

University of Tartu
Faculty of Social Sciences
School of Law
Department of Public Law

Natia Razmadze

**INTERNATIONAL LAW AND DOMESTIC
VIOLENCE AGAINST WOMEN**

Master's Thesis

Supervisor:

PhD (Law) Merilin Kiviorg

Tallinn

2018

Table of Contents

Abbreviations.....	3
Introduction.....	4
I. Domestic Violence and International Standards?.....	13
1.1. Definition of Domestic Violence in International Law.....	13
1.2. Convention on the Elimination of all Forms of Discrimination against Women.....	17
1.3. European Scope of Protection.....	19
1.3.1. Convention on Preventing and Combating Violence against Women and Domestic Violence.....	21
1.4. Prohibition of Torture and Domestic Violence.....	28
II. Domestic Violence against Women and Georgia?.....	33
2.1. Definition of Domestic Violence in Georgian Legal Framework.....	33
2.2. Domestic Situation of Specific Vulnerable Groups.....	37
2.3. Georgian Domestic Violence Cases in the ECtHR.....	46
III. Analysis of the Impact/Effectiveness of the International Standards on Domestic Situation in Georgia?	48
3.1. Impact of the International standards on Domestic Legislation/Cases.....	48
3.2. Special Programs and Recommendations from Monitoring Bodies?	54
Conclusion.....	58
Bibliography.....	65

Abbreviations

CoE – Council of Europe

CWN – Caucasus Women’s Research and Consulting Network

DEVAW – Declaration on the Elimination of violence against women

ECHR – European Convention of Human Rights

ECtHR – European Court of Human Rights

GYLA – Georgian Young Lawyer’s Association

ICCPR – International Covenant on Civil and Political Rights

NGO – Non-governmental Organization

PTSD – Posttraumatic Stress Disorder

States Parties – member states of the Council of Europe, States Parties to the ECHR

UDHR – Universal Declaration of Human Rights

UN – United Nations

UNFPA – United Nations Population Fund

WHO – World Health Organization

Introduction

Nowadays domestic violence is one of the most widespread human rights violation all over the world based on the gender inequality.¹ Violence against women covers the whole world going through the boundaries of states, race, culture or age. The United Nation (UN) defines violence against women as “any act of gender-based violence that results in, or is likely to result in physical, sexual, or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”² The UN Declaration on the Elimination of Violence against Women describes several types of violence that can occur against women in public or in private life.³ Domestic violence globally is the most common and widespread type of violence against women.

Global estimates published by World Health Organization (WHO) indicate that about 1 in 3 (35%) of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime.⁴ Population-level surveys based on reports from victims provide the most accurate estimates of the prevalence of intimate partner violence and sexual violence. A 2013 analysis conducted by WHO with the London School of Hygiene and Tropical Medicine and the South Africa Medical Research Council, used existing data from over 80 countries and found that every third woman worldwide has experienced violence.⁵ Based on the analysis it is obvious that domestic violence against women is one of the most spread human rights violation worldwide and in spite of applying laws and several measures the number of victims is numerous regardless of age, race, sexuality, and class all over the world, but commonly experienced by women and perpetrated by men.

Human rights are the rights that every person is entitled to simply by virtue of being human. At the root of the human rights concept is the idea that all people should be able to live with dignity. Violations of our human rights amount to denials of our basic humanity. Domestic violence may fall under several rights and freedoms explicated in international conventions and for this reason

¹ United Nations and Spotlight initiative to Eliminate Violence against Women and Girls, Accessible at: http://www.un.org/en/spotlight-initiative/assets/pdf/Spotlight_Overview.pdf

² United Nations Declaration on the Elimination of Violence against Women, 20.12.1993, Article 1.

³ Ibid.

⁴ Global and Regional Estimates of Violence Against Women, WHO, Department of Reproductive Health and Research, 2013.

⁵ Ibid.

research will interpret some of them. First human right that has to be mentioned together with domestic violence is the right to non-discrimination. As The Universal Declaration of Human Rights says: “Everyone is entitled to all the rights and freedoms set forth on this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁶

Despite the fact that the Declaration is not legally binding, this is one of the first and most important international acts that comprises all current human rights and can be considered as the basis for later international human rights instruments. Based on it, human rights are rights inherent to all human beings, whatever is our nationality, race, sex or other distinctive signs, and we are all equally entitled to our human rights without any discrimination. International Covenant on Civil and Political Rights (ICCPR) in line with UDHR provides that every party to the present covenant has obligation to take all necessary legislative and other measures to respect and to ensure to all individuals within its territory who is subject to its jurisdiction the rights recognized in the present Covenant, without any distinction of any kind.⁷

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations on governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. Consequently, this is the argument on which the international law principle is based that, where a state fails to protect a vulnerable group of people from harm, whether perpetrated by the state or private actors, it has breached its obligations to protect against human rights violation. The government has obligations in relation to a number of existing human rights instruments and standards which seek to ensure safety, protection, and support to all women and children experiencing violence. This thesis seeks to answer following questions: is it a problem of government weakness not providing the necessary protection and support for domestic violence victims or it is a lack of international mandatory instruments and standards that can lead to the high number of domestic violence in specific states under specific circumstances?

⁶ United Nations Universal Declaration of Human Rights, 10.12.1948, Art. 2.

⁷ International Covenant on Civil and Political Rights, adopted 16.12.1966, entry into force 23.03.1976.

The term domestic violence in the Convention on Preventing and Combating Violence Against Women and Domestic Violence⁸ means all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim. This research will concentrate on intimate partner violence that refers to behavior by an intimate partner or ex-partner that causes physical, sexual or psychological harm, including physical aggression, sexual coercion psychological abuse and controlling behavior.

Domestic violence is one of the most serious causes of illness, disability, poverty, and homelessness around the world not only for women but also for children. Together with the physical harm it is now well recognized that intimate violence victimization can lead to adverse mental health effects such as PTSD (posttraumatic stress disorder), depression, and anxiety.⁹ Domestic violence can lead to several physical and mental illnesses, depression, anxiety and sometimes to suicide.¹⁰ The biggest impact domestic violence can evoke in children who need a safe and secure home, free of violence, and parents whose purpose is protecting them, so that when things go wrong in the outside world, home is a place of comfort, help and support, but children who are exposed to violence in the home are denied their right to a safe and stable home environment.¹¹ Many are suffering silently, and with no or little support. Several studies also reveal that children who witness domestic violence are more likely to be affected by violence as adults – either as victims or perpetrators.¹²

As it was mentioned above, domestic violence may fall under several rights and freedoms explicated in international conventions, so one more human right that is provided in all international human rights instruments and has to be mentioned is the prohibition of torture in

⁸ Convention on Preventing and Combating Violence Against Women and Domestic Violence, adopted 11.05.2011, entry into force 01.08.2014

⁹ Mary Ann Dutton, "Pathways Linking Intimate Partner Violence and Posttraumatic Disorder, 27.05.2009

¹⁰ Ibid.

¹¹ The United Nations International Children's Emergency Fund, "Behind Closed Doors, the Impact of Domestic Violence on Children" 2006. Accessible at: <https://www.unicef.org/media/files/BehindClosedDoors.pdf>

¹² World Health Organization, 'World Report on Violence and Health', ed. By Krug, Etienne G., et al., Geneva, 2002; James, M., 'Domestic Violence as a Form of Child Abuse: Identification and Prevention', Issues in Child Abuse Prevention, 1994; Centers for Disease Control and Prevention, and Calverton, MD, ORC Macro, 'Reproductive, Maternal and Child Health in Eastern Europe and Eurasia: A Comparative Report', Atlanta, GA 2003; Indermaur, David, 'Young Australians and Domestic Violence', Trends and Issues in Crime and Criminal Justice, No. 195, Canberra, 2001.

international law that is one of the fundamental, absolute rights named *Ius Cogens*. Torture is a serious violation of the physical and mental integrity of the person. The 1966 International Covenant on Civil and Political Rights, (ICCPR) and the 1950 European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR) say: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.¹³ UN Convention Against, Torture and Other Cruel Inhuman or degrading treatment or Punishment highlights the fact that torture and other infringing acts can be physical or mental. According to Rhona Smith “The gravity of torture is such that even the threat of it can suffice for an infringement of human rights”.¹⁴

Torture is not an act in itself, or specific type of acts, but it is the legal qualification of an event or behavior based on the comprehensive assessment of this event or behavior that can be considered as torture, cruel, inhuman or degrading treatment or punishment, therefore, the difference between these different qualifications, depends on the specific circumstances of each case and is not always obvious.¹⁵ The distinctions depend on the nature, purpose and severity of the treatment applied. As the permanent acts of domestic violence are considered as the everyday threat to victim’s life and health that results in torture, or in inhuman or degrading treatment and can be physical and/or mental depending on human rights violations severity, research will seek the interconnection between domestic violence, torture, and inhuman treatment.

In the thesis, it will be examined to what extent the legislation in force at the international, European level as well as at the national level has reflected the situations on modern families in cases of domestic violence. For this purpose, the thesis will examine the main international directives that regulate domestic violence issues around the world and national legislation in force that has to comply with international standards. But, the aim of research are the countries that can be distinguished on the basis of religion, strong traditions and a high percent of child marriages, such as Kyrgyzstan (child marriage – 12%), Georgia (child marriage – 14%) and

¹³European Convention for the protection of Human Rights and Fundamental Freedoms, adopted 04.12.1950, entry into force 03.09.1953.

¹⁴ R. K.M. Smith. International Human Rights, seventh edition, Oxford University Press, 2015, p. 31.

¹⁵ Human Rights Office of High Commissioner, Interpretation of torture in the light of the practice and jurisprudence of international bodies.

