted the absence of a separate programme for assistance to child victims of THB. The report also noted that there were no specialised social workers and child specialists in the shelters.

129. On 7 August 2015 the State Fund amended the internal regulations of the two shelters and introduced the service of child carer for child victims of human trafficking and children accompanying adult victims. Further, on 10 August 2015, the Director of the State Fund approved the procedure for drawing up individual rehabilitation plans for child victims of THB and children accompanying their parents accommodated in the shelter. Any institution where a child is accommodated, including shelters of the State Fund, must inform the Social Service Agency about this within 24 hours of the child's arrival. Social workers of Agency have to examine each case, draw up an individual rehabilitation plan and monitor its implementation.

130. Article 18 (7) of the Anti-Trafficking Law states that "if the age of a victim of human trafficking is not determined and there are reasonable grounds to believe that the he/she is a minor, he/she shall be regarded as a minor and be subject to special protection measures until the determination of his/her age". If the information concerning the child's identity is not available in the civil registry, the age may be determined by a forensic examination. According to the authorities, so far there has been no need for such an examination as all victims assisted by the State Fund were in possession of documents and their age did not come into question. GRETA stresses that the age assessment procedure must ensure that the best interests of the child are effectively protected, taking into account the Convention on the Rights of the Child and General Comment No. 6 of the Committee on the Rights of the Child.²⁸

²⁷ See the reply to question 7 of the Reply of Georgia to GRETA's Questionnaire for the 2nd Evaluation Round: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680641bc8>

²⁸ General Comment No. 6 Treatment of unaccompanied and separated children outside their country of origin, Committee on the Rights of the Child, Thirty-ninth session, 17 May - 3 June 2005. In particular, General Comment No.6 states that identification measures should not only take into account the physical appearance of the individual, but also his or her psychological maturity. Moreover, the assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, s/he should be treated as such.

131. **GRETA urges the Georgian authorities to improve the identification of and assistance to child victims of trafficking, in particular by:**

- **adopting as a matter a priority a referral mechanism for the identification and assistance of child victims of THB, taking account of the special circumstances and needs of child victims, involving child specialists and ensuring that the principle of the best interests of the child is respected;**
- **ensuring that relevant actors take a proactive approach and increase their outreach work to identify child victims of THB by paying particular attention to children in care institutions, children living and working in the street, and unaccompanied minors;**
- **ensuring that child victims of trafficking fully benefit from the assistance measures provided for under the Convention, including appropriate accommodation and effective access to education.**
- **providing further training to stakeholders (police, service providers, NGOs, child protection authorities, social workers) as well as guidance for the identification of child victims of THB for the purposes of exploitation of begging and exploitation of criminal activities;**
- **ensuring that proper risk assessment is conducted before returning children to their parents, taking into account the best interests of the child;**
- **ensuring long-term monitoring of the reintegration of child victims of trafficking.**

d. Protection of private life (Article 11)

132. The Law on Personal Data Protection, adopted in 2011, establishes general rules and safeguards to prevent personal data from becoming available to any unauthorised actors.

133. Article 14(8) of the Anti-Trafficking Law stipulates that the identity, address and other personal data of victims and statutory victims, as well as that of witnesses of human trafficking, is confidential and its disclosure is prohibited except in cases envisaged by law. The Anti-Trafficking Law also protects the identity and other personal data of child victims and allows access to such data only in cases provided by law, when this is necessary to identify the child's parents and family whereabouts and disclosure of the information does not endanger the safety of the child.

134. Pursuant to the Rules of Procedure of the Permanent Group, its members are bound not to disclose the personal data of victims. The Governmental Decree of 11 April 2014 on approval of unified standards for identification of victims of human trafficking stipulates that information regarding a person considered to be a possible victim of THB shall be protected and not disclosed to the public, regardless of the outcome of the identification procedure. Further, according to the internal regulations of the State Fund and of the two shelters, their employees are responsible for protecting confidential information, including personal data concerning victims of THB, of which they become aware during their work.

135. According to the Criminal Procedure Code, courts are entitled to conduct proceedings involving child victims of THB *in camera* and may impose an obligation of non-disclosure of facts relating to the case or persons participating in such proceedings. The Guidelines for the Law Enforcement on the Investigation and Prosecution of Trafficking Cases and Treatment with Victims and Statutory Victims of Trafficking in Human Beings (Law Enforcement Guidelines) also cover issues of confidentiality of information regarding victims of THB, both adults and children. The Guidelines underline that a prosecutor is entitled to submit a motion to court for conducting proceedings *in camera*, when a child victim is involved.

e. Recovery and reflection period (Article 13)

136. In its first evaluation report, GRETA considered that the Georgian authorities should expand the aims of the reflection period to include the recovery of victims of trafficking from the trafficking experience, in line with the Convention. GRETA also urged the Georgian authorities to ensure that trafficked persons are systematically informed of the possibility to use a reflection period and are effectively granted such a period.

137. Article 12 of the Anti-Trafficking Law, which provides for a 30-day reflection period, has not been amended and the reflection period is intended exclusively for the purpose of deciding whether to cooperate with the law enforcement bodies.

138. Article 61 of the Law on Legal Status of Aliens prohibits the removal from Georgia of an alien assumed to be a victim of THB, or affected by the offence of THB, during the reflection period granted under the Anti-Trafficking Law.

139. The Georgian authorities have stated that the police, as well as the mobile groups and the State Fund, systematically inform victims of THB in writing, as well as orally during the first interview, of their right to a reflection period. However, according to information provided by the authorities, no victims of THB have benefited from the reflection period.

140. GRETA is concerned that Article 12 of the Anti-Trafficking Law does not state the purpose of the recovery and reflection period as it is stated in the Convention, i.e. to enable possible victims of trafficking to escape the influence of the traffickers and/or to take an informed decision on co-operating with the competent authorities. According to the Convention, the recovery and reflection period should be granted when there are reasonable grounds to believe that the person concerned is a victim of trafficking, i.e. before the identification procedure has been completed. Moreover, in itself, it is not conditional on the victim's co-operation with the investigative or prosecution authorities.

141. GRETA urges the Georgian authorities to review the legislation in order to ensure that the recovery and reflection period is specifically defined in law as provided for in Article 13 of the Convention and that all possible victims of trafficking are offered a recovery and reflection period and all the measures of assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period. The procedure for granting a recovery and reflection period should be spelled out and the authorities performing identification should be issued with clear instructions stressing the need to offer the recovery and reflection period as defined in the Convention, i.e. not making it conditional on the victim's co-operation and offering it to victims before formal statements are made to investigators.

f. Residence permit (Article 14)

142. According to Article 15(f) of the new Law on Legal Status of Aliens, a special residence permit shall be issued to an alien who is reasonably assumed to be a victim of or affected by the crime of human trafficking, in cases provided for by the Anti-Trafficking Law. Article 16 of the Law on Legal Status of Aliens specifies that the duration of the temporary residence permit may be up to six years. The special residence permit is granted at the request of an institution providing services to victims of human trafficking or a body conducting the criminal proceedings.

143. Governmental Ordinance No. 520 of 1 September 2014 on Approving Procedures for Reviewing and Deciding the Granting of Georgian Residence Permits²⁹ lays down the conditions and procedures for granting residence permits to aliens, including victims of THB. In addition, the Law Enforcement Guidelines (see paragraph 135) instruct law enforcement officials to ensure the granting of temporary residence permits for victims of trafficking, including children.

144. According to the information provided by the Georgian authorities, a temporary residence permit may also be issued to a victim of THB upon a motion by the Director of the State Fund; therefore, victim's co-operation with law enforcement authorities is not a necessary pre-condition for obtaining residence permit. However, no such permits have so far been issued.

145. According to the Georgian authorities, prior to the entry into force of the new Law on the Legal Status of Aliens, identified foreign victims of THB did not require residence permits due to the previous regulations concerning the stay of aliens on Georgian territory. Following the entry into force of the new Law, a deadline for issuing residence permits, where relevant, to all foreigners and stateless persons, was fixed at 1 March 2015. The law enforcement authorities asked the State Service Development Agency to issue residence permits for foreign victims of THB present in Georgia at that time and the granting of residence permits was on-going. During the evaluation visit, GRETA was informed that seven permits had been issued to foreign "statutory victims" of trafficking in 2015.

146. According to the Georgian authorities, foreign victims of THB may be granted asylum in Georgia if there are reasonable grounds to believe that their life, health or personal liberty will be under threat in case of return to the country of origin. However, so far no victims of trafficking have been granted asylum in Georgia. The Law on Refugees and Humanitarian Protection, in force since 2012, introduced the category "humanitarian status" (subsidiary protection) which may be granted to a person who does not meet the conditions for refugee status, but is unable to return to his/her place of habitual residence due to widespread violence, foreign aggression, occupation, internal conflict, massive violation of human rights or other circumstances which have seriously disturbed public order. Persons eligible to apply for "humanitarian status" include victims of THB.

147. GRETA welcomes the possibility of granting residence permits to victims of THB both on the grounds of their co-operation in criminal proceedings and for humanitarian reasons. GRETA invites the Georgian authorities to ensure that the legal possibilities are effectively applied in practice.

g. Compensation and legal redress (Article 15)

148. In the first evaluation report, GRETA urged the Georgian authorities to provide information to all victims of trafficking concerning possibilities to obtain compensation, to ensure that they have effective access to legal aid, and to provide an effective possibility of claiming compensation from traffickers.

149. The legislation concerning the right of victims of THB to claim compensation has not changed. Pursuant to Article 16 of the Anti-Trafficking Law, victims of trafficking are entitled to request compensation for moral, physical or material damages incurred as the result of a trafficking offence, in accordance with the Criminal Procedure Code and the Civil Procedure Code. The same article entitles victims of THB to receive a one-time compensation of 1000 GEL (approximately 390 euros) from the State Fund in case it is impossible to obtain compensation from the perpetrator.

150. To date, no victim of THB has received compensation from the perpetrator through criminal or civil proceedings. The failure to secure the freezing and seizure of criminal assets was highlighted as a problem.

