

OPINION ON CERTAIN LEGISLATION AND REGULATIONS OF GEORGIA ON PREVENTING AND COMBATTING TRAFFICKING IN HUMAN BEINGS

GEORGIA

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It is based on unofficial English translations of the legislation provided by the Ministry of Justice of Georgia and translations partially commissioned by the OSCE/ODIHR.



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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Georgian legislation contains many of the most important aspects of international law, which is welcome. However, a clarification of legal concepts, such as what trafficking in human beings concretely entails to avoid confusion with other crimes, would be welcome. Furthermore, it is recommended to strengthen the measures of protection and assistance for victims of trafficking. In particular, the reflection and recovery period should be granted to victims of trafficking regardless of whether they co-operate with the law enforcement authorities or not.

In view of the above, ODIHR submits the following recommendations to further enhance the legal framework on preventing and combatting trafficking in human beings in Georgia:

- A. To exclude the reference to “purchase or sale” in the definitions of “trafficking in human beings” and “child trafficking” in Articles 143¹ para. 1 and 143² of the Criminal Code of Georgia, respectively, while ensuring that the sale or purchase of human beings and of children constitutes separate criminal offences; [para. 24]
- B. To define “abuse of position of vulnerability” in the Criminal Code in line with the Council of Europe Convention on Action against Trafficking in Human Beings (CoE Anti-Trafficking Convention) and the EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, i.e. the person concerned has no alternative but to accept the situation and succumb to abuse; [para. 25]
- C.
 1. To amend the Criminal Code in line with the criteria laid down by the UN Palermo Protocol and the CoE Anti-Trafficking Convention, both for adult victims and child victims, to specify that the prohibited acts are committed “for the purpose of exploitation” or other similar wording in Georgian implying both the knowledge that a person would be exploited or the intent that s/he be exploited; [para. 26]
 2. To ensure that the definition of “exploitation” explicitly refers to “forced labour or services” and “institutions and practices similar to slavery” as defined in international law as well as “forced begging”, “forced marriage”, “illegal adoption/surrogacy” and exploitation in criminal activities and for the purpose of trafficking for production of pornographic material; [paras. 26-28]
- D.
 1. To assess whether existing legislation and policies are effective to discourage demand that fosters exploitation that in turn leads to trafficking and if not, consider other legislative options together with other non-legislative tools within state-funded programs and/or organized public health, education and awareness campaigns to discourage demand; [para. 35]
 2. To clarify the respective scope of Articles 143¹ (and 143²) and 253 of the Criminal Code to ensure that they do not overlap and that victims are not erroneously omitted from being classified as victims of trafficking, while ensuring that punishments are applied consistently; [paras. 33-34]
- E. To consider broadening the scope of measures used to curb demand fostering exploitation that leads to trafficking, whether labour or sexual exploitation, thereby more intensively targeting the industries and corporations involved in

the global supply chains as well as strengthening and protecting the rights of workers, including migrant ones, and ensuring they have access to prompt, effective and affordable remedies for exploitation and abuse, regardless of their legal status; [paras. 45-48]

- F. To include in the Law on Combatting Trafficking that a reflection and recovery period be granted regardless of whether the victim eventually chooses to cooperate with the authorities in criminal proceedings for a period of up to 90 days; [paras. 50-53]
- G.
 - 1. To include in the Law on Combatting Trafficking that the principle of non-punishment includes all criminal activities which victims have been compelled to commit as a direct consequence of being subjected to any of the acts i.e., offences concerning trafficking in human beings;
 - 2. To extend legal provisions on non-punishment to all victims of trafficking regardless of citizenship; and
 - 3. To include specific provisions on non-punishment of child victims of trafficking, including that consent to exploitation is irrelevant; [paras. 61-65]
- H.
 - 1. To include trafficking in children in the document “Child Protection Referral Procedures” in line with the UN Palermo Protocol; [para. 85]
 - 2. To amend legal provisions to permit the development and use of the Barnahus model for all child victims of crime; [para. 87]
- I. To include in the Guidelines on the Identification of Victims of Trafficking in Human Beings for State Border Officials of Georgia (Working at Border Crossing Points and Customs Crossing Points, Land and Maritime Border) provisions on:
 - The obligation to provide information to presumed victims about their rights to assistance and reflection and recovery period;
 - Ensuring that child victims are accompanied by a legal representative;
 - The screening of deportees to detect possible victims of trafficking; and
 - Denial of entry/revocation of visas for persons implicated in trafficking in human beings in line with Article 11.5 of the UN Palermo Protocol; [paras. 117-124]
- J. To include in the Standard Operating Procedures for Investigation and Mobile Groups provisions on:
 - Risk assessment prior to raids on venues where victims of trafficking may likely be located;
 - The principle of non-punishment; and
 - The rights to assistance to victims of trafficking and the reflection and recovery period; [paras.125-127] and
- K. To include in Georgian legislation and regulations an obligation for the State to enhance protection from trafficking on online platforms; and provide for increased responsibility of internet service providers to prevent trafficking. [paras.137-144]

These and additional Recommendations, are included throughout the text of this Opinion, highlighted in bold.

As part of its mandate to assist OSCE participating States in implementing OSCE human dimension commitments, ODIHR, upon request, conducts reviews of draft and existing legislation to assess their compliance with international human rights standards and OSCE commitments. It provides concrete recommendations for improvement.

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- Law on Combating Human Trafficking, 28 April 2006;
- Law on Combatting Crimes Against Sexual Freedoms and Sexual Inviolability, 17 March 2020, N5749-IIS;
- Decree N. 284 of the Government of Georgia on Unified Standards and Rules on Identification of the Victims of Trafficking in Human Beings, 11 April 2014;
- Standard Operative Procedures (SOPs) for Investigators, Operative Agents and Members of Mobile Groups to Reveal the Potential Victims of trafficking in Persons, Minister of Internal Affairs of Georgia Order N. 54 of 23 January 2015;
- Guidelines on the Identification of Victims of Trafficking in Human Beings for State Border Officials of Georgia (Working at Border Crossings and Customs Crossing Points, Land and Marine Border, 19 December 2017);
- Composition and Rules of Procedure of the Permanent Group Established by the Interagency Coordination Council on Implementation of Measures Against Trafficking in Human Beings, 14 November 2014, as amended 24 December 2018;
- Child Protection Referral Procedures [date not in document]; and
- Criminal Code of Georgia.

I. INTRODUCTION

1. On 4 December 2020, the Ministry of Justice of Georgia requested a legal review from the OSCE Office for Democratic Institutions and Human Rights (ODIHR) with the aim to further strengthen national anti-trafficking efforts. The request came with an attachment outlining “*the needs of Georgia in the Field of Combatting Trafficking in Human Beings*”.
2. The needs outlined and referred to above, are articulated in four major areas: (i) an analysis of the National Referral Mechanisms (hereinafter “NRMs”) on Identification of Victims of Human Trafficking; (ii) Human Trafficking through technology and online platforms; (iii) Training of Trainers on Trafficking and finally; (iv) sharing of experiences on investigation and prosecution of the crime and of the use of services by the victim of human trafficking. The NRM assessment and Training of Trainers will be dealt with separate documents.
3. On 23 December 2020, ODIHR responded to this request, confirming the Office’s readiness to prepare a legal opinion on the compliance of several pieces of legislation against trafficking in human beings with international human rights standards and OSCE human dimension commitments. The request is also part of ODIHR’s ongoing co-operation with the authorities of Georgia on combatting trafficking in human beings, since 2005,¹ and previously, also through the then OSCE Mission to Georgia.
4. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE commitments in the field of combatting trafficking in human beings.² Resources from the Office of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings were consulted during the process of preparing this legal analysis.

II. SCOPE OF THE OPINION

5. The scope of this Opinion covers only the legislation and regulations provided to ODIHR by the Ministry of Justice of Georgia. Thus the Opinion is limited and does not constitute a full and comprehensive review of the entire legal and institutional framework on preventing and combating human trafficking in Georgia.
6. The pieces of legislation provided in connection with the request are as follows:
 - Law on Combatting Human Trafficking of 28 April 2006;
 - Law on Combatting Crimes Against Sexual Freedoms and Sexual Inviolability, 17 March 2020, N5749-IIS;

1 ODIHR, [Note on the Draft Law of Georgia on Prevention and Combating of Trafficking in Persons and on the Protection, Assistance and Rehabilitation of the Victims of Trafficking in Persons](#) (2005), Opinion-Nr: TRAFF – GEO/024/2005(MASz); and Note on the Package of Draft Amendments to the Laws of Georgia on Regulation of the Activities of Tourist, Resort, Advertising and Employment Agencies and Operators for the Purpose of Combating Trafficking in Human Beings (2006), Opinion-Nr: TRAFF – GEO/053/2006(MASz), done on the request of the then OSCE Mission to Georgia.

2 [Annex to OSCE Ministerial Council Decision 2/03 on Combatting Trafficking in Human Beings](#)

- Decree N. 284 of the Government of Georgia on Unified Standards and Rules on Identification of the Victims of Trafficking in Human Beings, 11 April 2014;
 - Standard Operative Procedures (SOPs) for Investigators, Operative Agents and Members of Mobile Groups to Reveal the Potential Victims of trafficking in Persons, Minister of Internal Affairs of Georgia, Order N. 54 of 23 January 2015;
 - Guidelines on the Identification of Victims of Trafficking in Human Beings for State Border Officials of Georgia (Working at Border Crossings and Customs Crossing Points, Land and Marine Border, 19 December 2017);
 - Composition and Rules of Procedure of the Permanent Group Established by the Interagency Coordination Council on Implementation of Measures Against Trafficking in Human Beings, 14 November 2014, as amended 24 December 2018;
 - Child Protection Referral Procedures [date not in document]; and
 - Criminal Code of Georgia.
7. The Opinion raises key issues and provides indications of areas for revision. In the interests of conciseness, it focuses specifically on provisions which require amendment or improvement. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. Any country example should always be approached with caution since it cannot necessarily be replicated exactly in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.
8. The same may be said with regards to “model legislation” which will be referred to throughout the text. The United Nations Office on Drugs and Crime (UNODC) has developed model legislative provisions³ (UNODC 2020 Model) in this field, which may serve as guidance to legislators, rather than suggest a straightforward blueprint for laws. The CIS (Commonwealth of Independent States) model law⁴ referred to herein can be referred to as guidance, even if Georgia is not a part of the CIS
9. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women⁵ (hereinafter “CEDAW”) and the 2004 OSCE Action Plan for the Promotion of Gender Equality⁶ and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.
10. This Opinion is based on an unofficial English translation of the provided legislation, for the most part provided by the Ministry of Justice of Georgia and partially commissioned by ODIHR. Errors from translation may result. The Opinion is translated into Georgian, but the English version shall prevail in case of inconsistencies between these versions of the Opinion.

3 [UNODC: Model Legislative Provision Against Trafficking in Persons](#), Vienna 2020.

4 [CIS Model Law About Counteraction to Human Trafficking](#), accepted at the thirtieth plenary session of Inter-parliamentary Assembly of the State Parties of the CIS (The resolution of April 3, 2008 No. 30-11).

5 [UN Convention on the Elimination of All Forms of Discrimination against Women](#) (hereinafter “CEDAW”), adopted by General Assembly Resolution 34/180 on 18 December 1979. [Georgia acceded to this Convention on 26 October 1994](#).

6 See [OSCE Action Plan for the Promotion of Gender Equality](#), adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.

11. In view of the above, ODIHR would like to stress that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Georgia in the future.

III. ANALYSIS AND RECOMMENDATIONS

1. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

12. The commitment to combat trafficking in human beings has been undertaken by states at a number of levels and is reflected in various human rights instruments and documents, notably at the international level. This includes the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children of 2000 to the UN Convention against Transnational Organized Crime⁷ (hereinafter “the UN Palermo Protocol”). The Conference of the Parties to the UN Convention against Transnational Organized Crime established a review mechanism to the convention during its meeting in Vienna from 15 to 19 October 2018.⁸
13. At the regional level, the Council of Europe Convention on Action against Trafficking in Human Beings⁹ (hereinafter “the CoE Anti-Trafficking Convention”). Article 1 para. 2 of the CoE Anti-Trafficking Convention sets up a monitoring mechanism to ensure the effective implementation of the Convention by all states parties to the Convention. Chapter VII of the CoE Anti-Trafficking Convention specifies the details of this two-pillar monitoring system, which includes a technical body (Group of Experts on Action against Trafficking in Human Beings (hereinafter, GRETA)) and a political body (Committee of the Parties, Article 37). GRETA has published three reports on the implementation of the CoE Anti-Trafficking Convention in Georgia, issuing its final reports in 2016 and 2021.¹⁰ The Recommendations by the Committee of the Parties were adopted on 4 June 2021.¹¹
14. Importantly, the European Court of Human Rights has also ruled that human trafficking as a crime falls under the umbrella of violations prohibited in Article 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).¹²
15. As an OSCE participating State, Georgia has also committed to follow the main principles of the OSCE Action Plan to Combat Trafficking in Human Beings (hereinafter

7 [Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children](#), (hereinafter the “Palermo Protocol”) supplementing the United Nations Convention against Transnational Organized Crime. Protocol adopted by GA resolution 55/25 of 15 November 2000.

