



**Convention on the Elimination  
of All Forms of Discrimination  
against Women**

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**Committee on the Elimination of Discrimination  
against Women**

**Communication No. 24/2009**

**Views adopted by the Committee at its sixty-first session  
(6-24 July 2015)**

*Submitted by:* X and Y (represented by counsel)

*Alleged victims:* The authors

*State party:* Georgia

*Date of communication:* 24 June 2009 (initial submission)

*References:*

- Transmitted to the State party on 29 October 2009  
(not issued in document form)
- Admissibility decision of 26 July 2013  
([CEDAW/C/55/D/24/2009](#))

*Date of adoption of views:* 13 July 2015



## Annex

### **Views of the Committee on the Elimination of Discrimination against Women under article 7 (3) of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (sixty-first session)**

concerning

#### **Communication No. 24/2009\***

*Submitted by:* X and Y (represented by counsel)

*Alleged victims:* The authors

*State party:* Georgia

*Date of communication:* 24 June 2009 (initial submission)

*The Committee on the Elimination of Discrimination against Women, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,*

*Meeting on 13 July 2015,*

*Adopts the following:*

#### **Views under article 7 (3) of the Optional Protocol**

1. The authors of the communication are Georgian nationals: X, born in 1961, and her daughter, Y, born in 1990. They claim to be victims of a violation by Georgia of their rights under articles 1, 2 (b)-2 (f) and 5 (a) of the Convention on the Elimination of All Forms of Discrimination against Women. They are represented by counsel.<sup>1</sup> The Optional Protocol entered into force for Georgia on 1 August 2002.

#### **Factual background**

2.1 X married a Georgian man in 1987 after being raped by him in July 1987 following a student party; she had been a virgin. According to her, Georgian society perceives virginity as a young woman's virtue that is a guarantee of a successful marriage. X therefore married him because she believed that nobody else would wish to marry her. Within the marriage, she gave birth to five children, in 1988, 1989, 1990,

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\* The following members of the Committee took part in the consideration of the present communication: Ayse Feride Acar, Gladys Acosta Vargas, Bakhita Al-Dosari, Nicole Ameline, Malays Arocha Dominguez, Barbara Bailey, Niklas Bruun, Louiza Chahal, Náela Gabr, Hilary Gbedemah, Nahla Haidar, Ruth Halperin-Kaddari, Yoko Hayashi, Lilian Hofmeister, Ismat Jahan, Dalia Leinarte, Pramila Patten, Silvia Pimentel, Biancamaria Pomeranzi, Patricia Schulz and Xiaoqiao Zou.

<sup>1</sup> The case was submitted by Elena Fileeva (a Georgian attorney) and the non-governmental organization "Interights" (London); subsequently, the authors were represented by the European Human Rights Advocacy Centre (Middlesex University, London).

1991 and 1993. Following her first pregnancy, she became a housewife and left her job as a piano teacher in a music school in Tbilisi. In 1993, her mother moved in to live with X's family and help her in running the household and looking after the children.

2.2 X claims that her husband was often dissatisfied with her housework and became irritated when his instructions were not followed. Conflicts occurred because of insignificant household issues, resulting in violent incidents. On a number of occasions, her husband physically attacked their son, T. In general, her husband would react violently when the children argued while playing. He screamed at them, shook them with force and locked them in the toilet. X once had to clean wounds to the fingers of Y and T. after their father had crushed them in doors to punish them for misbehaviour. Those two children suffered the most violence. On other occasions, the father beat the children with various items that X then sought to remove. X ended up being assaulted by her husband whenever she intervened to protect the children.

*Violence suffered by X*

2.3 X claims that she began suffering physical violence at the hands of her husband in 1996. A number of complaints alleging spousal battery were made to the police, to no avail. On 23 December 2001, following another dispute, her husband assaulted her, causing injuries to her face and head. She received medical care.<sup>2</sup> On 28 December, the Isani-Samgori District Prosecutor's Office declined to open a criminal investigation into the incident, given that X had withdrawn her complaint because she was facing a moral dilemma in that, while her husband was violent, he was also the father of their children who had to be raised and helped.

2.4 On 3 July 2004, X reported to the police that her husband had attacked her because she had complained to the District Prosecutor's Office one month earlier. The police required the husband only to undertake, in writing, not to use further violence against his family.<sup>3</sup>

2.5 On 15 July 2004, the husband insulted and beat X after she asked him to give her some money. A medical examination qualified her injuries as light bodily harm. On 17 July, the police requested the husband to sign a written undertaking not to use force against X. On 24 July, the District Prosecutor's Office informed her that no criminal case would be opened.<sup>4</sup>

2.6 X claims that, following her complaint to the police of 16 June 2004, her husband became increasingly violent and, on 7 December, she lodged a new complaint. The police failed to intervene effectively, with the husband only requested to pledge in writing that in future he would not use violence to solve family problems.

<sup>2</sup> X explains, without giving further details, that a medical examination concluded that she had "a soft tissue tumour on the right hand and a subcutaneous haematoma". Her injuries were classified as light bodily harm.

<sup>3</sup> The husband had left the family home in June 2004 and applied for a divorce.

<sup>4</sup> X adds that, according to a police report dated 30 June 2004, her son, Z., explained to the police that his parents were fighting constantly, that his father was more often the one insulting his mother and that the situation had been going on for years. He confirmed that his father had beaten his mother two years previously and that his father also beat his brothers.

*Violence suffered by Y*

2.7 X explains that, in 1993, she realized that her husband had begun to engage in inappropriate behaviour with Y. Her mother, who moved into the family flat in 1993, observed that the father used to play with his daughter while holding his hands between her legs, on her genitals. When the daughter was about 2 years of age, the grandmother saw the husband holding his daughter on his lap with his hand on her genitals; his face was red, he was groaning and did not notice that he was being observed. Outraged, the grandmother challenged the husband about his behaviour and took the child away.