²⁹ See Annex 13 of the Reply of Georgia to GRETA's Questionnaire for the 2nd Evaluation Round: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680641bb3>

151. On 14 November 2014, the Co-ordination Council adopted Rules and Procedures for Granting Compensation from the State Fund, according to which victims may obtain compensation regardless of their co-operation with the law enforcement authorities. In case a victim of THB has received compensation from the State Fund, he/she remains eligible to claim compensation from the offender, if the latter has been detained and brought to justice after the victim received State compensation. According to Article 3(3) of the rules, it is considered impossible to claim compensation for physical, moral and material damages in accordance with civil and criminal legislation if the alleged perpetrator is not identified and detained within three months after the investigation has been launched, or if it is impossible to enforce the compensation order against the perpetrator within six months after the court decision. To claim compensation from the State Fund, the person is required to present documentation proving the impossibility of receiving compensation from the perpetrator, along with the proof of being a victim or a statutory victim of THB. In addition, GRETA was informed of draft amendments to the Anti-Trafficking Law, submitted to Parliament in January 2016, according to which victims of THB will be provided with one-off compensation regardless of whether they claim compensation from the perpetrator in civil or criminal proceedings. **GRETA would like to be kept informed of the adoption of this amendment.**

152. GRETA was informed that the State Fund awarded compensations of 1000 GEL to one victim of THB in 2012, 21 in 2013, six in 2014 and 18 in 2015, all of whom were Georgian nationals. In the course of 2015, 17 compensations were awarded by the State Fund, of which six to foreign victims of THB. Representatives of the State Fund explained the absence of compensations for foreign victims prior to 2015 by the fact that no applications were received. It was further clarified that some of those who received State Fund compensation in 2015 had been identified in 2013-2014, but applied for compensation in 2015.

153. While welcoming the increase in State Fund compensations granted to victims of THB, GRETA remains concerned by the absence of compensation from the perpetrators. **GRETA urges the Georgian authorities to take measures to facilitate and guarantee access to compensation for victims of trafficking from the offenders, including by:**

- **reviewing current criminal and civil procedures regarding compensation with a view to improving their effectiveness;**
- **ensuring that victims of trafficking are systematically informed in a language that they can understand of the right to seek compensation in criminal and civil proceedings, and the procedures to be followed;**
- **enabling victims of THB to exercise their right to compensation by guaranteeing them effective access to legal assistance;**
- **enabling victims of trafficking to exercise their right to compensation, by building the capacity of legal practitioners to support victims to claim compensation and including compensation into existing training programmes for law enforcement officials and the judiciary;**
- **encouraging prosecutors and judicial authorities to make full use of the legislation on the freezing and forfeiture of offenders' assets to secure compensation to victims of THB.**

h. Repatriation and return of victims of THB (Article 16)

154. Pursuant to Article 20(3) of the Anti-Trafficking Law, the expulsion of a foreigner where there are reasonable grounds to believe that he/she may be a victim of THB is prohibited. Following the expiry of the reflection period, or upon completion of criminal proceedings, foreign victims of trafficking are returned to their country of origin. A child victim of trafficking who is a foreign national or a stateless person is not to be returned if there is a reasonable doubt that the safety and security of the child would be endangered. The Georgian authorities co-operate with the IOM to ensure the safe return of foreign victims to their countries of origin. The authorities organised the return of one victim of THB in 2012, two in 2013 and two in 2015.

155. GRETA has not received information about the procedures put in place to assess the risk prior to returning a victim of THB or to assess if the return is in the best interests of the child.

156. As noted in paragraph 87, law enforcement agencies interview Georgian nationals deported from other countries in order to identify any THB victims among them. Any person considering him/herself a victim of THB may request the Permanent Group through the State Fund or through law enforcement authorities to be identified as such and access assistance envisaged for victims of THB. GRETA was informed that most Georgian nationals referred to the Permanent Group for identification were referred by the IOM among those who returned from abroad.

157. In the course of the evaluation visit, GRETA was informed that the Ministry of Displaced Persons had allocated 400 000 GEL (approximately 155 000 euros) in 2015 for reintegration programme of migrants returning to Georgia. In the course of 2015, five Georgian victims of THB benefitted from this programme. The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees issued a grant for NGOs to support the reintegration process of the Georgian migrants returning to the country. The funds are allocated for the implementation of projects in 12 thematic areas of reintegration, including funding of micro-business projects, temporary accommodation, vocation training and promotion of paid internships, provision of first aid, basic medicines and psycho-social rehabilitation, legal aid and financing of public awareness programmes on migration related issues. In addition, since 2014 the Ministry has operated four mobility centres set up in Tbilisi, Batumi, Kutaisi and Telavi, with financial support of the EU, to provide services to returned Georgian migrants. The budget of this project is 375 000 EUR and it will run until June 2017, when the Ministry is expected to take over all functions of mobility centres.

158. **GRETA considers that the Georgian authorities should take additional steps to:**

- **ensure that the return of victims of trafficking is conducted with due regard for their rights, safety and dignity. This means informing victims about existing programmes, protecting them from re-victimisation and re-trafficking and, in the case of children, fully respecting the principle of the best interests of the child;**
- **develop international co-operation in order to ensure proper risk assessment and safe return, as well as effective reintegration of victims of THB;**
- **ensure compliance with the *non-refoulement* obligation under Article 40, paragraph 4, of the Convention.**

3. Substantive criminal law

a. Criminalisation of THB (Article 18)

159. Following the amendments made to the CC in May 2014, Article 143¹ of the CC, entitled "Trafficking in human beings", reads as follows:

"1. Purchase or sale of human beings, or any unlawful transactions in relation to them, by means of threat, use of force or other forms of coercion, of abduction, blackmail, fraud, deception, by abuse of a position of vulnerability or power or by means of giving or receiving of payment or benefits to achieve the consent of a person having control over another person, as well as recruitment, carriage, concealing, hiring, transporting, providing, harbouring or receiving of a human being for exploitation, shall be punished by imprisonment for a term of seven to 12 years, with deprivation of the right to hold an official position or to carry out a particular activity for up to three years.

2. The same act committed:

- a) knowingly by the offender to a pregnant women;
 - b) knowingly by the offender against a helpless person or a person who financially or otherwise depends on the offender;
 - c) by abusing the official position,
- shall be punished by imprisonment for a term of nine to 14 years, with deprivation of the right to hold an official position or to carry out a particular activity for up to three years.

3. The same act committed:

- a) repeatedly;
 - b) against two or more persons;
 - c) by taking the victim abroad;
 - d) by using violence or threat of violence which is dangerous for life or health,
- shall be punished by imprisonment for a term of 12 to 15 years, with deprivation of the right to hold an official position or to carry out a particular activity for up to three years.

4. The act provided for by paragraphs 1, 2 or 3 of this article:

- a) committed by an organised group;
 - b) causing the death of the victim or resulted in other grave consequences,
- shall be punished by imprisonment for a term of 15 to 20 years, with deprivation of the right to hold an official position or to carry out a particular activity for up to three years.

Note:

1. For the purposes of this Article and Article 143² of this Code, the following shall constitute exploitation for the purpose of gaining material or other benefit:

- a) inducing a person to perform labour or other services;
- b) inducing a person to provide sexual services;
- c) engaging a person in criminal activities, prostitution, pornographic or other anti-social activities;
- d) removing, transplanting or otherwise using an organ, part of an organ or tissue of the human body by force or deception;
- e) subjecting a human being to practices similar to slavery or to modern-day slavery. Subjecting a human being to modern-day slavery shall mean creation of such conditions when the person performs certain work or renders services in favour of another person in return for payment, inadequate payment or without payment, and he/she is not able to change these circumstances because of his/her dependence on that person. Dependence on a person may be caused by, among other things:
 - e.a) confiscation, control or intentional unlawful handling of personal identification documents

- e.b) restriction of the right to free movement or control of free movement;
- e.c) restriction or control of communication (including correspondence and phone calls) with family members or other persons;
- e.d) creation of coercive or threatening environment.

2. For the purposes of this Article and Article 143², it does not matter whether a person consents to his/her pre-determined exploitation.

3. For the acts provided for by this Article, a legal person shall be punished by deprivation of the right to carry out activities or with liquidation and a fine.”

160. Child trafficking is defined under Article 143² of the CC as follows:

“1. Purchase or sale of children, or other unlawful transactions in relation to them, as well as their recruitment, carriage, concealment, hiring, transportation, provision, harbouring or reception for exploitation, shall be punished by imprisonment for eight to twelve years, with deprivation of the right to hold an official position or to carry out a particular activity for up to three years.”

161. GRETA welcomes the inclusion in the CC of a definition on what constitutes exploitation in the context of THB, which is similar to the previously existing text in the Anti-Trafficking Law. This definition refers to “engaging a person in criminal activities”. Although “forced begging” is not specifically mentioned, according to the authorities, forced begging as a type of exploitation is covered by the Note to Article 143¹ of the CC. Further, even though “forced marriage” or “illegal adoption”³⁰ are not specifically mentioned as forms of exploitation, the Georgian authorities have affirmed that the definition of THB would cover these acts if they were committed as part of human trafficking. In the reporting period no cases of THB for forced marriage or illegal adoption have been identified by the authorities.

162. According to the Law Enforcement Guidelines (see paragraph 135), an abuse of a position of vulnerability is understood as a situation where, due to physical or mental disability, a person is unable to understand the existing situation and has no other option but to succumb to the violence applied to him/her. GRETA notes that this interpretation of abuse of a position of vulnerability is more restrictive than that of the Convention and draw the attention of the authorities to paragraph 83 of the Explanatory Report of the Convention, which states as follows: “by abuse of a position of vulnerability is meant abuse of any situation in which the person involved has no real and acceptable alternative to submitting to the abuse. The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim’s administrative status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce.” **In this respect, GRETA urges the Georgian authorities to bring the interpretation of the abuse of a position of vulnerability in full conformity with the Convention.**³¹

³⁰ These acts are criminalised as separate offences under respectively Article 150¹ (forced marriage, in force as of 1 April 2015), Article 172 (illegal arrangement of adoption of a minor) and Article 172¹ (preliminary selection of pregnant women and creation of conditions for their transportation for the purpose of giving birth outside of Georgia for the purposes of adoption, or facilitating such adoption).

³¹ See also UNODC [Guidance Note](#) on “abuse of a position of vulnerability” as a means of trafficking in persons in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized.

163. The Georgian authorities have referred to a THB case from 2013 in which an Uzbekistani woman was brought to Georgia by a fraudulent offer of employment in Batumi. The offender restricted the victim's movements and confiscated her identity documents, subjected her to physical abuse and sexual exploitation, resulting in the women's mental illness. The traffickers was sentenced to life imprisonment and the court stated in the judgment that the victim was in a position of vulnerability as she was unable to protect herself due to her illness, while the offender continued to exploit the victim by abusing this position.