8 [Review Mechanism of the United Nations Convention against Transnational Organized Crime](#) (UNTOC).

9 [Council of Europe Convention on Action against Trafficking in Human Beings](#), adopted on 16 May 2005, [ratified by Georgia on 14 March 2007](#).

10 [GRETA \(2016\)8: Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Georgia](#), published on 3 June 2016; and [GRETA\(2021\)02 Evaluation Report Georgia](#), published on 16 March 2021.

11 [Recommendation CP/Rec\(2021\)03 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Georgia](#), adopted on 4 June 2021. Georgia has at the time of writing not responded to these recommendations, but responded to previous recommendations in the second evaluation round in [CP\(2017\)18 Report submitted by the authorities of Georgia on measures taken to comply with Committee of the Parties Recommendation CP/Rec\(2016\)05 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings](#), received 23 May 2017.

12 [European Court of Human Rights, Rantsev v. Cyprus and Russia](#), (Application no. 25965/04), judgment 7 January 2010, para. 282. Georgia ratified the ECHR on 20 May 1999.

“the OSCE Action Plan”).¹³ The OSCE Action Plan, while explicitly referring to the UN Palermo Protocol, also recommends States to develop and implement “National Referral Mechanisms”, defined as co-operative, national framework through which governments fulfil their obligations to protect and promote the human rights of victims of trafficking, especially children, coordinating their efforts in a strategic partnership with civil society organizations, survivor leaders and the private sector.¹⁴

16. In addition to the OSCE Action Plan, and since then, OSCE participating States have adopted several OSCE decisions that will be referred to throughout the document.¹⁵
17. Georgia has recently, on 3 March 2022, formally applied for membership of the European Union (EU).¹⁶ Therefore, for the sake of completeness, the relevant EU legal framework will be referenced as a comparative legal analysis tool, in particular the EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (hereinafter, the “EU Anti-Trafficking Directive”).¹⁷
18. International and European conventions aim to offer a “minimum standard” of protection of human rights,¹⁸ that is, they provide the “floor” rather than the “ceiling” for states. States are free and indeed encouraged to go above the minimum benchmark to the extent possible.

2. BACKGROUND AND NATIONAL LEGAL FRAMEWORK

19. This Opinion aims to outline those legislative provisions which would benefit from future revision, in particular in terms of the assistance that should be provided to identify victims of trafficking, or presumed victims of trafficking. Where possible, examples are provided from other OSCE participating States to illustrate better how such provisions may work in practice.

13 OSCE, [Decision No. 2/03 Combating Trafficking In Human Beings, MC.DEC/2/03, 2 December 2003](#). See also [Report by the Special Representative and Co-ordinator for Combating Trafficking in Human Beings following the Country Visit to Georgia 17-19 June 2019, 6 May 2020](#).

14 ODIHR, [National Referral Mechanisms – A Practical Handbook](#), 2nd edition, p. 15.

15 OSCE, [Decision No. 1 Enhancing The OSCE’s Efforts To Combat Trafficking In Human Beings, MC\(8\).DEC/1, 28 November 2000; Decision No. 6 of the Ministerial Council MC\(9\).DEC/6, 4 December 2001; Decision of the Ministerial Council No. 426 Trafficking in Human Beings, 12 July 2001; Decision No. 13/04 The Special Needs For Child Victims Of Trafficking For Protection And Assistance MC.DEC/13/04, 7 December 2004; Decision No. 557/Rev.1* OSCE Action Plan To Combat Trafficking In Human Beings, PC.DEC/557/Rev.1, 7 July 2005; Decision No. 685 Addendum to The OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance, 7 July 2005; Decision No. 13/05 Combating Trafficking In Human Beings, MC.DEC/13/05, 6 December 2005; Decision No. 14/06 Enhancing Efforts To Combat Trafficking In Human Beings, Including For Labour Exploitation, Through A Comprehensive And Proactive Approach, MC.DEC/14/06, 5 December 2006; Decision No. 8/07 Combating Trafficking In Human Beings For Labour Exploitation, MC.DEC/8/07, 30 November 2007; Decision No. 5/08 Enhancing Criminal Justice Responses To Trafficking In Human Beings Through A Comprehensive Approach, MC.DEC/5/08, 5 December 2008; Decision No. 1107 Addendum To The OSCE Action Plan To Combat Trafficking In Human Beings: One Decade Later, PC.DEC/1107/Corr.1, 6 December 2013; Decision No.15/06 On The Combatting Of Sexual Exploitation Of Children, 5 December 2006; Supplementary Human Dimension Meeting On Combatting Sexual Exploitation Of Children, 18-19 October 2007, Final Report; - Child Trafficking: From Protection To Prevention, 28-29 May 2018, Final Report; -Decision No.9/07 On Combatting Sexual Exploitation Of Children On The Internet, 30 November 2007; Decision No. 7/17 Strengthening Efforts To Combat All Forms Of Child Trafficking, Including For Sexual Exploitation, As Well As Other Forms Of Sexual Exploitation Of Children, MC.DEC/7/17, 8 December 2017; Decision No. 6/17 Strengthening Efforts To Prevent Trafficking In Human Beings, MC.DEC/6/17, 8 December 2017; Decision No. 6/18 Strengthening Efforts To Prevent And Combat Child Trafficking, Including Of Unaccompanied Minors, MC.DEC/6/18, 7 December 2018.](#)

16 Website of Prime Minister of Georgia: [Signing of Georgia’s Application for EU Membership 3 March 2022](#), see also [Press Release of 17 June 2022 on the EU Commission on the Recommendation to the European Council to grant Ukraine, Moldova and Georgia’s candidate status](#), and the [Press Release of 23 June 2022 of the European Council](#) expressing readiness to grant applicant status to Georgia.

17 [EU Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims](#). Other relevant EU instruments include: [Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA](#) (hereinafter “The Victims’ Directive”), and [Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography](#).

18 E. Bjorge, “National supreme courts and the development of the ECHR rights”, *ICON*, vol. 9, 2011, n° 1, p. 22.

3. DEFINITIONS

20. Under Article 3 para. a) of the UN Palermo Protocol and Article 4 para. a) of the CoE Anti-Trafficking Convention, trafficking in persons/human beings is “*the recruitment, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation*”. Exploitation shall include, at a minimum, “*the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs*”. A similar definition is also included in the OSCE Action Plan.

3.1 Definition of Trafficking in Georgian Legislation

3.1.1. The Criminal Code of Georgia

21. Article 143¹ para. 1 of the Criminal Code of Georgia (the “Criminal Code”) defines human trafficking as the “[p]urchase 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”. A note under this Article explains the meaning of “exploitation”.¹⁹
22. According to international standards, trafficking requires three constitutive elements i.e., an act (action), means (how it is done) and exploitative purpose (why it is done). In the Criminal Code, the “purchase” or the “sale” is included as one of the actions of trafficking, although such act could be considered a separate criminal offence, is not dependent on means or exploitative purpose, and there could be more clarity on action, which could include physical movement such as transportation, transfer, harbouring or receipt.²⁰ Furthermore online recruitment has been recognized as actions of trafficking, and physical movement is therefore not strictly needed.²¹ There is no need to include such a formulation in anti-trafficking legislation since this may confuse the constitutive elements required to commit the crime. The argument put forth by the UN Special Rapporteur on the sale of children, child prostitution and Child Sexual Abuse Material and Exploitation Material is that mixing sale and trafficking will divert most efforts

19 The note refers to: 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.

20 UNODC, [Key elements of human trafficking factsheet](#).

21 [Online and technology -facilitated trafficking in human beings](#), GRETA, March 2022.

towards trafficking while other criminal offences involving sexual exploitation or sale of human beings are overlooked, is applicable in this case as well.²²

23. The anti-trafficking response was strengthened by adopted legislative changes in the Criminal Code, which came into force in June 2018. Procuring was introduced as a crime under Article 254 par 1 of the Criminal Code, and engagement in prostitution (Article 253 of the Criminal Code) and engagement of a child in making and selling of pornographic images (Article 255¹ of the Criminal Code) were amended. The amendments were aimed, *inter alia*, at ensuring proper qualification of THB offences and facilitating the collection of evidence. They were also reflected in the Criminal Procedural Code in the part dedicated to collection of evidence. Thus covert investigative actions were made possible also for the new crime of procuring.²³
24. Similarly, Article 143² of the Criminal Code, which defines “child trafficking”, also includes the wording “purchase or sale” of children. As outlined above, it is not necessary or indeed could prove confusing to include such formulation. Moreover, the Committee on the Rights of the Child specifically emphasizes the importance of distinguishing the “sale of children” from “trafficking in children” since the former always involves some form of commercial transaction, which trafficking in children does not require (for example, trafficking of a child by means of deceit, force or abduction, according to Article 3 (c) of the Palermo Protocol.²⁴ Moreover, trafficking always has the intended purpose of exploiting the child, which is not a required constitutive element for the sale of children, although the effect of the sale can still be exploitative.²⁵

RECOMMENDATION A

- To exclude the reference to “purchase or sale” in the definitions of “trafficking in human beings” and “child trafficking” in Articles 143¹ para. 1 and 143² of the Criminal Code of Georgia, respectively, while ensuring that the sale or purchase of human beings and of children constitutes separate criminal offences.

25. Another important aspect which should be revised is the understanding of the notion “abuse of position of vulnerability”, as pointed out in the 2016 Report of GRETA.²⁶ In Georgia, 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*”.²⁷ The CoE Anti-Trafficking Convention applies a wider definition of “abuse of vulnerability” as this is meant to entail “*any situation in which the person involved has no real and acceptable alternative to submitting to the abuse*”,²⁸ with the vulnerability

22 For example, [UN Special Rapporteur on the sale of children, child prostitution and child pornography, 2019 Annual Report on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material \(A/HRC/43/40\)](#), para. 89.

23 *Op. cit.* footnote 10 (GRETA(2021)02 Evaluation Report Georgia), para. 13.

24 See UN Committee on the Rights of the Child, [Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography](#), 10 September 2019, para. 15.

25 *Ibid.*

26 [Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Georgia, Second Evaluation round GRETA\(2016\)8](#).

27 *Ibid.* para. 162.

28 [Explanatory Report of the CoE Trafficking Convention](#), para. 83.

being of any kind, whether physical, psychological, emotional, family-related, social or economic.²⁹ Article 2 par 2 of the EU Anti-trafficking Directive defines a “position of vulnerability” as “*a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.*” Hence, the interpretation of the Georgian notion of “abuse of position of vulnerability” is more restrictive than the one contained in the CoE Anti-Trafficking Convention and in the EU Anti-trafficking Directive. A more compliant definition can only be found in the Law on Combatting Trafficking of Georgia of 2006³⁰ (“Combatting Law”), in Article 3 para. c), which refers to a “helpless state”. **It is therefore recommended to define in the Criminal Code the meaning of “abuse of position of vulnerability” in full conformity with the CoE Anti-Trafficking Convention and the EU Anti-trafficking Directive.**³¹

RECOMMENDATION B

To define “*abuse of position of vulnerability*” in the Criminal Code in line with the CoE Trafficking Convention and the EU Anti-trafficking Directive, i.e. the person concerned has no alternative but to accept the situation and succumb to abuse.

26. Further, the definitions of “*trafficking in human beings*” and “*child trafficking*” in Articles 143¹ and 143² of the Criminal Code respectively simply refer to the prohibited conducts being committed “for exploitation”. It is not clear whether this refers to the knowledge that the victims would be exploited or with the intent that they be exploited. This is important to the extent that the offence does not require exploitation to have taken place but that the intent to exploit is enough for the offence to have been committed. In this respect, it is generally recommended to use the phrase “for the purpose of exploitation”, which can mean either knowledge or intention and does not require actual exploitation.³² **It is therefore recommended to supplement the Criminal Code accordingly.**
27. While it is welcome that a definition of “exploitation” is included in a Note under Article 143¹ of the Criminal Code, this term is defined in a rather unique way. According to the UN Palermo Protocol and the CoE Anti-Trafficking Convention, exploitation shall include, at a minimum, “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.³³ A similar definition is also included in the OSCE Action Plan. However, the definition in the Criminal Code does not use terms that are defined under international law, which may have been simpler. Even if there is a definition of “modern slavery” in the Criminal code, the reference/link to “forced labour”

²⁹ *Ibid.*

³⁰ Law No. 2944-IS of 28 April 2006.

