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الدورة الخامسة والخمسون

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البند 3 من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية

والاجتماعية والثقافية، بما في ذلك الحق في التنمية

رسالة خطية مقدمة من مكتب محامي الدفاع العام في جورجيا*

مذكرة من الأمانة

تتشرف الأمانة بأن تحيل إلى مجلس حقوق الإنسان البيان الخطي المقدم من مكتب محامي الدفاع العام في جورجيا**، الذي يُعمَّم وفقاً للمادة 7(ب) من النظام الداخلي للمجلس (انظر مرفق القرار 1/5) ووفقاً للترتيبات والممارسات التي وافقت عليها لجنة حقوق الإنسان في قرارها 74/2005.

* مؤسسة وطنية لحقوق الإنسان اعتمدها التحالف العالمي للمؤسسات الوطنية لتعزيز وحماية حقوق الإنسان ضمن الفئة "ألف".

** يُعمَّم بالصيغة التي ورد بها، وباللغة التي قُدم بها فقط.



الرجاء إعادة الاستعمال

بيان خطي مقدم من مكتب محامي الدفاع العام في جورجيا

Written statement of the Public Defender's Office (Ombudsman) of Georgia

Office of the Public Defender (Ombudsman) of Georgia (hereinafter PDO) oversees the observance of human rights and freedoms in Georgia. PDO was appointed as the independent mechanism for monitoring, promoting, and protecting the implementation of the UN CRPD in Georgia in 2014. The mechanism has been very active since the beginning, gathering valuable data and issuing recommendations for the better protection of the rights of persons with disabilities. PDO has been active at an international level and submitted alternative reports to the Committee on the Rights of Persons with Disabilities regarding the initial state report as well as to the list of issues following the report. PDO also reports issues related to the protection of the rights of persons with disabilities to other international frameworks, such as European Social Charter, Committee on the Rights of the Child, UN Committee on Economic, Social and Cultural Rights. Unfortunately, PDO, as the monitoring mechanism for the implementation of the UN CRPD does not have access to the occupied territories of Georgia and is unable to identify human rights violations of persons with disabilities there, which is the issue of our special concern.

There are a number of positive developments that took place in Georgia after ratification of the UN CRPD, adopting relevant legislation and, in some cases, practices for the better protection of the Rights of Persons with Disabilities. However, fundamental practical changes that will truly improve the lives of persons with disabilities living there have yet to come and the state has to take all the necessary measures to ensure equal rights for them.

Despite important steps taken by government towards harmonization of legislation with the UNCRPD and adoption of the Law of Georgia on the Rights of Persons with Disabilities, it does not provide timely and clear solution to a number of systemic issues, such as shift to biopsychosocial model of evaluation and treatment; development of community-based services, proper social protection, legal capacity, data collection and etc.¹ Despite creation of some formal procedures, meaningful participation of persons with disabilities in the decision-making process is not ensured. There is no effective mechanism or practical experience of participation of those who are at risk of multiple and intersectional discrimination, such as women with disabilities, persons with mental and intellectual disabilities, migrants, older persons and etc. Significant challenges exist in terms of the functioning of consultative councils of persons with disabilities at the local self-governing levels.² Coordination mechanism created for the implementation of the UN CRPD also needs to be strengthened in order to effectively prioritize issues and perform its duties.

Shift from medical to biopsychosocial approach to disability and ensuring accessibility are issues to be prioritized by the state as they are prerequisite for proper realization of other rights. It is important that the initiated reform of transition to the biopsychosocial system of assigning disability status is carried out in the shortest time possible. But before changing the assessment system, state must ensure that the needs of all categories of persons with disabilities are met by providing them with a decent and adequate social package.³

It is equally important that the state ensure accessibility of physical environment, information, programs and services for persons with disabilities. Until now, no national

¹ Public Defender's Statement Available at:

<https://ombudsman.ge/eng/190308061724siakhleebi/sakhalkho-damtsvelis-gantskhadeba-shezghuduli-shesadzleblobis-mkone-pirta-uflebebis-shesakheb-sakartvelos-kanontan-dakavshirebit>.

² Parliamentary Report of the Public Defender of Georgia 2022. Available at:

<https://ombudsman.ge/res/docs/2023120411211781277.pdf>.