Azerbaijan (child marriage – 11%) and others¹⁶, but this research will concentrate on Georgia. What are the measures established by international organizations for the prevention of domestic violence and for support of victims, especially for non-educated women that result from child marriages part of which are not even legally valid. How these measures are applied by governments and if these measures are enough for preventing human rights violations and for supporting victims in such countries in relation to a specific vulnerable group, more precisely non-educated women who are dependent on their husbands or intimate partners.

This research is directed to the results of the several analysis provided on the domestic violence in connection to the main international bodies of human rights, that deal with the domestic violence issues to understand the effectiveness of internationally adopted measures and their mandatory essence for preventing domestic violence and supporting victims. Thus, the thesis will mainly include analytical and comparative methods for research. For this reason, the present study is divided into three parts, first of which will focus on legal international human rights framework of the domestic violence and its definition. Such as, which human rights violation domestic violence may include how it is accepted internationally, what is the legal basis and obligatory measures that have to deal with the violation and on which aspects study will concentrate and the extent to which the international law is provided by UN and Council of Europe on domestic violence and necessary measures that have to be implemented, the different ways in which violation can be prevented and victims have to be supported.

The second part of the present study will give an explanation why study focuses on the specific type of countries with several distinctive characteristics and specifically on Georgia to examine the situation of domestic violence and understand the frequency of such kind of violations in relation to specific vulnerable groups such as non-educated women the reason for what can be considered the high percentage of child marriages and the community's attitude to educate in the first place boys since the final destination for girls is the housework. Why instead of applying several international legal regulations and measures domestic violence cases are very frequent. For this purposes, research will analyze Georgian law, policies that apply and cases of domestic violence.

¹⁶ United Nations, Global Database on Violence against Women, accessible at: <http://evaw-global-database.unwomen.org/fr/countries>

The third part aims at answering several research questions, what are the mandatory international measures that have to be applied by states in relation of domestic violence, how these measures work in reality in such kind of states as Georgia, where the understanding of efficiency of official organs and belief in a law is very low, states where the religion, traditions and the evaluation of your attitudes by community, one's reputation is in the first place and vulnerable groups of women such as non-educated women dependent only on husband without the support from the community and families has no way except to stay with perpetrators. The present study that seeks to answer to the question is the internationally accepted measures legally mandatory for states such as the several educational programs, raising awareness seminars, shelters for victims of domestic violence enough to support victims from vulnerable groups to defend themselves from torture, degrading treatment and leave the perpetrators?

The objective of the present study is to establish, are the international law and obligatory measures if there is such sufficient to preventing domestic violence, supporting victims and to provide the measures that has to be mandatory that can be expected to play a big role in the assessment of such cases and providing the best support for victims that will lead to the reduction of domestic violence in Georgia and similar countries with similar specifications. The present study provides a research on the effectiveness of international measures in relation to domestic violence and its frequency in Georgia. The research will focus on the case of Georgia as one of the most religious countries in the world, where around 85 % of people are Christian orthodox, a country where traditions sometimes stand higher then law and where the understanding of gender equality is vague both for men and for women.

In 2017 analysis made and published by UN women Georgia, the national statistics office of Georgia and European Union together provided information on the attitude of people from all over the country in relation to domestic violence.¹⁷ Since 2009 it has been the first analysis made on a national level that brought to light the attitude of people about the domestic violence issue. Almost one-fourth of women (22%) and one-third of men (31%) considers that beating women (wife) is justified in some circumstances and it is normal. One-fourth of women (23%) and

¹⁷ UN women Georgia, the national statistics office of Georgia and European Union, "Analysis on the frequency of domestic violence and attitude of the population in relation to domestic violence around the country" accessible at: <http://georgia.unwomen.org/ka/news/stories/2017/02/georgia-to-conduct-nation-wide-study-on-violence-against-women-with-eu-support> and <http://www.tabula.ge/ge/story/130436-gaeros-qalta-organizacia-saqartveloshi-7-dan-1-qali-ojaxshi-dzaladobis-msxverplia>

almost half of men (43%) considers that wife has to subordinate in any conditions even if she disagrees and does not matter how much.¹⁸ The understanding of equality is very vague in Georgia from any point of view, from the side of family, relatives or society. The common approach is that what happens in the family has to stay in the family.

In reality, it is not the only one problem and reason of this kind of approach to the domestic violence in Georgia. The country is very religious and divorce is one of the impossible things that women can do in their life, no matter how hard it is to live with a husband or partner with whom she created family and how much she suffers especially if a girl got married in early ages. Georgia has a quite big percentage of child marriages 14%¹⁹, that can be said gives rise to vulnerable groups such as non-educated women who have no way to run from their perpetrators. Because of the religion and traditions, families of girls refuse to help victims of domestic violence as it will result in divorce and rumors, as it is widely accepted that if a girl decides to marry she has to carry on she has an obligation to “take everything on her shoulders to save family” instead of the problems and pain. In result it occurs that woman who is the victim of domestic violence has no way to run from perpetrator as her family refuses to her to return to family, the victim is not educated, does not have the possibility to work especially if she has children. To sum up, as it was provided almost half 43 % of men thinks that women have to take everything as it is their duty on the basis of understanding that in most cases women do not have any place to run.²⁰

According to Amnesty International organization is concerned about the widespread impunity of perpetrators of domestic violence in Georgia, because of the insufficient measures to protect the victims of domestic violence and absence of functioning cross-referral system between different

¹⁸ UN women Georgia, the national statistics office of Georgia and European Union, “Analysis on the frequency of domestic violence and attitude of the population in relation to domestic violence around the country” accessible at: <http://georgia.unwomen.org/ka/news/stories/2017/02/georgia-to-conduct-nation-wide-study-on-violence-against-women-with-eu-support> and <http://www.tabula.ge/ge/story/130436-gaeros-qalta-organizacia-saqartveloshi-7-dan-1-qali-ojaxshi-dzaladobis-msxverplia>

¹⁹United Nations, Global Database on Violence against Women, accessible at: <http://evaw-global-database.unwomen.org/fr/countries>

²⁰UN women Georgia, national statistics office of Georgia and European Union, “Analysis on frequency of domestic violence and attitude of population in relation to domestic violence around the country” accessible at: <http://georgia.unwomen.org/ka/news/stories/2017/02/georgia-to-conduct-nation-wide-study-on-violence-against-women-with-eu-support> and <http://www.tabula.ge/ge/story/130436-gaeros-qalta-organizacia-saqartveloshi-7-dan-1-qali-ojaxshi-dzaladobis-msxverplia>

agencies.²¹ As in other countries throughout the world, thousands of Georgian women are subjected to domestic violence on a regular basis. They are hit, beaten, raped, and in some cases even killed and many more endure psychological violence and economic control.

Article 3 of the Georgian Law on Domestic Violence adopted on 25th of May, 2006 defines domestic violence as a “violation of constitutional rights and freedoms of one family member by the other, in conjunction with physical, psychological or sexual violence, coercion or threat to undertake such actions”²² It is the state’s responsibility to protect women living inside its borders from violence, even from domestic abuse behind closed doors. Authorities can do this by creating national laws that criminalize violent acts against women, providing support services like safe sheltered accommodation or different programs for providing at least some type of education for women who need it. In such cases as Georgia, this includes work to change public attitudes and challenging the stigma around the country.

By denying a vulnerable group of people the benefits necessary to access safe accommodation and support, the Government is failing its obligation under international human rights law to act with due diligence to respect, protect and fulfill the human rights of all people within its jurisdiction. But the question is what kind of obligation does state have for supporting the victims of domestic violence, is it the state who fails or is it the lack of international obligatory measures that has to be set by international organizations?

In the thesis, it will be examined to what extent the legislation is in force at the international and Council of Europe level as well as at the national level and how it reflects the developments of the modern world. For this purpose, the thesis will examine the main international directives, standards and national legislation in force that regulate domestic violence, what is the possible ways for victims to defend themselves and how it can be developed in the future. Lack of international law and instruments to support victims of domestic violence leads to the frequency of domestic violence in developing countries such as Georgia, especially for vulnerable groups.

²¹ Amnesty International, Georgia: “Thousands Suffering in Silence: Violence Against women in the Family”, Accessible at:

<https://www.amnesty.org/en/documents/document/?indexNumber=EUR56%2F009%2F2006&language=en>

²² Georgian Law on prevention of Domestic Violence, Protection of Victims of Domestic Violence and help, 25.05.2006

This study is concerned with women that do not have an educational background and access to this vital support to declare the violence to the official bodies and leave the perpetrator.

The relevance of the thesis at the international level is that the thesis will try to propose ways of improving the protection of victims by providing several international mandatory measures, as services educative possibilities, shelters with an ability to stay a longer time, the tools that will reflect the relevance of human rights protection more adequately. Requirements that have to be obligatory for states, the standards established by the international organization as United Nation and Council of Europe that has to be universal for state parties. This thesis will verify what is the minimum protection required by international bodies, examine whether Georgia's legislation and services are in accordance with this level of protection? What has been changed and how it has reflected on the current situation and what has to be done in the future to improve the situation internationally in the countries such as Georgia and to decrease the number of domestic violence cases.

The thesis' focus will be on the analysis, law and thus the thesis will make use of the legal literature in the field of domestic violence as far as possible because not much research has been done in relation to this topic. Thesis will concentrate on UN and Council of Europe anti-discrimination and domestic violence law (publications and textbooks) so far it is necessary for clarifying the substance of equality rights and the interpretation of the respective international legislation. The dissertation is going to offer some recommendations for changes in policies of domestic violence to provide compliance with the international obligation for states to protect international human rights. Furthermore, in order to fully comprehend the situation in Georgia, the thesis will also cover the opinions and reports of the Amnesty International and other international and domestic non-governmental organizations.