³¹ It is noteworthy that the Report Concerning Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Georgia, Third evaluation round GRETA(2021)02, para. 160, noted that “*the Georgian authorities have stated that as of 1 January 2021, the definition of the “abuse of a position of vulnerability” will be changed, and the conditions will be as follows: where a person is materially or otherwise dependent on another person, or where a person with a disability cannot realistically assess the existing situation, or where a person has no option other than to give in to violence used against him/her*”.

³² UNODC, “[Legislative Guide for The Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime](#)”, para. 118, which states: “*The third aspect of the definition of trafficking in persons (the exploitative purpose) provides the basis for establishing the fault element in domestic criminal law. As a mens rea standard in criminal law, the phrase “for the purpose of” can mean either knowledge or intention. This means that evidence that the accused engaged in the prohibited conduct with either the intention that the victim be exploited or knowledge that they would be exploited will be sufficient to establish the offence. This means that the accused need not be the one who exploits the victim. It also means that actual exploitation is not required to establish the offence of trafficking in persons, but rather a purpose to exploit. Trafficking in persons is a crime of specific or special intent (dolus specialis)*”.

³³ See Article 3(a) of the [Protocol To Prevent, Suppress And Punish Trafficking In Persons Supplementing The UN Convention Against Transnational Organized Crime](#).

could be clearer, as defined in Article 2 par 1 of the Convention concerning Forced or Compulsory Labour of 1930 (No. 29)³⁴ to mean “*all work or service which is exacted from any person under the menace of any penalty, and for which the said person has not offered himself voluntarily*” or to “*institutions and practices similar to slavery*”, which are also defined in international law, including debt bondage, serfdom and servile forms of marriage.³⁵

28. Concerning “child exploitation”, the most common forms in Georgia are forced begging and sexual and labour exploitation. Children can be forced to beg by their parents, siblings, guardians, or criminal gangs. Child beggars work long hours and are often abused. Among victims of forced begging are migrant children who come from impoverished areas.³⁶ Although Article 171 par 1 of the Criminal Code recognizes child begging as “engagement of minors in anti-social activities”, the term is unclear and it is therefore recommended for forced begging to explicitly be included in the types of exploitations defined in the Criminal Code. Moreover, no additional exploitative purposes are listed such as forced marriage or related to illegal adoption/surrogacy, which however appear to be rather common forms of exploitation in Georgia. Although the GRETA 2016 Report³⁷ notes that the authorities informed that such exploitative purposes would be covered by existing legislation, for instance under the more general formulation “engagement in criminal activities”, it is generally recommended to explicitly mention them for the purposes of effective prosecution.
29. In light of the above, **it is important to revisit the definition of “exploitation” provided in the Criminal Code to better reflect the broad meaning of “exploitation” contained in the UN Palermo Protocol and the CoE Anti-Trafficking Convention.**

RECOMMENDATION C

1. To amend the Criminal Code in line with the criteria laid down by the UN Palermo Protocol and the CoE Anti-Trafficking Convention, both for adult victims and child victims, to specify that the prohibited acts are committed “for the purpose of exploitation” or other similar wording in Georgian implying both the knowledge that a person would be exploited or the intent that s/he be exploited.
2. To review the legislation in order to ensure that the definition of “exploitation” explicitly refers to “forced labour or services” and “institutions and practices similar to slavery” as defined in international law as well as “forced begging”, “forced marriage” and “illegal adoption/surrogacy” as well as exploitation in criminal activities and for the purpose of trafficking for production of pornographic material.

30. Article 143¹ (Note 1. e) of the Georgian Criminal Code includes a novel provision attempting to define “modern day slavery” as the “*creation of such conditions when the*

34 [C029 - Forced Labour Convention, 1930 \(No. 29\), ratified by Georgia on 22 June 1993.](#)

35 See *op. cit.* footnote 32 ([UNODC, Legislative Guide For The Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women and Children, Supplementing The United Nations Convention Against Transnational Organized Crime \(2020\)](#)), paras. 133-138. See also Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), even though Georgia has not signed nor ratified this Convention.

36 [IOM Georgia: Labour Exploitation of Children in Georgia in the Spotlight](#) (2021).

37 *Op. cit.* footnote 10, para. 161.

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.”

31. It should be noted that the term “modern day slavery” is not defined in international law and is sometimes used as an umbrella formulation to cover a set of specific legal concepts including forced labour, debt bondage, forced marriage, other slavery and slavery like practices, and human trafficking.³⁸ Moreover, the above definition may somewhat overlap with other legal concepts. For instance, some of the listed factors denoting dependence constitute indicators of forced labour situations³⁹ or may indicate the existence of an abuse of a position of vulnerability. The legal drafter should review the definition of so-called “modern day slavery” in light of other legal concepts to avoid potential overlaps which may be detrimental to the accessibility and foreseeability of the legislation, and therefore contrary to the principle of legal certainty.
32. It is positive that the Criminal Code includes aggravating circumstances where the crime of trafficking is committed as a group (Criminal Code Article 143¹, point (4) (a) and Article 143², point 4(a)). Moreover, according to Article 5 par 2 of the Palermo Protocol, attempting to commit acts of THB shall also be a criminal offence, as shall aiding and abetting, or “organizing or directing” other persons to commit such acts. Pursuant to Article 12 of the Criminal Code, since the offence of trafficking in human beings is subject to a sentence exceeding 10 years of imprisonment, it qualifies as a “particularly serious crime”, the preparation of which is also criminalized (Article 18 par 2 of the Criminal Code). In addition, read together with Article 19 of the Criminal Code on Attempted Crime and Articles 23-25 of the Criminal Code on Complicity, the attempt to commit the crime of trafficking, both as principal and accomplice, is punishable, which is in line with international standards.⁴⁰
33. Article 143³ of the Criminal Code moves on to criminalize the use of services of statutory victims of human trafficking “knowingly”. This means that, the use of labour or sexual services or indeed organ removal, would be penalized when the person who used the services was aware that the victim was in a situation of exploitation as provided in Articles 143¹ and 143² of the Criminal Code. This reflects the measures mentioned in Article 19 of the CoE Anti-Trafficking Convention, which provides that States Parties “*shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings*”. Article 18(4) of the EU Directive 2011/36/EU similarly states that: “[i]n order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider taking measures to establish as a criminal offence the use

38 See e.g., ILO, [Global Estimates of Modern Slavery](#) (2017), p. 9.

39 For example, as may be found in the [ILO Forced Labour Indicators \(2012\)](#).

40 *Op. cit.* footnote 7, Palermo Protocol, Article 5 (2) (a) and (b). See also *op. cit.* footnote 32, para. 171.

of services which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2.”

34. While this legislative choice is relatively widespread in the OSCE region,⁴¹ proving that the sex buyer had prior knowledge that the person engaged in prostitution was a victim of human trafficking may be a difficult task. , As noted by the OSCE Special Representative, such provisions “*criminalize only the demand for trafficking —i.e., those who know that the person in prostitution is a trafficking victim and still proceed with the transaction [... i.e.,] only a subset of the broader concept of demand articulated in Article 9(5) of the Palermo Protocol, which obliges States to discourage the demand that fosters exploitation that leads to trafficking.*”⁴² It has thus been argued that criminalizing the knowing use of services from victims of trafficking in human beings, without taking any additional steps to discourage the demand that fosters exploitation which leads to trafficking, may be insufficient to meet the standard set out by Article 9 of the Palermo Protocol. Other countries have chosen a “strict liability” approach, thereby removing the requirement to prove prior knowledge of the statutes of the person in prostitution as a victim of trafficking in human beings, thereby focusing more on the status of the victim⁴³ and based on the assumption that this should be leading to a reduction of the overall market for paid sexual services, and thereby should ultimately discourage demand.⁴⁴ Another method has been to criminalize the use of sexual services, irrespective of the status of the person in prostitution as a victim of trafficking in human beings or otherwise. When partnered with the decriminalization of the selling of sexual services, this criminal justice framework is commonly referred to as the ‘Nordic’ or Equality model applied in OSCE participating States such as France, Ireland, Iceland, Canada, Northern Ireland, Norway, and Sweden. As with any criminal justice measures, all of these options must be exercised ethically, responsibly and with due consideration for the vulnerabilities of those selling sex, whether trafficking victims or otherwise.
35. Criminal justice measures are however only one of the tools to discourage demand as outlined in the Palermo Protocol, with social, educational and cultural measures all within the scope of action for States. Hence, it makes it all the more important to employ a combination of various preventative measures (see below in Section 4 on measures to curb trafficking in human beings).
36. In light of the foregoing, **the legal drafters should assess, in light of the Georgian context and the above-mentioned considerations, whether existing legislation and policies are effective to discourage demand that fosters exploitation that in turn leads to trafficking and if not, consider other legislative options together with other non-legislative tools within state-funded programs and/or organized public health, education and awareness campaigns to discourage demand.**
37. Article 253 of the Criminal Code includes a provision on engagement in prostitution using threat, blackmail, deception, violence and threat of violence. The abovementioned GRETA Reports of 2016 and 2021 both noted the low number of convictions for human trafficking and the risk of requalification as other offences which carry lighter penalties.⁴⁵ It is possible that this is due to Article 253 being equated to or confused with a trafficking offence in Article 143¹ and thus allowing for incorrect qualification of the offences –

41 About 40 per cent of the OSCE participating States, see OSCE Special Representative, “[Discouraging the demand that fosters trafficking for the purpose of sexual exploitation](#)” (2021), p. 36.

42 *Ibid.*

43 *Ibid.*, (2021 OSCE Special Representative “[Discouraging the demand that fosters trafficking for the purpose of sexual exploitation](#)”), p. 39.

44 See e.g., [Report on the Special Rapporteur on trafficking in persons, especially women and children](#), 20 February 2006, E/CN.4/2006/62, para. 88.

45 See *op. cit.*, footnote 10 (GRETA 2021 Report), para. 81; and *op. cit.*, footnote 27 (GRETA 2016 Report), paras. 183-184.

resulting in victims not being correctly identified, assisted or compensated as trafficking victims. There is also an important difference in the range of sanctions applied under these offences (Criminal Code Article 143¹ para. 1 (7-12 years), Criminal Code Article 253 para. 1, fine or imprisonment for two to five years). **It is recommended that the respective scope of these articles be clarified so as to ensure that victims are not omitted from being classified as victims of trafficking.**

38. Similarly, Article 253 par 5 includes a provision relating to minors with sanctions of 15-20 years or life imprisonment whereas the same type of offence under Article 143² (using coercion and deception in relation to a minor and so qualifying for additional sanctions) is subject to sanctions of 14-17 years of imprisonment. **It is therefore recommended to delineate more clearly the respective scopes of such criminal offences to avoid overlap and substantiate the discrepancy in the sanctions.**

RECOMMENDATION D

1. To assess whether existing legislation and policies are effective to discourage demand that fosters exploitation that in turn leads to trafficking and if not, consider other legislative options together with other non-legislative tools within state-funded programs and/or organized public health, education and awareness campaigns to discourage demand;
2. To clarify the respective scope of Articles 143¹ (and 143²) and 253 of the Criminal Code to ensure that they do not overlap and that victims are not erroneously omitted from being classified as victims of trafficking, while ensuring that punishments are applied consistently.

39. Finally, Article 254 of the Criminal Code speaks of the prohibition of the promotion of prostitution, which includes an element of inducing persons into prostitution as prohibited, while also stating that this may occur in a non-violent way. Simply put, the Criminal Code appears to prohibit procuring, but not the purchase of sex acts.
40. The last three articles of the Criminal Code submitted for review, being Article 255, Article 255¹ and Article 255², refer to the producing and sale of pornographic works, some through the use of new technologies, and will be discussed in section 6 on trafficking online below.

3.1.2. Definition of Trafficking in the Law on Combatting Trafficking of 2006

41. In 2006, Georgia introduced the Combatting Law. The stated purpose of the Law, as stated in Article 2, is to prevent and combat trafficking in human beings, protect the rights of victims and offer them rehabilitation, define specific procedures for the institution of criminal prosecution against the crime of human trafficking and define the principles for co-operation between state bodies, international organisations and legal persons for preventing and combatting human trafficking and for the protection of victims.
42. Article 3 of the Combatting Law includes the same rather complicated definition of trafficking offence, as included in the Criminal Code. As mentioned above, **it is recommended this definition be amended, to be in line with international standards and recommendations** (see Section 3.1.1).