2.8 Y was also often beaten by her father. He once beat her with a bat, which broke, leaving her with serious injuries.

2.9 On 16 June 2004, X reported to the District Prosecutor's Office the sexual abuse of Y by the father. In front of a psychologist, she described the incidents involving physical and sexual abuse committed during the previous five years by him, the constant conflict at home and the tense atmosphere among family members as a result of the father's actions. Statements were also taken from the son, T. (describing incidents of his father beating or molesting him and his sister) and from X's mother. The statements notwithstanding, the District Prosecutor's Office decided on 30 June not to open a criminal case.

*Exhaustion of domestic remedies*

2.10 With regard to the exhaustion of domestic remedies, X recalls having complained on several occasions of being physically assaulted by her husband. The local police inspector visited the family home on a number of occasions, spoke to her husband and made him sign pledges that he would stop behaving violently towards his wife and children. No further action was taken by the police inspector and no charges were pressed against the husband. In particular, following the incident of 23 December 2001 when her husband physically assaulted her, she was issued with a medical report that showed that she had suffered light bodily harm.<sup>2</sup> Consequently, an initial investigation was carried out by the District Prosecutor's Office. Both X and her husband gave statements and a police officer confirmed in writing that X had been beaten by her husband on 23 December. On 26 December, under pressure from her husband, X withdrew her complaint, causing the case to be closed on 28 December. On 15 July 2004, X reported to the police another assault that had occurred on 14 July; her injuries had been qualified as light bodily harm. At the police station, the husband again pledged in writing that in future he would not use violence against her. The police officers talked to X and sought to persuade her to withdraw her complaint. In the meantime, on 24 July, she received a letter in which it was stated that the Office would not open a criminal investigation on the basis of her complaint against her husband, without giving a reason.

2.11 X further explains that she also complained to the police about the physical violence that her husband was repeatedly inflicting on their children, including on Y. Her complaints, however, were viewed as a private matter and not investigated. On 16 June 2004, she reported the physical and sexual abuse of her daughter and of one of her sons, describing the incidents committed by her husband, including past incidents. Statements were also taken in that context by the District Prosecutor's Office from X's mother, Y and the husband. On 30 June, the Office refused to open a criminal

investigation.<sup>5</sup> On 25 July, X filed an appeal with the Isani-Samgori District Court, claiming that the refusal was unlawful, groundless and biased. On 4 October, the Court annulled the refusal of 30 June, finding that the Office had omitted to consider the accounts of the authors and the mental health of the husband and had taken only the husband's account of events into consideration when refusing to open a criminal case. Prosecutors again collected statements from X, her mother and the children. On 7 November, the Office refused to press charges against the husband, concluding that the alleged lecherous action in relation to the children and paedophilia had not been confirmed and that the children had been influenced by their mother. X appealed and the decision was annulled on 8 December. The case was transmitted to the Office, which collected additional evidence from the husband's employees and his neighbours. On 28 December, the Office again refused to open a criminal case, noting that the husband had been positively assessed by his neighbours and business partners and declaring the authors' claim unsubstantiated. On 24 January 2005, X appealed against the decision. On 11 February, the Tbilisi Prosecutor's Office annulled the decision of 28 December 2004 and returned the case to the District Prosecutor's Office for failure to properly investigate the complaint. On 11 March, X wrote to the General Prosecutor requesting to have her complaint of 16 June 2004 examined, given that her husband was threatening her and the children. By a ruling of 12 March, the District Prosecutor's Office refused to bring charges against the husband. X appealed against that decision to the General Prosecutor's Office, which rejected her appeal on 4 August on the grounds that the actions of her husband did not constitute a crime. X appealed against that decision to the District Court, which rejected it on 29 November as unsubstantiated. She appealed against that decision to the Tbilisi Court of Appeal. Her appeal was heard in her absence, on 7 February 2006, and rejected as groundless. The decision was not subject to further appeal.<sup>6</sup>

### **Complaint**

3.1 The authors submit that the above facts reveal a violation by the State party of articles 1, 2 (b)-2 (f) and 5 (a) of the Convention because the State party has failed to comply with its duty to enact criminal law provisions to effectively protect women and young girls from physical and sexual abuse within the family, has failed to provide equal protection under the law to victims of domestic violence and sexual abuse and has subjected the authors to torture by failing to protect them from domestic violence.

3.2 In substantiation, with reference to articles 1 and 2 of the Convention together with the Committee's general recommendation No. 19, the authors explain that the State party has failed in its duties under the Convention to condemn discrimination against women in all its forms, to ensure that appropriate measures are taken to prohibit gender-based violence and to investigate and punish human rights

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<sup>5</sup> The District Prosecutor's Office concluded that the father's actions did not surpass the normal frameworks of attitude of a father to his children in the family; that he had permanent conflict with his wife concerning the rules of bringing up children and behaviour in the family; and that he liked to pet the children but his wife and the grandmother perceived his actions to be lecherous. The prosecutor in charge concluded that the actions of the father were not lecherous and refused to open a criminal case.

<sup>6</sup> On 22 August 2012, the authors' counsel added that an application on behalf of the authors had been submitted to the European Court of Human Rights on 14 March 2007 and declared inadmissible on 9 December 2008 (see paras. 5.1-5.2).

violations. The State party has a duty, among other things, to introduce, develop and improve, where necessary, effective national policies against violence by ensuring the safety and protection of victims, support and assistance, adjustment of criminal and civil law and the training of professionals confronted with violence against women in order to ensure the prevention of such violence.<sup>7</sup>

3.3 The authors add that women and children, who are more vulnerable to becoming victims of domestic violence, are entitled to the State party's active protection against serious breaches of their personal integrity — physical, moral and sexual — of which the authorities have or ought to have knowledge. They claim that, beyond the obligation to take action when complaints are lodged, the State party has an obligation to open an investigation whenever there are sufficient indications that serious violations may have occurred.<sup>8</sup> The State party's obligation to protect women from violence involves not only addressing the conduct of the perpetrator but also ensuring the welfare of the victim. Essential measures for effective protection include removing the continuing risk of domestic violence, making available measures of restraint to ban perpetrators from contacting, communicating with or approaching victims and providing appropriate victim support services (including shelters, counselling and medical support). The prohibition of torture and other forms of ill-treatment requires that the authorities engage in effective investigations when persons claim to have been subjected to torture or ill-treatment and identify and punish those responsible.<sup>9</sup>