³ Public Defender's Opinion on Social Package for Persons with Disabilities – available at:

<https://ombudsman.ge/eng/190308061724siakhleebi/sakhalkho-damtsvelis-pozitsia-shezghuduli-shesadzleblobis-mkone-pirta-sotsialuri-paketis-gazrdis-shesakheb>.

accessibility plan has been developed.⁴ Cases of discrimination have been identified in terms of access to public facilities and services, including bank branches, notary bureaus, National Forensics Bureau, etc. The persistent lack of access to information and communication tools, including websites, mobile applications, and various services, presents a significant challenge for persons with disabilities, depriving them of opportunities to participate fully in society. Liberty Bank, which provides social services for persons with disabilities, is among the services that remain largely inaccessible to them.

The monitoring of the legal capacity system⁵ revealed a number of administrative and practical barriers. These include a failure to identify the genuine needs of support recipients and accurately determine the extent of support required for the effective exercise of specific rights. Moreover, there is a lack of effective supervision, a shortage of human resources within the guardianship and state care body. The practice of implementing the reform is inconsistent with the requirements of Article 12 of the UN CRPD.

Access to justice for persons with disabilities depends on several crucial factors: identification of the act of violence, appropriate reaction, adequate protection, and engagement in the existing rehabilitation services. Profound challenges persist across all these stages within the system. Extremely low awareness among persons with disabilities and their dependence on others makes it difficult to identify cases of violence against them. It is especially problematic to detect sexual or other types of violence against women with psychosocial needs and to administer effective justice. Problems in this area include lack of physical accessibility to judicial bodies, negative and stereotypical attitude of people working in the justice system towards women/girls with disabilities, insufficient communication skills and evidence collection practices in the justice system, risk of secondary victimization, absence of segregated statistics, lack of support services, etc.⁶ The Involuntary placement and treatment of persons with mental health problems in mental health institutions is a regular practice.

Creating an environment for independent living of persons with disabilities remains a challenge. Rehabilitation Services targeted to persons with Disabilities have many flaws as well.⁷ The major issue is the insufficient geographic coverage of these services. Additionally, there are challenges in timely identifying the needs of children with disabilities and providing early intervention and proper referrals. Once individuals turn 18, the state no longer ensures continuity of service, jeopardizing the progress made with the services received and undermining their independence.

Large-scale institutions still exist where beneficiaries live segregated and isolated from the community for extended periods, often until the end of their lives. The same issue arises when deinstitutionalization is not conducted properly. The Public Defender has identified shortcomings in the recent deinstitutionalization process in Senaki concerning persons with mental health problems. The monitoring carried out by PDO⁸ revealed that the process did not align to the nature of creation of alternative services⁹ determined by the State deinstitutionalization Strategy and led to the establishment of smaller institutions. The beneficiaries are accommodated in 15 cottages each designed for 12 people, situated in the same area as in an institution, where overall 115 people live totally segregated from the community with no nearby settlement or developed social infrastructure. The territory is

⁴ Parliamentary Report of the Public Defender of Georgia 2021 - available at: <https://bit.ly/3Kn5xwk>.

⁵ Special Report of the Public Defender of Georgia "Role of Guardianship and Care Authority Implementation of Capacity Reform". 2023. Available only in Georgian: <https://ombudsman.ge/geo/190308061623angarishebi/kvlevis-prezentatsia-meurveobisa-damzrunvelobis-organos-rol-i-kmedunarianobis-reformis-gankhortsielebis-protsesshi>.

⁶ Special Report of Public Defender of Georgia "ASSESSMENT OF THE NEEDS OF WOMEN AND GIRLS WITH DISABILITIES AND THE STATE OF PROTECTION OF THEIR RIGHTS IN GEORGIA". Available at: <https://ombudsman.ge/eng/190308061623angarishebi/shezghudulisshesadzleblobis-mkone-kalebisa-da-gogoebis-sachiroebibisa-da-mati-uflebebis-datsvis-mdgomareobis-shefaseba-sakartveloshi>.

⁷ Special Report of Public Defender of Georgia, "Implementation of Social Rehabilitation and Child Care State Programmes in Georgia", 2021. Available at: <https://ombudsman.ge/res/docs/2021110513270416541.pdf>.

⁸ Monitoring was conducted in December 2023. The report is being drafted at the moment.

⁹ The service was created within the framework of the "2022 State Program of Social Rehabilitation and Childcare", as a sub-program for providing services in community organizations.

surrounded by high fences and gates are locked. The houses share a common dining area, routine, and menus. Beneficiaries are excluded from the decision-making process, including meal preparation, which fails to consider their preferences. It is important to avoid such harmful practices and create services that promote independent living.