4. PREVENTION OF TRAFFICKING AND DISCOURAGING DEMAND

43. Chapter II of the Combatting Law is composed of two articles (5 and 6) that deal with mechanisms for the prevention of trafficking.
44. Article 5 of the Combatting Law on prevention offers a number of useful preventive measures, and they focus on root causes of trafficking, which is in line with Article 9 of the UN Palermo Protocol. Examples are, the reduction of poverty, under-development and unemployment as well as the lack of access to equal opportunities and discrimination (Article 5 (2) (a)). Further, Article 9(5) of the UN Palermo Protocol states that “States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters the exploitation of persons, especially women and children, that leads to trafficking.”
45. Moreover, the CoE Anti-Trafficking Convention also endorses preventive measures to discourage demand. Article 6 specifically concerns measures to discourage the demand and provides as follows:
- “ To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures including:*
- a) research on best practices, methods and strategies;*
 - b) raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings;*
 - c) target information campaigns involving, as appropriate, inter alia, public authorities and public makers;*
 - d) preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being. ”*
46. The UNODC Legislative Guide to the UN Palermo Protocol⁴⁶ (“UNODC Legislative Guide”) provides a range of additional measures which may be used to curb the demand for trafficked exploitative labour, including sexual exploitation. The UNODC Legislative Guide lists the measures such as targeted at discouraging demand:
- (a) Measures addressing the root causes of and factors contributing to trafficking, including poverty, lack of education, and social norms that enable exploitative practices, such as norms permitting discrimination against women and other traditionally disadvantaged groups, with a view to reducing vulnerability to trafficking; [...]*
 - (c) Measures sanctioning those who use the goods or services exacted from victims of trafficking; [...]*

⁴⁶ [UNODC, Legislative Guide for the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children \(2020\)](#), para. 316.

- (h) *Measures raising awareness and attention about the risks associated with trafficking and research into all forms of exploitation and the factors that foster demand;*
 - (i) *Private sector and State initiatives to address exploitative labour practices;*
 - (j) *Measures addressed at disrupting supply chains that involved exploitative labour practices; [...]*
 - (l) *Consumer-based action against products made from trafficked labour.”*
47. While many of the measures that are listed in the UNODC Legislative Guide are also mentioned in Articles 5 and 6 of the Combatting Law, **it is recommended to supplement these with others indicated in the above cited Guide. This would mean adding in Article 5 reference to those measures such as (c), (i), from the Legislative Guide, all of which focus not only on the root causes but also on the demand side of the trafficking for exploitation, whether labour or sexual exploitation, thereby more intensively covering the industries and corporations involved in the global supply chains. Especially, strengthening and enforcement of international labour standards is essential to address demand-side aspects of human trafficking, especially strengthening and protecting the rights of workers, including migrant ones, and ensuring they have access to prompt, effective and affordable remedies for exploitation and abuse, regardless of their legal status.**⁴⁷
48. At the EU level, the EU Anti-Trafficking Directive addresses trafficking in human beings by aiming to prosecute criminals effectively and better protect the victims. It also obliges EU Member States to “*take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation*”,⁴⁸ though without prescribing the form that such measures should take. The EU Strategy on Combatting Trafficking in Human Beings (2021-2025) focuses on prioritizing reducing demand fostering exploitation that leads to trafficking and all forms of exploitation, breaking the criminal model to halt victims’ exploitation, protecting, supporting and empowering victims, especially women and children and to deepen cooperation across the international dimension.⁴⁹
49. The Palermo Protocol does not provide guidance nor take a position on the regulation of prostitution in combating trafficking in human beings. The Council of Europe Anti-Trafficking Convention also leaves discretion to State Parties on the issue. However, all States agreed that the demand that fosters exploitation, including the exploitation of the prostitution of others, must be discouraged, with the EU Anti-Trafficking Directive expressly referring to reduction.⁵⁰
50. Furthermore, Article 6 of the Combatting Law assigns the implementation of the measures to various agencies and authorities. Article 6 (7) of the Combatting Law also stipulates that the authorities responsible should co-operate with international organisations and civil society. As pointed out by GRETA in its 2021 Report,⁵¹ the labour inspectorates should be more intensively involved in the identification of victims and be provided with more resources and training as part of the obligation of prevention of trafficking under Article 9 of the UN Palermo Protocol. In addition, more efforts are

47 See Inter-Agency Coordination Group against Trafficking in Persons, [Preventing Trafficking in Persons by Addressing Demand](#) (September 2014).

48 *Op. cit.*, footnote 17 (EU Directive 2011/36), Article 18 - 1.

49 [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings 2021-2025](#), Chapters 5 and 6.

50 *Op. cit.*, footnote 17 (EU Anti-trafficking Directive 2011/36), Preamble (25) and Article 18.

51 GRETA, Report Concerning Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Georgia, Third evaluation round GRETA(2021)02, paras. 129-135, in particular.

recommended when exploring the links between child trafficking and the use of the Internet and new technologies (discussed in the section on trafficking online below).

RECOMMENDATION E

To consider broadening the scope of measures used to curb demand fostering exploitation that leads to trafficking, whether labour or sexual exploitation, thereby more intensively targeting the industries and corporations involved in the global supply chains as well as strengthening and protecting the rights of workers, including migrant ones, and ensuring they have access to prompt, effective and affordable remedies for exploitation and abuse, regardless of their legal status.

5. PROTECTION AND ASSISTANCE

5.1 Reflection and Recovery Period

51. Article 12 of the Combatting Law provides a provision on reflection delay. It states that its purpose is for the victims to “*decide whether he/she is willing to cooperate with law enforcement bodies.*”
52. As stated in previous and recent ODIHR opinions,⁵² “[i]nternational and regional standards are clear on the necessity of introducing a recovery and reflection period for victims of trafficking in human beings who have been identified. They are also clear that the granting of such reflection and recovery period shall not be dependent on whether or not the victims participate in criminal investigations. Article 13 of the CoE Anti-Trafficking Convention only requires that there should be reasonable grounds to believe that the person concerned is a victim. Analogous provisions that relate to identification and reflection delay can be found in Article 11 and preamble par 18 of the EU Anti-Trafficking Directive. **It is therefore recommended for the Combatting Law to be amended to reflect that international standards require a reflection and recovery period to be granted regardless of whether the victim eventually chooses to cooperate with the authorities in criminal proceedings.**
53. Furthermore, Article 13 of the CoE Anti-Trafficking Convention states that during this period a person should be exempt from the obligation to give testimony (as is provided for in Article 371 of the Criminal Code of Georgia) and this period should last “**at least**” (minimum) of 30 days and it is designed to allow the person to free themselves of the trafficking situation, the perpetrator and receive all the necessary protection and assistance measures outlined in Article 12 pars (1) and (2) of the CoE Anti-Trafficking Convention. **Therefore, the minimum 30 days, currently in the Law, may be amended to 90 days and include a possible extension where the situation so requires, as per promising practice in the EU** (see Section 5.1.1. *infra*).

52 ODIHR, [Opinion on Certain Legislation On Combatting Trafficking In Persons of Finland](#), TRAFF-FIN/399/2020, Warsaw, 13 October 2021, para. 109.

RECOMMENDATION F

To include in the Law on Combatting Trafficking that a reflection and recovery period be granted regardless of whether the victim eventually chooses to co-operate with the authorities in criminal proceedings for a period of up to 90-days.

5.1.1 Regulation of the Reflection and Recovery Period in other OSCE participating States

54. In the **Netherlands**, according to the Dutch authorities, a person who does not have legal residence and shows the “slightest indication” of possibly being a victim of trafficking in human beings is offered a three-month recovery and reflection period by the Police or KMar (a gendarmerie force performing military and civilian police duties). There is no requirement that the person concerned makes a formal statement or declaration.⁵³ During this period, the victim has access to safe housing, psychological, medical and material assistance and legal aid. It is the duty of the police to inform victims about the B9 9 Aliens Circular) procedure. If the victim decides at the end of this period to co-operate with law enforcement/criminal justice proceedings they will be granted a residence permit for the duration of the criminal proceedings until the end of the trial, which is renewable each year. The recovery and reflection period applies to all presumed victims of trafficking where they do not derive a right to stay in the Netherlands from other instruments and are provided with access to all forms of support and assistance, regardless of whether they co-operate with the investigation and prosecution.⁵⁴
55. In **Portugal**, pursuant to Law No. 23/2007 on the Entry, Stay, Exit and Removal of Foreigners from Portugal, as amended through Law No. 29/2012, only third-country nationals are entitled to a recovery and reflection period, the duration of which is a minimum of 30 days and a maximum of 60 days. During this period, no expulsion order may be enforced. Persons granted a recovery and reflection period are entitled to emergency medical treatment, psychological assistance, protection, interpretation and legal assistance. When the victim is a child, the period may be further extended if this is in the child’s best interests.⁵⁵
56. In **Spain**, a period for recovery and reflection of at least 30 days is granted by the Royal Decree 557/2011.⁵⁶
57. In **Ireland**, according to Section 5 of the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking, persons who have been identified as presumed victims of trafficking may be granted a 60-day recovery and reflection period if they have no other valid permission to remain in Ireland. Further, the Administrative Immigration Arrangements provide that the Minister for Justice and Equality may grant a period longer than 60 days to suspected child victims, having regard to the arrangements in place for the care and welfare of the child.⁵⁷
58. In **Poland**, the Act on Foreigners came into force in May 2014. It regulates the issues of residence of foreigners in Poland, including foreigners who were identified as victims of trafficking in human beings. Under the Act, victims are entitled to a reflection period (3-

53 [GRETA Report Netherlands](#), (2018)19, adopted 13 July 2018, p. 33.

54 [Asylum Information Database – Netherlands](#).

55 [GRETA Report Portugal](#), (2017)4, adopted 2 December 2016, p. 27.

56 Article 142 para. 1 of the [Spanish Royal Decree 557/2011 of 20 April 2011, approving the Regulation of the Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration](#), Following its reform by Organic Law 2/2009 (In Spanish).

57 [GRETA Report Ireland](#), adopted 7 July 2017, pp. 41-43.

month time permission of legal stay) as well as to a temporary residence permit of up to 6 months with the possibility of extension for another 6 months.⁵⁸

59. In **Cyprus**,⁵⁹ Law 60(I)/2014⁶⁰ defines trafficking in persons as a penal offence. The Law is aligned with the EU Anti-Trafficking Directive and provides victims of trafficking with at least a one-month reflection period with the possibility of renewal. During this period, the victims have the following rights: protection from deportation, the right to medical care, the right to information concerning their rights and possibilities provided for by the Law, public allowance, the right to psychological support, protection by the police, free translation and interpretation services, protection of personal data, access to programmes provided by the State or by NGOs in cooperation with the State (if available).
60. In **Sweden**, on 1 July 2007, the Aliens Act was amended in order to harmonise with the EU Directive on the victims of trafficking in human beings. According to Section 15 Aliens Act At the request of the leader of the preliminary investigation, a residence permit for thirty days can now also be issued if the witness wants time for reflection in order to recover and to make a decision as to whether he or she wishes to co-operate with the criminal investigation authorities.⁶¹

5.2 Principle of Non-Punishment

61. Article 15 of the Combatting Law contains the non-punishment clause, which exempts victims from liability for certain acts under the Criminal Code and the Administrative Code of Georgia. An all-encompassing phrase is also used to exempt victims because of their victim status and even before they are officially granted victim status. According to Article 15 (2) of the Combatting Law, victims of trafficking are not supposed to be subject to criminal liability for committing crime under Article 344 (illegal crossing of Georgian border) and under Article 362 (use of false documents) of the Criminal Code, or under the Administrative Violations Code (prostitution is an administrative offence in Georgia). **These exemptions shall apply to violations committed due to a person being a victim of trafficking, before being granted that status.**
62. The OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings has urged that the “non-punishment provision should be interpreted in light of the definition of trafficking in human beings, especially with regard to compulsion. A comprehensive understanding of compulsion includes all the means of trafficking: threat/use of force, other forms of coercion, abduction, fraud, deception, and abuse of power or of a position of vulnerability. Being compelled to commit a crime thus includes the full array of factual circumstances in which victims of trafficking lose the possibility to act with “free will.”⁶²
63. The adoption of the EU Anti-Trafficking Directive strengthened the approach to non-punishment and it appears wider than the CoE Anti-Trafficking Convention. While Georgia is not yet a member of the EU, it may consider to take example from this regional practice where the Directive establishes an express obligation not to prosecute in anticipation of when it will formally become a candidate and be bound to bring its legislation in compliance with the EU *acquis*. Article 8 of the Directive provides: “Member States shall, in accordance with the basic principles of their legal systems, take

58 [European Commission, information on trafficking of human beings in Poland.](#)

59 [European Commission, information on trafficking of human beings in Cyprus.](#)

60 [Law 60\(I\)/2014 \(in Greek\).](#)

61 [Aliens Act of Sweden](#) (Law (2005:716).