3.4 With reference to article 1 of the Convention and the Committee's general recommendation No. 19, the authors point out that, at the time of the events forming the basis for the complaint, the State party had no legal provisions to address domestic violence effectively. The definition of domestic violence was introduced into the State party's legal framework only by the Prevention of Domestic Violence Act, adopted on 25 May 2006. Until then, complaints of domestic violence had been dealt with by the area police inspector on the basis of administrative rules. After considering the case at the location of the incident, the inspector would take a written declaration from the offender not to commit similar acts in future. Such declarations were not legally binding and therefore unenforceable. If a victim insisted on making an official complaint, the prosecutor's office would act as a mediator between the spouses rather than investigate the incident and prosecute the perpetrator. The State party's failure to enact effective legislative provisions and provide social services to protect victims of domestic violence is compounded by

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<sup>7</sup> In this connection, with reference to recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe to member States on the protection of women against violence, adopted on 30 April 2002, and to resolution 1530 (2007) of the Parliamentary Assembly of the Council of Europe, the authors note that the State party must ensure that its national law provides that any act of violence against women, in particular physical or sexual violence, constitutes a violation of that person's physical, psychological and/or sexual freedom and integrity; must classify all forms of violence within the family as a criminal offence; and must penalize any abuse of the position of a perpetrator, in particular that of an adult vis-à-vis a child.

<sup>8</sup> The authors refer to the judgement of the European Court of Human Rights of 9 June 2009 in *Opuz v. Turkey*, application No. 33401.

<sup>9</sup> In this context, with reference to the judgement of the European Court of Human Rights in *Opuz v. Turkey*, the authors note that the finding of the Court that, in the light of the seriousness of the crimes committed against the applicant and her mother, the prosecuting authorities should have been able to conduct a prosecution as a matter of public interest even if the victims had withdrawn their complaints, is of relevance to the present communication.

the authorities' failure to effectively investigate X's numerous complaints regarding the physical and sexual abuse inflicted on her and her children by her husband.

3.5 The authors add that their situation was well known by the police following numerous communications with X and her relatives. Beginning with the violent episode of 23 December 2001 and culminating in the incident of 17 July 2004 (both incidents were reported to the police), the physical assaults became more frequent. In addition to X, the children were subjected to verbal and physical assaults by their father, causing further quarrels among the parents. X called the police on several occasions to seek protection for her and the children, but no such protection was offered.

3.6 The authors claim that, under the Georgian Criminal Procedure Code, the police should have accepted and registered X's complaints, launched a criminal investigation, gathered evidence, prosecuted the husband and taken action to prevent further violence. The police, however, failed to meet any of those obligations. The complaints made to the local inspector were never registered, properly investigated or prosecuted. In the light of the long history of violence and abuse, the police, by failing to respond immediately to the complaints, did not exercise due diligence to protect the authors from gender-based violence. The police and the prosecutors knew or ought to have known that the authors were continuously exposed to violence and abuse endangering their physical and mental health and were therefore under an obligation to prevent violence from occurring.

3.7 The authors add that the failure of the authorities to effectively address domestic violence in their case is also evident from the investigation of X's complaint of 14 June 2004. She complained about the beatings of her children and of her husband's inappropriate behaviour towards Y. The complaint was rejected on several occasions as "manifestly ill-founded", "groundless" or "not surpassing the normal frameworks of attitude of a father to his children in the family". The authorities merely gathered statements from the parties involved, without conducting a medical-forensic examination, ignoring the previous domestic violence complaints.

3.8 The authors explain that several statements were collected from the children in the presence of a school psychologist. The children confirmed the beatings, with Y describing incidents in which her father touched her genitals and beat her. The prosecutors, however, doubted Y's statements and requested the school psychologist to evaluate the children. The psychologist concluded that Y's statement was repetitive, emotionless and used terminology that did not correspond to the child's social environment, education or age. The authors explain that the prosecutors relied on those conclusions without verifying the psychologist's proficiency, qualifications and expertise, arguing that such an opinion should have been sought from a psychologist with clinical experience.

3.9 The authors further explain that the prosecutors also inquired about the mental health of X and her husband. One Tbilisi Psychoneurological Dispensary diagnosed the husband as mentally healthy but excitable and irritable. Another Tbilisi Psychoneurological Dispensary certified that, while X was not registered as mentally ill, "this does not suffice to acknowledge a person to be mentally healthy". On an unknown date, Tbilisi Clinical Hospital No. 5 diagnosed X with neurasthenia and prescribed treatment. The authors point out that "these certificates were requested from practitioners, not experts, and provided a general assessment rather than individual evaluations of the authors".

3.10 The authors also note that the prosecutors, when rejecting X's complaint, took into consideration the references of her husband as a student and businessman, i.e. outside the family. That X had a higher education diploma and that she had previously worked as a music teacher but stopped because she was looking after her children was not taken into consideration. The authors claim that, by giving preference to the husband's education and positive assessment outside the family over those of the victim, the investigator had a subjective discriminatory attitude towards the author's complaint and lacked impartiality. The prosecutors were focused on identifying the flaws in X's statements, behaviour and mental health, instead of on gathering and processing evidence regarding her complaint. The authors and all other family members, except the husband/father, were negatively assessed in the prosecutors' resolutions, which do not refer to the previous acts of domestic violence suffered by X and do not specify the need to professionally evaluate the children's physical and psychological health. At no stage were the social services involved to help the family. The prosecutors' failure to consider X's claims of sexual violence against her children deprived the process of its effectiveness and meaning. Even when the complaint showed a pattern of abusive behaviour against the children, the prosecutors found this to be irrelevant.