I. Domestic Violence and International Standards.

1.1. Definition and Domestic Violence in International Law

In order to determine all comprising parts that can be connected to domestic violence, it is necessary to provide a brief interpretation of several terms, definitions that are accepted internationally by international organizations and reflect on the main instruments safeguarding in respect for human rights and issues of domestic violence. First of all the main definition that is provided by UN in the Declaration on the Elimination of Violence against Women is the violence against women, that means any act of gender-based violence that is a manifestation of historically unequal power relation between men and women that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including even threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.²³

General Assembly recognizing the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, and dignity provided this clear and comprehensive definition of violence against women to ensure the elimination of violence in all forms.²⁴ This study will focus on all types of physical, sexual and psychological violence that occurs in the family beside the closed doors and concretely on intimate partner violence that refers to behavior by an intimate partner or ex-partner that causes physical, sexual or psychological harm, including physical aggression, sexual coercion psychological abuse and controlling behaviors.

Intimate partner violence occurs in all countries, irrespective of social, economic, religious or cultural group. Violence against women covers the whole world going through the boundaries of states, race, culture or age. Although women also can be violent in relationships with men, and violence is also sometimes found in same-sex partnerships, the overwhelming number of partner violence is borne by women at the hands of men and though the most common forms of violence

²³ United Nations Declaration on the Elimination of Violence against Women, 20.12.1993, Article 1.

²⁴ Ibid.

against women is that performed by a husband or an intimate male partner.²⁵ The reason for it is the fact that women are often emotionally involved with and economically dependent on perpetrators on those who victimize them day by day by several means physically and emotionally.

Domestic violence takes place between private individuals however, the practice of domestic violence constitutes the clear violation of several internationally recognized human rights. Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms which are provided in the Declaration on the Elimination of Violence against Women (DEVAW) such as: the right to life, the right to equality, the rights to liberty and security of person, the rights to equal protection under the law, the right to be free from all forms of discrimination, the rights to the highest standard attainable of physical and mental health, the right to just and favorable conditions of work and the rights not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.²⁶ For the purposes of this research, we will concentrate on several of these rights to understand all aspects of domestic violence that can be applied.

If we consider the fact that most violence is carried out by men, just a small step is needed to understand that violence against women is structural violence – violence that is used to sustain male power over female and control. Human rights are the rights that every person is entitled to simply by virtue of being human. Violations of our human rights amount to denials of our basic humanity. Based on this human right that has to be mentioned together with domestic violence is the right to be free from all forms of discriminations the DEVAW provides it.

International Covenant on Civil and Political Rights in accordance with UDHR provides that: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”²⁷ The idea of non-discrimination

²⁵ World Health Organization, “World Report on Violence and Health”, Chapter 4: “Violence by intimate Partners”, 2002.

²⁶ United Nations Declaration on the Elimination of Violence against Women, 20.12.1993, Article 3.

²⁷ International Covenant on Civil and Political Rights, adopted 16.12.1966, entry into force 23.03.1976. Art 2.

is that we are all equally entitled to our human rights without any kind of discrimination based on differences that can occur from our origin or from other backgrounds of our choices. Instead of the fact that Article 2 of CCPR includes the discrimination on the basis of sex and lays the obligation on state parties to protect and ensure equality by adopting laws and other measures necessary to give effect to all rights. Article 3 of the CCPR gives separate definition and places a separate obligation on states to ensure the equal right of men and women for the enjoyment of all rights.²⁸

With regard to the Article 3 of the CCPR, it is important to provide the whole explanation of this specific provision on basis of CCPR General Comment N28 on the Equality of Rights between Men and Women adopted by the Human Rights Committee.²⁹ The General Comment provides a more detailed description of states obligations for the enjoyment by women of the human rights protected under the Covenant. To enable the Committee to obtain a complete picture of the situation of women in each State party as regards the implementation of the rights in the Covenant, this general comment identifies some of the factors affecting the equal enjoyment by women.

The main general obligation for States parties is to take all necessary steps and measures to enable every person enjoying those rights without distinction between men and women. Important part of general comment that has to be examined in relation of this study is the 5th paragraph which provides the reasons for inequality in the enjoyment of rights by women around the world such as embedded parts of traditions, history, culture and of course religious attitudes that result in subordinate role of women in several different communities that can be also illustrated by high incidence of prenatal sex selection and of course number of abortions of female fetuses.³⁰

The obligation that falls on state parties is to ensure that this specific attitudes such as traditional, historical, religious or cultural will not be used to justify violations of women's right to equality and in case of this kind of possibility indicate what measures they have taken or what has to be

²⁸Ibid, Art 3.

²⁹ Human Rights Committee, CCPR General Comment No. 28: Article 3 (The Equality of Rights between Men and Women).

³⁰ Human Rights Committee, CCPR General Comment No. 28: Article 3 (The Equality of Rights between Men and Women), Para. 5.

done in the future to overcome such factors.³¹ Also, for this purposes states have a duty to provide information regarding the role of women in society to Human Rights Committee to understand the effectiveness of measures and legislative provisions, what progress has been done with changes and what difficulties states face in cases of domestic violence.³²

The human right which can be violated by an intimate partner in cases of domestic violence is the right to liberty and security of person, the only exception is on the grounds and in accordance of official legal procedures that are established by law.³³ Right to liberty is one of the most important human rights for a person as it is the initial right that can be considered as the ability to have a connection with the world and search for some help in cases of domestic violence. That is why General Comments Paragraph 14 provides obligation on state parties to provide information on any laws or practices that can be deemed as the violation of liberty such as deprivation of their liberty on an arbitrary or unequal basis, such as confinement within the house which is a part of the definition of domestic violence and a tool used by perpetrators of domestic violence.³⁴

The violation of liberty and freedom by Intimate partner means various controlling behaviors, such as isolating a person from their family and friends, monitoring their movement, sometimes even complete confinement and restricting their access to information or assistance.³⁵ In cases of domestic violence, this kind of prohibition and limitation can lead even to the fatal results.

One more human right that is guaranteed by international instruments and can be deprived by the perpetrator is the right to work. International Covenant on Economic, Social and Cultural rights recognizes everyone's right to work that includes the opportunity to gain his living by work which person will freely choose, from the side of states convention asks to take all the appropriate steps to ensure this right without discrimination to achieve steady economic, social and cultural development, full and productive employment under secure conditions.³⁶ This

³¹ Ibid.

³² Ibid, Para 3.

³³ International Covenant on Civil and Political Rights, adopted 16.12.1966, entry into force 23.03.1976. Art 9.

³⁴ Human Rights Committee, CCPR General Comment No. 28: Article 3 (The Equality of Rights between Men and Women), Para. 14.

³⁵ World Health Organization, "World Report on Violence and Health", Chapter 4: "Violence by intimate Partners", 2002.

³⁶ International Covenant on Economic, Social and Cultural Rights, adopted 16.12.1966, entry into force 03.01.1976. Art 6.

prohibition is one more manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men one of the main social mechanisms by which women are forced into a subordinate position compared with men as in this type of relationships women are economically dependent on men and actually without support from outside they are a subjects of victimization over and over again.

1.2 Convention on the Elimination of all Forms of Discrimination against Women

Among other international human rights treaties, the Convention on the Elimination of all Forms of Discrimination against Women takes an important place and role in bringing the female half of humanity into the focus of human rights matters. The task of the Convention is the same as the goals of the United Nations: to strengthen faith in fundamental human rights, in the dignity of every human being and worth of the human person, in the equal rights of men and women. Based on the Convention the term "discrimination against women" means any distinction, exclusion or restriction that can occur in any field on the basis of sex which has the effect or purpose of impairing the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.³⁷

States Parties have the obligation to take all appropriate measures, including legislation, in all fields, such as political, social, economic and cultural fields to protect and ensure the full development and advancement of women, to guarantee enjoyment of all human rights and fundamental freedoms on the basis of equality with men to modify the social and cultural patterns of conduct of men and women, with a view to achieve the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.³⁸

³⁷Convention on the Elimination of all Forms of Discrimination against Women, adopted 18.12.1979, entry into force 03.09.1983. Art 1.

³⁸Convention on the Elimination of all Forms of Discrimination against Women, adopted 18.12.1979, entry into force 03.09.1983.

Convention lays down the obligations on states to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, such as the same rights and responsibilities during marriage and at its dissolution, to have the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children, and the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation.³⁹ The lack of understanding of equality and non-discrimination during marriage in family life between man and woman is one of the most important aspects that cause domestic violence in countries where still is the strong belief in the patriarchy.

By General Recommendation No.21 UN Committee wanted to analyze and clarify the significance of women's status in the family.⁴⁰ Recommendation recalls the inalienable rights of women which are already embodied in the above-mentioned conventions and declarations, but the aim of this recommendations is to go further by recognizing the importance of culture and traditions in shaping the thinking and behavior of men and women and the role it plays in respecting the exercise of basic rights by women. Historically the fact, that woman and her activity in public or in private life in different times was viewed and regulated differently but was always treated as inferior, proves the need for a fight for women's rights all over the world.

In the modern world, there can be no justification for applying different and discriminatory laws or customs to women. As committee provides from the information after the examination of reports, women are prevented from having equal access to resources and from enjoying equality of status in the family and society that in particular results in the violation of the Convention and in the breach of the principle of equality that leads to domestic violence. Worldwide the form and concept of the family can vary from State to State, and even between regions within a State however, whatever form it takes, and whatever the legal system, religion, custom or tradition within the country, the treatment of women in the family both at law and in private must accord with the principles of equality and justice for all people, as article 2 of the Convention requires.⁴¹

³⁹Convention on the Elimination of all Forms of Discrimination against Women, adopted 18.12.1979, entry into force 03.09.1983. Art 16.