62 [Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team](#), para. 5.

the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts [i.e., offences concerning trafficking in human beings] referred to in Article 2” (emphasis added). **It is recommended therefore to consider expanding the non-punishment clause.** This entails not only expanding the variety of crimes that may be committed under duress (or the lack of any viable alternative while subject to the trafficker) of the trafficking situation, but also refraining from instigation of prosecution all together.

64. Additionally, Article 20 of the Combatting Law provides a non-punishment provision to victims of trafficking who are not Georgian citizens, but only under the Administrative Code, whereas, as described above, Georgian trafficking victims are explicitly exempted also from criminal proceedings. **It is recommended that all trafficking victims benefit from the proposed non-punishment, or even non-prosecution clause, regardless of citizenship** (for stateless persons see, section 5.4 *infra*).
65. Crucially, as advised to other OSCE participating States⁶³ - as regards child victims of human trafficking, the non-punishment principle is especially important: consent to exploitation is irrelevant. This principle should also be reflected in clear wording in the Georgian anti-trafficking legislation/criminal code. **It is recommended that concrete wording be adopted so that criminalisation of child victims of human trafficking is effectively prevented.**

RECOMMENDATION G

1. To include in the Law on Combatting Trafficking that the principle of non-punishment includes all criminal activities which victims have been compelled to commit as a direct consequence of being subjected to any of the acts i.e., offences concerning trafficking in human beings;
2. To extend legal provisions on non-punishment to all victims of trafficking regardless of citizenship; and
3. To include specific provisions on non-punishment of child victims of trafficking, including that consent to exploitation is irrelevant.

5.2.1. Examples of Non-Punishment Provisions from other OSCE participating States

66. In **Cyprus**, Article 29 of Law 60(I)/2014 provides that victims of human trafficking are not to be prosecuted and subject to sanctions for their involvement in criminal activities, if those were a direct consequence of the fact that the persons were victims of human trafficking.⁶⁴
67. In **Latvia**, non-punishment provisions can be found in Criminal as well as Administrative Law, according to which a person may be released from criminal or administrative liability if he or she has committed a criminal offence during a period when he or she was subjected to human trafficking and was forced to commit it.⁶⁵

63 ODIHR, *Opinion On Certain Legislation On Combatting Trafficking In Persons of Finland*, TRAFF-FIN/399/2020, Warsaw, 13 October 2021, para. 99.

64 GRETA, *Evaluation Report – Cyprus*, published on 11 June 2020, para. 91.

65 EU Commission, *Together Against Trafficking in Human Beings- Latvia*. Such provisions can be found in Criminal Law Section 58 “Release from Criminal Liability”, Criminal Procedure Law Section 379 “Termination of Criminal Proceedings, releasing a Person from Criminal Liability” as well as in Latvian Administrative Violations Code.

68. In **Germany**, the German authorities have also referred to articles in the Criminal law as a legal basis for the implementation of the non-punishment provision.⁶⁶ However, recommendations have been put forward for the German authorities to ensure that the non-punishment provision can be applied to all offences that victims of human trafficking were compelled to commit and for all forms of trafficking.⁶⁷
69. In **Romania**, according to Article 20 of the Anti-trafficking Law, “a person subject to trafficking who committed as a result of his/her exploitation, the crime of prostitution, begging, illegal immigration or unlawful crossing of a border of a state or donation of organs or tissues or cells of human origin (...) should not be punished for these crimes.” However, there are concerns that this provision gives a rather narrow interpretation of the non-punishment clause and that it does not cover all offences which victims of human trafficking were compelled to commit, including administrative and immigration-related offences.⁶⁸

5.3 Legal Assistance to Victims

70. Article 14 of the Combatting Law stipulates rights to information and assistance for victims, translators and legal assistance, as well as witness protection. Generally, this provision seems to be in compliance with Articles 12 and 13 of CoE Anti-Trafficking Convention. This Article does not provide for free legal assistance and legal aid (except in the context of criminal proceedings) although the State Fund does apparently offer free legal consultation. **This Article could be improved by including the provision of free legal assistance to trafficking victims at the earliest stages, in order to ensure that they know their rights and their decisions are informed.**

5.4 Repatriation

71. Article 20 (4) of the Combatting Law states that during the reflection period, non-Georgian citizens victims of trafficking shall be granted a residence card. However, little detail is provided on exactly how this should be implemented. In addition, the State compensation provided during this time is often difficult to access by third-country nationals as it requires a Georgian bank account.
72. Furthermore, the Combatting Law states in Article 20 (6) that immediately after the expiration of the reflection period, a person shall be repatriated. In order to be in line with Article 8(2) of the UN Palermo Protocol, “*When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.*” Furthermore, the view expressed during the drafting of the Protocol was that “humanitarian factors” referred to rights established in international human rights law instruments. “Compassionate factors” was seen as referring to personal circumstances such as family situation, age, gender, de-facto

66 Provisions in Criminal Law which could be used as a legal basis for the non-punishment principle: Articles 240, 253, 232 of the [Criminal Code](#), Article 35 of the Criminal Code concerning duress, as well as Articles 153 and 153a of the [Code of Criminal Procedure](#) providing for the possibility of dispensing with prosecution because the trafficking victim’s alleged guilt is considered to be of a minor nature and there is no public interest in prosecution.

67 [GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany, published on 20 June 2019](#), pp. 50-51.

68 [GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human beings by Romania, published on 30 September 2016](#), pp. 36-37.

relationships, and other factors that should be considered on an individual and case-by-case basis.⁶⁹ This has been stipulated in Article 21⁴ par (2) for minors and should equally apply to adults. **It is recommended to review the Law to include compassionate and humanitarian factors when considering the return of a victim adult or minor to his/her country of origin or country of permanent residence.**

73. States also have to respect *non-refoulement* obligations (i.e., that they shall not return non-nationals to a country where there is a real risk of that person being subjected to torture or other cruel, inhuman or degrading treatment or punishment,⁷⁰ risks of violations to the rights to life⁷¹ or to the integrity or freedom of the person,⁷² flagrant violation with respect to arbitrary imprisonment,⁷³ enforced disappearance,⁷⁴ risk of manifestly unfair trial,⁷⁵ serious forms of sexual and gender-based violence,⁷⁶ prolonged solitary confinement⁷⁷ or other serious human rights violations⁷⁸). Moreover, Article 31 of the 1954 UN Convention relating to the Status of Stateless Persons, prohibits the expulsion of stateless persons who are lawfully on the territory of a state.⁷⁹ In addition to their *non-refoulement* obligations under international refugee and human rights law, States Parties must also take into account the provisions of the UN Palermo Protocol, in accordance with the saving clause in Article 14 par 1.
74. It is recommended that **repatriation be effectuated only after the country and situation into which the victim is being repatriated is thoroughly analysed to respect non-refoulement obligations and guard against re-trafficking.** Furthermore, under Article 7 of the UN Palermo Protocol, both humanitarian and compassionate factors should be taken into account.

69 UNODC, [Legislative Guide for the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children \(2020\)](#), para. 240.

70 See [UN Convention Relating to the Status of Refugees](#) (opened for signature on 28 July 1951, entered into force on 22 April 1954), 189 UNTS 150, Article 33 ([Accession of Georgia on 9 August 1999](#)); [Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment](#) (adopted on 10 December 1984, entered into force on 26 June 1987, [Accession of Georgia 26 October 1994](#)), 1465 UNTS 85, Article 3; [International Convention for the Protection of All Persons from Enforced Disappearance](#) (adopted on 20 December 2006, entered into force on 23 December 2010, not ratified by Georgia), 2716 UNTS 3, Article 16; Articles 2(1) and 7 of the ICCPR (see [CCPR, General Comment no. 20 \(1992\)](#), para. 9, which indicates that this obligation is reflected in Article 7 of the ICCPR, whilst [General Comment no. 31 \(2004\)](#), UN Doc. CCPR/C/21/Rev.1/Add.13, para. 12, recognizes the non-refoulement principle in Article 2 of the ICCPR). See also e.g., para. 31 of 2018 CCPR [General Comment no. 36](#).

71 See e.g., UN Special Rapporteur on Counter-Terrorism and Human Rights, [Annual Report: Ten areas of best practices in countering terrorism](#), UN Doc. A/HRC/16/51, 22 December 2010, para. 38 and Practice 10.5; and UN Secretary General, [Report on the protection of human rights and fundamental freedoms while countering terrorism](#), A/63/337, 28 August 2008, para. 45. See also OHCHR, [Technical Note on the Principle of Non-Refoulement under International Human Rights Law](#) (2018), page 1; and CCPR, [General Comment no. 31 \(2004\)](#), para. 12.

72 *Ibid.* para. 45 (2018 UN Secretary General's Report); and page 1 (2018 OHCHR Technical Note on Non-Refoulement).

73 See e.g., European Court of Human Rights, [Othman \(Abu Qatada\) v. United Kingdom](#) (Application no. 8139/09, 17 January 2012), para. 233.

74 See Article 16 of the International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the UN General Assembly by Resolution A/RES/61/177 of 20 December 2006 (which entered into force on 23 December 2010, not ratified by Georgia).

75 UN Secretary General, [Report on the protection of human rights and fundamental freedoms while countering terrorism](#), A/63/337, 28 August 2008, para. 45; and OHCHR, [Technical Note on the Principle of Non-Refoulement under International Human Rights Law](#) (2018), p. 1. See also, European Court of Human Rights, [Othman \(Abu Qatada\) v. United Kingdom](#) (Application no. 8139/09, 17 January 2012), paras. 258-262.

76 *Ibid.* page 1 (2018 OHCHR Technical Note on Non-Refoulement). See also e.g., UN CAT Committee, [Njamba and Balikosa v. Sweden](#), Communication no. 322/2007, 3 June 2010, para. 9.5; and CEDAW Committee, [General Recommendation no. 32](#) (2014), para. 23.

77 UN Secretary General, [Report on the protection of human rights and fundamental freedoms while countering terrorism](#), A/63/337, 28 August 2008, paras. 39 and 42; and *ibid.* page 1 (2018 OHCHR Technical Note on Non-Refoulement). See also e.g., CCPR, [General Comment no. 20](#) (1994), para. 6.

78 CCPR, [Kindler v. Canada](#), Communication no. 470/1991, at para. 13.2: "If a State party extradites a person within its jurisdiction in circumstances such that as a result there is a real risk that his or her rights under the Covenant will be violated in another jurisdiction, the State party itself may be in violation of the Covenant"; and [ARJ v. Australia](#), UN Doc. CCPR/C/60/D/692/1996, 11 August 1997, para. 6.9, referring to risk of any serious human rights violation triggering non-refoulement obligations.

79 [Georgia acceded to the Convention on 23 December 2011](#)). It should be recalled that parties to the Convention relating to the Status of stateless persons must take into account their obligations including housing, education, employment, etc.

5.4.1 Regulation of Residence Permits for Victims of Trafficking in other OSCE participating States

75. In **Italy**,⁸⁰ a special residence permit for social protection has been established, envisaged by Article 18 of the National Law on Migration (Legislative Decree No 286 of 1998). The granting of this residence permit does not depend on reporting traffickers/exploiters to law enforcement agencies by the victim. The residence permit is renewable for one year and may be converted into a residence permit for education or work. To benefit from the Article 18 assistance programs funded by the government and implemented by regions, municipalities and NGO partners, the trafficking victim must be evaluated by a mandated agency provider as “in danger”.
76. In **Greece**,⁸¹ according to Article 19A of the Criminal Procedure Code, victims of trafficking in human beings who do not co-operate with the competent authorities are granted, free of charge, a residence permit for humanitarian reasons according to a decision of the Minister of Migration Policy. The holders of this permit have free of charge access to medical services and health care (Article 33 of Law 4368/2016).
77. In **Belgium**,⁸² foreign potential victims of trafficking are granted a reflection period of 45 days during which they can decide either to file a complaint or make a statement of return to his/her country of origin. Under the Belgian system, testimony in court proceedings is not a condition for a victim to be granted the status of “victim of trafficking in human beings”. The victim may obtain permanent residency after their traffickers have been sentenced. The victim can also obtain an unlimited residence permit without the conviction of the trafficker(s), provided that the Public Prosecutor or the Labour Auditor has established in his/her charges the offence of trafficking in human beings. The legal basis of the scheme has been provided by the Law of 15 September 2006⁸³ amending the Aliens Law of 15 December 1980 (Article 61/2 to 61/15).
78. In **Germany**,⁸⁴ Section 25 (4a) of the Act on the Residence, Employment and Integration of Foreigners in the Federal Territory of the Federal Republic of Germany contains a special humanitarian provision on the issuance of a residence permit to a victim of human trafficking. A permit should be granted if (inter alia) the individual in question shows a willingness to testify as a witness in the criminal proceedings concerning the offence committed against them. In addition, after conclusion of the criminal proceedings against the perpetrators, the permit should be prolonged if the foreign individual’s continued presence in Germany is required for humanitarian or personal reasons, or for matters of public interest.
79. In **Spain**,⁸⁵ there has been an amendment of Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration⁸⁶ introducing Article 59 bis (subsequently amended),⁸⁷ which establishes a specific status for undocumented migrants who are victims of trafficking in human beings so that the victim is informed of the provisions under the said Article. Trafficking victims subject to the regime provided for

80 [European Commission, information on trafficking of human beings in Italy.](#)

81 [European Commission, information on trafficking of human beings in Greece.](#) See also [European Website on Integration: Greek Citizenship Code-Modification of Law 4521/2014 with Law 4332/2015.](#)

82 [European Commission, information on trafficking of human beings in Belgium.](#)

83 Website of the [Ministry of Foreign Affairs of Belgium: Asylum Procedure in Belgium.](#)

84 [European Commission, information on trafficking of human beings in Germany.](#)

85 [European Commission, information on trafficking of human beings in Spain.](#)

86 [Spanish Royal Decree 557/2011 of 20 April, approving the Regulation of the Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration \(as amended by Organic Law 2/2009 of 11 December 2009 and Organic Law 10/2011 of 17 July 2011\).](#)

87 By Organic Law 10/2011 of 17 July 2011.

in Article 59 bis of the Aliens Act may freely choose to seek a residence and work permit for exceptional circumstances, or assisted return to their country of origin.