3.11 The authors contend that the domestic violence that they suffered over the years amounts to torture and ill-treatment and that the State party has failed to effectively prosecute those acts and to protect them.<sup>10</sup> With reference to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, they argue that all the necessary constituent elements of torture were present in their case: severe physical and mental pain and suffering (X indicated in her claim to the prosecutors that she was gradually losing self-esteem as a mother and housewife because of her husband's constant criticism and insults and that she felt morally harassed; Y mentioned that she realized that her father was not caressing her as a father and that she was ashamed and afraid to stay alone with him at home because he could beat her); intent (both authors were beaten and subjected to abuse on several occasions by the husband/father who, through physical violence and intimidation, sought to exercise control over them; the failure of the police to protect them contributed to impunity for the perpetrator); and State involvement (no clear legal framework regarding protection of victims of domestic violence existed before 2006 and, even subsequent to the adoption of the law, domestic violence could sometimes be seen as a private matter). According to the authors, while the authorities were fully aware of the situation, through their inaction they tacitly contributed to encouraging the perpetrator's violent behaviour, without interrupting the violence, offering a shelter to the victims and investigating their claims.

#### **State party's offer for an amicable settlement and authors' comments thereon**

4.1 On 5 September 2011, the State party submitted a proposal with a view to securing an amicable settlement with the authors. The State party explains that it fully endorses the principles enshrined in the Convention. It admits that, in 2004-2005 (when the violence occurred), its legal system was harmonizing national law with the requirements of the Convention, but states that the major principles of the Convention were in the meantime entirely implemented at the national level. The

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<sup>10</sup> The authors note that, while there is no exhaustive list of forms of violence that may constitute torture, the special rapporteurs on torture and violence against women and the Human Rights Committee have concluded that domestic violence may constitute a form of torture.



State party adds that some deficiencies in investigation identifiable at the time in question may have led to a violation of the authors' rights. In that light, it invites the authors and their representatives to engage in discussions regarding an amicable settlement of the case.

4.2 On 21 October 2011, the authors' representatives confirmed the authors' willingness to engage in a possible amicable settlement. On 22 April 2012, the authors' counsel informed the Committee about discussions with the authorities in that regard. On 20 June, she added that there had been no developments.<sup>11</sup>

#### **Additional comments by the parties**

5.1 On 22 August 2012, the authors explained that their application had been rejected by the European Court of Human Rights on 9 December 2008 as manifestly ill-founded by a decision of a committee composed of three judges, without giving a reason for its decision. On 17 September, the authors provided a copy of their application to the Court of 14 March 2007 and of the Court's decision of 9 December 2008.

5.2 On 4 January 2013, the State party challenged the admissibility of the communication under article 4 (2) of the Optional Protocol to the Convention because the authors had applied, on 14 March 2007, together with one of X's sons, to the European Court of Human Rights, which had studied the case and, on 9 December 2008, declared the application inadmissible under articles 34 and 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

5.3 On 25 March 2013, the authors submitted their comments on the State party's observations. They note, among other things, that the present communication is focused on the gender-specific impact of domestic violence and the gender discrimination inherent in the State party's failure to respond to and to prevent violence against women and girls. By contrast, in their application to the European Court of Human Rights they did not refer to gender-based discrimination, but focused on the personal impact of the abuse suffered by Y and her brother and on the harm caused to X as a mother unable to protect her children. Such distinction is reflected in the differences regarding the parties, the facts and the legal complaints. Before the Court, the authors did not complain about discrimination, sex-based or otherwise, and accordingly did not invoke a violation of article 14 (prohibition of discrimination) of the European Convention on Human Rights, but rather focused on the personal impact of the abuse suffered by Y and her brother. It was alleged that X was also a victim of a violation under article 3 of the European Convention on Human Rights because she was unable to protect her children from such abuses. Their application focused on a breach of articles 3 (prohibition of torture), 8 (right to respect for private and family life) and 13 (right to an effective remedy) of the European Convention on Human Rights. This stands in contrast to their complaint to the Committee, which refers to discrimination on grounds of sex (see para. 3.1).

#### **Issues and proceedings before the Committee concerning admissibility**

6.1 On 26 July 2013, at its fifty-fifth session, the Committee examined the admissibility of the communication. It noted, for purposes of article 4 (2) (a) of the

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<sup>11</sup> No further details on the amicable settlement discussions were submitted by the parties.

Optional Protocol, that an application on behalf of the authors and one of X's sons (and Y's brother) had been filed before the European Court of Human Rights in March 2007 and that the Court had declared the application inadmissible as manifestly ill-founded and concluded that the facts before it had disclosed no appearance of a violation of the applicants' rights and freedoms under the European Convention on Human Rights and the protocols thereto. The Committee took note of the State party's objections concerning the admissibility of the communication. The issue before the Committee was whether the authors' application before the Court constituted the "same matter" as the communication to the Committee and, if it did, whether the Court had in fact "examined" it.

6.2 The Committee had first to determine whether the same matter as submitted to the European Court of Human Rights was referring to one and the same claim of the violation of a particular right concerning the same individual. The Committee therefore needed first to ascertain whether the same matter in the present case related to the same facts, the same individuals and the same substantive rights.

6.3 The Committee noted the State party's observation that both petitions were "fairly similar, given that the articles relied upon in both cases are substantively similar". The authors had sought relief under the European Convention on Human Rights under articles 3 (prohibition of torture), 8 (right to respect for private and family life) and 13 (right to an effective remedy), whereas in the current case, the authors had invoked articles 1, 2 (b)-2 (f) and 5 (a) of the Convention on the Elimination of All Forms of Discrimination against Women. According to the State party, to avoid re-examination of already decided disputes, it was necessary to look at the underlying nature of a dispute and not at its formal classification.

6.4 The Committee also noted the authors' comments that, the similarity of the petitions notwithstanding, the facts pleaded and relied upon before the European Court of Human Rights and before the Committee differed. It recalled that the communication before the Committee was focused on the gender-specific impact of domestic violence and the gender discrimination inherent in the State party's failure to respond to and prevent violence against women and girls, whereas the application to the Court was focused on the personal impact of the abuse suffered by Y and her brother and on the harm, as a mother unable to protect her children, to X; such distinction was reflected in the differences regarding the parties, the facts and the legal arguments. The authors emphasized that, before the Court, they had not invoked a violation of article 14 (prohibition of discrimination) of the European Convention on Human Rights.