⁴⁰ General recommendation N21 "Equality in marriage and family relations" 13th session, 1994.

⁴¹ General recommendation N21 "Equality in marriage and family relations" 13th session, 1994.

Based on reports committee discloses that many countries in their legal systems provide for the rights and responsibilities of married partners by relying on the application of common law principles, religious or customary law, these variations in law and especially in practice relating to marriage could have a huge, wide-ranging consequences for women, when husband is accord the status of head of household who is the controller of everything a primary decision maker.⁴² Recommendation mentions the right to work to choose a profession or employment that best suits person's abilities and qualifications as the way for individual fulfillment for everyone as a basis of a stable family which will be based on principles of equality and justice.⁴³ If women are denied these rights by law or by custom, this is the violation of Convention.

The present document CEDAW spells out the meaning of equality and how it can be achieved. But, in so doing, the Convention establishes not only an international understanding of rights for women but also an agenda for action by countries to guarantee the enjoyment of those rights provided in Convention.⁴⁴ States Parties from their side undertake the obligation to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention. The thrust of the Convention aims at enlarging our understanding of the concept of human rights, as it gives formal recognition to the influence of culture and tradition on restricting women's enjoyment of their fundamental rights. These forces take shape in stereotypes, customs, and norms which give rise to the multitude of legal, political and economic constraints on the advancement of women. For this purposes, the implementation of the Convention is monitored by the Committee on the Elimination of Discrimination against Women (CEDAW). At least every four years, the States parties are expected to submit a national report to the Committee, indicating the measures they have adopted to give effect to the provisions of the Convention to eliminate all form of discrimination against women inter alia domestic violence.

1.3 European Scope of Protection

⁴² Ibid. para 17.

⁴³ Ibid. para 18.

⁴⁴ Convention on the Elimination of all Forms of Discrimination against Women, adopted 18.12.1979, entry into force 03.09.1983.

European framework on human rights consists of several different international instruments from which first and the most important is the Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe.⁴⁵ Defending human rights is one of the Council of Europe's basic tasks. With this in view, the aim is to establish effective systems for supervising and protecting fundamental rights and freedoms, to identify new threats to human rights, to raise public awareness of the importance of these rights. The Convention for the Protection of Human Rights and Fundamental Freedoms, supplemented by its additional protocols, is a major piece of legislation: for member states of the Council of Europe, this is one of their most important commitments that lays down the rights and freedoms that apply strictly to individual human beings and member states undertake to secure everyone within their jurisdiction. The Convention, supplemented by additional protocols, has also established an international system of protection through the European Court of Human Rights, whose effectiveness is universally recognized.⁴⁶

In the ECHR the first right stated is the right to life which is almost absolute right. Everyone's right to life shall be protected by law; the only exception provided by convention is the situation of absolute necessity.⁴⁷ The obligation of states is not only the duty to refrain from taking lives intentionally but also take appropriate steps to protect the life that is why any use of lethal force by agents of the state must give rise to an effective investigation. Positive obligations of the state have brought about an extension of the scope of Article 2 not only to state activities that may endanger lives but also to interpersonal relationships.⁴⁸

ECHR provides the provision of non-discrimination for the enjoyment of the rights and freedoms without any discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or

⁴⁵ Convention for the Protection of Human Rights and Fundamental Freedoms, adopted 04.11.1950, entry into force 03.09.1953.

⁴⁶ Jean-François Renucci, Introduction to the European Convention on Human Rights, 2005.

⁴⁷ Convention for the Protection of Human Rights and Fundamental Freedoms, adopted 04.11.1950, entry into force 03.09.1953. Art 2.

⁴⁸ Osman v. the United Kingdom, ECtHR, 28 Oct. 1998, Reports 1998-VIII.

other status.⁴⁹ Prohibition of discrimination is one of the basic principles that is closely associated with the principle of equality and applies to any situation of discrimination.

The right that was also already discussed in the last chapter is the right to liberty and security that can be crucial in cases of domestic violence. Everyone has to have the right to liberty and security as the existence of human being and realization of their human nature is based on self-determination that is almost impossible in unlawful imprisonment besides the closed door of family. The only exception provided by convention are the cases where a person can be detained in accordance with a legal procedure.

1.3.1. Convention on preventing and combating violence against women and domestic violence

Recalling the Convention for the Protection of Human Rights and Fundamental Freedoms and other several international human rights instruments, recognizing that violence against women is a manifestation of historically unequal power relations between women and men which have led to domination over, and discrimination against women by men and to the prevention of the full advancement of women Recognizing the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men, with grave concern, that women and girls are often exposed to serious forms of violence such as domestic violence, sexual harassment, rape, forced marriage, crimes committed in the name of so-called “honor” and genital mutilation, which constitute a serious violation of the human rights of women and girls and a major obstacle to the achievement of equality between women and men.⁵⁰

The reason of adopting this convention was understanding that domestic violence affects women all over the world disproportionately, that children are victims of domestic violence in the family

⁴⁹Convention for the Protection of Human Rights and Fundamental Freedoms, adopted 04.11.1950, entry into force 03.09.1953. Art 14.

⁵⁰ Convention on preventing and combating violence against women and domestic violence, adopted 11.05.2011, entry into force 01.08.2014.

and to create the framework of different lawful and other means to free Europe from violence against women and domestic violence. Based on Convention “violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.⁵¹

Specific type of violence against women that is the field of this research “domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.⁵² The first human right that is the basis in every international instrument for domestic violence is the non-discrimination as unequal power relations between women and men are the reason which leads to domination over women by men by forcing them into a subordinate position compared with men.

Convention lays down obligations on Parties to take all the necessary legislative and other measures to promote and protect to exercise due diligence to prevent, investigate, punish and provide reparation for the rights for everyone, particularly women from acts of violence covered by the scope of this Convention that are perpetrated by non-State actors to live free from violence in the private sphere.⁵³ All international instruments regulating domestic violence issues include the obligations of states to take all necessary legal and other measures to guarantee women’s rights for elimination of violence against women, but particularly this is the first Convention which provides all the possible measures by names that has to be applied as a list as much as it is possible.

Such measures to adopt and implement State-wide effect, comprehensive and coordinated policies encompassing all relevant measures to prevent and combat all forms of violence covered by the scope of this Convention and offer an effective response to violence against women. The

⁵¹ Ibid, Art 3.

⁵² Ibid.

⁵³ Ibid, Art 5.

important part of implementing different measures are the awareness-raising campaigns and programs which parties have to conduct in the manner of cooperation with national human rights institutions, civil society and non-governmental organizations to increase awareness of such kind of manifestations as a form of violence, their consequences on women and children and the need to prevent such violence and protect victims from later victimization.

One of the ways for prevention of domestic violence is the understanding of graveness of such crimes and the first step parties shall take is a teaching materials adopted, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity and understanding of learners, in official curricula and at all levels of education. This involves parties' obligation to take the necessary steps to promote the principles referred to the Convention even in informal educational facilities, as well as in sports, cultural and leisure facilities and the media.⁵⁴

The state's general obligation on which this study will focus to find its implementation and effectiveness of several measures in Georgia's case is provided in Article 20 of the Convention: Parties shall take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include, when necessary, services such as legal and psychological counseling, financial assistance, housing, education, training and assistance in finding employment.⁵⁵ All international instruments provide the obligation of states for applying all necessary legislative and other measures but the Convention on preventing and combating violence against women and domestic violence adopted by Council of Europe provides the list of these measures that have to be applied by states to prevent domestic violence and provide all possible support for victims of this crimes, such as psychological and financial assistance, accommodation in cases of need, appropriate education, training and after assistance in finding employment to be free from perpetrators influence and avoid re-victimization.

⁵⁴Convention on preventing and combating violence against women and domestic violence, adopted 11.05.2011, entry into force 01.08.014. Art 13-14.

⁵⁵ Ibid, Art 20.

Convention provides the three ways how domestic violence can be committed by perpetrator: psychological violence that is considered as an intentional conduct of seriously impairing a person's psychological integrity through coercion or threats, when victims are suffering for their or/and others health, life and integrity⁵⁶, intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for safety of his or her safety must be criminalized in any such case. Physical violence is the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, mal-development or deprivation⁵⁷. The intentional conduct of committing such acts of physical violence against women is the method by which perpetrators try to put women in the subordinate position by stating their superiority with physical power.

Sexual violence is defined as any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.⁵⁸ The Convention defines sexual violence as engaging in non-consensual vaginal, and or oral penetration of a sexual nature of the body of another person with any bodily part or object, causing another person to engage in such acts with a person, or a third person any of this cases based on Convention applies to such acts committed against former or current spouses or partner as recognized by internal law.⁵⁹ The idea of this provision is to ensure that the fact of civil or factual marriage will not give a difference for criminalization of this crime in cases of sexual violence instead of fact that spouses are considered as intimate partners but the forced nature of act is a sexual violence in any circumstances, that is why The offences

⁵⁶ Convention on preventing and combating violence against women and domestic violence, adopted 11.05.2011, entry into force 01.08.014. Art 33.

⁵⁷ "WHO Global Consultation on Violence and Health. Violence: a public health priority". World Health Organization,02-03.12.1996.

⁵⁸World Health Organization, "World Report on Violence and Health", Chapter 6: "sexual violence", 2002.

⁵⁹Convention on preventing and combating violence against women and domestic violence, adopted 11.05.2011, entry into force 01.08.014. Art 36.

established in accordance with this Convention shall apply irrespective of the nature of the relationship between victim and perpetrator.