164. The aggravating circumstances for child trafficking are similar to those for trafficking in adults, but the penalties envisaged are higher (e.g. 11 to 15 years' imprisonment for committing it by abusing the official position, 14 to 17 years' imprisonment for committing it repeatedly, using coercion, blackmail or deception, against two or more children, taking the victim abroad, using violence or threat of violence dangerous for life or health, 17 to 20 years' or life imprisonment when committed by an organised group, or causing the death of the victim or other grave consequences).

b. Criminalisation of the use of services of a victim of THB (Article 18)

165. It was already noted in the first evaluation report that Article 143³ of the CC criminalises the use of services of a victim of THB, with the prior knowledge that a person is a victim.³²

166. According to the Georgian authorities, during 2012-2015 the use of services of a trafficked person did not occur, which is why there have been no convictions under this Article. However, in GRETA's view, the shortcomings in the identification of victims of THB in Georgia subjected to different types of exploitation may have led to difficulties in detecting cases of the use of services of trafficked persons and bringing those involved to justice.

c. Corporate liability (Article 22)

167. The criminal liability of legal persons for THB was introduced to the CC in 2006 and is also envisaged under Article 13(4) of the Anti-Trafficking Law.³³ No cases of THB with the involvement of legal persons have been registered during the reporting period. However, the authorities referred to several investigations initiated against legal persons for providing venue for prostitution (Article 254 of the CC)³⁴. According to the authorities, no proceedings were initiated against legal persons for THB offences during the reporting period.

168. GRETA invites the Georgian authorities to carry out a review of the application of the corporate liability provisions with the view to improving their practical application to cases of THB.

³² See paragraphs 14 and 198 of the Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Georgia, first evaluation round:

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680631c34>

³³ See paragraph 200 of the Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Georgia, first evaluation round:

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680631c34>

³⁴ See page 103 of the Reply of Georgia to GRETA's Questionnaire for the 2nd Evaluation Round:

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680641bc8>

d. Non-punishment of victims of THB (Article 26)

169. As noted in the first GRETA report, victims of THB are exempted from criminal liability for the acts envisaged in Article 344 of the CC (illegal crossing of the State border) and Article 362 of the CC (production, purchase or use of a forged document, seal or form). Victims of trafficking are also exempted from administrative responsibility in case of prostitution, if they were compelled to do so (Article 172³ of the Code of Administrative Violations). Further, victims of trafficking are exempted from administrative responsibility for the violation of the rules of registration of Georgian citizens and foreign nationals residing in Georgia, if they were compelled to do so (Article 185 of the Code of Administrative Violations). As noted in paragraph 17, on 4 August 2015, Article 143³ of the CC was amended to allow for not punishing a person who knowingly uses the services of a victim of trafficking, in case the former co-operates with the investigation.

170. There is no case law to illustrate how the non-punishment provision is applied in practice in Georgia. GRETA notes that in its Concluding Observations of the UN Committee on the Elimination of Discrimination against Women on the combined fourth and fifth periodic reports on Georgia,³⁵ the Committee called upon the authorities to ensure that, during raids of brothels and individual establishments, victims of trafficking and forced prostitution are not treated as offenders.

171. While welcoming the existence of a specific legal provision concerning the non-punishment of victims of trafficking, GRETA is concerned that this provision is applicable to a rather narrow range of possible offences which victims of THB may be compelled to commit. **GRETA considers that the scope of the non-punishment provision should be extended to cover all offences which victims of THB were compelled to commit. GRETA also considers that the Georgian authorities should develop guidance and training for police officers and prosecutors on the non-punishment provision.** Reference is made in this context to the recommendations on non-punishment for legislators and prosecutors contained in the paper issued by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team.³⁶

4. Investigation, prosecution and procedural law

a. Measures relating to ensuring effective investigations (Articles 1, 27 and 29)

172. The detection and investigation of THB offences is entrusted to four police mobile inspection groups set up under the Division for Combating Trafficking and Illegal Migration of the Criminal Police Department in the Ministry of the Interior. Each group is composed of two investigating officers who operate in the high-risk areas covering Tbilisi and the regions of Guria, Kakheti, Samegrelo, Kvemo Kartli, Shida Kartli, Adjara and Imereti. The mobile groups plan and organise raids in places where prostitution may be practiced, such as bars, hotels, casinos and saunas, with a view to identifying victims of trafficking. In addition, a special division for combating THB (Adjara Task Force) has been set up in Adjara within the Central Criminal Police.

³⁵ Concluding observations on the combined fourth and fifth periodic reports of Georgia, adopted by the Committee at its fifty-eighth session (30 June – 18 July 2014):

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGEO%2fCO%2f4-5&Lang=en

³⁶ <http://www.osce.org/cthb/101002>

173. Pursuant to Article 12 of the CC³⁷, THB is considered as a crime of particular gravity and investigations into this offence warrant the use of special investigation techniques. The use of special investigation techniques is regulated by the Criminal Procedure Code (CPC). Pursuant to Articles 137 and 138 of the CPC, such techniques may be used upon the decision of the prosecutor or in some cases may be subject to court's authorisation upon the motion of the prosecutor, which should be examined by the court within 24 hours. The range of special investigation techniques includes interception and recording of telephone conversations, recording and removal of information records of any means of communication, control of postal and telegraph correspondence, covert video and audio surveillance, including filming and photographing, and electronic surveillance by such technical means. The authorities have indicated that such techniques are used when investigating THB offences.

174. As regards offences committed through the misuse of the Internet, in December 2012 a Special Cybercrime Unit was set up within the Central Criminal Police Department of the Ministry of the Interior, which is responsible for the detection, suppression and prevention of illegal activities committed in cyberspace. A Special Sub-unit for Computer-Digital Forensics has been established within the Main Division of Forensic Expertise, which processes digital evidence. When investigating an offence committed through the misuse of the Internet, law enforcement authorities notify the Georgian National Communications Commission about this, which in turn requests service providers to block access to the website concerned. The Ministry of the Interior has elaborated draft Standard Operational Procedures on Handling Digital Evidence, which specify the types of software programmes and technical rules used when searching for and seizing such evidence. At the time of writing this report, the Standard Operational Procedures were in the process of discussion.

175. GRETA notes that so far no joint investigation teams (JIT) have been set up with the participation of Georgian law enforcement authorities for the purposes of investigating THB cases. **GRETA invites the Georgian authorities to consider using this possibility envisaged under Article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, which entered into force in respect of Georgia on 1 May 2014.**

176. Representatives of law enforcement authorities, the prosecution and the judiciary welcomed the amendments to the CC made in May 2014 which defined the concept of exploitation and facilitated the qualification of cases as THB. However, representatives of the judiciary noted that investigations into possible cases of THB are often initiated under Article 254 of the CC ("providing a venue for prostitution"), which limits the possibility for collecting evidence as this provision does not warrant the use of special investigation techniques, being a less serious offence which carries lower penalties. As a result, such investigations do not result in the collection of evidence allowing the requalification of the case into THB and do not contribute to identifying victims of THB. Allowing the use of special investigation techniques on an exceptional basis for Article 254 of the CC would facilitate obtaining evidence of possible cases of trafficking.

177. According to representatives of the judiciary, there is a "zero-tolerance" attitude to THB and whenever such cases reach courts, the convictions reflect the gravity of the offence. However, GRETA is concerned that while Article 63(2) of the CC prohibits the application of suspended sentences to offences of particular gravity (including THB), the legislation does not rule out the use of a plea bargaining procedure (Articles 209-210 of the CPC) in cases of THB. According to the authorities, no plea bargaining procedure was applied in THB cases during the reporting period. Nevertheless, GRETA is concerned by the possibility of plea bargaining in human trafficking cases as the absence of effective sentences could engender a feeling of impunity and undermine efforts to support victims to testify.

³⁷ According to Article 12(4), crimes of particular gravity are intentional crimes which carry a maximum penalty of more than 10 years of imprisonment.

178. According to data provided by the Georgian authorities, 10 investigations were launched into THB cases in 2012, 11 in 2013, 13 in 2014 and 18 in 2015. One person was convicted of THB in 2012, two in 2013, six in 2014 (including two for trafficking in children), and three in 2015 (including one for child trafficking). The sentences ranged from six years and eight months to life imprisonment.

179. An investigation was initiated in 2013 by the Central Criminal Police Department, in co-operation with INTERPOL, into the distribution of pornographic images of a child through websites with servers in different countries. Following the identification of IP addresses involved, the investigators established the involvement of the mother of the victim who was taking photographs of her daughter and was transmitting them to an Israeli national, who in turn was distributing images via the internet. As a result of a joint investigation with law enforcement authorities in Israel, Australia and USA, and the assistance of INTERPOL, on April 2013 joint operations were carried out by Georgian and Israeli police and the mother of the victim was detained in Georgia, while the Israeli suspect was arrested in Israel. Tbilisi City Court sentenced the woman to 14 years' imprisonment, while the Israeli national was sentenced to 11 years and 6 months' imprisonment. The case was appealed first in the Tbilisi Court of Appeals and then before the Supreme Court of Georgia, but both courts upheld the decision of the first instance court.

180. The Georgian authorities have informed GRETA of a THB case initiated by the unit for combating human trafficking and illegal migration of the Central Criminal Police Department, which concerned Georgian nationals identified as victims of human trafficking abroad. This case involved Georgian nationals subjected to labour exploitation in Turkey who were promised jobs and by deception were forced to work in a factory. The owner of the factory took their passports, restricted their freedom of movement and forced them to work without pay. Seven victims were identified by law enforcement bodies during interviews at the border. An investigation was initiated and the victims were provided with assistance by the State Fund.

181. Article 52 of the CC envisages the forfeiture of proceeds and instrumentalities of crime in the context of a criminal conviction for any intentional offence, including THB, and prescribes confiscation of such property, whenever such measure is "necessary for state and public interest, to protect the rights and freedoms of certain persons or to avoid the commission of a new crime.". Article 52 (3) of the CC stipulates that "property acquired through criminal means as well as any proceeds derived from such property or the property of equivalent value" may be confiscated if the prosecution can prove that the property has been obtained through criminal means. Further, measures and procedures relating to freezing of assets are set out in Articles 151-158 of the CPC.³⁸

182. According to the authorities, no forfeitures of proceeds and instrumentalities of THB offences have been carried out so far. In the first evaluation report, GRETA urged the Georgian authorities to explore the reasons for the non-application of the possibility provided by legislation to confiscate the assets of traffickers. The authorities explained the lack of confiscation of assets of the traffickers as being due to the absence of any property or financial assets registered in their name which could have been subjected to confiscation. However, GRETA notes that traffickers can transfer their assets to other persons to be able to profit from these assets without being punished. It is therefore indispensable to overcome this obstacle, bearing in mind the importance of confiscation as a sanction against traffickers, as well as the means for compensating victims. A solution could be to modify the criminal legislation with the view to authorising confiscation of assets transferred by the traffickers to other persons, but in practical terms remaining at their effective disposal. **GRETA considers that the Georgian authorities should take the necessary measures to authorise confiscation of criminal assets of perpetrators of human trafficking registered in the names of other persons, with due regard to the rights of third persons acting in good faith.**