6.5 The Committee perused the application to the European Court of Human Rights and the pleadings contained therein and noted that, before the Court, the authors had not complained about discrimination, sex-based or otherwise, and had not invoked a violation of article 14 (prohibition of discrimination), whereas discrimination based on sex was at the heart of the communication before the Committee. The application to the Court had focused on the sexual and physical abuse against the two children (Y and her brother, T.), the failure of the State party's authorities to protect them and to prosecute the perpetrator, and the "moral torture and pain" suffered by X as a mother who "could not manage to protect her children from such kind of actions". The repeated domestic violence suffered by X from 1996 to 2004 had never been invoked before the Court. X's son (and second

author's brother), also a victim of violence, had been a party to the application to the Court but not to the communication before the Committee.

6.6 The Committee noted that the two applications did not relate to the same substantive rights, given that, in the communication before it, the authors had invoked their right to equality and non-discrimination, whereas those allegations had not been invoked before the European Court of Human Rights.

6.7 Accordingly, the Committee considered that it could not be said that the "same matter" had been examined by the European Court of Human Rights and that it was thus not precluded from examining the communication before it by virtue of article 4 (2) of the Optional Protocol. It considered that the authors had sufficiently substantiated their claims under articles 1, 2 (b)-2 (f) and 5 (a) of the Convention for purposes of admissibility and declared them admissible.

#### **State party's observations on the merits**

7.1 On 9 December 2013, the State party provided its observations on the merits. It asserts that the authors have failed to provide valid arguments to support their allegations concerning a violation of articles 1, 2 (b)-2 (f) and 5 (a) of the Convention in conjunction with the Committee's general recommendation No. 19.

7.2 The State party claims that its authorities have fulfilled all their positive obligations under the Convention and refers to the investigations conducted.

7.3 The State party reiterates the facts and refers to the complaints submitted by X between 16 and 30 June 2004. On 30 June, an assistant in the District Prosecutor's Office, in accordance with article 28 (b) of the Criminal Procedure Code, declined to initiate a criminal case against the husband in the light of the conflicting explanatory notes and the discrepancies throughout the interrogations. No illegal act was disclosed during the investigations.

7.4 The State party also makes reference to a complaint by X's neighbour, K., to the District Prosecutor's Office on 30 June 2004. The neighbour claimed that on 30 December 2002 water had leaked into X's apartment and the husband had stormed in, attacked her children and damaged the apartment. She told prosecutors that, out of respect for X, she had at first refrained from reporting the incident to the police. When she had learned that X was seeking to press charges against her husband, however, she had decided to help her by making a statement. Nevertheless, on 7 July 2004, the neighbour said that she wished to withdraw her statement, indicating that she had reported the incident at X's request. The State party maintains that, bearing in mind those facts, the discrepancies and contradictory statements demonstrate the inconsistency of the case and that proving the existence of any kind of illegal act on the part of the husband is complicated.

7.5 The State party indicates that, after the authors submitted another explanatory note on 7 July 2004, the investigative authorities of the District Prosecutor's Office obliged the husband to pledge that he would abide by the law and not insult the members of his family.

7.6 On 15 July 2004, the husband submitted a statement to the District Prosecutor's Office in which he noted that his wife had been diagnosed with aggressive psychosis, described assaults perpetrated by her against him at their home and at his workplace

and requested prosecutors to do everything possible to protect him from such physical abuse and to secure psychiatric treatment for his wife.

7.7 On 14 and 15 July 2004, the District Prosecutor's Office requested the Tbilisi Psychoneurological Dispensary to provide any records regarding the psychological conditions of X and her husband. The authorities received information regarding the husband's "severe character accentuation". Furthermore, on 16 June, the area's senior police officer requested X to undergo an examination at the Dispensary, but she refused.

7.8 After X appealed against the decision of the District Prosecutor's Office of 30 June 2004, the Isani-Samgori Regional Court annulled that decision on 4 October, finding, among other things, that prosecutors had relied solely on the husband's explanatory note, that other minor family members or witnesses had not been questioned and that no legal action had been taken to verify the psychological status of X and her husband. The State party concludes that the resolution shows that the judicial authorities demonstrated the will to investigate promptly, thoroughly, impartially and seriously all allegations of domestic violence, as established by the Committee's case law, without any distinction, exclusion or restriction on the basis of sex.<sup>12</sup>

7.9 The State party draws attention to the statement by X of 18 October 2004 to the effect that her elder son, D., regularly worked with his father at the market. Accordingly, she was apparently not concerned that her husband would harm him. The State party therefore submits that that statement renders the preceding statement by X absolutely vague and unfounded.

7.10 Furthermore, the questioning of the other minors in the presence of a psychologist and a teacher at the children's school revealed additional facts contradicting the statements by the authors. Y told the psychologist that, three years previously, when she had gone with her brother, T., and her father to Telavi, her father had not beaten them or caressed them inappropriately. T. refuted the allegation that their father had ever taken the two of them to Telavi, but stated that he had stayed with his father and his brother, A., in Telavi at their aunt's house for a fortnight and his father had not beaten them during that time. The State party points out that that statement also shows that X was not concerned about leaving the children alone with their father.

7.11 While the elder sons, D., and S., were being questioned, they maintained that they had witnessed no inappropriate acts on the part of their father, only hearing of them from their mother and their grandmother. They further stated that their mother and their grandmother frequently talked to them about paedophilia. The State party therefore claims that the children were to some extent brainwashed by their mother and their grandmother, causing them to testify against their father.

7.12 The youngest son, A., said during questioning that he was there because his mother and his grandmother wished to seize his father's business so that the elder brother could work there and support the family. According to the State party, that statement raises suspicion about the circumstances of the case and calls into question the allegations by the authors.

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<sup>12</sup> The State party refers to communication No. 2/2003, *A. T. v. Hungary*, views adopted on 26 January 2005.

7.13 The psychologist who attended the interviews found, among other things, that the children talked about traumatic issues in a non-emotional way, with phrases learned by heart, that their terminology was uncommon for their age and that the late reaction of X and her mother concerning the events made the facts appear extremely vague. The psychologist concluded that the children were not emotional and that there was a high possibility that they might have been influenced.