Worldwide one of the grounds when domestic violence can occur in the family life of two person, is the unwillingness of women to get married to a specific person that can result in forced marriages. Sometimes the reason is not even the refusal from the side of women but the unwillingness of men even to ask the consent of women. As the Convention provides it is an intentional conduct of forcing an adult or a child to enter into a marriage which she does not want to. As the Universal Declaration of Human Rights provides men and women are entitled of equal rights and they shall enter into marriage only with the free will and full consent of the intending spouses.⁶⁰ Forced marriages are a cultural practice in several countries that result in suffering severe limitations for girls on their movement and mobility, as well as restricted access to education and other activities, and high levels and widespread acceptance of domestic violence.

Legal measures that every international instrument on domestic violence or on violence against women provides is the criminalization and implementation of provisions in domestic acts of all above mentioned crimes and acts that are considered as a part of domestic violence, which will be enough punishable by effective, proportionate and dissuasive sanctions, taking into account their graveness and seriousness including deprivation of liberty. The Convention lists several grave circumstances which in case are not already the part of the offence in internal law that has to be taken into consideration as aggravating circumstances in the determination of the sentence to the offenses established in the criminal panel. Such circumstances are the offenses committed against a former or current spouse or partner or by a person cohabiting with the victim that is done repeatedly day-by-day. The legal and other measures have to be applied even for people who have reasonable ground to believe that such acts may be committed, or that further acts of violence are to be expected or can be repeated.

Such circumstances are considered if offence was committed against a person in the presence of a child who is witness, actually sees incidents of physical, psychological or sexual abuse, or hears

⁶⁰United Nations Universal Declaration of Human Rights, 10.12.1948, Art 16.

threats or fighting of family members and may also observe the aftermath of physical abuse such as blood, bruises, tears, torn clothing and broken items. Instead of the fact that adults may think that children can't understand and realize many things, children are much more caring and capable to see the tension, the problem is that children who grow up with abuse are expected to keep the family secret and be silent inside and outside of a home. Several types of research showed that children who are in abusive homes learn that violence is an effective way to resolve conflicts, problems and use violence in life and itself become perpetrators.⁶¹

The main circumstance on which this research will concentrate is the vulnerable groups of women as victims of domestic violence that is the aggravating circumstance by Convention as the offense that was committed against a person who is from a vulnerable group of people. Vulnerable group of women related to this research are the women who are not educated and does not have any support and are economically dependent on abusers. The vulnerability is the degree to which a population, individual or organization is unable to anticipate, cope with, resist and recover from the impacts of disasters.⁶² As the World Health Organization provides poverty and its common consequences such as malnutrition, homelessness, poor housing and destitution are the major contributors to vulnerability. In the cases of domestic violence especially in countries such as Georgia, this is the main issue non-education why women do not have enough possibility to leave perpetrators instead of the strong will to break free, especially she is not the only one who needs food and home but she has the duty to take care of children.

Several more aggravating circumstances are offences committed by two or more people together, especially if it was preceded or accompanied by extreme levels of violence or with the use or threat of the weapon.⁶³ One more circumstance is the offence that in the end resulted in severe physical or psychological harm of the victim that can be considered in different levels of severe pain, but the main is the consequences of the crime as the pain of victim after single or repeated domestic violence. About repeated domestic violence Convention provides last aggravating circumstance if the perpetrator had previously been convicted of offences of a similar nature as it

⁶¹ Domestic Violence Roundtable, "The Effects of Domestic Violence on Children", Accessible at: <http://www.domesticviolenceroundtable.org/effect-on-children.html>

⁶² Environmental health in emergencies and disasters: a practical guide. World Health Organization, 2002.

⁶³ Convention on preventing and combating violence against women and domestic violence, adopted 11.05.2011, entry into force 01.08.014. Art 46.

is understood as a nature of the person and maybe it will need to provide some assistance for the perpetrator in this case.⁶⁴

Measures that have to be applied in cases of domestic violence provided in Convention are specialist support, shelters for victims of domestic violence, 24-hour telephone helplines, education, training and assistance in finding employment and access to all these services facilitating their recovery from violence. Convention lays down an obligation on states to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach pro-actively to victims, especially women and their children.⁶⁵ Consequently, it is a duty of the state to make sure that shelters will be organized around the country in sufficient numbers and sufficient capacity to receive victims of domestic violence women and children and provide support. Also, setting up of appropriate, easily accessible rape crisis or sexual violence referral centers for victims in sufficient, enough numbers to provide for the medical and forensic examination, trauma support and counseling for victims.

Convention also provides necessity of specialist support in an adequate geographical distribution, immediate short and long-term support services to any victim subjected to any of the acts of violence.⁶⁶ In the majority of cases, victims of domestic violence have psychological trauma when it is necessary and even vital in some circumstances to provide specialist support and avoid re-victimization and suicidal behavior. One more important measure for supporting is the state-wide round-the-clock (24/7) telephone helplines free of charge to provide advices and immediate support confidentially if the caller wishes so in relation to all forms of violence.

The last provision that this study will mention from the Convention is an obligation to protect and support child witnesses. The obligation that due account will be taken for the rights and needs of

⁶⁴ Ibid.

⁶⁵ Convention on preventing and combating violence against women and domestic violence, adopted 11.05.2011, entry into force 01.08.014. Art 23.

⁶⁶ Ibid, Art 22.

child witnesses including age-appropriate psychological counseling for them in cases of all forms of violence and will be given due regard to the best interests of the child.⁶⁷

1.4 Prohibition of Torture and Domestic Violence

The right of all human beings to freedom from violence is guaranteed in the core international human rights treaties of the United Nations and other international institutions in particular through provisions on the inherent dignity and integrity of the person, the right to life, the prohibition of torture, the right to liberty and personal security, and the right to non-discrimination and equality. This Chapter will focus on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment in relation with domestic violence that is provided in the UN Declaration on the Elimination of Violence against Women as the fundamental freedom entitled equally to everyone. The provision that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment are included almost in all international instruments as the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

The term "torture" and its definition is provided in the Convention against Torture and other cruel, inhuman or degrading treatment or punishment that means "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes

⁶⁷Convention on preventing and combating violence against women and domestic violence, adopted 11.05.2011, entry into force 01.08.014.Art, 26.

as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”⁶⁸

Prohibition of torture in international law is one of the fundamental and non-derogable absolute rights named *Ius Cogens* this means that no derogation in any exceptional circumstances even such as war, terrorism and similar public emergency threatening the life of the nation can be invoked as a justification for Torture. Torture is a serious violation of the physical and mental integrity of the person.⁶⁹

Torture is not an act in itself or a specific type of acts, but it is the legal qualification of an event or behavior based on the comprehensive assessment of this event or behavior. Therefore, the difference between these different qualifications depends on the specific circumstances of each case and is not always obvious, because distinctions depend on the nature, purpose, and severity of the treatment applied.⁷⁰ However, in some cases there is a need to take into account the vulnerability of the victim (age, gender, status, etc.) as well as the environment and the cumulative effect of various factors, to determine whether this case amounts to torture or whether it does not reach this ultimate threshold and should be considered as cruel, inhuman or degrading treatment or punishment.⁷¹ UN Convention Against, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment highlights the fact that torture and other infringing acts can be physical or mental. The gravity of torture is such that even the threat of it can suffice for an infringement of human rights.⁷²

⁶⁸ Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment, adopted 10.12.1984, entry into force 26.06.1987.

⁶⁹ Rhona K.M. Smith, *International Human Rights*, seventh edition, 2015.

⁷⁰ Human Rights Office of High Commissioner, *Interpretation of torture in the light of the practice and jurisprudence of international bodies*.

⁷¹ *Ibid.*

⁷² Rhona K.M. Smith, *International Human Rights*, seventh edition, 2015.

CEDAW Recommendation 19 on violence against women states that it is necessary to reflect the close connection between discrimination against women, gender-based violence, and violations of human rights and fundamental freedoms as the violence against women is a violation of the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment as it is the absolute right guaranteed by several international instruments.⁷³ The definition of violence against women includes gender-based violence, violence that is directed against a woman because she is a woman which includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions and the Recommendation as one of this rights that can be violated by violence against women states the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment.⁷⁴

The General Comment No. 2 on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment provided by the Committee against Torture addresses the three parts of Article 2 each of which identifies distinct interrelated principles that underlines the Convention's absolute prohibition against torture. Since the adoption of the Convention against Torture, the absolute and non-derogable character of this prohibition has become accepted as a matter of customary international law.⁷⁵

In clarifying state responsibility for torture by non-state officials or private actors committee stated that if state authorities or others know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed and they fail to exercise due diligence to prevent, investigate, prosecute and punish such private actors the state bears responsibility and fails to comply with provisions of the Convention. Such failure of the state to intervene to stop, sanction and provide remedies to victims of torture enables non-state actors to commit acts impermissible under the Convention with impunity. In the General Comment No. 2 committee in clarifying state responsibility for torture by non-state actors, specifically has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic

⁷³ General Recommendation No. 19, 11th session, 1992.

⁷⁴ Ibid.