80. In **Malta**,⁸⁸ Subsidiary Legislation (S.L. 217/07)⁸⁹ transposing Council Directive 2004/81/EC was passed in 2007. This legislation provides that victims of trafficking or illegal immigrants who cooperate with the Maltese authorities are given permission to reside in Malta for a period of six months (renewable). This legislation also provides for a reflection period of up to two months, prior to the granting of the six-month residence permit. The temporary residence permit may be renewed if required in accordance with the Permission to Reside for Victims of trafficking or Illegal Immigration who Cooperate with the Maltese Authorities Regulations (S.L. 217/07).
81. In the **USA**, T-Visa status was created by the US Congress in 2000 as part of the Victims of Trafficking and Violence Protection Act. The T-Visa system permits certain victims of trafficking to remain in the USA for up to four years if they have assisted law enforcement in a criminal investigation or prosecution for human trafficking. T-visas offer protection to victims who lack regular immigration status and are therefore specifically vulnerable to traffickers. The T-Visa provides them with lawful residence status, access to the employment market and a range of federal and state benefits and services.
82. T-Visa status can become permanent residence with provision of a green card, and it can also extend to victims' qualifying family members. By keeping witnesses and their families safe in a way that provides them with the ability to support themselves, the T-Visa system has greatly strengthened the ability of law enforcement agencies to investigate trafficking crime and secure successful convictions of traffickers.⁹⁰
83. It is worth noting that a properly established NRM is essential to ensure that all identification stakeholders operate within their mandates and respective roles depending on whether this identification leads to a residence permit or further supports an asylum application. Discrepancies may arise in recognition rates for human trafficking victims, disputes between different decision-making authorities or divergent burdens of proof which impact the outcome of a human trafficking case. This is a newly presented problem in the **United Kingdom**, which has manifested in two domestic cases *MS (Pakistan)* and *DA and Others v SSHD*.⁹¹

5.5 Referral Mechanisms for Children

84. Referral mechanisms for children give social workers more powers to identify child victims of violence and separate them from their families/ guardians. Furthermore, it establishes a system of referral of children subject to abuse, abandoned children and homeless children. It defines who is a child victim of violence, and among others physical, sexual, psychological, economic violence and coercion.
85. The document "Child Protection Referral Procedures"⁹² ("Child Referral") does not directly refer to trafficking of children, except in Article 6 par 4 subpar (j), which provides that a child can be identified and referred when the "Child's Items: toys, beds, clothes are found at the places inappropriate for a child such as a factory and other, that indicates on the possible case of human trafficking" (direct translation). This provision

88 [European Commission, information on trafficking of human beings in Malta.](#)

89 [Permission to Reside for Victims of Trafficking or Illegal Immigration who Co-operate with the Maltese Authorities Regulations, 6 July, 2007.](#)

90 U.S. Citizenship and Immigration Services (2018), [Victims of Human Trafficking: T Nonimmigrant Status](#), Washington, DC: USCIS.

91 Supreme Court of the United Kingdom: [\[2020\] UKSC 9, 18 March 2020.](#)

92 [On the basis of Article 26\(12\) of the Law of Georgia on Social Assistance.](#)

is welcome as it alerts all institutions named as responsible for the identification of child victims, presumably also including potential child victims of trafficking.

86. However, the provisions could be improved by making more explicit that the entire Child Referral Mechanism also applies to trafficking, which could be defined in the definitions section of the Child Referral document. Elements such as coercion, are already in place and welcome and can be used to support the application of this comprehensive document to child trafficking. **It is therefore recommended that “trafficking in children” be defined in accordance with the UN Palermo Protocol also in this document, so that it is clear, that the referral and assistance applies also to them.** It is likewise recommended that an NRM for children is developed, which includes stakeholders such as national child protection systems and children’s statutory services; law enforcement/police, including law enforcement bodies with police officers who are specialized in child protection, child abuse, domestic abuse/violence, sexual offences and trafficking; competent child specialist NGOs that are directly linked to the NRM for children or national child protection systems; and healthcare services for urgent or immediate healthcare needs, including mental health specialists.
87. In addition, legal provisions should be amended to permit the development and use of the Barnahus model for all child victims of crime.⁹³ Barnahus is a child-friendly, multi-disciplinary and interagency model responding to child victims and witnesses of violence, including victims of trafficking. Its purpose is to offer each child a co-ordinated and effective response and to prevent (re)traumatisation during investigation and court proceedings without experiencing undue delays in their criminal justice procedures. Its values and components can be adapted into any system of working with children to ensure that child rights-centred, age-appropriate methods of working are applied and are therefore as effective as possible in maximising children’s safety, well-being and participation, as well as securing criminal intelligence. The Barnahus model for children comprises: 1. *“Respect for the participatory rights of the child by ensuring that she/he is heard and receives adequate information and support to exercise these rights; 2. Multi-disciplinary and interagency collaboration during investigations, procedures, diagnostic and needs assessments, and service delivery, with the aim of avoiding re-traumatization and securing outcomes that are in the best interests of the child; 3. Comprehensive and accessible services that meet the individual and complex needs of the child and her/ his non-offending family or caregivers; and 4. Ensuring high professional standards, training and sufficient resources for staff working with child witnesses and victims of violence”*.⁹⁴

RECOMMENDATION H

1. To include trafficking in children in the document “Child Protection Referral Procedures” in line with the UN Palermo Protocol.
2. To amend legal provisions to permit the development and use of the Barnahus model for all child victims of crime.

88. There appears to be a number of gaps in the Child Referral. There is no reference to the status of victim of trafficking or referral for a decision on status to the Permanent Group (see Section 5.6 *infra*), nor is any reference made to referral between the Permanent

⁹³ See [Barnahus Network](#).

⁹⁴ *Op. cit.* footnote 14 (ODIHR [National Referral Mechanism Handbook](#)), p. 218.

Group or State Fund to the Social Services Agency responsible for child protection under the mechanism. **This is recommended to be added to the Child Referral for child victims of trafficking.**

89. The Child Referral does not make reference to a recovery or reflection delay nor to criminal proceedings or special kinds of assistance and protection measures offered to trafficking victims. **It should be supplemented in this respect.**
90. Furthermore, special measures should be considered to be added for non-national children as well as the issuance of residence permits where foreign child victims are concerned.
91. In addition, special measures should be taken to ensure registration and provision of identification documents to all undocumented children in Georgia, citizens and third-country nationals.
92. It might also be important to consider supplementing the Child Referral with an explicit recognition of the particular physical, psychological, and psychosocial harm child victims of trafficking may suffer as well as their particular needs.⁹⁵ NRMs for children and NRM child services should be partnered with, and build on existing national child protection systems. They should be staffed by child specialists and supported by civil society organizations that are directly linked to both NRM child services and national child protection systems.
93. All child victims of trafficking must have equal access to identification procedures, including all entitlements to child protection and support measures. This includes child victims of domestic and transnational trafficking for all forms of exploitation, regardless of immigration status or background.
94. Preliminary identification procedures for children and decisions should be completed as soon as possible, within 48 hours for children.
95. The status of “presumed victim of trafficking” for a child should guarantee immediate access, within a maximum of 24-hours, to: a recovery and reflection period of a minimum 90 days; provision of immediate healthcare, psychological care, and attendance to practical needs; safe and appropriate accommodation (if required); a legally appointed guardian for any child who is without parental care and protection, including unaccompanied or separated children; and allocation of a guardian advocate who is trained in child protection, child trafficking and related risks and needs to oversee and support the child victim throughout the whole process and through social inclusion. Assistance and information should be provided in a language the child understands or via a translator.
96. Conclusive victim of trafficking status decision for children should be issued within a timeframe of 90 days from the positive preliminary identification decision and correspond with the duration of the recovery and reflection period.
97. The role of guardian advocates for all children who are victims of trafficking should be enshrined in national legislation and allocated uniformly and equally to all child victims of trafficking, whether they are citizens, residents or foreign nationals, children with safe and appropriate family care or unaccompanied and separated children. Guardian advocates should conduct Needs and Risk assessments for each child victim of trafficking with responsibility for a maximum of 20 children at any given time (depending on the

95 *Ibid*, see also UNICEF, [Guidelines On The Protection of Child Victims of Trafficking](#) (2006).

- complexity of needs). Child victims of trafficking should be accompanied to all sessions and meetings with services by their guardian advocate.
98. Child victims of trafficking should be provided with safe and appropriate accommodation within 24-hours, with alternative, interim accommodation provided by the national child protection system in the meantime.
 99. A protection period for all child victims of trafficking should be implemented, with one-on-one individualized support and supervision of child victims who are at high-risk of immediate disappearance or re-trafficking for the first 72-hours or more after they enter the NRM.
 100. The informed participation of child victims of trafficking should guarantee meaningful involvement of the child in all stages and decisions about them. A record of the child's opinions and views throughout should be kept. Children should be provided with age-appropriate and child-friendly information and materials about their rights. They should be informed of their right to participate, and to ask questions about all decisions pertaining to them.
 101. Children who are victims of trafficking are to be treated as vulnerable witnesses in all cases and be provided with a comprehensive and consistent system of protection and support in accordance with the best interest principles of children of the UN Convention on the Rights of the Child.⁹⁶

5.5.1 Examples from OSCE participating States of Mechanisms to Protect Children

102. In **Italy**, the “Zampa Law” Protection Measures for Unaccompanied Minors (Law No. 47/17)⁹⁷ contains detailed provisions on age determination for unaccompanied minors including children who have been victims of trafficking and those who have not been identified. According to the Law, the procedure for assessing the social and medical age of young people may be ordered by the competent judicial authorities if there is reasonable doubt as to a young person's claimed age, or if it is not possible to assess their age on the basis of documents.
103. Age assessment procedures, aims, methods and consequences must be explained to the child and they must be treated as a minor until the assessment is concluded. The assessment is conducted by multi-disciplinary methods, involving professionals who have the appropriate expertise, with a cultural mediator present at all stages. The result has to indicate the margin of error and the benefit of doubt has to be given to the child. Both the person concerned and their guardian have to be informed about the final decision adopted by the competent judicial authority and given the possibility to appeal it.⁹⁸
104. In **Greece**, the Ministry of Labour, Social Security and Social Solidarity developed the Guardianship Law which promotes the protection and social inclusion of unaccompanied minors (Law No. 4554 of 18 July 2018).⁹⁹ According to the Guardianship Law, a guardian will be appointed to a foreign or stateless person under the age of 18 who arrives in Greece who is not accompanied by a relative or a non-relative exercising parental guardianship or custody. The Law provides a best interest of the child determination procedure following the issuance of standard operational procedure to be issued (Article

⁹⁶ *Op. cit.*, footnote 14 (ODIHR [National Referral Mechanisms – A practical Handbook, second edition](#)), p. 20.

⁹⁷ [Law No. 47 of 7 April 2017 \(Provisions on Protective Measures for Unaccompanied Foreign Minors\)](#), see also: UNODC: [Module 12: Children as Smuggled Migrants and Victims of Trafficking, “key issues”, which mentions the Zampa Law.](#)

⁹⁸ Rozzi, E. (2017), [The new Italian law on unaccompanied minors: a model for the EU?](#), EU Immigration and Asylum Law and Policy, 13 November 2017.

⁹⁹ [European Website on Integration](#) See also <http://www.opengov.gr/minlab/wp-content/uploads/downloads/2018/07/nomos-4554_2018-1.pdf> (in Greek).