7.14 On 7 November 2004, the District Prosecutor's Office, referring to the interviews, the report of the psychologist and other suspicious discrepancies, refused to initiate a criminal case against the husband, concluding that the children had been influenced by their mother and that it was illogical for X to have accused her husband of paedophilia yet permitted the children to work with him and stay with him in another town overnight.

7.15 That decision was annulled by the Tbilisi Prosecutor's Office, which indicated, among other things, that the neighbours and the husband's colleagues had not been questioned and that no interview had been conducted regarding the neuropathological treatment undergone by X. The State party asserts that the decision shows, once again, the authorities' willingness to investigate impartially and promptly.

7.16 The neighbours and colleagues subsequently testified that X's husband was a decent man who cared a lot about his family and that they had never observed any inappropriate behaviour on his part towards children. Some also claimed that X was a very jealous woman who spread rumours about and defamed her husband. In addition, the doctor who had treated X was questioned. He confirmed having diagnosed her with neurasthenia and prescribed her treatment.

7.17 On the basis of the aforementioned interviews, the District Prosecutor's Office refused to initiate a criminal case, a decision that was annulled by the Tbilisi Prosecutor's Office on 11 February 2005. The grounds for the rejection were, among others, that the husband's doctor should be questioned with regard to the husband's severe character accentuation and personal disorder, all the neighbours living on the same floor as the authors should be questioned and a complete characterization of X and her husband concerning their education and social status should be obtained.

7.18 Consequently, the husband's doctor was questioned. She explained that his character accentuation did not constitute a mental disorder or sexual perversion, but that persons suffering from such accentuation were prone to irritation and inclined to argue about trivial matters. For their part, the neighbours described the family as a good family and decent people, while the husband's employer said that he was honest. The State party submits that the interrogations revealed no new circumstances in the case.

7.19 The State party further reiterates that the case was examined and rejected on 4 August 2005 by the Office of the General Prosecutor, on 29 November by the Tbilisi Court of First Instance and on 7 February 2006 by the Tbilisi Court of Appeal.

7.20 The State party therefore concludes that its authorities have fulfilled all the components of the positive obligation under the Convention. In addition, it observes that there are no indications of discrimination on the basis of sex and that all investigative procedures were conducted promptly and impartially, in line with the relevant articles of the Convention and the case law of the Committee.

**Authors' comments concerning the State party's observations**

8.1 On 17 November 2014, the authors submitted their comments regarding the State party's observations on the merits, claiming that the State party had completely failed to substantiate the conclusions drawn and, overall, had failed to deal with the substance of the matter.

8.2 In the authors' opinion, the State party did not address the main matter of "repeated domestic violence" and ignored a number of facts, such as that X was raped and subsequently forced to marry the perpetrator, that since 1996 she had suffered ongoing and significant abuse at the hands of her husband and that the children had suffered continuous abuse, including being hit with various objects (this abuse was particularly acute for Y, given that she was regularly beaten, screamed at and shaken with force, her fingers were crushed in doors as a punishment and she was subjected to sexual abuse). The State party did not mention those events nor did it consider the legal obligations that those facts entailed. Nevertheless, that abuse, suffered over many years, and the authorities' corresponding failure to respond to it form the vital background of the investigations conducted by the State party.<sup>13</sup>

8.3 The authors argue that the observations of the State party demonstrate a fundamental misunderstanding of its obligations under the Convention, which becomes apparent from the presentation of the investigation and judicial determination as thorough and impartial. For example, X's statement that she thought that her husband would not hurt their son in public led the State party to conclude that all her earlier complaints were vague and unfounded. The authors submit that this is not rational and demonstrates either bias against the authors or a preconceived notion of how victims of domestic violence behave.<sup>14</sup> With the authorities' decision to close the case because the neighbours' statements revealed no new circumstances, the burden of proving the case was placed on the authors. It is an overly high burden, given that they had already produced significant supporting evidence.<sup>15</sup>

8.4 The authors highlight that gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy their rights and freedoms.<sup>16</sup> They therefore maintain that the State party has failed to act with due diligence to prevent, investigate, prosecute and punish acts of gender-based violence, as set out in paragraph 19 of the Committee's general recommendation No. 28.

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<sup>13</sup> The authors refer to communication No. 20/2008, *V. K. v. Bulgaria*, views adopted on 25 July 2011, para. 9.9.

<sup>14</sup> The authors refer to *V. K. v. Bulgaria*, footnote 13 above, paras. 9.9 and 9.11, and communication No. 18/2008, *Vertido v. the Philippines*, views adopted on 16 July 2010, paras. 8.3 and 8.4.

<sup>15</sup> See *V. K. v. Bulgaria*, footnote 13 above, para. 9.9.

<sup>16</sup> The authors refer to the Committee's general recommendation No. 19, para. 1.

8.5 The authors reiterate the systemic failures in Georgian law at the time of the incidents complained of by the author<sup>17</sup> and the absence of legislation explicitly criminalizing domestic violence;<sup>18</sup> the failure to institute or implement any policy ensuring the investigation, prosecution and punishment of domestic violence; the absence of any legislation providing for restraining or protective orders;<sup>19</sup> the absence of sufficient training for law enforcement and prosecutorial/judicial State actors to ensure the protection of victims and the elimination of bias towards (predominantly male) persons accused of such violence as opposed to (predominantly female) complainants; and the absence of a gender-sensitive mechanism for interviewing victims and the practice of using non-enforceable written pledges by suspected perpetrators. The authors submit that the State party has failed to provide evidence or meaningful arguments to contradict this. It therefore appears that, although the State party in no way contests the accuracy of the facts presented, it disputes that the failings in question would amount to a violation of the rights relied upon. This is incompatible with the clear guidance given by the Committee.<sup>20</sup>

8.6 The authors reiterate that, in the present case, the State party failed, among other things, to officially register complaints of domestic violence, to launch an investigation, to take into account the history of previous complaints of domestic violence, to recognize that the admitted incidents of physical violence constituted criminal offences and to provide gender-sensitive or child-sensitive reporting and interview settings. The authors therefore maintain that the State party failed to ensure the practical realization of the principles of non-discrimination and substantive equality under articles 1, 2 (c) and 2 (d) of the Convention.<sup>21</sup>

