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Voices of Children Failing to Reach the State – Shadow Childcare System in Georgia

POLICY BRIEF

Executive Summary

This policy paper addresses the protection of children's rights by covering the unregulated residential childcare institutions currently functioning in Georgia. These institutions expose children to physical and psychological violence in violation of both international and local law. Because the children placed in these institutions are not official registered by the state, neither the local nor international community have any information about these children. The parents, when present, do not or cannot protect their children's rights because they are mostly unaware of the conditions in these institutions and the needs of their children after they have been placed in them. The Public Defender of Georgia, the only agency with access to these unregulated childcare institutions, has carried out monitoring only once within the last ten years. The findings of that monitoring revealed grave violations of children's rights in contravention of the internationally recognised principles and standards for the protection of children's rights established by the United Nations Convention on the Rights of the Child.

This policy document offers recommendations to the central and local authorities to ensure the protection of children's fundamental right to grow up in a family environment through systemic reforms supported by the provision on the protection of children's rights in the Association Agenda between Georgia and the European Union.

Introduction

The Association Agenda between the European Union and Georgia was created to prepare and facilitate the implementation of the Association Agreement earlier signed by the two parties. Paragraph 2.1 of Chapter 2 of the Association Agenda addresses the paramount and fundamental rights of children, calling on Georgia to **‘address the situation of children’s poverty and give considerably higher priority to the situation of vulnerable children’ and to ‘focus on measures to protect children against all forms of violence.’**

According to a 2012 UNICEF discussion paper, ‘National studies have shown that family separation and the subsequent institutionalisation or placement of children in foster care or small group homes is mainly driven by poverty.’¹ Put simply, parents, who are unable to provide for their children due to poverty and lack of access to resources, relinquish their children to institutions in the hopes that they will receive better care (i.e. nutrition and education). Unfortunately, in Georgia, the state has been ineffective in providing services to assist families and prevent the separation of children from their families and/or supporting child reintegration back into biological families. Instead, the state has ignored the existence of illegal, unregulated residential facilities, where children’s rights are systematically violated.

Globally, children in institutions fare poorly in comparison to their peers. Research has shown² that children who grow up in institutions, even in well-suited ones, are negatively impacted in terms of their health and psychosocial development. These children do not develop secure attachments to their basic primary caregivers and experience a lack of trust towards the world. The lack of developmental stimulation and interaction with society causes delays in their psychosocial and physical skills development,³ and results in emotional dysfunction and poor socialisation. There are no child institutions without the presence of violence because the environment other than family is a priori a source of violence. Children who are isolated in the institutions and unable to contact human rights defenders are punished in cruel ways for any opposition to violence.

To study the situation of children in institutions against the backdrop of the EU-Georgia Association Agenda, the main focus was placed on improving the monitoring of the defence of children’s rights and increasing the role of the Public Defender in this direction. However, as two years since the adoption of Association Agenda evidence, the Public Defender’s mandate alone is not enough to resolve this problem. The civil sector’s sharp and timely response to the persistent violation of children’s rights is absolutely necessary. The improper treatment of children at shadow children’s homes described in the special report of the Public Defender of Georgia of 2015 have not been addressed so far, which we discuss in details below.

¹ UNICEF (2012) Georgia: Child poverty reduction, discussion document, p. 16. Available at (07.10.2016): http://unicef.ge/uploads/UNICEF_Child_PovertyGEO_web_with_names.pdf

² Brown, K (2009). The Risk of Harm to Young Children in Institutional Care. Save the Children. Pp. 9-17.

³ Williamson, J., Greenberg, A. (2010). Families not Orphanages, Better Care Network working paper, p. 5-6,

What is a child institution

According to Article 9 of the United Nations Convention on the Rights of the Child (UNCRC): **‘States Parties shall ensure that a child shall not be separated from his or her parents against their will,’** except when such separation is necessary for the best interests of the child. In those cases, the decision on separation shall be made by a corresponding judicial body in accordance with the conditions and procedures envisaged by applicable laws. This provision makes it clear that the assumption underlying child welfare policy is that children are better off if raised by their natural parents and that all cases of separation shall be justified by necessity and urgency.