³⁸ For further information concerning the freezing and confiscation of assets, see paragraphs 244-269 of the Report on Fourth Assessment Visit to Georgia ([MONEYVAL\(2012\)8](#), published on 3 July 2012) of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

183. GRETA is concerned by the low number of prosecutions and convictions in THB cases and information that possible THB offences are investigated and prosecuted as other offences, carrying lower penalties. In this respect, GRETA refers to the Concluding observations on the combined fourth and fifth periodic reports of Georgia, adopted by the CEDAW in 2014, according to which many traffickers enjoy impunity "owing to corruption and the requalification of the crime of trafficking under other provisions of the Criminal Code, such as the crime of forced prostitution, with less severe sanctions."³⁹

184. **GRETA urges the Georgian authorities to take measures to ensure that THB cases are investigated proactively, prosecuted successfully and result in effective, proportionate and dissuasive convictions, including by:**

- **further developing the specialisation of investigators, prosecutors and judges;**
- **providing further training to police officers and prosecutors to investigate and prosecute cases of THB for different purposes of exploitation, including through co-operation with other relevant actors (the State Fund, child protection services and labour inspectors);**
- **making greater use of special investigation techniques in suspected cases of THB with a view to ensuring that evidence is obtained at as early a stage of the investigation as possible;**
- **ensuring, where possible, that THB charges are not re-qualified into other offences, which carry lighter penalties;**
- **excluding THB from the plea bargaining procedure.**

b. Protection of victims and witnesses (Articles 28 and 30)

185. In its first evaluation report, GRETA considered that the Georgian authorities should ensure adequate protection of the life and safety of victims of trafficking and of those assisting them during court proceedings, and address the lack of application of the special protection measures to victims of trafficking.

186. The special protection measures provided for in Chapter IX of the CPC may be applied if there are reasonable grounds to believe that the life or health of a participant in the criminal proceedings will be under threat or damage.⁴⁰ "Statutory" victims have the right to request personal security protection and protection of the security of their family members at any time. Pursuant to Article 68(3) of the CPC, special protection measures include:

- a) measures to prevent the identification of the location of the protected person by modifying or deleting from the civil registry or other public database information which would enable the identification of this person;
- b) change of identity and issuing new documents, providing a pseudonym, modification of appearance, making secret any information and documents enabling the identification of the person;
- c) personal security measures (bodyguard, on-call emergency protection);
- d) temporary or permanent change of place of residence;
- e) relocation to another country.

³⁹ Concluding observations on the combined fourth and fifth periodic reports of Georgia, adopted by the Committee at its fifty-eighth session (30 June – 18 July 2014).

⁴⁰ For more details, see the reply to question 53 of the Reply of Georgia to GRETA's Questionnaire for the 2nd Evaluation Round: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680641bc8>

187. Article 243(3) of the CPC authorises a judge to decide that a party to the criminal proceedings is to be interrogated by technical means from a different location. According to representatives of the judiciary, this method of interrogation has not been used in cases of THB. More generally, no special protection measures have been used in relation to victims of THB since 2011.

188. The Georgian authorities have indicated that protection of victims of THB accommodated in the shelters of the State Fund is included in the overall assistance and protection programme.

189. The victim and witness co-ordinator service⁴¹, which was set up in 2011, currently employs 20 co-ordinators throughout the country. They are mainly social workers and psychologists whose tasks include providing psychological assistance to victims and giving information about the assistance they are entitled to during the investigation and criminal proceedings. There has been only one case where a co-ordinator was involved in assisting a victim of THB for sexual exploitation. According to information provided by the authorities, the mandate of witness and victim co-ordinators will be expanded with a view to increasing their involvement in assisting victims of THB, starting from the stage of investigation from the moment of the involvement of a prosecutor.

190. The CC and the CPC set out special procedures for child victims and witness of crimes, including THB. Children must be examined in the presence of a legal representative or psychologist. The testimony of child witnesses or victims of sexual exploitation/violence may be audio/video recorded and the number of interviews must be kept to the strict minimum required for the criminal procedure. Further, the Juvenile Justice Code, adopted on 12 June 2015, provides for procedural guarantees for juvenile victims and witnesses. A legal representative, a counsel and a psychologist should attend the interview of a child. Further, a judge may decide to use image or sound substitute equipment or an opaque screen, or examine the witness with the use video-recording, or close the court hearing in full or in part, or remove the accused from the courtroom while examining the juvenile. In addition, according to the Law Enforcement Guidelines, the investigating authorities must take special measures while interrogating children in order to provide the best possible protection, taking into account their vulnerability. Special measures to be taken by the police officers while interviewing possible child victims of THB are also contained in the SOPs approved by the Minister of the Interior in January 2015. **GRETA welcomes the procedural measures for the protection of children contained in the Juvenile Justice Code and encourages the authorities to ensure full and effective application of these measures to child victims of THB.** In this context, GRETA also refers to the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.⁴²

191. **GRETA considers that the Georgian authorities should make greater use of the measures provided for in law to protect victims and witnesses of THB, with a view to ensuring adequate protection before, during and after criminal proceedings, and increasing the rate of successful prosecutions.**

⁴¹ See the reply to question 54 of the Reply of Georgia to GRETA's Questionnaire for the 2nd Evaluation Round: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680641bc8>

⁴² Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies.

c. Jurisdiction

192. Georgian legislation asserts jurisdiction over all offences committed on Georgian territory, as well as those committed outside its territory if the offender is a Georgian national or a stateless person residing permanently in Georgia, and the offence is also considered a crime according to the legislation of the country where it was committed. The act will be punishable even if it was not a crime in the country where it was committed if it is a serious crime⁴³ or a particularly serious crime⁴⁴ under Georgian law, or if criminal responsibility is provided under an international treaty to which Georgia is a party. Jurisdiction will also be established over acts committed abroad by a foreign national or a stateless person not residing permanently in Georgia, if the act in question is a grave crime or a crime of particular gravity against the interests of Georgia, or if criminal responsibility is provided under an international treaty to which Georgia is a party, thus covering THB. The commission of an offence against a Georgian national outside the jurisdiction of the Georgian state will be subject to investigation under the CC of Georgia and will also be punishable.

5. International co-operation and co-operation with civil society

a. International co-operation

193. Georgia has concluded international agreements on co-operation in combating crime, including THB, with the following countries: Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Egypt, Estonia, France, Hungary, Israel, Italy, Kazakhstan, Latvia, Lithuania, Malta, Moldova, Poland, Romania, the Slovak Republic, Turkey, Ukraine, UK and Uzbekistan. Further, in 2013-2014, Georgia signed bilateral agreements on co-operation in combating crime with Israel and Lithuania. A Memorandum of Understanding on co-operation in the fight against crime was signed on 24 January 2014 between the Georgian Ministry of the Interior and the National Crime Agency of the United Kingdom. Similar agreements are in preparation with Albania, Belgium, Croatia, Cyprus, the Czech Republic, Greece, Kyrgyzstan, Portugal, Qatar, Saudi Arabia, Slovenia and the United Arab Emirates.

194. At the multilateral level, the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters entered into force in respect of Georgia on 1 May 2014. In July 2014 Georgia initiated the procedure for concluding an operational co-operation agreement with Europol. In December 2015 the Joint Supervisory Body of Europol approved a positive report on Georgia, thus opening the way to negotiations on the text of an agreement. The signature of the agreement is expected to take place in March 2016. The agreement will allow Georgia to deploy a liaison officer in Europol's Headquarters to exchange information, including criminal intelligence, personal data and classified information, with Europol through a secure communication line.

195. The International Criminal Co-operation Centre (ICCC) was created in 2012 within the Central Criminal Police Department of the Ministry of the Interior. Its main functions are representing the Ministry in international organisations and foreign countries through police attachés and liaison officers, conducting co-operation with foreign counterparts at operative level, and implementing international co-operation agreements in the criminal field.

196. The new Law on International Law Enforcement Co-operation entered into force on 4 October 2013. Its objective is to ensure efficient co-operation between Georgian and foreign law enforcement agencies, as well as international organisations, in the fields of prevention, detection and suppression of crime and to define practical modalities for co-operation, including exchange of information, exchange of liaison officers or police attachés, and joint investigation of transnational crimes.

⁴³ According to Article 12(3) of the CC, an intentional crime for the commission of which the maximum sentence prescribed does not exceed 10 years of imprisonment, also a crime of negligence for the commission of which the maximum sentence exceeds five years of imprisonment shall constitute a serious crime.

⁴⁴ According to Article 12(4) of the CC, an intentional crime for the commission of which stipulates punishment exceeding 10 years of imprisonment or life imprisonment shall constitute a particularly serious crime.

197. The Ministry of the Interior co-operates with Turkey through the Joint Commission meetings set up under the Agreement between the Government of Georgia and the Government of the Republic of Turkey on Co-operation in the Field of Security, concluded in 1994. Combating THB is one of the priorities of the Joint Commission's work. The Joint Commission held its fourth meeting on 21 March 2013 in Batumi and its fifth meeting on 6 June 2014 in Ankara, and co-operation to tackle THB was among the topics of discussion. The two countries agreed to continue exchanging information and to conduct joint investigations related to THB and other forms of organised crime, including through direct exchange of information related to criminal offences. In addition, two Georgian police attachés started working in Turkey (in Ankara and Istanbul) as of July 2014, while a Turkish police attaché was assigned to Batumi as of 2013. On 1 September 2012, a Memorandum of Understanding entered into force between the governments of Georgia and Turkey concerning co-operation in combating crime. During 2012-2014 a number of mutual legal assistance requests⁴⁵ were sent in THB cases and one perpetrator of THB was extradited to Turkey. Further, in 2015, Georgia extradited one trafficker to the Republic of Moldova. In 2015 the authorities received eight requests for mutual legal assistance, of which six have already been executed, while two are pending.

b. Co-operation with civil society

198. NGOs and other civil society actors maintain active partnership with public bodies in implementing activities on preventing and combating THB. The State Fund has recently renewed the Memoranda of Understanding on the provision of services to victims of THB with the NGOs "Anti-Violence Network of Georgia", GYLA, "Women's Information Centre" and "Women for Future", as well as with the IOM Office in Georgia. In 2015 the State Fund also concluded a Memorandum of Understanding with the NGO "Tanadgoma" regarding the referral of sex workers who may be victims of THB to the State Fund.

199. The Co-ordination Council co-operates with NGOs with competence on action against THB. Their representatives regularly attend meetings of the Council and are also involved in different working groups established by the Council (see paragraphs 19-21). NGOs provide input in the development and implementation of anti-trafficking policy during the drafting of strategies and action plans. Many of them conduct specialised training for different officials responsible for the identification and assistance to victims of trafficking.