8.7 The authors submit that there exists a sociocultural pattern of conduct in the State party that accords greater weight to the word of a man and that accepts a level of physical violence and sexual touching as being within the realms of acceptable parenting for a man. Customs and social patterns also perpetuate discrimination and prejudices based on the idea of inferiority or superiority. The authors add that the State party did not contest those discriminatory practices, social and cultural

<sup>17</sup> The authors refer to the concluding observations of the Committee on the first periodic report of Georgia ([A/54/38/Rev.1](#), part two, para. 102); the concluding observations of the Committee on the combined second and third periodic reports of Georgia ([CEDAW/C/GEO/CO/3](#), paras. 19-20); the concluding observations of the Committee against Torture on the second periodic report of Georgia ([A/56/44](#), para. 82 (j)); the concluding observations of the Committee on the Rights of the Child on the second periodic report of Georgia ([CRC/C/15/Add.222](#), paras. 42-43); the concluding observations of the Committee on Economic, Social and Cultural Rights on the initial report of Georgia ([E/C.12/1/Add.42](#), paras. 15 and 27) and the second periodic report of Georgia ([E/C.12/1/Add.83](#), paras. 18 and 36); the concluding observations of the Human Rights Committee on the second periodic report of Georgia ([CCPR/CO.74/GEO](#), para. 14); and the report of the Special Rapporteur on violence against women, its causes and consequences, on international, regional and national developments in the area of violence against women for the period 1994-2003 ([E/CN.4/2003/75/Add.1](#), para. 1996).

<sup>18</sup> The authors submit that such legislation was introduced only in 2012.

<sup>19</sup> The authors submit that such legislation was introduced only in 2006, with the Prevention of Domestic Violence Act.

<sup>20</sup> The authors invoke general recommendation No. 19, paras. 24 (b), 24 (k), 24 (r) (iii) and 24 (r) (v); and *A. T. v. Hungary*, footnote 12 above, para. 9.6 (g). They further refer to the report of the Special Rapporteur on violence against women, its causes and consequences, on the due diligence standard as a tool for the elimination of violence against women ([E/CN.4/2006/61](#), para. 82).

<sup>21</sup> The authors refer to communication No. 47/2012, *González Carreño v. Spain*, views adopted on 16 July 2014, para. 9.9.

patterns of conduct and prejudices outlined in the communication, nor provide evidence indicating steps to modify or eliminate them.

8.8 The authors challenge the argument of the State party that all necessary investigative procedures were thoroughly followed during the preliminary investigation, indicating that the State party failed to apply an objective standard of assessment to the prima facie evidence suggesting the commission of an offence and to act accordingly. Even the acceptance by the husband that he caressed his daughter all the time, that he sometimes hit his wife and that he had dropped his son, T., on to a bed with his face down and hit him several times did not lead to the opening of an investigation. Rather, the authorities concluded that the husband's behaviour was not unlawful, thereby demonstrating the institutional failure and the lack of will on the part of the authorities to investigate and prosecute domestic violence effectively.

8.9 The authors further submit that the State party failed to gather and represent evidence impartially, instead demonstrating a sceptical and disbelieving attitude towards the accounts provided by X and her witnesses, as distinct from an inherent bias demonstrated towards the explanations of the husband. They point, in particular, to the initial failure to interview all potentially relevant witnesses, the use of leading questions during interviews and the request for X to undergo psychiatric examinations in absence of any evidence as to their relevance. It further appears that the authorities sought confidential medical information from X's doctor, without evidence that she granted permission for its disclosure.

8.10 The authors claim that an examination of the judicial decisions demonstrates a judiciary that compounded the omissions and mistakes made by the prosecuting authorities as well as independently demonstrating bias towards the husband. The decision of the Tbilisi City Court of 29 November 2005 lacks impartial analysis and fails to accurately represent both the specifics and the totality of the evidence gathered. The judge concludes with the following passage: "Most significant is the fact that the [author's] attorney is unable to counter the evidence gathered by the prosecutors through numerous examinations". According to the authors, this indicates an apparent view that the onus was on them to disprove evidence put forward in the husband's favour.

8.11 The authors submit that the physical, sexual, emotional and psychological abuse that they suffered has had an enduring impact on their lives and their physical and emotional well-being.

8.12 With regard to the current legislative and policy developments in the State party, the authors submit that, although there are now laws prohibiting and criminalizing domestic violence, their implementation is problematic in practice.<sup>22</sup>

8.13 The authors are seeking monetary compensation for the material and moral damage suffered as a result of the violations of their rights.<sup>23</sup> They are also seeking an official apology from the Government, including an acknowledgment of the facts and an acceptance of responsibility for the violations of their rights under the Convention.<sup>24</sup> The fundamental defects within the investigative proceedings at the

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<sup>22</sup> The authors refer to an expert report prepared by Babutsa Pataria.

<sup>23</sup> The authors refer to general recommendations Nos. 28 and 19.

<sup>24</sup> The authors refer to general recommendation No. 28, para. 32; General Assembly resolution 60/147, para. 22; and communication No. 1493/2006 of the Human Rights Committee, *Williams Lecraft v. Spain*, views adopted on 27 July 2009, para. 9.



national level notwithstanding, they do not seek a re-investigation of their complaints. The authors further allude to the growing number of women who are victims of violence and the low rate of reporting of cases of sexual domestic violence owing to stigma and fear,<sup>25</sup> requesting the Committee to make the following general recommendations to the State party to strengthen the application of the legal framework: ensure effective, prompt and impartial investigations; ensure access to civil and criminal remedies for victims of domestic violence; and strengthen efforts to overcome stereotypical attitudes regarding the roles and responsibilities of women.

### **Deliberations of the Committee**

#### *Consideration of the merits*

9.1 The Committee has considered the present communication in the light of all the information placed at its disposal by the authors and by the State party, in accordance with the provisions of article 7 (1) of the Optional Protocol.