Article 20 of the UNCRC stipulates, ‘A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.’ The UNCRC defines **‘special protection and assistance’** as the right of a child to be placed in an environment alternative to the biological family, such as the home of a relative or foster/adoptive family. Placing a child in a residential institution⁴ shall, according to the UNCRC, be considered a measure of last resort, since ‘low-quality institutional care is unlikely to promote healthy physical and psychological development and can have serious negative consequences for long-term social adjustment especially for children under 3 but also for children under 5 years old.’⁵

Poverty, substance use, status of displaced person or refugee or health condition may not justify placing of a child in a residential institution.⁶ Placing a child in a residential institution may only be a justifiable measure if family and alternative care measures fail to yield desirable results and it is the only possible resolution of the problem. When this happens, the decision must be reviewed on a regular basis so that the child is returned home at the earliest opportunity. Furthermore, residential institutions shall be subjected to regular monitoring.

The definition of residential institution has recently been redefined by international bodies to limit the number of children that can be placed at such institutions to ten. These institutions must now function as small family-type residences.⁷

In 2013, the European Commission, as a proponent of children being raised in the family environment and deinstitutionalising children, made the very important promise to stop the expansion of institutional care settings for children without parental care and promote quality, community-based care and foster care within family settings instead.⁸

⁴ Residential facility implies such service of childcare within the framework of which the child is provided with 24-hour care and separated from his/her family.

⁵ Committee on the Rights of the Child, General Comment No. 7 2005, CRC/C/GC/7/Rev.1, para. 36.

⁶ UN General Assembly, Human Rights Council, A/HRC/11/L.13. 15 June 2009: ‘Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development’. Guidelines for the Alternative Care of Children.

⁷ Ibid. paragraph 28.

⁸ European Commission Recommendation: Investing in Children: Breaking the Cycle of Disadvantage, 20 February 2013. p. 9. http://ec.europa.eu/justice/fundamental-rights/files/c_2013_778_en.pdf.

Regulation of childcare institutions in Georgia

Maud de Boer-Buquicchio, the UN Special Rapporteur on the sale of children, child prostitution and child pornography, visited Georgia from 11 to 18 of April 2016. In her end of mission statement, she wrote: **‘Despite the deinstitutionalisation process initiated more than a decade ago, which involved the closing down of large-scale residential childcare institutions run by the State, there still remain a considerable number of large-scale residential institutions run by third parties such as local governments, religious organisations and private individuals, which were not affected by the deinstitutionalisation process but were created in parallel to it. Moreover, these institutions are not subjected to childcare regulations and standards, and escape the control and monitoring of the State.’**⁹

Back in 2013, the international organisation Disability Rights International expressed concern that unregulated orphanages in Georgia posed the threat of child trafficking.¹⁰ Reporting on the same issue was included in the assessment document of the first year of implementation of the Association Agenda,¹¹ however the problem remained unaddressed as of September 2016. According to recent studies, the situation has gotten even worse. In 2016, a report by the NGO Partner for Children identified 36 unregulated large-scale residential institutions housing 1,146 children.¹² These facilities are run by local self-governments, religious organisations and private persons and the children they serve are not officially registered by the government.

These unregulated (aka shadow) institutions take the following form:

	Residential Childcare Institutions	Number	No. of children
1.	Islamic boarding-schools (the so-called madrasa)	23	470
2.	Institutions under Orthodox Church	4	229
3.	Institutions run by local self-governments and private persons	9	447
	Total	36	1 146

Choosing between child hunger and poverty and separation from the family

According to the Partnership for Children report,¹³ children in these facilities are practically isolated from the outside world. The majority of them are from such poor families that parents actually leave them in the institution to save them from hunger. Accordingly, the parents have no ability to demand quality childcare. In some institutions, the conditions are below minimum standards: in the child residential institutions of Barisakho and Magharoskari, for example, there are neither toilets nor bathrooms for the children.