⁷⁵ General Comment N 2 on Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Committee against torture, 24.01.2008.

violence, female genital mutilation, and trafficking as violation of Convention against Torture that makes clear definition that domestic violence is considered as torture, cruel, inhuman or degrading treatment and punishment depending on its severity.⁷⁶

The principle of non-discrimination is one of the basic and general principles for the protection of human rights which is included within the definition of torture in the Article 1, paragraph 1, which explicitly prohibits specified acts when they are committed for “any reason base on discrimination of any kind...”, as the Committee provides discriminatory use of mental or physical violence or abuse that is exactly the issue of domestic violence is an important factor in determining whether an act constitutes torture or not.⁷⁷

The Committee emphasizes that gender is a key factor as being female intersects with other identifying characteristics such as race, religion, age and etc. to determine the ways that women and girls are subject to or at risk of torture or ill-treatment and as a result to several severe consequences.⁷⁸ This is the contexts in which female are at risk of deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes, as women can be a subject to violations of the Convention on the basis of their actual or perceived non-conformity with socially determined gender roles.⁷⁹

This is the reason why committee lays down the obligation on states to ensure the protection of members of such groups who are especially at risk of being tortured, by prosecuting and punishing all acts of violence and abuse against these individuals and of course ensuring implementation of other positive measures of prevention and protection, including but not limited to the measures that are provided in this convention.⁸⁰ Committee states the importance of state reports on officially inflicted or sanctioned torture or ill-treatment on the monitoring conditions,

⁷⁶ Ibid, Para 18.

⁷⁷ Ibid, Para 20.

⁷⁸ Ibid, Para 22.

⁷⁹ Ibid.

⁸⁰ Ibid, Para 21.

implementation of preventive measures to prevent torture and ill-treatment to situations where violence is inflicted privately.⁸¹

In the case of *Rumor v. Italy* concerned domestic violence where the applicant's partner attacked her several times hitting, threatening her with knife and pair of scissors after what locked her in their flat and one of their children's witnessed part of this aggression applicant argued that there had been a violation of her right to be free from torture and inhuman or degrading treatment under Article 3 of the ECHR as she claimed that following the violence inflicted upon her by partner she lived in a state of constant fear.⁸² European Court of Human Rights provided that ill-treatment must attain a minimum level of severity if is going to fall within the scope of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. As a Court states the assessment of this minimum is relative and it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and in some instances, the sex, age, and state of health of the victim.⁸³

For the reason to find the case conditions applicable to the provisions of the Convention and the Jurisdiction of the Court, it has to be decided if case circumstances are enough and if facts provided by applicant amount to the human rights violations provided by the Convention. In the case as the applicant had physical injuries that she had suffered as a result of being attacked by her partner and to her fear of further violence based on what she was considered as vulnerable individual and as the violence and the psychological consequences for her were serious enough court stated that the violence committed by applicants intimate partner amount to ill-treatment within the meaning of Article 3 of the Convention and was considered applicable.⁸⁴

Instead of the fact that Article of the Convention is applicable to the present case it is the different question whether the authorities actions in response to the applicant's complaints complied with the requirements of the provision and whether the national authorities took all

⁸¹ Ibid, para 25.

⁸² Rumor v. Italy Application no. 72964/10, ECtHR 27.05.2014.

⁸³ Rumor v. Italy Application no. 72964/10, ECtHR 27.05.2014, Para. 57.

⁸⁴ Ibid, para. 60-62.

reasonable measures to prevent violent attacks against applicants physical integrity⁸⁵ including states positive obligation to ensure that individual within their jurisdiction will be protected against all forms of ill-treatment which the authorities knew or ought to have known prohibited under Article 3 of the Convention which is committed by private individuals. In this case the court stated that official authorities, carabinieri, the public prosecutors and the domestic courts did not remain passive after the incident and abuser was immediately arrested and remanded in custody and holds that there has been no violation of Article 3 of the Convention.⁸⁶

II. Domestic Violence against Women and Georgia?

2.1. Definition of Domestic Violence in Georgian Legal Framework

Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence provides the definition of violence against women as any act of violence committed in public or in private life on the basis of gender issue, that can result in physical, psychological or sexual suffering or economic harm, including the threat of such kind of acts, to force women or arbitrary deprivation of liberty.⁸⁷ The term domestic violence means by one family member the deprivation and violation of constitutional rights and freedoms of another family member by abandoning or by physical, psychological, economic or sexual violence or by force.⁸⁸

One of the most important human rights that is connected to domestic violence and is incorporated in the definition of prohibition against torture in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment is the prohibition of non-discrimination that is provided in the Georgian Constitution that all humans are equal by birth

⁸⁵ Ibid, para. 62.

⁸⁶ Ibid.

⁸⁷ Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence, 25.05.2006. Art 3¹.

⁸⁸ Ibid, Art 3.

and to its jurisdiction without distinction of any kind, such as race, color, language, sex, religion, political or other opinion, national or social origin, property, birth and any other status.⁸⁹ The Georgian law corresponds to internationally accepted and established principles and norms and to all international treaties where Georgia is a party if they did not contradict with Georgian Constitution.

Humans honor and dignity are inviolable and so the Constitution prohibits torture, cruel, inhuman or degrading treatment or punishment and any kind of physical or mental coercion⁹⁰ and the deprivation of liberty for any of this purposes without the court decision on imprisonment of person.⁹¹ In relation to family life Constitution states that marriage are based on equality of spouses and on mutual consent.⁹² Based on of this provisions it is clear that Georgian law complies with international standards and provides and guarantees all human rights and freedoms provided in the obligatory international instrument in which Georgia is a party and states that citizens of Georgia all are equal in social, economic, cultural and political life without any kind of discrimination. To comply with the obligation to criminalize the crime of domestic violence as it is provided in several international instruments in 2006 the Georgian criminal law was changed by adding new Article and criminalization of the domestic violence. Article was giving the definition of the violence and providing only the community service as the punishment for the crime.

In 2014 the first step to stiffen the law against violence against women was the statement of the minister of internal affairs on regulations for district inspectors as before they could only ask for explanation letter from abusers after this statement inspectors had the right to issue restraint warrant immediately in any case of domestic violence.⁹³ Restraint warrant is the legal act issued by the authorized police officer that defines temporary measures for protecting the victims of

⁸⁹ Ibid, Art 14.

⁹⁰ Ibid, Art 17.

⁹¹ Ibid, Art18

⁹² Ibid, Art 36.

⁹³ Ministry of Internal Affairs, domestic violence accessible at: <http://police.ge/ge/projects/odjakhshi-dzaladoba>

domestic violence from the perpetrator.⁹⁴ Georgian law provides one more possibility for protecting victims such as protective warrant that is already issued by the court which can include the obligatory course of violent attitude and change of violent attitude and behavior by the abuser.⁹⁵ The right to ask issue the protecting warrant has the victim of the crime, family member or person who provides the medical, legal and psychological support for the maximum duration of six months.

Before the 2014 the only criminal punishment for crime of domestic violence was the community service that after some time became clear that was not enough and effective to prevent domestic violence and for this purposes criminal code of Georgia was changed and as the punishment for committing the violence was added imprisonment for up to year for violence, regular insult, black-mail, humiliation by one family member of another family member, which has resulted in physical pain or anguish and which has not entailed the consequences provided such as Intentional infliction of grave injury.⁹⁶ Legal measures that every international instrument on domestic violence or on violence against women provides is the criminalization and implementation of provisions in domestic acts of all possible crimes and acts that are considered as a part of domestic violence, which will be enough punishable by effective, proportionate and dissuasive sanctions, taking into account their graveness and seriousness. As the Convention on preventing and combating violence against women and domestic violence⁹⁷ provides the Penal Code of Georgia lists he several aggravating circumstances for domestic violence such as committing the crime knowingly against a pregnant women, minor or a helpless person, against a minor's family member in the presence of the minor, against two or more persons, by two or more a group of persons, repeatedly and offence committed against a person made vulnerable by particular circumstances such as economic dependence on perpetrator or other kind of dependence that will be punished with imprisonment for a term of one to three years.⁹⁸

⁹⁴ Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence, 25.05.2006. Art 10.

⁹⁵ Ibid.

⁹⁶ Criminal Code of Georgia, adopted 22.07.1999, entry into force 01.06.2000, Art 126.

⁹⁷ Convention on Preventing and Combating Violence against Women and Domestic Violence, adopted 11.05.2011, entry into force 01.08.014.

⁹⁸ Criminal Code of Georgia, adopted 22.07.1999, entry into force 01.06.2000, Art 126, para. 2.

The definition of violence against women and all possible types of violence that can be applied as the tool of domestic violence are provided in the Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence which provides the Psychological violence as any offence, blackmail, degrading treatment, threat or any other act that violates the pride and dignity of a human being. Sexual violence based on this law is an act that violates sexual liberty and integrity of the person, as well as sexual intercourse or other acts of sexual nature or immoral acts with a minor. This legal act gives also the definition of economic violence as restriction of the right to property, the right to work and the right to enjoy shared property and lastly the Coercion that can be committed by physical or psychological coercion of a person to perform or to abstain from performing an act, performance or non-performance of which represents the right of the person, or coercion to endure certain pressure against his/her will.⁹⁹

General prohibition of domestic violence in connection with the main international bodies provides several measures for preventing domestic violence and supporting victims of this crime first and one of the most important measures are the shelters. As the Convention of human rights that deal with the domestic violence issues to understand the effectiveness of broadly adopted measures and their mandatory essence for preventing domestic violence and supporting victims. As the Convention on preventing and combating violence against women and domestic violence provides states shall take all necessary steps to provide easily accessible shelters in sufficient numbers to provide safe accommodation for victims of domestic violence, Georgian law on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence provides the provisions on temporary shelters for women and children and on crisis centers for immediate and free legal consultation, primary and urgent medical care and psychological support.¹⁰⁰

⁹⁹ Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence, 25.05.2006. Art 4.

¹⁰⁰ Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence, 25.05.2006. Art 17².