200. As noted in paragraph 23, the Permanent Group is composed of representatives of NGOs and a representative of the IOM. Given the important tasks vested upon the Permanent Group, **GRETA welcomes this state of affairs which demonstrates a high level of trust between the public bodies and NGOs.**

201. In the course of the evaluation visit, representatives of NGOs working in the field of THB noted that co-operation with the state authorities was satisfactory and made it possible for them to effectively participate in anti-trafficking policy decisions. However, GRETA notes that little, if any, co-operation is in place with trade unions and the private sector. Such co-operation is important to address the prevention of THB for the purpose of labour exploitation.

202. **GRETA invites the Georgian authorities to increase their efforts to build strategic partnerships with civil society, including with trade unions and the private sector. In this respect, GRETA refers to the UN Guiding Principles on Business and Human Rights, endorsed by the UN Human Rights Council in its resolution 17/4 of 16 June 2011.**

⁴⁵ For more information concerning mutual legal assistance requests, see Annex 18 to the Reply of Georgia to GRETA's Questionnaire for the 2nd Evaluation Round:

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680641bb8>

IV. Conclusions

203. Since the adoption of GRETA's first report on Georgia in December 2011, progress has been made in a number of areas.

204. The Georgian authorities have continued to develop the legal framework for combating trafficking in human beings, in accordance with GRETA's recommendations. In 2014 amendments were made to the Criminal Code provisions on trafficking in human beings with a view to defining the terms "exploitation" and "dependence on a person". Further, the Law on Combating Trafficking was amended and a new chapter concerning the social and legal assistance to child victims of THB and their rehabilitation was added to it.

205. In addition, the new Law on the Legal Status on Aliens and Stateless Persons contains provisions on granting temporary residence permits to victims of human trafficking, both on the grounds of their co-operation in criminal proceedings and for humanitarian reasons.

206. Progress has also been made when it comes to the co-ordination of anti-trafficking action and the involvement of non-governmental organisations in the planning and implementation of anti-trafficking policy.

207. Efforts have been made to provide training to relevant professionals and to expand the categories of staff targeted. The training is often carried out in co-operation with NGOs and, whenever possible, a multi-stakeholder approach is promoted.

208. The Georgian authorities have adopted a number of policy documents (in the area of gender equality and on assisting IDPs, socially vulnerably people and "eco-migrant" families) which have the potential of tackling the root causes of human trafficking.

209. With a view to preventing trafficking in children, the Georgian authorities have set up mobile groups under the Ministry of Labour, Health and Social Affairs in charge of detecting and assisting children in street situations, including assisting them in acquiring identity documents. GRETA comments the measures taken to raise awareness of human trafficking as part of the national school curricula.

210. The Georgian authorities have also taken steps to address trafficking for labour exploitation, including through awareness-raising initiatives and pilot projects on temporary labour migration in Germany, Estonia and Poland. The recent reintroduction of the Labour Inspectorate is expected to improve the prevention of trafficking and the detection of victims, but it needs to be provided with adequate resources and training.

211. Further, GRETA commends the setting up of a unified database containing information on victims of human trafficking, as well as offenders, which is disaggregated by nationality, sex, age, type of exploitation and country of exploitation.

212. However, despite the progress achieved, some issues give rise to concern. In this report, GRETA requests the Georgian authorities to take further action in a number of areas. The position of the recommendations in the text of the report is shown in parentheses.

Issues for immediate action

- **GRETA urges the Georgian authorities to take further steps to ensure the timely identification of victims of THB, and in particular to:**
 - **effectively disseminate the existing guidelines, indicators and Standard Operative Procedures and ensuring their application in practice;**
 - **increase the outreach work of the special mobile groups of the State Fund;**
 - **improve co-ordination between the different bodies performing victim identification, the police mobile inspection groups and other relevant entities;**
 - **increase efforts to proactively identify victims of trafficking for the purpose of sexual exploitation;**
 - **provide interpretation during police interviews of possible victims of trafficking, where necessary;**
 - **reconsider the current practice of interviewing possible victims of THB at their place of exploitation;**
 - **increase efforts to proactively identify victims of trafficking for the purpose of labour exploitation, by providing the Labour Inspectorate with the resources required and training;**
 - **pay increased attention to detecting victims of trafficking among foreign workers, asylum seekers and persons placed in immigration detention centres, including by providing additional training to relevant staff (paragraph 107).**

- **GRETA urges the Georgian authorities to improve the identification of and assistance to child victims of trafficking, in particular by:**
 - **adopting as a matter of priority a referral mechanism for the identification and assistance of child victims of THB, taking account of the special circumstances and needs of child victims, involving child specialists and ensuring that the principle of the best interests of the child is respected;**
 - **ensuring that relevant actors take a proactive approach and increase their outreach work to identify child victims of THB by paying particular attention to children in care institutions, children living and working in the street, and unaccompanied minors;**
 - **ensuring that child victims of trafficking fully benefit from the assistance measures provided for under the Convention, including appropriate accommodation and effective access to education;**
 - **providing further training to stakeholders (police, service providers, NGOs, child protection authorities, social workers) as well as guidance for the identification of child victims of THB for the purposes of exploitation of begging and exploitation of criminal activities;**
 - **ensuring that proper risk assessment is conducted before returning children to their parents, taking into account the best interests of the child;**
 - **ensuring long-term monitoring of the reintegration of child victims of trafficking (paragraph 131).**

- **GRETA urges the Georgian authorities to review the legislation in order to ensure that the recovery and reflection period is specifically defined in law as provided for in Article 13 of the Convention and that all possible victims of trafficking are offered a recovery and reflection period and all the measures of assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period. The procedure for granting a recovery and reflection period should be spelled out and the authorities performing identification should be issued with clear instructions stressing the need to offer the recovery and reflection period as defined in the Convention, i.e. not making it conditional on the victim's co-operation and offering it to victims before formal statements are made to investigators (paragraph 141).**
- **GRETA urges the Georgian authorities to take measures to facilitate and guarantee access to compensation for victims of trafficking from the offenders, including by:**
 - **reviewing current criminal and civil procedures regarding compensation with a view to improving their effectiveness;**
 - **ensuring that victims of trafficking are systematically informed in a language that they can understand of the right to seek compensation in criminal and civil proceedings, and the procedures to be followed;**
 - **enabling victims of THB to exercise their right to compensation by guaranteeing them effective access to legal assistance;**
 - **enabling victims of trafficking to exercise their right to compensation, by building the capacity of legal practitioners to support victims to claim compensation and including compensation into existing training programmes for law enforcement officials and the judiciary;**
 - **encouraging prosecutors and judicial authorities to make full use of the legislation on the freezing and forfeiture of offenders' assets to secure compensation to victims of THB (paragraph 153).**
- **GRETA urges the Georgian authorities to bring the interpretation of the abuse of a position of vulnerability in full conformity with the Convention (paragraph 162).**
- **GRETA urges the Georgian authorities to take measures to ensure that THB cases are investigated proactively, prosecuted successfully and result in effective, proportionate and dissuasive convictions, including by:**
 - **further developing the specialisation of investigators, prosecutors and judges;**
 - **providing further training to police officers and prosecutors to investigate and prosecute cases of THB for different purposes of exploitation, including through co-operation with other relevant actors (the State Fund, child protection services and labour inspectors);**
 - **making greater use of special investigation techniques in suspected cases of THB with a view to ensuring that evidence is obtained at as early a stage of the investigation as possible;**
 - **ensuring, where possible, that THB charges are not re-qualified into other offences, which carry lighter penalties;**
 - **excluding THB from the plea bargaining procedure (paragraph 184).**

Further conclusions

- GRETA considers that the Georgian authorities should continue their efforts to regularly provide specialised training on THB, in particular to police officers, prosecutors, judges, lawyers, labour inspectors, medical professionals, social workers and professionals working with children, with a view to improving their knowledge and skills to enable them to identify victims of trafficking, protect and support them, and assist them in claiming compensation. The training should cover, *inter alia*, the role and responsibilities of these actors in the National Referral Mechanism (paragraph 37).
- GRETA invites the Georgian authorities to ensure that this database is maintained by compiling reliable statistical data from all main actors, including specialised NGOs, on measures to protect and promote the rights of victims as well as on the investigation, prosecution, convictions and compensation in human trafficking cases. This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database (paragraph 40).
- GRETA considers that the Georgian authorities should conduct and support further research on THB as an important source of information for future policy measures. Areas where research is needed in order to shed more light on the extent of human trafficking in Georgia include trafficking in children, trafficking for the purpose of labour exploitation, and trafficking of foreign nationals into Georgia (paragraph 43).
- GRETA considers that the Georgian authorities should increase their efforts to inform the general public about THB and the different forms of exploitation, both abroad and within the country. Future actions should be designed in the light of impact assessment of previous measures, focussing on identified needs and target groups (paragraph 50).
- GRETA considers that the Georgian authorities should:
 - continue developing targeted measures to build awareness about THB for labour exploitation;
 - introduce a mechanism of effective monitoring of private employment agencies and other intermediaries involved in facilitating employment of Georgian nationals to ensure the authenticity of job offers they promote;
 - enhance the capacity of the newly established Labour Inspectorate Department to ensure that it has sufficient human resources to effectively detect and refer possible victims of THB for labour exploitation (paragraph 58).
- GRETA considers that the Georgian authorities should enhance their efforts to prevent trafficking in children by:
 - endowing the agencies specialised in the protection of children's rights with necessary authority to intervene and act in the best interests of the child whenever there are reasonable grounds to believe that a child is subject to any form of exploitation;
 - improving the co-ordination between child-protection agencies, mobile groups and the police in order to ensure prevention of trafficking among children working and living in the streets;
 - taking further measures to facilitate birth registration;
 - issuing documents to children working and living in the streets so that they can access assistance and protection measures (paragraph 68).