⁹ End of mission statement of the United Nations Special Rapporteur on the sale of children, child prostitution and child pornography, Maud de Boer-Buquicchio, on her visit to Georgia, Tbilisi 18 April 2016. Available at (27.09.2016) <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19836&LangID=E>

¹⁰ Mathews, E., Ahren, L., Rosenthal, E., Conroy, J., Kaplan, L., Levy, R., McGowan K., G. (2013) Disability Rights International, Left Behind 2013 (‘Left Behind’) (Obtained on 5 November 2015) <http://www.driadvocacy.org/wp-content/uploads/Left-Behind-final-report1.pdf>

¹¹ Open Society Georgia Foundation (2015). Assessing the First Year of Georgia’s Implementation of the Association Agenda - Progress and Opportunities in the Political Sphere. Available at (27.09.2016): http://www.osgf.ge/files/2015/2015/publication/Book_GEO_WEB.pdf

¹² NGO Partnership for Children (2016). Equal Treatment to the Schools of Faith. Final report.

¹³ NGO Partnership for Children (2016). Equal Treatment to the Schools of Faith. Final report

The founders of these institutions and local residents try to justify their existence by saying that they are saving the children from hunger. However, this is a false argument. According to the UNCRC, the State shall create the conditions for the growth and development of all children,¹⁴ and it is impermissible to protect one right (conditions for development) while violating another equally important right (right to grow up in a family environment). These rights are equal to each other rather than hierarchical and both must be protected.

Ensuring the right to education through residential institutions

Securing the right to an education is another justification employed by the founders of shadow childcare residential institutions. The majority of institutions run by religious groups specify that the children who live in Georgia's high mountainous regions have no access to education due to the lack of schools and therefore placing these children in institutions is the only choice. The Ministry of Education also relies upon the same argument: the majority of the residential institutions run by local self-governments were established by the Ministry of Education. As in the case of hunger prevention, this approach is also wrong and is instead indicative of the tendency to violate children's rights for the sake of expediency. The lack of schools, which deprives a child of an education, cannot be addressed by placing children in institutions away from their families. Instead the Ministry of Education must ensure the availability of educational institutions close to the places of residence of children's biological families.

Unaddressed facts of violence against children and other violations of children's rights

The Special Report of the Public Defender of Georgia published in 2015 reveals cases of child abuse at religious institutions¹⁵ and describes the violation of children's rights. Here are some extracts from the report:

Restriction of the rights of children to freedom of expression and free development:

'A number of religious restrictions have been set for the beneficiaries of boarding houses run by religious confessions; often the minors are obeying these restrictions against their will. Among them, the restrictions related to clothing should be mentioned. Beneficiary girls of Muslim boarding houses, according to their religion, are not allowed to wear trousers. They are not required to wear head covers at public school and only wear those in the boarding house. Except for the Feria Orthodox and Bediani boarding houses, beneficiary girls of the boarding houses run by the Patriarchate are not allowed to wear trousers. The restrictions apply to the length of the dress as well. Children express discontent in this matter.'¹⁶

¹⁴ UNICEF (2007). Implementation Handbook for the Convention on the Rights of the Child.

¹⁵ Ombudsman of Georgia (2015). Legal situation of children at the boarding houses run by the Orthodox Church and Muslim Confession. Available at (27.09.2016). <http://ombudsman.ge/ge/reports/specialuri-angarishebi/bavshvta-uflebrivi-mdgomareoba-saqartvelos-martlmadidebeli-eklesiisa-da-muslimuri-konfesiis-daqvemdebarebashi-ar-sebul-bavshvta-pansionebsi1.page>

¹⁶ Ombudsman of Georgia (2015). Legal situation of children at the boarding houses run by the Orthodox Church and Muslim Confession. p. 39. Available at (27.09.2016) http://www.theioi.org/downloads/8r3bd/Georgia_Special%20Report_Monitoring%20in%20boarding%20house%20run%20by%20religious%20confessions_2015_EN.pdf

Restriction of the right to life in the family and integration in the community:

‘During a conversation with the monitors, the beneficiaries of boarding houses would always mention that they live at boarding houses based on their own wish, although each of them stated that at first they found it very hard to get accustomed to the life at the boarding house and adapt to the rules, they wanted to return home, [and] experienced discomfort by [sic] living at the boarding house. Beneficiaries leave boarding houses and go out to city only for a limited time and when it is necessary for buying necessary items. While living in the boarding house the communication of children with the community is restricted to the communication with the children living in the Muslim community only, of the same sex and the attendance of a religion lesson at the boarding house with the children and adults of the same sex. At Muslim boarding houses they do not celebrate the birthdays of the beneficiaries and there is no periodic motivation for the beneficiaries.’¹⁷

Restriction of the right to games and leisure time:

‘The institutional style of boarding houses often significantly differs from a family environment. This is especially noticeable when assessing the daily schedule and living environment of beneficiaries, e.g. at the Stepantsminda school-boarding house beneficiaries are in extended classes after school, bedrooms are locked during the day, [and] there are no objects for entertainment or ones demonstrating the individuality of the children. A similar environment is observed in the boys rooms as well.’¹⁸

Use of physical and psychological violence against children:

‘Through the interviews with the beneficiaries, the monitoring group has revealed individual cases of psychophysical violence from caregivers: it has been discovered at the Ninotsminda boarding house that beneficiaries, as a punishment, are banned from leaving the room or have to skip a meal, e.g., supper. According to the beneficiaries, for physical punishment, minors have to crawl in the hall in front of their peers, while having their hands pressed [to] their head[s].’¹⁹

Use of religious rituals as punishment:

‘A trend has been identified in boarding houses run by the Patriarchate: one of the common methods of punishment is prostration. At the Stepantsminda school-boarding house, in case of a child’s difficult behavior, beneficiaries are sent to the clergymen and a spiritual father makes children prostrate to repent sins or as a punishment. 50-100 prostrations are determined as the measure of punishment. Beneficiaries have also mentioned the obligation to make prostrations when they miss prayer. It has been revealed as a result of the monitoring that Ninotsminda boarding house beneficiaries also have the obligation of prostrations as a form of punishment.’²⁰

Information about any response to the aforesaid violations has not been disseminated after the publication of the Public Defender report. Regardless of the fact that the child residential houses of Peria and Ninotsminda were licensed by the

¹⁷ Ibid. p. 40.

¹⁸ Ibid. p. 41.

¹⁹ Ibid. p. 42.

²⁰ Ibid. p. 43.

state after the active protestation on the part of the NGOs, no strict response to the aforesaid breaches has taken place in the said institutions.

The treatment outlined above constitutes a clear violation of international and national laws and the rights of more than one thousand children are being violated by these unregulated institutions. State assistance is unavailable to them, while the nongovernmental sector has no access to such institutions in order to protect the children. As such, these children do not benefit from state oversight, which is a clear violation of the requirement to protect vulnerable children envisaged by the EU-Georgia Association Agenda.

State response to the shadow child institutions

The Parliament of Georgia adopted amendments to the Law on Licensing Educational Activity in 2016, according to which all childcare institutions currently operating without a license must acquire a license by 1 September 2017. This law requires institutions to comply with the State Standard of Childcare,²¹ which stipulates that the number of children in one building of an institution shall not exceed 10. Unfortunately, large-scale institutions will be able to respond to this requirement by distributing children among different buildings located on one territory while making no changes to the content of the services provided. On the other hand, this regulation will not apply to the many institutions established by the Ministry of Education and run by local authorities that are classified as boarding schools.

The Government of Georgia has not developed a single action plan to transition the more than one thousand children from the shadow childcare institutions into the family environment, since doing so would require the government to acknowledge the existence of these institutions. Undertaking this effort in an unplanned manner could cause further trauma to these children and exacerbate their social isolation. Similarly, the Ministry of Education has not presented a plan as to how the right to education would be secured for children moved to large-scale residential institutions due to the lack of schools in the villages.

As it stands, these shadow childcare institutions will remain unregulated until 1 September 2017. The delay of responding to the facts of current violence against children and their improper treatment may cause irreversible effects.