Placing victims of domestic violence in the shelters legally are guaranteed only up to three-month term with the possibility to prolong duration in exceptional circumstances as it is stated by the statute of the shelter.¹⁰¹ One more provision and obligation that state parties have based on several international instruments is the providing of free 24/7 helpline for the victims of domestic violence for immediate consultation and support available on the whole territory of the country. This measure for preventing violence and supporting victims is provided in Georgia 24/7 from 2014 which is completely confidential and any interested person can get information on domestic violence issues and measures of protection.¹⁰² Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence takes into account the importance of fact that victim of the domestic violence has to be informed in cases of release, escape or temporary leaving of prison of perpetrator and lays obligation on official institutions to inform the victim of domestic violence about such circumstances.¹⁰³

2.2. Domestic Situation of Specific Vulnerable Groups

Violence against women covers the whole world going through the boundaries of states, race, culture or age. Global estimates published by World Health Organization indicate that about 1 in 3 (35%) of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime.¹⁰⁴ In the thesis, it will be examined to what extent the legislation in force at the international, European level as well as at the national level has reflected the situations on modern families in cases of domestic violence. For this purpose, the thesis will examine the main international directives that regulate domestic violence issues around the world and national legislation in force to understand why the number of human rights violations as domestic violence and their victims worldwide in spite of applying laws and several measures are huge regardless of age, race, sexuality, and class all over the world and commonly experienced by women and perpetrated by men.

¹⁰¹ Ibid.

¹⁰² Ibid, 19¹.

¹⁰³ Ibid, 17¹

¹⁰⁴ Global and Regional Estimates of Violence against Women, WHO, Department of Reproductive Health and Research, 2013.

For this purposes the research concentrates on the country that is little different from the majority of countries all around the world where there are different values for community a state where the religion, traditions and the social status in the community is in the first place and vulnerable groups of women such as non-educated women dependent only on husband without the support from the community or family has no way except to stay with perpetrators. Research focuses on the case of Georgia as one of the most religious countries in the world, where around 85 % of people are Christian orthodox, a country where traditions sometimes stand higher than law and where the understanding of gender equality is vague both for men and for women.

In 2017 analysis made and published by UN Women Georgia, the National Statistics Office of Georgia and European Union together provided information on the attitude of people from all over the country in relation to domestic violence.¹⁰⁵ After 2009 it was the first analysis made on the national level that brought to light the attitude of people about the domestic violence issue. Almost one-fourth of women (22%) and one-third of men (31%) considers that beating women (wife) is justified in some circumstances and it is normal. One-fourth of women (23%) and almost half of men (43%) considers that wife has to subordinate in any conditions even if she disagrees and does not matter how much.¹⁰⁶ The understanding of equality is very vague in Georgia for both women and men, unfortunately big part of society thinks that as it happens in family it is not a crime and there is no need to inform official institution and fight for women's rights.

Based on the information provided by the Ministry of internal affairs the number of cases on domestic violence resulting in restraint warrant in 2015 was doubled in comparison with 2013 that increased from 227 to 2.598 cases. One of the reasons for the growth of this index is the fact

¹⁰⁵ UN women Georgia, the national statistics office of Georgia and European Union, "Analysis on the frequency of domestic violence and attitude of the population in relation to domestic violence around the country" accessible at: <http://georgia.unwomen.org/ka/news/stories/2017/02/georgia-to-conduct-nation-wide-study-on-violence-against-women-with-eu-support> and <http://www.tabula.ge/ge/story/130436-gaeros-qalta-organizacia-saqartveloshi-7-dan-1-qali-ojaxshi-dzaladobis-msxverplia>

¹⁰⁶ UN Women Georgia, the national statistics office of Georgia and European Union, "Analysis on the frequency of domestic violence and attitude of the population in relation to domestic violence around the country" accessible at: <http://georgia.unwomen.org/ka/news/stories/2017/02/georgia-to-conduct-nation-wide-study-on-violence-against-women-with-eu-support> and <http://www.tabula.ge/ge/story/130436-gaeros-qalta-organizacia-saqartveloshi-7-dan-1-qali-ojaxshi-dzaladobis-msxverplia>

that during the analysis in 2009 it was found that 78.3% of citizens considered domestic violence as the family business and even in cases of serious grave violations victims and relatives preferred to be silent and not to notify officials.¹⁰⁷ From some point the number of cases and the attitude of people is somehow understandable as in 2009 there was not almost any effective measure for victims of domestic violence, even the helpline one of the important measures to prevent violence and especially support victims was created only in 2010 with the support of UN Women Georgia.¹⁰⁸

In reality, it is not the only one problem and reason of such a high index of domestic violence in Georgia. The country is very religious and divorce is one of the impossible and unimaginable things that women can do in her life, no matter how hard it is to live with a husband and how much she suffers especially if a girl got married in early ages and has no support from family's side. Georgia has a quite big percentage of child marriages 14% that can be said gives rise to vulnerable groups such as non-educated women who have no way to run from their perpetrators.¹⁰⁹ Because of the religion and traditions, families of girls refuse to help victims of domestic violence as it will result in divorce and rumors as it is widely accepted that if a girl decides to marry she has to carry on instead of the problems and pain and save the family. In result it occurs that woman who is the victim of domestic violence has no way to run from perpetrator as her family refuses to her to return to family, the victim is not educated, does not have the possibility to work especially if she has children and has the obligation to take care of them. To sum up, as it was provided almost half 43 % of men thinks that women have to take everything as it is their duty on the basis of understanding that in most cases women do not have any place to run.

According to Amnesty International, they are concerned about the widespread impunity of perpetrators of domestic violence in Georgia. Because of The insufficient measures to protect the victims of domestic violence and the absence of functioning cross-referral system between

¹⁰⁷ Un Women Georgia, Attitude of community on domestic violence in Georgia, approaches and tendencies, 24.02.2016, Accessible at: <http://georgia.unwomen.org/ka/news/stories/2016/02/public-attitudes-towards-domestic-violence-in-georgia---trends-at-a-glance>

¹⁰⁸ Ibid.

¹⁰⁹ United Nations, Global Database on Violence against Women, accessible at: <http://evaw-global-database.unwomen.org/fr/countries>

different agencies.¹¹⁰ As in other countries throughout the world, thousands of Georgian women are subjected to domestic violence on a regular basis. They are hit, beaten, raped, and in some cases even killed. Many more endure psychological violence and economic control.

Amnesty International issued an interesting informative report on domestic violence in Georgia its week sides and some recommendations to appropriately respond the issue on violence against women.¹¹¹ As follows from one of the submissions by the Georgian government to the United Nations Committee on the Elimination of Discrimination against Women “family violence is one of the most widespread problems in Georgia” and apart from women, other family members such as the elderly or children also frequently become victims of violence in families but the report focuses on violence against women perpetrated by their husbands or other intimate partners.¹¹²

Amnesty International among other issues makes focus about the widespread impunity of perpetrators of domestic violence in Georgia, as for that time in country there was no effective measure in sufficient numbers to provide support and punishment, such as temporary shelters for adequate and safe housing, crisis centers, law enforcement measures, criminalization of domestic violence, lack of mandatory government training programs for officials and even helpline for supporting the victims that is why Including due the lack of available safe and affordable housing and access to independent means to support themselves, several women whose cases are mentioned in the report continue to live with their violent partner and risk reprisals if they are identified.¹¹³

Amnesty International in this report considered that the adoption by the Georgian Parliament of the Law of Georgia on Combating Domestic Violence, Prevention of and Support to Its Victims (Law on Domestic Violence), that was drafted following extensive consultation with nongovernmental organizations (NGOs), was an important step forward in meeting the

¹¹⁰ Amnesty International, Georgia: “Thousands Suffering in Silence: Violence Against Women in the Family”, 09.2006, Accessible at:

<https://www.amnesty.org/en/documents/document/?indexNumber=EUR56%2F009%2F2006&language=en>

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

government's obligations to prevent domestic violence and to protect survivors of such violence. For the first time it provided the definition of domestic violence into Georgian legislation and In addition, it provided a legal basis for the issuance of protection and restraint orders and stresses the need to set up temporary shelters for victims of domestic violence and rehabilitation centers for batterers.¹¹⁴

One of the things that Amnesty International mentioned in the report that the organization is aware is the strong and supportive family relationships that is a core value of Georgian culture but sometimes may become fateful in cases of domestic violence.¹¹⁵ Through this report and Amnesty International's campaigning on domestic violence the organization aimed to contribute to efforts by local NGOs to help government officials to ensure that many more women who suffer from violence in their homes will experience support in society and by the state in order to regain a home that is free from violence. In focusing on domestic violence in Georgia, Amnesty International does not suggest that violence against women is peculiar to Georgia, or that it is more widespread in Georgia than elsewhere the most important thing that organization wanted to say with this report was the problem of silence in the country where thousands are suffering but no one raises the voice.¹¹⁶

One more problem and reason of frequency of domestic violence in Georgia is The practice of bride-kidnapping on which Amnesty International makes accent continues to be reported as in the cases of bride-kidnapping women are often raped and expected to marry the man so as to avoid stigmatization and being "dishonored" in the community. According to information received by Amnesty International, the victims of bride-kidnapping rarely report bride-kidnapping to the police fearing public opinion, and the perpetrators are rarely brought to justice.¹¹⁷ Maybe in recent years such practices are almost disappeared from Georgia's territory but the results of past bride-kidnapping still reflects today's situation and domestic violence cases in the country as before adopting the law of Georgia on Elimination of Domestic Violence, Protection and Support

¹¹⁴ Ibid.