21). Under the framework, appointed guardians have responsibilities related to the integration of unaccompanied minors. The guardians are professionals who receive training on how to sensitively support children in all their activities.

5.6 Reporting and information sharing – Standing Task Force

105. Finally, it is recommended that the Georgian authorities consider including in the Combatting Law a system of reporting by the various authorities to one central point – an independent National Rapporteur. The National Rapporteur’s function is assigned to the THB Council, rather than to an independent mechanism for monitoring and evaluating the effectiveness of State policies and actions against THB as prescribed by Article 27 of the EU Directive: “*National monitoring systems such as national rapporteurs or equivalent mechanisms should be established by Member States, in the way in which they consider appropriate according to their internal organisation, and taking into account the need for a minimum structure with identified tasks, in order to carry out assessments of trends in trafficking in human beings, gather statistics, measure the results of anti-trafficking actions, and regularly report.*”¹⁰⁰
106. It is recommended **to considering the possibility of establishing the role of an independent National Rapporteur or designating an already existing independent mechanism for monitoring and evaluating the anti-trafficking activities of public institutions or bodies at all levels.**¹⁰¹ This would not have the same status as the Standing Task Force which is stipulated and described in Article 11 of the Combatting Law.
107. Article 11 of the Combatting Law creates a standing task force (also referred to as Permanent Group) to grant status after person applies to service agency (although no reference is made to the mobile units who are the ones that interview the victim and then make their report to the task force, which might make things clearer).
108. Article 11 (4) of the Combatting Law provides that “Provision under this chapter applies to citizens of Georgia or stateless persons” – which leaves open the question, about whether this applies to foreign victims and determination of status by the Permanent Group. **Unless done so in other acts, outside the scope of this review, it is recommended for the Law to also regulate the situation of foreign victims of trafficking in Georgia.**

5.6.1 *Composition and Rules of Procedure of the Permanent Group Established by the Interagency Co-ordination Council on Implementation of Measures against Trafficking in Human Beings*¹⁰²

109. The composition of the Permanent Group can be found in Article 1 of the Composition and Rules of Procedure of the Permanent Group. Article 3 refers to the fact that the decision to accord the status of victim of trafficking is based on a questionnaire submitted by one of the State Fund’s mobile groups. There are currently three such groups in Georgia but Article 3 para. 2 states that a “foreign citizen in Georgia shall be granted status if a criminal offence is initiated”. This might conflict with the right to a reflection and recovery period, during which time the person can decide whether or not to cooperate with law enforcement authorities and seems also to conflict with the later statement under the same subsection which states that “The permanent group shall

¹⁰⁰ *Op. cit.* footnote 17 (EU Directive 2011/36/EU). See also: [Issue Brief - The role of independent National Rapporteurs or equivalent mechanisms in enhancing States’ anti-trafficking responses | OSCE](#).

¹⁰¹ [Third Evaluation Report – Georgia, GRETA](#), 16 March 2021.

¹⁰² Approved by the Interagency Coordination Council on Implementation of Measures against Trafficking in Human Beings on its meetings held on 14 November 2014 and amendments 24 December 2018.

consider such a case on an equal ground with other cases as prescribed by the rule”. **It is recommended that this is clarified or that the reference to a foreign citizen is deleted.**

5.7 Identification of Victims of Trafficking in Human Beings

5.7.1 Unified standards and rules on identification of victims of trafficking¹⁰³

110. Decree N284 of the Government of Georgia on the Unified Standards and Rules on Identification of the Victims of Trafficking in Human Beings seeks to unify the manner in which victims of trafficking in human beings are identified and is a secondary piece of legislation to the Combatting Law (see Section 5.1 *supra*).
111. There is no mention in this document of the reflection and recovery period. **It is recommended for this to be rectified in order to reflect the provisions of the Combatting Law.**
112. Furthermore, the Decree includes a rather limiting provision in relation to the identification of foreign victims in Article 3(9): “A *foreigner who was granted the victim status by foreign country, international or foreign non-governmental organization can enjoy the services of shelter, compensation, medical or other services after he/she is granted the status of victim by the permanent group, except as provided in par 6 of this Article.*” Par 6 of Article 3 refers to the identification as a “statutory victim” linked to criminal proceedings. **It is recommended that this article be revised as described above in Section 5.1 on reflection and recovery period to ensure that the status of victim is not linked to the initiation of criminal proceedings and to the victim agreeing to co-operate in such.**
113. The non-conditionality of international law relating to the identification of victims of trafficking recognizes that it is a complex process. Appropriate identification, protection and individual support must be provided for all adults and children who: (a) are initially detected as possible victims of trafficking; (b) have received a positive preliminary identification and therefore have the status of ‘presumed victims of trafficking’; and (c) have received a positive conclusive identification and therefore have the status of ‘victim of trafficking’.
114. A criminal prosecution or conviction of a victim’s trafficker should not be a requirement in order for them to be conclusively identified and provided with the status of a victim of human trafficking, nor should co-operation with criminal justice proceedings be the only way in which a victim may secure entitlements related to that status, including provision of a residence permit and other forms of leave to remain.
115. Any service or hotline that receives reports of a potential crime of human trafficking /or NRM referrals should be staffed by professionals who are specialized in adult and child victim identification. It should be derived from, or directly linked to law enforcement authorities, statutory social services for adults and national child protection systems. Staff who answer referral calls and enquiries should be vetted to the highest level possible in the national jurisdiction and trained to work in accordance with national laws. They should be trauma-informed and specialized in adult and child victim identification.
116. Non-conditional support should be equally accessible to victims of trafficking who do not wish to consent to referral for NRM identification procedures and/or those who do

¹⁰³ The Decree N284 of the Government of Georgia on Unified Standards and Rules on Identification of the Victims of Trafficking in Human Beings, 11 April 2014.

are not willing or able to co-operate with law enforcement investigations or criminal justice procedures. Identification represents a very early stage in the process for victims to be able to make fully informed decisions, therefore early legal advice and representation should be available for those who wish to consider their next steps prior to their preliminary identification.¹⁰⁴

5.7.2 Guidelines on the Identification of Victims of Trafficking in Human Beings for State Border Officials of Georgia

117. The Guidelines on Identification of Victims of Trafficking in Human Beings for State Border Officials of Georgia (Working at Border Crossing Points and Customs Crossing Points, Land and Maritime Border) were approved in 2017 (“2017 Guidelines”).¹⁰⁵
118. The 2017 Guidelines are a relatively new addition and address some of the concerns related to identifying victims of trafficking amongst asylum seekers and migrants and making referrals. It should be noted however, that the 2017 Guidelines do not make reference to asylum seekers and identification of possible victims of trafficking amongst this group – nor do they reference migrants, although implicitly border police are dealing with migrants alongside nationals.
119. Article 11 of the UN Palermo Protocol on border measures emphasize that they should be “*without prejudice to international commitments in relation to free movement of people*”. It has been noted by the UNODC Legislative Guide that it may be difficult if not impossible to detect victims at borders and that such measures must not interfere with the right to freedom of movement as provided in Article 12 of the ICCPR, including the freedom to leave any country, including one’s own (Article 12(2) of the ICCPR).¹⁰⁶
120. The 2017 Guidelines include a summary of the Georgian law on trafficking and distinguish it from smuggling. It is recommended that reference is made in the part on smuggling to aggravated forms of smuggling and the protection rights/needs of migrants in accordance with the UN Smuggling of Migrants Protocol,¹⁰⁷ especially Article 6.3 (Criminalisation referring to aggravating circumstances) and Article 16 (Protection and Assistance Measures).
121. The 2017 Guidelines include lists of indicators for different kinds of trafficking scenarios – sexual, labour, child trafficking and guidance on trauma informed methods of interviewing. **It is recommended that there should be a reference in the 2017 Guidelines to an obligation to provide clear and written information in a language presumed victims understand about rights to assistance/reflection and recovery period, and referral to NRMs etc. as provided under Article 14.2 of the Combatting Law, which requires that: “Law enforcement should immediately explain to victims their right to apply to service agency – or referral to the special mobile group of the Agency”** – which would then mirror the provision under Article 1.4 of the Unified Standards on Identification. (Reference is also made in the 2017 Guidelines (Section 8) and the standards on identification (Article 1 para. 3) to non-punishment provisions applicable to victims which is welcomed).
122. **It is also recommended for the 2017 Guidelines to be adjusted to other key regulations, for example, regulations stating that child victims should be**

¹⁰⁴ *Op. cit.* footnote 14 (ODIHR [National Referral Mechanisms – A practical Handbook, second edition](#)), p. 104.

¹⁰⁵ Approved by the Interagency Coordination Council for Implementing Actions against Trafficking in Human Beings, 19 December 2017.

¹⁰⁶ See also OHCHR, [Recommended Principles and Guidelines on Human Rights at International Borders](#), 2014, especially regarding the freedom to leave any country.

¹⁰⁷ [UN Protocol Against the Smuggling of Migrants](#), supplementing UNTOC, adopted by General Assembly resolution A/RES/55/25 of 15 November 2000. [Ratified by Georgia on 5 September 2006.](#)

accompanied by a legal representative. The 2017 Guidelines state that contact should be made with the police, but no reference is made to the Social Service Agency, which is referred to in the Child Referral Mechanism. It is recommended for this reference to be included. In the case of adults, contact should be made to State Fund if they do not wish to co-operate with the police – which appears to be correct – although no reference is made to whether the procedure is different for non-citizens. Again, it is recommended for the 2017 Guidelines to be reviewed for consistency.

123. Although deportees are apparently interviewed on return and screened for trafficking, the 2017 Guidelines make no reference to the need to screen deportees and it is recommended for this to be added. It should be noted however that the Law Enforcement Standard Operating Procedures for Investigation and Mobile Groups mentioned in Section 5.7.3 *infra*, do refer to screening deportees.
124. **Another gap which would require consideration is that no reference is made to identifying/detecting suspects of the crime of trafficking (persons implicated in the commission of offences) and denial of their entry or revocation of visas. This should be amended to reflect Article 11.5 of the UN Palermo Protocol.**

RECOMMENDATION I

To include in the Guidelines on the Identification of Victims of Trafficking in Human Beings for State Border Officials of Georgia (Working at Border Crossing Points and Customs Crossing Points, Land and Maritime Border) provisions on:

- The obligation to provide information to presumed victims about their rights to assistance and reflection and recovery period;
- Ensuring that child victims are accompanied by a legal representative;
- The screening of deportees to detect possible victims of trafficking; and
- Denial of entry/revocation of visas for persons implicated in trafficking in human beings in line with Article 11.5 of the UN Palermo Protocol.

5.7.3 Standard Operating Procedures for Investigation and Mobile Groups

125. The Standard Operating Procedures for Investigation and Mobile Groups (“SOPs”)¹⁰⁸ refer to proactively monitoring high risk areas including venues for prostitution and interviewing potential victims on site. However, no reference is made to risk assessments ahead of conducting raids which can endanger the safety of trafficking victims. **It is recommended that such risk assessments prior to raids be included in the SOPs.** This is because the failure to identify victims of trafficking in these situations may lead to punishment of women and men who have potentially not been properly identified as trafficking victims. Moreover, the absence of translators in these situations further makes communication with foreign persons engaged in prostitution impossible. It is important that such considerations be reflected in the SOPs.
126. In addition to what has been written above on non-punishment, the non-punishment of victims of trafficking is addressed under CEDAW’s General Recommendation 38 on

¹⁰⁸ Approved by Minister of Internal Affairs of Georgia Order N54 23/01/2015.

trafficking in women and girls in the context of global migration.¹⁰⁹ It specifically recommends to “ensure that all women and girl victims of trafficking, without exception, are not subject to arrest, charge, detention, prosecution or penalty or are otherwise punished for irregular entry or stay in countries of transit and destination, absence of documentation, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as victims of trafficking.”¹¹⁰ It adds that “the non-punishment principle must be: (a) enshrined in legislation and implemented through proper training to ensure responders are able to identify trafficking victims for such relief; (b) not compel victims to provide evidence or testimony in exchange for immunity from prosecution redress or services; and (c) provide recourse for trafficking victims to clear their criminal records in cases where they have been convicted of crimes that were committed as a direct consequence of being a victim of trafficking.”¹¹¹ **Thus, it is recommended that similar language on the principle of non-punishment be included in the SOPs.**

127. No reference is made in the SOPs to the rights to assistance and reflection and recovery period before providing statements to the police. **It is recommended such reference be included.**

RECOMMENDATION J

To include in the Standard Operating Procedures for Investigation and Mobile Groups provisions on:

- Risk assessment prior to raids on venues where victims of trafficking may likely be located;
- The principle of non-punishment; and
- The rights to assistance to victims of trafficking and the reflection and recovery period.