²¹ Decree of the Government of Georgia No. 66 dated 15 January 2014 – ‘Technical Guidelines – on approving the standards of childcare’.

Ignoring the issue in the Action Plan for the implementation of the Association Agenda

The issue of protecting children's rights, especially as relates to shadow institutions, is ignored by the government in the Action Plan for the implementation of the Association Agenda. In particular, neither the 2014 nor 2015 Action Plans for the implementation of Association Agenda address the protection the rights of children in unregulated institutions. As to the Action Plan of 2016, it points out that the problem of child poverty and of the most vulnerable groups (including, first of all, children lacking parental care and placed in the shadow institutions) will be resolved '**[b]y way of expanding the scope of establishing youth clubs and taking measures to prevent level two felonies.**' It is easy to understand that the children isolated in shadow childcare institutions, who are not even allowed to go out in the street, cannot use such youth clubs, while the government is interested in preventing potential felonies rather than protecting children from violence and crimes against them, possibly taking place right at this moment.

As to the role of the Public Defender Office, currently the only institution with unhampered access to the aforesaid facilities, Paragraph 29 of the Action Plan for the implementation of the Association Agenda for 2016 refers to plans to monitor only the state institutions. Monitoring the shadow and unlicensed childcare institutions is not included in the Action Plan for 2016 while the 2015 report revealed the gravest violations against the children there.

Recommendations:

The special care for the groups of vulnerable children envisaged by the EU-Georgia Association Agenda has not been systematically implemented so far. The fragmental measures periodically planned by different ministries often remain unimplemented because the aforesaid measures are not preceded by a comprehensive analysis of these children's needs and are undertaken without coordinated planning or monitoring of the measures and results of implementation. The Public Defender's one-time-only monitoring cannot ensure that the problem will be addressed by decision-makers.

The protection of children's rights must be included in the new EU-Georgia Association Agenda in a more detailed and profound way, since the time remaining for the implementation of the existing agenda is insufficient to address them. The state legislative and executive authorities have to take into account the following measures in the future agenda:

- Placing children in residential facilities for poverty, health, educational or other related reasons must be prohibited. The placing of children in residential facilities should be considered as a measure of last resort to be taken on a temporary basis and children must be returned to/placed in a family environment at the earliest opportunity;

- Regulators, including both state institutions and non-governmental organisations focused on protecting children's rights, should be given an opportunity to monitor the protection of children's rights in an unhampered way at any childcare organisation irrespective of its legal form;
- The Public Defender of Georgia should carry out monitoring of the shadow childcare institutions at least once a year and supervise the response of the corresponding agencies to the revealed violations;
- The Law on Licensing Educational Institutions must be amended to remove the provisions that permit the operation of large residential institutions without observing the terms and conditions of the license envisaged by this law (e.g. boarding schools);
- The government must implement the EU approaches and policy regulating the approach to children in state care in accordance with the EU recommendations stipulating the complete closure of childcare institutions and placing children lacking parental care in families or in family-type care;
- The executive authority should develop a national strategy and working plan to prevent children's placement in residential institutions, strengthen biological families, complete deinstitutionalisation of those children already placed in institutions and return them to their biological families or alternative care family services without traumatising the children;
- The Ministry of Education and Science must ensure the availability of education for children in the natural area of their residence by way of opening/supporting schools and providing transportation for them;
- State agencies, specifically the Social Service Agency and Ministry of Internal Affairs, must ensure a swift and effective response to the violation of children's rights in residential institutions by way of taking specific measures to protect the rights of children and prevent violence in real time.

¹⁶ UPR Submission, Children's Rights, Georgia. Report available at (13.06.2016): <http://phr.ge/assets/uploads/%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%94%E1%83%91%E1%83%98/12.pdf>

¹⁷ United Nations General Assembly, Human Rights Council, Thirty First Session, Report of the Working Group on the Universal Periodic Review. 13 January, 2015. Available at (13.06.2016): <https://documents-dds-ny.un.org/doc/UN-DOC/GEN/G16/005/04/PDF/G1600504.pdf?OpenElement>