9.2 The Committee takes note of the averments of X concerning the history of violence perpetrated against her by her husband, beginning with her rape in July 1987 before their marriage, the physical violence during their marriage, especially as from 1996, and the numerous complaints that she made to the police. The Committee also takes note of the detailed information provided by the author about the violent disposition of her husband towards their children and especially towards her son, T., and her daughter, Y. The Committee notes, in particular, the details provided concerning the physical and sexual abuse of Y, in respect of which she made a complaint to the District Prosecutor's Office on 16 June 2004. The Committee further observes that the said complaint was supported by statements given by X's son, T., as well as her mother, who first noticed the inappropriate behaviour of her husband towards Y. X claims that the State party failed to conduct any effective investigation into her complaints of domestic violence against her and physical and sexual abuse against her daughter and to prosecute her husband, in violation of their rights under articles 1, 2 (b)-2 (f) and 5 (a) of the Convention. The issue before the Committee is therefore to determine whether the State party, through its public authorities and institutions, has adequately addressed the complaints of X and provided her and Y with effective legal protection.

9.3 The Committee recalls that, in accordance with paragraph 6 of its general recommendation No. 19, discrimination within the meaning of article 1 of the Convention encompasses gender-based violence against women. Such discrimination is not restricted to action by or on behalf of Governments. Rather, under article 2 (e), States parties may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation (para. 9).

9.4 The Committee takes note of the contention of X that, at the time of the events forming the basis for her complaint, there was no legal framework in the State party to provide effective legal protection against domestic violence and that the Prevention of Domestic Violence Act, which incorporated a definition of domestic violence for the first time, was adopted in the State party only on 25 May 2006. It

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<sup>25</sup> The authors refer to the concluding observations of the Committee on the combined fourth and fifth periodic reports of Georgia (CEDAW/C/GEO/4-5).

also takes note of the details provided concerning the manner in which complaints of domestic violence were being dealt with by the area police inspector purely on the basis of administrative rules, namely that the inspector would simply record a written declaration from the offender not to commit similar acts in future, with such declarations not legally binding and therefore unenforceable. Whenever a victim insisted on making an official complaint, the prosecutor's office would act as a mediator between the spouses rather than investigate the incident and prosecute the perpetrator.

9.5 The Committee gave due consideration to the manner in which the authorities in the State party handled the complaints of X and observes that, on 28 December 2001, the Isani-Samgori District Prosecutor's Office declined to open a criminal investigation into another incident, of 23 December 2001, during the course of which X sustained injuries to her face and head, because she had withdrawn her complaint. The police responded to X's complaints in respect of the physical attacks inflicted on her by her husband on 16 June and 3 and 15 July 2004 by simply requiring the husband to undertake in writing that he would not use further violence against his family. On 24 July 2004, the Office informed X that no criminal charges would be brought against her husband. Similarly, in response to X's complaint of physical and sexual abuse of Y by her father made to the Office, supported by statements from X's son, T., who related incidents of his father beating or molesting him and his sister and from X's mother, the Office decided, on 30 June 2004, not to open a criminal case and not to press charges. The Committee further takes note that the State party has not challenged those allegations. On the contrary, in its submission of 5 September 2011, the State party admitted that when the alleged violence occurred national law was being harmonized with the requirements of the Convention. The State party also acknowledged that some deficiencies in investigation identifiable at the time in question might have led to a violation of the authors' rights.

9.6 The Committee notes that X submitted several complaints regarding the violence inflicted on her and her children by her husband to various authorities.<sup>26</sup> All her complaints to the police resulted in police officers obtaining from her husband a written undertaking not to inflict further violence on her and her children, even when, at least on one occasion, she had been issued with a medical certificate showing that she was a victim of superficial bodily injuries caused by beatings at the hands of her husband. The Committee notes that, the repeated written undertakings by the husband notwithstanding, the violence against the authors and the other children continued, with the authorities failing to react adequately to stop it. X's initial complaint was discontinued, after she withdrew it, and the prosecuting authorities decided not to continue the investigation, the serious nature and gravity of the allegations notwithstanding. X's additional complaints were all dismissed and the prosecuting authorities decided that there was no *corpus delicti* in the husband's acts, whereas the courts simply declared the cases to be groundless.<sup>26</sup> Those statements have not been denied or challenged by the State party, which simply observed that X's attorney was unable to counter the evidence gathered by prosecutors through numerous examinations, thus creating extremely high requirements regarding the burden of proof in a domestic violence case.<sup>27</sup>

9.7 The Committee considers that, read in its entirety, the above-mentioned unrefuted facts demonstrate that the State party's authorities have failed in their duty to adopt appropriate legislative and other measures, including sanctions, prohibiting

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<sup>26</sup> See paras. 2.10 and 2.11 above.

<sup>27</sup> For a similar approach, see, for example, *V. K. v. Bulgaria*, footnote 13 above, para. 9.9.

violence against women as a form of discrimination against women; to establish legal protection of women's rights on an equal basis with men and to ensure, through competent tribunals and other public institutions, the effective protection of women against discrimination; to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with that obligation; to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; and to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women. It also considers that the above-mentioned facts show a failure by the State party in its duty to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices that are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

10. Acting under article 7 (3) of the Optional Protocol, and in the light of the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the authors' rights under articles 2 (b)-2 (f), in conjunction with articles 1 and 5 (a), of the Convention, as well as the Committee's general recommendation No. 19.

11. The Committee makes the following recommendations to the State party:

(a) Concerning the authors of the communication: provide adequate financial compensation to the authors commensurate with the gravity of the violations of their rights;

(b) General:

(i) Ensure that victims of domestic violence and their children are provided with prompt and adequate support, including shelter and psychological support;

(ii) Intensify awareness-raising campaigns and introduce a zero-tolerance policy in respect of violence against women and, more specifically, domestic violence;

(iii) Ratify the Convention on Preventing and Combating Violence against Women and Domestic Violence;

(iv) Provide mandatory training for judges, lawyers and law enforcement personnel, including prosecutors, on the application of the Prevention of Domestic Violence Act, including on the definition of domestic violence and on gender stereotypes, as well as appropriate training on the Convention, the Optional Protocol thereto and the Committee's general recommendations, in particular general recommendation No. 19.

12. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee. The State party is requested to have the Committee's views and recommendations translated into Georgian, to publish them and to have them widely disseminated, in order to reach all sectors of society.