5.7.4 Examples from OSCE participating States on Training of Professionals likely to Encounter Victims of Trafficking

128. On the EU level, different Member States implement projects and training aimed at professionals who are most likely to encounter victims. Georgia is encouraged to further develop and implement national simulation based training.¹¹² The Office of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings is ready to assist in this regard.
129. In addition, Georgia could participate in the current efforts of the EU in the development of the European National Referral Mechanism.
130. In **Greece**, the Office of National Rapporteur (ONR) follows a proactive approach to the identification of victims of trafficking in human beings and recognizes the essential role

¹⁰⁹ CEDAW, [General recommendation No. 38 \(2020\) on trafficking in women and girls in the context of global migration](#), CEDAW/C/GC/38.

¹¹⁰ *Ibid.* para. 98.

¹¹¹ *Ibid.* para. 98.

¹¹² See, for instance, [Compendium of good practices on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings](#), Chapter 1.6.

of the first responders. With the aim of capacity building and bringing in more professional groups in identification and referral of presumed victims, a series of training programs have taken place, conducted by the NRM under the auspices of ONR, the National Centre for Public Administration & Local Government, and international organizations.¹¹³

131. In **Spain**, Article 30 of *Law 4/2015 of 27 April 2015* on the Statute of Crime Victims requires the Ministry of Justice, the General Council of the Judiciary, the Prosecution Service and the autonomous regions, in their respective competencies, to ensure general and specific training on the protection of victims in criminal proceedings for judges, prosecutors, legal secretaries, members of the State Security Forces, forensic doctors, officers in the administration of justice, officers in Victims Assistance Offices and officers in the central state administration or autonomous regions with these competencies.¹¹⁴
132. In **Latvia**, employees of the Riga municipality have access to regular (annual) training for identification of cases of trafficking.¹¹⁵ Since 2010, the Riga municipality implements the project “*Preventive measures for elimination of trafficking in human beings*”, through which the training for employees of local government authorities is offered each year. For example, in 2015, 20 municipal police officers and 85 social employees and social teachers participated in the training.
133. In the **Netherlands**, the Human Trafficking Academy run by the national coordinator of the National Referral Mechanism offers a portfolio of training and online training modules for various groups of professionals (municipality workers, aid workers, hospitality workers, police investigators).
134. In **Denmark**, the Centre against Human Trafficking provides regional authorities involved in the detection of potential victims with capacity-building and guidelines for recognising indicators of trafficking in human beings. They carry out regular evaluations to see if other relevant actors should be included in such education.¹¹⁶
135. In the **USA**, the U.S Health and Human Services SOAR training (Stop, Observe, Ask, Respond) was developed.¹¹⁷ Many victims and survivors of trafficking come into contact with healthcare and social service professionals during and after their exploitation, but are not identified. SOAR training is targeted for health care providers, social workers, public health professionals and mental health professionals. The SOAR framework is a trauma-informed, culturally and linguistically appropriate response to human trafficking, providing health care professionals with tailored information on how to identify and respond to human trafficking within their field. SOAR training consists of three tiers:

Tier 1 – Develop online, on-demand content to equip participants with the knowledge and skills to identify and respond to human trafficking.

Tier 2 – Develop online, blended learning content for organizations which is focused on enhancing their institutional response to human trafficking.

¹¹³ See information from the Greek Ministry of Foreign Affairs (Accessed 14 May-September 2022).

¹¹⁴ GRETA (2018)7: Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain, para. 46.

¹¹⁵ Ombudsman of the Republic of Latvia (2017), *The Role of Local Governments’ Social Services, Orphan’s and Custody Courts and Branch Offices of the State Employment Agency of Latvia in the Process of Identification of Victims of Trafficking in Human Beings*, p. 12.

¹¹⁶ European Commission – *Together Against Trafficking in Human Beings – Denmark*.

¹¹⁷ See Office of the Administration for Children & Families – Office on Trafficking in Persons: [SOAR Online](#).

Tier 3 – Develop in-person training content for communities which is focused on identifying strategic partnerships and building capacity to effectively respond to human trafficking.

136. Some bilateral programmes also exist, for example, the “**Swiss-Hungarian Transnational Cooperation on the Referral of Victims of Trafficking**”¹¹⁸ project launched in April 2017 and within the framework of the EU’s Internal Security Fund ISF. The project was successfully implemented by the International Organisation for Migration (IOM) in Budapest and comprised of three study visits (one to Switzerland and two to Hungary) with the participation of the most relevant Swiss and Hungarian counter-trafficking actors.

6. COMBATTING TRAFFICKING ONLINE

137. New technologies, which are constantly subject to evolution, are a double-edged sword in the context of trafficking in human beings. Technology can be misused by traffickers in order to recruit, control, advertise and exploit victims as well as planning and conducting the crime, vastly expanding the outreach of traffickers to their potential victims, while on the other hand technology serve as a powerful tool for law enforcement to identify victims and traffickers and to better trace and collect evidence for cases against traffickers, with less frequent reliance on the testimony of the victim. Importantly they also provide a greater chance of those working to assist victims to reach them.
138. Another important consideration is the role of the internet intermediaries, which are private companies and provide the platform for online activity but do not have the same responsibility towards an individual to protect his/her human rights as does the State. Nevertheless, the State is not absolved from its responsibility to prevent the occurrence of trafficking and this could also involve the responsibility to prevent the use of online tools to lead individuals into situations of trafficking.
139. In 2020, the UNODC in their Global Report on Trafficking in Persons (“UNODC Report”) devoted an entire chapter which investigated the use of online tools to facilitate trafficking.¹¹⁹
140. The UN Special Rapporteur on the sale of children, child prostitution and child pornography warns of new risk factors, such as the increasing misuse of technology by traffickers for the purpose of increasing criminal proceeds from exploitation of people and for decreasing the risks of being caught by law enforcement. Despite a high Internet penetration rate in Georgia, mainly in the cities, the Special Rapporteur noted with concern that there are no studies on the impact of information and communications technologies on child sexual abuse and exploitation. In this case, the Special Rapporteur commended that “the prevention and protection measures adopted at public schools through the educational management information system under the Ministry of Education and Science, and encourage[d] the relevant authorities to extend similar measures, in partnership with the private sector, beyond public schools.”¹²⁰
141. Further, a working group on trafficking in human beings, of the Conference of the Parties to the United Nation Convention against Organised Crime, put together a recent Report

¹¹⁸ [European Commission – Together Against Trafficking in Human Beings – Hungary.](#)

¹¹⁹ UNODC, [Global Report on Trafficking in Persons](#), Chapter V - Traffickers use of the Internet; digital hunting fields.

¹²⁰ [Report of the Special Rapporteur on the sale of children, child prostitution and child pornography on her visit to Georgia](#) from 11 to 18 April 2016, A/HRC/34/55/Add.1, 21 December 2016, para. 29.

on “Successful strategies for addressing the use of technology to facilitate trafficking in persons and to prevent and investigate trafficking in persons”¹²¹ (hereafter, “Report of the Conference of the Parties”), which may serve as useful reference.

142. According to data presented by Europol, the COVID-19 pandemic had the most significant impact on cybercrimes compared to other forms of criminal activities. There is evidence that some people in the sex industry moved their operations online due to lockdown measures. Some anecdotal evidence suggest that some forms of webcam sex trafficking also appear to be increasing. The shift towards the Internet is closely linked to additional privacy risks for the individuals concerned, making them more vulnerable to blackmail and further exploitation. Additionally, remote working amid the coronavirus outbreak gives abusers new ways to target people online to both generate demand and to groom vulnerable women and children. The COVID-19 pandemic has particularly affected the vulnerability of children to trafficking, especially online, which continues to be present.¹²²
143. The OSCE Office of the Special Representative on Combatting Trafficking in Human Beings has worked on “Policy responses to technology-facilitated trafficking in human beings”. The OSCE Special Representative notes that “Two threshold questions must be considered when examining the response to technology-facilitated trafficking in human beings (THB): 1) whether technology-facilitated THB is covered in the definition of THB in national legislation; and 2) whether criminal procedures cover the investigation and prosecution of technology-facilitated THB, including the collection and use of electronic evidence in court.”¹²³
144. The current trend is that the “offline” definition of trafficking is also applied to the online context. However, as noted above, it must be borne in mind that the platforms that are being used to facilitate trafficking should be held accountable for their actions, as outlined in “Guiding Principles on Business and Human Rights”.¹²⁴ Internet intermediaries are no longer treated as just the “messengers” or just the platform. Through cases such as *Delfi v. Estonia*,¹²⁵ their neutral role is increasingly challenged in particular, in Europe by domestic courts, the European Court of Human Rights, the Court of Justice of the European Union. While it is clear that they are corporations that devise and follow their own standards, in terms of human rights, their obligation must be extended to human rights protection.

RECOMMENDATION K

To include in Georgian legislation and regulations an obligation for the State to enhance protection from trafficking on online platforms; and provide for increased responsibility of internet service providers to prevent trafficking.

¹²¹ [Conference of the Parties to the United Nation Convention against Organised Crime, Working Group on Trafficking in Persons](#), 23 July 2021, CTOC/COP/WG.4/2021/2.

¹²² [Addressing Emerging Human Trafficking Trends and Consequences of the COVID-19 Pandemic](#), ODIHR and UN WOMEN, pp. 30-31.

¹²³ See [Policy responses to technology-facilitated trafficking in human beings: Analysis of current approaches and considerations for moving forward](#), p. 2.

¹²⁴ See OHCHR, [Guiding Principles on Business and Human Rights](#), 2011.

¹²⁵ European Court of Human Rights, [Delfi AS v. Estonia](#) [GC], Application no.64569/09, judgment of 16 June 2015, paras. 140-162.

7. RECOMMENDATIONS RELATED TO THE PROCESS OF PREPARING AND ADOPTING LEGISLATION IN THE FIELD OF COMBATTING TRAFFICKING IN HUMAN BEINGS

145. OSCE participating States have committed to ensure that legislation will be “*adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability*” (1990 Copenhagen Document, para. 5.8).¹²⁶ Moreover, key commitments specify that “[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (1991 Moscow Document, para. 18.1).¹²⁷ The Venice Commission’s Rule of Law Checklist also emphasizes that the public should have a meaningful opportunity to provide input.¹²⁸ Additionally, in its General Recommendation no. 38, CEDAW Committee specifically recommends to ensure “*the full, effective and meaningful participation of women and girls, especially victims of trafficking, those at risk of being trafficked and communities affected by trafficking and/or anti-trafficking measures, in all levels of decision-making and at all stages of efforts to prevent and combat trafficking, in the design of human rights-based, gender-sensitive response measures, including in the development, implementation, monitoring and evaluation of anti-trafficking legislation, policy and programmes*”.¹²⁹
146. For consultations on draft legislation to be effective, they need to be inclusive and involve consultations and comments by the public, including civil society and in this case specifically all of those non-governmental organisations that work with victims of trafficking at a grass roots level. All stakeholders from the public sector should also be consulted, in particular the police, immigration authorities, social workers and members of education institutions. Sufficient time should be provided to stakeholders to prepare and submit recommendations on draft legislation, while the State should set up an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions, providing for clear justifications for including or not including certain comments/proposals.¹³⁰ To guarantee effective participation, consultation mechanisms must allow for input at an early stage *and throughout the process*,¹³¹ meaning not only when the draft is being prepared by relevant ministries but also when it is discussed before Parliament (e.g., through the organization of public hearings).
147. In light of the above, **the public authorities are encouraged to ensure that future amendments related to this field are subjected to inclusive, extensive and effective consultations, including with civil society, survivors of trafficking in human beings, survivor-led networks, organizations assisting trafficked persons - offering equal opportunities for women and men to participate. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the law-making process, including before Parliament. As an important element of good law-making, a consistent monitoring and evaluation system of the implementation**

¹²⁶ Available at <<http://www.osce.org/fr/odihr/elections/14304>>.

¹²⁷ Available at <<http://www.osce.org/fr/odihr/elections/14310>>.

¹²⁸ See Venice Commission, *Rule of Law Checklist*, CDL-AD(2016)007, Part II.A.5.

¹²⁹ See *UN CEDAW Committee, General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration*, para. 48.

¹³⁰ See e.g., *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes* (from the participants to the Civil Society Forum organized by ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015.

¹³¹ Section III, Sub-Section G on the Right to participate in public affairs (2014 ODIHR [Guidelines on the Protection of Human Rights Defenders](#)).

of the Law and its impact should also be put in place that would efficiently evaluate the operation and effectiveness of the laws, once adopted.¹³²

[END OF TEXT]

Annex 1: List of Laws and regulations

¹³² See e.g., OECD, [*International Practices on Ex Post Evaluation*](#) (2010).