- GRETA considers that the Georgian authorities should maintain their efforts to strengthen the prevention of THB through social, economic and other measures for vulnerable groups, including IDPs. Further efforts should be made to promote gender equality, combat gender-based violence and stereotypes, and support specific policies for the empowerment of women as a means of combating the root causes of THB (paragraph 76).
- GRETA considers that, as part of their training, medical staff and other relevant professionals should be sensitised about THB for the purpose of organ removal (paragraph 81).
- GRETA considers that the authorities should take additional practical measures to increase awareness about adverse effects of the use of services of victims of THB for labour exploitation by providing relevant guidance to labour inspectors and other relevant services (paragraph 83).
- Further, GRETA considers that the authorities should continue raising awareness about THB for the purposes of sexual exploitation, including tackling demand in particular in Tbilisi and tourist areas, such as the Black Sea coast, as well as take additional measures to alert the general public about THB within Georgia for different forms of exploitation (paragraph 84).
- GRETA considers that the Georgian authorities should take additional measures to strengthen the capacity of border guards to detect and identify possible child victims of THB (paragraph 90).
- GRETA considers that the Georgian authorities should:
 - improve access to assistance measures for victims of THB not accommodated in State Fund shelters, including measures to facilitate their reintegration;
 - provide training on THB to social workers in order to increase their outreach capacity and enable them to effectively assist victim of trafficking;
 - facilitate the reintegration of victims of trafficking into society by providing them with vocational training and access to the labour market (paragraph 118).
- GRETA invites the Georgian authorities to ensure that the legal possibilities of granting residence permits to victims of trafficking both on the grounds of their co-operation in criminal proceedings and for humanitarian reasons are effectively applied in practice (paragraph 147).
- GRETA considers that the Georgian authorities should take additional steps to:
 - ensure that the return of victims of trafficking is conducted with due regard for their rights, safety and dignity. This means informing victims about existing programmes, protecting them from re-victimisation and re-trafficking and, in the case of children, fully respecting the principle of the best interests of the child;
 - develop international co-operation in order to ensure proper risk assessment and safe return, as well as effective reintegration of victims of THB;
 - ensure compliance with the *non-refoulement* obligation under Article 40, paragraph 4, of the Convention (paragraph 158).
- GRETA invites the Georgian authorities to carry out a review of the application of the corporate liability provisions with the view to improving their practical application to cases of THB (paragraph 168).
- GRETA considers that the scope of the non-punishment provision should be extended to cover all offences which victims of THB were compelled to commit. GRETA also considers that the Georgian authorities should develop guidance and training for police officers and prosecutors on the non-punishment provision (paragraph 171).

- GRETA invites the Georgian authorities to consider using the possibility of setting up joint investigation teams, envisaged under Article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, which entered into force in respect of Georgia on 1 May 2014 (paragraph 175).
- GRETA considers that the Georgian authorities should take the necessary measures to authorise confiscation of criminal assets of perpetrators of human trafficking registered in the names of other persons, with due regard to the rights of third persons acting in good faith (paragraph 182).
- GRETA considers that the Georgian authorities should make greater use of the measures provided for in law to protect victims and witnesses of THB, with a view to ensuring adequate protection before, during and after criminal proceedings, and increasing the rate of successful prosecutions (paragraph 191).
- GRETA invites the Georgian authorities to increase their efforts to build strategic partnerships with civil society, including with trade unions and the private sector. In this respect, GRETA refers to the UN Guiding Principles on Business and Human Rights, endorsed by the UN Human Rights Council in its resolution 17/4 of 16 June 2011 (paragraph 202).

Appendix

List of public bodies, intergovernmental organisations, non-governmental organisations and other civil society actors with which GRETA held consultations

Public bodies

- Ministry of Justice
- Ministry of the Interior
- Ministry of Labour, Health and Social Affairs
- Ministry of Education and Science
- Prosecutor General's Office
- Representatives of the judiciary
- State Fund for the Protection of and Assistance to the (Statutory) Victims of Trafficking in Human Beings
- Permanent Group on granting the status of victim of THB
- Ombudsman's Office

International organisations

- International Organization for Migration
- United Nations Children's Fund

NGOs

- Anti-Violence Network of Georgia
- Caritas Georgia
- Civil Development Agency
- Georgian Young Lawyers' Association
- Migration Centre
- "Tanadgoma"
- Women's Information Centre
- World Vision

Government's Comments

The following comments do not form part of GRETA's analysis concerning the situation in Georgia

GRETA engaged in a dialogue with the Georgian authorities on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version.

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the Georgian authorities on 15 April 2016 and invited them to submit any final comments. The comments of the authorities of Georgia, submitted on 17 May 2016, are reproduced hereafter.

**The comments of the Government of Georgia
on the GRETA report on Georgia
(Second evaluation round)
2016**

Introduction

The Government of Georgia (hereinafter – the GoG) expresses its sincere gratitude to the delegation of GRETA composed of Mr. Olafs Bruvers, Ms. Rita Theodorou and Mr. David Dolidze, Administrator in the Secretariat of the Convention, for the spirit of co-operation during the monitoring process.

While the efforts and the work done by the experts are fully appreciated, the GoG would like to make its clarifications on some of the points of the Report to shed more clarity on situation related to trafficking in human beings (hereinafter – THB) in Georgia. For this purpose, the relevant excerpts from the Report are accompanied by the GoG comments.

Emerging trends in trafficking in human beings**1) Para. 17:**

„Moreover, the amendments made to Articles 143¹ and 143² of the CC increased from one to three years the sanction of deprivation of the right to hold a public position or pursue a particular activity. Further, on 4 August 2015, Article 143³ of the CC was amended to allow for not punishing a person who knowingly uses the services of a victim of trafficking, in case the former co-operates with the investigation.“

GoG Comment:

The GoG kindly clarifies that the main aim of the amendment introduced to Article 143³ of Criminal Code of Georgia was to ensure the security of the testimonies and encourage the reporting of the crime. Two cumulative preconditions should be met to exclude the responsibility of the person: the perpetrator should report the possible THB case to the police prior to the investigation and there must not be the signs of other crime in his/her behavior.

Prevention of trafficking in human beings**b. Measures to prevent trafficking in children (Article 5)****2) Para. 64:**

“GRETA was informed that on 23 December 2015 the Co-ordination Council approved several legislative amendments aiming at creating a legal framework for providing children living and/or working in the streets with identification documents, improving the child protection referral mechanism and strengthening the role of social workers. On 15 January 2016 the Government approved these draft legislative amendments which were submitted to the Parliament. GRETA would like to be kept informed about the adoption of this legislation by the Parliament.”

GoG Comment:

Georgian authorities kindly underline that prevention of THB among minors, especially those who are living and/or working in the streets is one of the key priorities. The draft legal amendments aiming at providing homeless children with identification documents, improving the child protection referral mechanism and strengthening the role of social workers have been already adopted by the Parliament of Georgia by the second reading.

Pursuant to the draft amendments the LEPL Social Service Agency will be entitled to apply to the LEPL Public Service Agency (authorized governmental body to issue identification documents) for the registration of “homeless children”. Furthermore, according to the draft amendments social worker will be able to remove the child from the family/separate from the perpetrator in case of violence. Also, the draft amendments foresee the adoption of child referral mechanism upon the Governmental Decree, which will be adopted within 1 month after the enactment of the legal amendments.

3) Para. 65:

“The Public Service Development Agency (which fulfils the role of civil registry agency) is responsible for the registration of all children born in Georgia regardless of the nationality of the parents. To increase the geographical coverage of state services, including child registration at birth, new service centres of the Public Service Development Agency have been opened in different regions, including small towns and villages. If a child is born in a hospital, the person in charge of the medical institution must notify the agency responsible for birth registration within five days from the date of birth. GRETA was informed that children from disadvantaged social groups and ethnic minorities are often born in home settings. In most cases, neither they nor their parents have birth registration or identity documents due to several factors, among which are lack of information on local registration procedures, reluctance to deal with public bodies and lack of finances to pay for registration documents.”

GoG Comment:

The Government of Georgia acknowledges the importance of the birth registration. Therefore, institutional mechanisms are strengthening and different programs are being implemented by the Ministry of Justice of Georgia to promote the civil act registration, including in rural areas.

In particular, free of charge birth registration is accessible in all Community Centers of the Ministry of Justice of Georgia currently built in 33 villages (in addition, 11 Community Centers are being built) throughout Georgia, including in rural areas.

Furthermore, if the medical establishment does not manage to inform the LEPL Public Service Development Agency (hereinafter –PSDA) about the birth of a child, especially if the child is born in home settings, the PSDA is entitled to determine the legally significant fact of birth in 1 month after applying to the PSDA. This procedure is also free of charge.

Apart from this, it should be noted that GoG conducts different programs to promote the civil act registration of different target groups. According to the Governmental Decree N508, the following group of people have the free of charge access to the identification cards and other civil services of the PSDA: (1) socially vulnerable people who are registered in database of the Ministry of Health, Labor and Social Affairs; (2) persons with disabilities due to the military activities; (3) those who were involved in Second World War; (4) students, etc.

In addition, since 2011 the Ministry of Justice of Georgia runs temporary programs aiming at providing free of charge IDs for different target groups, including minors, IDPs, students, socially disadvantage citizens, etc. The free registration of Roma people and ethnic minorities is also included in the priorities of the Ministry and reinforced in the National Action Plan for the Civil Equality and Integration.

Additionally, the PSDA conducts information campaign on the public services to inform the general population about the services accessible to them.

d. Social, economic and other initiatives for groups vulnerable to THB (Article 5)**4) Paras. 71 and 75:**

“The major goal of the IDP Livelihood Strategy and respective Action Plan, drawn up in May 2014, is to improve socio-economic conditions of IDPs through joint efforts of state institutions, donors, international organisations, local and international NGOs, as well as the private sector. Pursuant to a decision of the Ministry of Displaced Persons in July 2014, IDP families are helped to improve their livelihood through cultivating their own land plots, thus decreasing their dependence on state assistance.”

“According to representatives of the Public Defender’s Office, Georgia is facing challenges relating to feminisation of migration and not enough is done to support women in rural areas, including among IDPs and other vulnerable groups. In general, the efforts to prevent THB in Georgia are lacking a gender-sensitive approach and gender mainstreaming.”

GoG Comment:

One of the objectives of the Livelihood Action Plan (LAP) 2016-2017 is to increase participation of IDPs in different state funded programs aimed at livelihood support: IDPs will be encouraged to engage in the Insurance and cooperative support programs of the Ministry of Agriculture (MoA) and the “Support to Micro and Small Enterprises in Georgia”, implemented by the Enterprise Development Agency. The Livelihood Agency of the Ministry of Refugees and Accommodation will provide additional subsidies to the IDP beneficiaries of Insurance Support program and support enrollment of IDPs in vocational training programs by providing enrolled IDP students with transportation and/or accommodation allowances.

Furthermore, the Livelihood Agency pays special attention to IDP women in the Livelihood Action Plan - a minimum of 40% of the beneficiaries must be women for most of its planned activities. Moreover, the planned information campaigns of the Agency will be targeted on IDP women in order to increase their participation in non-traditional occupations.

f. Measures to discourage demand (Article 6)

5) Para. 83:

“However, GRETA notes that discouraging demand for services of victims of THB for different forms of exploitation remains insufficient. In this respect, GRETA considers that the authorities should take additional practical measures to increase awareness about adverse effects of the use of services of victims of THB for labour exploitation by providing relevant guidance to labour inspectors and other relevant services.”

GoG comment:

Georgian authorities kindly note that the special questionnaires are developed for the mobile groups of the State Fund and Labor Inspectors, which include indicators of labor/sexual exploitation and forced labor. These detailed questionnaires promote the officials to better identify the possible THB cases, gain more comprehensive information about the case while interviewing the possible victim.