Persons with disabilities living in the community also need more social guarantees, particularly in terms of education and employment, to ensure they are adequately prepared for independent living and fully included in society.¹⁰ Implementation of inclusive education still faces many challenges at all educational levels.

It is noteworthy, that there are still 7 resource schools (boarding schools) for children with various disabilities in the country where children live and study segregated from the society. A monitoring conducted by public Defender of Georgia in 2023 revealed that the rights of students with disabilities are not properly realized in these institutions. Among the shortcomings identified during the monitoring are: insufficient funding of resource schools, inadequate consideration of the specifics needs of the schools; shortage of qualified staff, including sign language interpreters; lack of learning materials and resources; deficiencies in the development of individual learning plans; insufficient awareness about identifying facts of violence and responding to them; challenges related to access to the physical environment; unsatisfactory hygienic conditions.

In contrast to general and professional education, the system of higher education has seen minimal systemic efforts toward the development of inclusive education. There is no standardized process for organizing inclusive higher education. Universities try to regulate inclusive education individually in various ways. Problems identified by the public Defender of Georgia during the monitoring conducted in the end of 2023¹¹ include the prevalence of stereotypes toward people with disabilities, leading many students to conceal their special educational needs. There is also a growing number of students with psychosocial disabilities and mental health issues whose needs remain unmet by universities. Additionally, students with disabilities are only partially included in the educational process - university spaces are only partially accessible to wheelchair users and those with mobility restrictions. Furthermore, educational materials, university websites, and e-learning portals are only partially accessible. Family members often assist with transportation and engage in communication with the staff to support students with disabilities.

Employment for persons with disabilities is associated with special difficulties starting from the initial stage of job announcement. These obstacles include limited information about employers and services available to youth with disabilities, stigma among employers and lack of training in using reasonable accommodations. Moreover, barriers to accessing formal education persist for people with disabilities, along with insufficient opportunities for continuing professional development. Infrastructure and recruitment websites often remain inaccessible, and working arrangements are inflexible. Data on employment promotion programs reveal a significant disparity between the number of job seekers and the actual number of actually employed individuals.¹²

Last, but not least, it is important to highlight that the PDO is actively using its mechanism to apply to the Constitutional Court. Currently, a number of complaints from the Public Defender concerning the social rights of persons with disabilities are under consideration by the Court.¹³

¹⁰ Special Report of the public Defender of Georgia: ASSESSMENT OF THE NEEDS OF WOMEN AND GIRLS WITH DISABILITIES AND THE STATE OF PROTECTION OF THEIR RIGHTS IN GEORGIA . available at: <https://ombudsman.ge/res/docs/2022032913195226234.pdf>.

¹¹ The special report on the monitoring of inclusive education on higher education level in Georgia is being currently prepared.

¹² Report of the Public Defender of Georgia "Right to work and employment of persons with disabilities". 2022 The report is available on the website: <https://bit.ly/3G16oCs>.

¹³ N1705 - available only in Georgian: <https://constcourt.ge/ka/judicial-acts?legal=13756>; N1736 – available only in Georgian: <https://constcourt.ge/ka/judicial-acts?legal=14577>; N1736 – available only in Georgian: <https://constcourt.ge/ka/judicial-acts?legal=14577>; N1755 – available only in Georgian: <https://constcourt.ge/ka/judicial-acts?legal=15019>; N1545 – available only in Georgian: <https://constcourt.ge/ka/judicial-acts?legal=10210>; N1773 – available only in Georgian: <https://constcourt.ge/ka/judicial-acts?legal=15175>.

The Public Defender has also submitted three complaints to the Constitutional Court concerning issues of involuntary treatment at mental health hospitals¹⁴ and the restriction of patients' rights there.¹⁵

It's worth noting that after admission of the Public Defender's complaint regarding the termination of social packages for persons with disabilities during their employment as public servants by the Constitutional Court, the Government of Georgia implemented PDO's recommendation and enacted changes to the decree, thereby abolishing discriminatory regulation.¹⁶

¹⁴ N1678 – available only in Georgian: <https://constcourt.ge/ka/judicial-acts?legal=13295>.

¹⁵ N1794 0 available only in Georgian: <https://constcourt.ge/ka/judicial-acts?legal=15866>.

¹⁶ Public Defender's Statement on Changes in Determination of Social Package for Persons with Disabilities; available at: <https://ombudsman.ge/eng/190308061724siakhleebi/sakhalkho-damtsvelis-gantskhadeba-shezghuduli-shesadzleblobis-mkone-pirta-sotsialuri-paketis-gansazghvrashi-tsvlilebis-shetanis-taobaze>.