Measures to protect and promote the rights of victims, guaranteeing gender equality

a. Identification of victims of THB (Article 10)

6) Para. 95:

“GRETA was informed that victims of THB referred to the Permanent Group for identification are often unwilling to co-operate with law enforcement agencies and take part in criminal proceedings. In the opinion of members of the Permanent Group, more detailed instructions should be adopted for mobile groups of the State Fund as regards conducting interviews with victims and completing the identification questionnaire. Even though members of the mobile groups usually attend meetings of the Permanent Group, the latter considers that more time and more information is needed to take a well-substantiated decision concerning victim status. A possibility for the potential victim to be interviewed by the Permanent Group would also be useful to consider.”

GoG Comment:

The State Fund further developed the Questionnaire used by the mobile groups of the State fund during interviewing the potential victims of THB. The new questionnaire includes the detailed indicators of the possible crime and lets the mobile groups to reflect the history of the potential victim of THB. It also allows the Permanent Group to make the assessment of each case easier and to make the reasoned decisions whether granting the Status of Victim or not.

Furthermore, it should be mentioned that the mobile groups of the State Fund always inform the potential victims of THB about his/her right to attend the meeting of the Permanent Group to give them more detailed information about the case. In 2015 and on April, 2016 2 potential victims attended the meetings of the Permanent Group.

7) Paras. 99:

“...GRETA was informed that there had been no contacts between the police mobile inspection groups and the special mobile groups of the State Fund as regards their respective activities to identify victims of THB and that there is no co-ordination between the activities of these groups. GRETA notes that the sharing of information between the police mobile inspection groups and the special mobile groups of the State Fund should be improved and possible victims of THB who do not wish to co-operate with law enforcement authorities should be referred to the Permanent Group for identification.”

GoG Comment:

The GoG kindly notes that police mobile inspection groups and the special mobile groups of the State Fund are two separately operating bodies. The mobile groups of the State Fund involve in the case and interview the potential victims if the latter does not want to cooperate with law enforcements. This is the alternative mechanism introduced in Georgian legal system in order to give the possibility for the victims be benefited from state run services. The members of the mobile groups are obliged to keep the confidential information and do not refer the case to the investigative body unless the potential victim wishes so. On the other hand, if the potential victim expresses the interest to cooperate with law enforcement agencies, the State Fund will directly inform Ministry of Interior about the possible THB case, which will launch the investigation. As an example, the Georgian authorities invoke the case of 2015 – victim, who was identified by the State Fund Mobile Group and the Victim Status was granted by the Permanent Group, decided to cooperate with the law enforcement. The Investigation is ongoing. Accordingly, the less intensive cooperation between the mobiles groups of MoIA and State Fund is justified by the interests of the victim.

8) Para. 101:

“Representatives of NGOs and international organisations have reported recent cases of Georgian nationals allegedly exploited in Iraq and Afghanistan for forced labour and domestic servitude. A group of 22 persons was reportedly returned from Iraq. According to the authorities, investigations were initiated in these cases, but none of them led to establishing the facts of THB.”

GoG Comment:

The GoG kindly clarifies that the Permanent Group granted the status of victim to two males in 2014, 4 males and 1 female in 2015. All of them claimed to be the victims of labor exploitation in Iraq, however, they did not want to cooperate with law enforcement and did not apply to the MoIA.

As for Afghanistan, Georgian authorities note that in 2015 investigation was started on the possible fact of labor exploitation committed against Georgian citizen (young woman) in Afghanistan. The law enforcement authorities studied the case, however, the elements of human trafficking are not confirmed till now. The investigation is pending and the law enforcement authorities continue their efforts to ensure safe return of the Georgian citizen back to Georgia.

9) Para. 107:

“GRETA urges the Georgian authorities to take further steps to ensure the timely identification of victims of THB, and in particular to:

- Effectively disseminate the existing guidelines, indicators and SOPs and ensuring their application in practice;

- Increase the outreach work of the special mobile groups of the State Fund;
- Improve co-ordination between the different bodies performing victim identification, the police mobile inspection groups and other relevant entities;
- Increase efforts to proactively identify victims of trafficking for the purpose of sexual exploitation;
- Provide interpretation during police interviews of possible victims of trafficking, where necessary;
- Reconsider the current practice of interviewing possible victims of THB at their place of exploitation;
- Increase efforts to proactively identify victims of trafficking for the purpose of labour exploitation, by providing the Labour Inspectorate with the resources required and training;
- Pay increased attention to detecting victims of trafficking among foreign workers, asylum seekers and persons placed in immigration detention centers, including by providing additional training to relevant staff.”

GoG Comment:

With regard to the recommendations of the Expert Group in terms of timely and proactive identification of THB victims, Georgian authorities kindly note that:

- Existing guidelines, indicators and SOPs are widely disseminated among the key persons who are in charge of victim identification: investigators, patrol police officers, border police officers, prosecutors, labor inspectors and the mobile groups of the State Fund.
- The special trainings devoted to victim identification include the guidelines and SOPs;
- The law enforcement agencies and the labor inspectorate department closely cooperate to promote the identification of the labor exploitation cases. For this aim, the Memorandum of Understanding between the Ministry of Interior and Ministry of Health, Labor and Social Affairs.
- Georgian authorities keep separate the mobile groups of the State Fund, which are in charge of interview the potential victims who do not want to cooperate with law enforcement (*Please refer to the comment for the Para. 99*).

b. Assistance measures (Article 12)

10) Para. 118:

“While welcoming the fact that the two shelters for victims of THB are fully covered by the state budget, GRETA considers that the Georgian authorities should:

- Improve access to assistance measures for victims of THB not accommodated in State Fund shelters, including measures to facilitate their reintegration;
- Provide training on THB to social workers in order to increase their outreach capacity and enable them to effectively assist victim of trafficking;
- Facilitate the reintegration of victims of trafficking into society.”

GoG Comment:

The GoG kindly clarifies that the Georgian authorities facilitate the reintegration of victims of THB in society by providing them with vocational training and access to the labour market. For example, 6 victims (both men and women) accommodated in Batumi and Tbilisi shelters were employed in the furniture production company, in the commercial construction company and in service sector with the assistance of the State Fund; one minor accompanied to the victim graduated from the school and entered the Batumi Navigation Teaching University; one woman who was tutored in Shelter passed the national exams and entered the Faculty of law in Batumi Shota Rustaveli State University, four victims (women) attended the thick felt work and Turkish language courses.

11) Para. 128:

“Child victims of trafficking continue sharing accommodation with adults in the two State Fund shelters, as no separate accommodation is available. GRETA notes that the report of the Public Defender’s Office (see

paragraph 117) highlighted the absence of a separate program for assistance to child victims of THB. The report also noted that there were no specialized social workers and child specialists in the shelters.”

GoG Comment:

With regard to the rehabilitation programs devoted to child victims, GoG notes that on August 10, 2015 the Director of the State Fund approved the individual rehabilitation-reintegration plan for minor victims/statutory victims of human trafficking and children accompanying their parents who are the beneficiaries of the Shelter.

12) Para. 131:

“GRETA urges the Georgian authorities to improve the identification of and assistance to child victims of trafficking, in particular by:

- adopting as a matter a priority a referral mechanism for the identification and assistance of child victims of THB, taking account of the special circumstances and needs of child victims, involving child specialists and ensuring the primacy of the best interests of the child;
- ensuring that relevant actors take a proactive approach and increase their outreach work to identify child victims of THB by paying particular attention to children in care institutions, children living and working in the street, and unaccompanied minors;
- ensuring that child victims of trafficking fully benefit from the assistance measures provided for under the Convention, including appropriate accommodation and effective access to education.
- providing further training to stakeholders (police, service providers, NGOs, child protection authorities, social workers) as well as guidance for the identification of child victims of THB for the purposes of exploitation of begging and exploitation of criminal activities;
- ensuring that proper risk assessment is conducted before returning children to their parents, taking into account the best interests of the child;
- ensuring long-term monitoring of the reintegration of child victims of trafficking.”

GoG Comment:

Government of Georgia acknowledges the importance of identification of THB among minors and protecting their best interest. Number of legal and institutional measure were taken in order to promote the identification of child victims:

- Special Chapter was introduced to the Law on Combating Human Trafficking aiming at protection and assistance of the child victims;
- The interests of the child are well accommodated in the criminal proceedings when child is a statutory victim. The Criminal Procedure Code of Georgia establishes special procedures in the cases when the minor is victim or witness that also covers crimes of THB. According to these rules juvenile must be examined in the presence of his/her legal representative, or psychologist. If a juvenile is a witness or victim of sexual exploitation and sexual violence his/her examinations may be audio/video recorded with subsequent demonstration in a court session. A witness under the age of 14 years shall be told about his/her duty to tell only the truth, but shall not be warned about criminal liability for refusing to testify, giving false and substantially contradictory testimony. If a juvenile is a witness or victim of sexual exploitation and sexual violence the quantity of his/her examinations shall be minimized as possible and shall be determined only by necessities of the criminal procedure;
- Juvenile Justice Code ensures that only persons specialized in juvenile justice may administer juvenile justice procedure. If a procedural action has been performed in relation to minors by a person who is not specialized in juvenile justice, the not specialized person shall immediately notify a person specialized in juvenile justice, who shall continue the process, and the person who is not specialized in juvenile justice shall be immediately dismissed from the juvenile justice procedure;

- Draft amendments were submitted to the Parliament to provide the homeless children, who are vulnerable for THB, with identification documents and enhance the role of social workers in case of child violence;
- Children living in the state care institutions are closely monitored by the social workers of the Social Service Agency. Monitoring of the state care child residential institutions (small group homes and two larger state institutions) is also conducted by the monitoring division of Ministry of Labour, Health and Social Affairs.
- SOPs and guidelines for law enforcements include particular chapters devoted to the treatment of child victims of human trafficking and foresee detailed instructions how to treat with children who might be involved in human trafficking;
- Special mobile teams under the Ministry of Healthcare operate to identify children working and/or living in the streets and provide them with sufficient services;
- The social worker examines the case of the child and assess the risks before the child is returned to his/her family. In particular, the Social worker studies and assesses family relationships, the environment, parental skills and motivation and, if necessary, makes consultations to the family. If the risk assessment shows that the return of the child to his/her parents is in his/her best interests, the Social worker submits his/her motion to the Regional Council of the Guardianship and Trusteeship Agency, which makes the final decision.
- Special trainings are organized for the law enforcements and the mobile groups of the State Fund to develop their capacity.

Furthermore, GoG clarifies that in 2011-2015 four minor statutory victims were identified by the law enforcements.

d. Recovery and reflection period (Article 13)

13) Para. 140:

“GRETA is concerned that Article 12 of the Anti-Trafficking Law does not state the purpose of the recovery and reflection period as it is stated in the Convention, i.e. to enable possible victims of trafficking to escape the influence of the traffickers and/or to take an informed decision on co-operating with the competent authorities. According to the Convention, the recovery and reflection period should be granted when there are reasonable grounds to believe that the person concerned is a victim of trafficking, i.e. before the identification procedure has been completed. Moreover, in itself, it is not conditional on the victim’s co-operation with the investigative or prosecution authorities.”

GoG Comment:

According to the Georgian legislation the reflection period starts from the moment of applying to the State Fund, Shelter or law enforcement agency. Since the first contact of the potential victim/statutory victim of human trafficking with the law enforcements, they clarify all his/her rights including the right to reflection period. This information is provided to THB victims in writing, as well as orally during the first interview. According to the Georgian legislation the victim enjoys up to 30 days of reflection period.

As for the concern of GRETA regarding the protection and assistance services to the potential victims, GoG kindly clarifies that the status of victim or statutory victim is mandatory for State Fund to provide any services for the victim. Since the State Fund is budgetary organisation and funded by state budget, it needs legal basis to provide the services for the person. If the person is not granted victim/statutory victim status the State Fund will not be authorized to provide any assistance. That’s also the reason for having only two ways to grant the status to let the person apply for State Fund services.

h. Repatriation and return of victims of THB (Article 16)

14) Para. 153:

“While welcoming the increase in State Fund compensations granted to victims of THB, GRETA remains concerned by the absence of compensation from the perpetrators. GRETA urges the Georgian authorities to take measures to facilitate and guarantee access to compensation for victims of trafficking from the offenders, including by:

- reviewing current criminal and civil procedures regarding compensation with a view to improving their effectiveness;
- ensuring that victims of trafficking are systematically informed in a language that they can understand of the right to seek compensation in criminal and civil proceedings, and the procedures to be followed;
- enabling victims of THB to exercise their right to compensation by guaranteeing them effective access to legal assistance;
- enabling victims of trafficking to exercise their right to compensation, by building the capacity of legal practitioners to support victims to claim compensation and including compensation into existing training programs for law enforcement officials and the judiciary;
- encouraging prosecutors and judicial authorities to make full use of the legislation on the freezing and forfeiture of offenders’ assets to secure compensation to victims of THB.”

GoG Comment:

As for the victims’ right to compensation from the offenders, Georgian authorities note that national criminal and civil legislation foresee the procedures to receive the compensation from the trafficker through the court proceedings. It should be noted that all victims and statutory victims are duly informed about their right to compensation from the law enforcements and the mobile groups of the State Fund in a language that they can understand. Furthermore, the Victim and Witness Coordinators are involved in THB cases to facilitate cooperation and coordination between the statutory victim and Prosecutors. In addition, the lawyers of the State Fund assist the victims/statutory victims to submit the claim to the Court for the compensation upon their request.

They also play important role in assisting and informing about the rights of the victims/statutory victims. However, in most of the cases, either the traffickers are not identified or the victims do not want to exercise their right to compensation.

Substantive criminal law

a. Criminalisation of THB (Article 18)

15) Para. 162:

“According to the Law Enforcement Guidelines (see paragraph 135), an abuse of a position of vulnerability is understood as a situation where, due to physical or mental disability, a person is unable to understand the existing situation and has no other option but to succumb to the violence applied to him/her. GRETA notes that this interpretation of abuse of a position of vulnerability is more restrictive than that of the Convention and draw the attention of the authorities to paragraph 83 of the Explanatory Report of the Convention, which states as follows: “by abuse of a position of vulnerability is meant abuse of any situation in which the person involved has no real and acceptable alternative to submitting to the abuse. The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim’s administrative status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce.” In this respect, GRETA urges the Georgian authorities to bring the interpretation of the abuse of a position of vulnerability in full conformity with the Convention.”

GoG Comment:

According to the Anti-Trafficking Law “position of vulnerability” is defined as a state when a person is materially or otherwise dependent on another person, when a person is not able to realistically assess the existing situation due to his/her physical or mental defector when a person has no option other than to obey violence used against him/her. Thus, based on this definition, position of vulnerability is not only related to physical or mental disability, but also to the situation when he/she is dependent on other circumstances such as economically or otherwise, including socially, emotionally or family-related circumstances.

c. Non-punishment of victims of THB (Article 26)**16) Para. 171:**

“While welcoming the existence of a specific legal provision concerning the non-punishment of victims of trafficking, GRETA is concerned that this provision is applicable to a rather narrow range of possible offences which victims of THB may be compelled to commit. GRETA considers that the scope of the non-punishment provision should be extended to cover all offences which victims of THB were compelled to commit. GRETA also considers that the Georgian authorities should develop guidance and training for police officers and prosecutors on the non-punishment provision. Reference is made in this context to the recommendations on non-punishment for legislators and prosecutors contained in the paper issued by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team.”

GoG Comment:

Georgian authorities respectfully clarify that national legislation foresee general and special non-punishment provisions for the perpetrators, inducing those who are also the THB victims. As it was correctly mentioned in the Report of GRETA THB victim will be excluded from the criminal and administrative liability if the crime/misconduct (illegal crossing of state border; production, purchase or use of a forged document, seal or form; prostitution) is committed because of being victims or persons affected by human trafficking.

Furthermore, criminal legislation enshrines the general provisions for excluding the criminal liability (Chapter VIII of Criminal Code of Georgia). In Particular:

- A person, including THB victim/statutory victim, shall not be considered to have acted unlawfully if he/she commits an act provided for by CCG in self-defense, i.e. injures the wrongdoer during the unlawful infringement to protect his/her or other person's legally protected interests (Article 28 of CCG);
- A person, including THB victim/statutory victim, shall not be considered to have acted unlawfully if he/she seizes the offender to bring him/her before public authorities without exceeding the measures required for this purpose (Article 29 of CCG);
- A person, including THB victim/statutory victim, shall not be considered to have acted unlawfully if he/she commits any crime in absolute necessity, i.e. if he/she injures another person to avert the danger facing the legally protected interests of the injurer or of an any other person, provided that the danger could not have been avoided through other means and if the harm caused to these interests was of less significant than the harm averted (Article 30 of CCG);
- A person, including THB victim/statutory victim, shall not be considered to have acted unlawfully if he/she harms the legally protected interests provided the risk is justified to achieve socially useful goals (Article 31 of CCG);
- A person, including THB victim/statutory victim, shall not be considered to have acted unlawfully if he/she commits crime under such other circumstance that, although not expressly referred to in this Code, fully complies with the lawful requirements for this act (Article 32 of CCG).

Investigation, prosecution and procedural law

a. Measures relating to ensuring effective investigations (Articles 1, 27 and 29)

17) Para. 175:

“GRETA notes that so far no joint investigation teams (JIT) have been set up with the participation of Georgian law enforcement authorities for the purposes of investigating THB cases. GRETA invites the Georgian authorities to consider using this possibility envisaged under Article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, which entered into force in respect of Georgia on 1 May 2014.”

GoG Comment:

After the signature of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters by Georgia on 24 June 2013 the new provisions of the Protocol, including Article 20 (Joint investigation teams), were incorporated in the domestic legislation of Georgia. The relevant amendments to the International Cooperation in Criminal Matters Act were adopted by the Parliament on 30 May 2013 and entered into force on 24 June 2013.

International Cooperation Unit of the Chief Prosecutor’s Office, being a central authority in international judicial cooperation matters, is actively engaged in training of practitioners in the area of international judicial cooperation as well as providing them with guidance per necessity. Information on new possibilities under Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, *inter alia* setting up a joint investigative team, together with other outstanding judicial cooperation matters was provided to practitioners in the framework of training activities. 163 Prosecutors and investigators were trained in international judicial cooperation matters in 2014. Each Prosecution Service staff member participated in 2 training programs in the said area or other similar events throughout 2015.

The above-mentioned measures demonstrate that the competent authorities of Georgia have made efforts to ensure that the possibility under Article 20 of the Protocol is duly understood and considered by the practitioners. Until now the need of setting up such team was not identified in internal investigations as well as there had been no foreign request.

18) Para. 182:

“According to the authorities, no forfeitures of proceeds and instrumentalities of THB offences have been carried out so far. In the first evaluation report, GRETA urged the Georgian authorities to explore the reasons for the non-application of the possibility provided by legislation to confiscate the assets of traffickers. The authorities explained the lack of confiscation of assets of the traffickers as being due to the absence of any property or financial assets registered in their name which could have been subjected to confiscation. However, GRETA notes that traffickers can transfer their assets to other persons to be able to profit from these assets without being punished. It is therefore indispensable to overcome this obstacle, bearing in mind the importance of confiscation as a sanction against traffickers, as well as the means for compensating victims. A solution could be to modify the criminal legislation with the view to authorising confiscation of assets transferred by the traffickers to other persons, but in practical terms remaining at their effective disposal. GRETA considers that the Georgian authorities should take the necessary measures to authorise confiscation of criminal assets of perpetrators of human trafficking registered in the names of other persons, with due regard to the rights of third persons acting in good faith.”

GoG Comment:

In 2011, new Article 124¹ (Monitoring of Bank Accounts) was added to the Criminal Procedure Code of Georgia. According to the Article, if there is a presumption that an individual is committing crime with the use of bank account/accounts or there is the aim to search/identify the property subject to confiscation, prosecutor could file the motion to the court and ask the issuance of ruling on bank account monitoring. Based

on the ruling bank is obliged to provide the investigation with the information of transactions on one or several bank accounts. The given amendment may be successfully used in Trafficking cases where the monitoring of defendant's transactions is needed.

19) Para. 184:

“GRETA urges the Georgian authorities to take measures to ensure that THB cases are investigated proactively, prosecuted successfully and result in effective, proportionate and dissuasive convictions, including by:

- Ensuring, where possible, that THB charges are not re-qualified into other offences, which carry lighter penalties;
- Excluding THB from the plea bargaining procedure.”.

GoG Comment:

In 2014-2015 no investigation on criminal cases initiated under the Article 143¹-143³ was re-qualified to other provisions of Criminal Code. In every case investigation is thorough and strategically well-organized. Herewith, in such crimes no plea bargaining procedure is used.

In 2014-2015 no investigation on criminal cases initiated under the Article 143¹-143³ was re-qualified to other provisions of Criminal Code. In every case investigation is thorough and strategically well-organized. Herewith, in practice the use of plea bargaining procedure is limited on such crimes and is addressed only in exceptional circumstances. Please be informed that no plea bargaining procedure was used in 2014-2015 on Trafficking cases.