¹¹⁵ ibid

¹¹⁶ Amnesty International, Georgia: "Thousands Suffering in Silence: Violence Against women in the Family", 09.2006, Accessible at: <https://www.amnesty.org/en/documents/document/?indexNumber=EUR56%2F009%2F2006&language=en>

¹¹⁷ Ibid.

of Victims of Domestic Violence and establishing several preventing and supporting measures for domestic violence it was almost impossible for victims to protect themselves and children and raise their voice of course in cases where they had no support from relatives and state could not provide proper measures.

Many women in Georgia, majority, who have been subjected to domestic violence have not sought outside help in some cases it is a feeling of shame that prevents them from doing so as well as fear of destroying their family if they were to decide not to keep silent anymore and in many cases understanding that they don't have economic stability in some cases even the possibility to maintain themselves and children with food and safe accommodation.

Many women blame themselves for the violence directed against them and try to behave differently to please their partner and avoid "punishment", partly the reason for this is the attitude of community majority of which thinks that domestic violence is only business of family and that women believe that they deserve to be subjected to this treatment and that the man has a right to do so. Nana Agapishvili from the NGO "Ndoeba" summed up a widespread societal attitude towards domestic violence even the fact that of beating women by men is considered as a really bad behavior In Georgia generally however, if people find out that it happens in a family then it means it is somehow a bad family and the woman is probably doing something really wrong by what she may deserve such treatment.¹¹⁸ There is a fairly widespread belief that marital violence is justified in cases involving a woman's adultery or if a mother "neglects her children".

According to the NGO Caucasus Women's Research and Consulting Network (CWN)¹¹⁹ published in 2006, over 90 percent of women across Georgia considered that the "woman should

¹¹⁸ Ibid.

¹¹⁹ UNFPA: 1999 Georgia Reproductive Health Survey, Atlanta 2001; UNFPA: 2005 Georgia Reproductive Health Survey, Atlanta 2005; Caucasus Women's Research and Consulting Network (CWN): Family Violence on Women. Multi-Component Research, 2006. The 1999 RHS was the first population-based national survey of this type that was conducted in Georgia. A sample of 7,798 women aged 15-44 years were interviewed, including 1,655 internally displaced women living in government facilities. The second RHS was conducted in the first part of 2005. The surveys were similar in design and content, but the 2005 RHS did not include a separate sample of internally displaced women living in public housing. The CWN conducted interviews with 1,000 women across Georgia who had lived with a man for at least a year. The interviewees were randomly selected. Due to differences in methodology and wording of the questions the findings of the two RHSs on the one hand, and the CWN on the other hand vary with regard to some of their findings.

be more modest and try not to provoke violence and Over 60 percent of women responded that “no matter what, whatever happens in the family should stay within the family”.¹²⁰ This kind of societal attitudes tend to strengthen the perception that domestic violence is an internal problem of the family and should be solved inside the family. That is the reason why even in cases when victims of domestic violence want to escape they have no way to run, as the majority of community even their families did not support breaking family and without valuable support from the side of government, there is no point to raise the voice against the perpetrator. For this reasons, a very small percentage of women call the police for help when they are subjected to domestic violence. According to the CWN study, while every seventh woman has considered calling the police to protect herself from domestic violence only 1.8 percent had reported domestic physical or other abuse to the police because women felt themselves ashamed for having to turn to outside help, lack of confidence that police could provide a constructive solution or the fact that without appropriate support this will change something in the future.¹²¹

For example, report of Amnesty International provides a case of Rusudan from a village in Western Georgia who reportedly called the police several times because her husband used to beat her severely and as the Anti-Violence Network of Georgia provides the information once when she went to the police station to ask for help, the officer told her to go home and not “provoke” any confrontations with her husband after this events she even ran away from home several times, but her relatives always brought her back.¹²² The problem of usage helplines, referring to police officers and even shelters is that all these measures are short-term, temporary measures, in idea they have to make at least some impact on perpetrators, but in reality in several cases where officers of the patrol police have come to the family house/flat and tried to calm down the batterer, sometimes even took him for a ride in the police car or to the police station for several hours or a night but after he returns home the beatings often continue to “punish” the female partner for having called the police and creating problems.¹²³

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Amnesty International, Georgia: “Thousands Suffering in Silence: Violence Against Women in the Family”, 09.2006, Accessible at: <https://www.amnesty.org/en/documents/document/?indexNumber=EUR56%2F009%2F2006&language=en>

¹²³ Ibid.

It appears that women rarely file complaints against their intimate partners for domestic violence. Shame, reluctance to risk their family's falling apart and lack of financial independence are some of the reasons why women in many cases do not consider the court system as a possible solution to their problems. In cases where women want to see their husbands brought to justice, those in the criminal justice system reportedly often do not pursue the case appropriately. According to the information available to Amnesty International, relatively few cases of domestic violence come to court. The criminal cases that are opened typically involve particularly serious physical injury or death. Georgian Young Lawyer's Association (Gyla) made a monitoring of domestic violence, domestic crimes and violence against women by analyzing and monitoring of criminal cases in different cities courts and appellate courts that covers the period from August 2016 to January 2017.¹²⁴

The monitoring revealed several findings such as a fail of judges to adequately assess threats in cases of domestic violence, domestic crimes and violence against women as they impose unreasonably lenient preventive measures on defendants that is why the adequacy of punishment with respect to such crimes remains a problem as despite the judgements of conviction and the gravity of crimes, judges are reluctant to impose imprisonment on perpetrators of domestic violence.¹²⁵ In cases where women want to see their husbands brought to justice, those in the criminal justice system reportedly often do not pursue the case appropriately.

That is why it appears that women rarely file complaints against their intimate partners for domestic violence, Shame, reluctance to risk their family's falling apart, lack of trust in official institutions and finally lack of financial independence are some of the reasons why women in many cases do not consider the court system as a possible solution to their problems. The impunity enjoyed by perpetrators of domestic violence helps to perpetuate domestic violence. However, it is important that the authorities send out a clear signal to society about domestic violence, hotlines and crisis centers offering help to victims of violence in the family thanks to

¹²⁴ Trial Monitoring on the cases of Domestic Violence, Domestic Crimes and Violence against Women, Georgian Young Lawyer's Association, 27.03.2017. Accessible at: <https://gyla.ge/ge/post/qalta-mimart-dzaladobis-saqmeebi#sthash.esZtPoqH.dpbs>

¹²⁵ Ibid.

this publication of information that reaches by television majority of people the term domestic violence has become less of a taboo than it was several years ago.

In many cases, the family's house or flat belongs to the husband or his parents. While in Georgia men and women are equal before the law regarding property and inheritance rights, houses and flats are traditionally passed on to male heirs. According to the Civil Code of Georgia, only property acquired during marriage is considered common property and has to be shared upon divorce and property acquired before marriage as well as by inheritance or gift constitutes separate property of the spouse and because of it, as a result, women often have to leave the family's house/flat if the couple is divorced.¹²⁶

The UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to nondiscrimination in this context, stated in his February 2005 report to the UN Commission on Human Rights, Women and adequate housing, that “women living in situations of domestic violence inherently live in inadequate housing, due to the violence they face within the home because of this many women are prevented from leaving violent situations, because alternative housing and financial support or factors such as density, poor habitability and lack of accessible civic services, as water, electricity, sanitation and other are unavailable and the lack of secure tenure also contributes to a women's decision to remain in an abusive situation and increases the vulnerability of women to domestic violence.”¹²⁷

Many women who do manage to leave home become vulnerable to homelessness due to the lack of family, community and State support and consequently may suffer further violence. That is why Shelters for victims of domestic violence are an important element in governments' strategies to protect the human rights of women. They provide a temporary safe place for women who want to leave a violent relationship and have nowhere else to go.

¹²⁶ Civil Code of Georgia, adopted 26.06.1997, entry into force 24.07.1997, Art 1158, 1161.

¹²⁷ United Nations, Economic and Social Council, E/CN.4/2005/43, 24.02.2005, A 43.

While many women leave a violent relationship temporarily and, for example, stay with relatives or friends, many do not take the step of permanently leaving the violent partner. Often it is a lack of viable alternatives that prevent them from doing so. Women with few or no financial means are in a particularly precarious situation when they wish to leave a violent relationship. Due to widespread economic hardship in Georgia, this dilemma affects many women. Without a sufficient income of their own and without enough money to buy accommodation or at least rent they often have nowhere to go unless friends or their family are prepared, able and of course willing to take such women and their children in on a permanent basis at least before women will have own income to take care of herself and children. That is why, including its manifestation in gender-based domestic violence, Amnesty International considers that the authorities must ensure the provision of and accessibility of women victims of domestic violence to vocational training, and assist them to find jobs to facilitate them in gaining economic independence from their former husbands or partners, and ensure the availability of adequate and safe housing.¹²⁸

2.3 Georgian Domestic Violence Cases in the ECtHR

In spite of frequency of domestic violence in Georgia, not perfect obligatory law and definitely not perfect measures for preventing domestic violence and for supporting victims there is no even one case on domestic violence issue or related human rights violations in relation with domestic violence in the European Court of Human Rights. The only one case concerning domestic violence is the Taliko Tkhelidze against Georgia lodged on 13 April of 2017 but still not accepted as acceptable. Each application that comes to the Court's registry and is not deemed by judges to be clearly inadmissible are further considered by the court, so for now, the case is included in the list of communicated cases.¹²⁹

¹²⁸ Amnesty International, Georgia: "Thousands Suffering in Silence: Violence Against women in the Family", 09.2006, Accessible at:

<https://www.amnesty.org/en/documents/document/?indexNumber=EUR56%2F009%2F2006&language=en>

¹²⁹ Tkhelidze v. Georgia, app no 33056/17, ECtHR 13.04.2017.

On August 2013 M.T. moved in with L.M. in Rustavi, Georgia, although their marriage was never registered, under domestic law and practice they were still considered as spouses. They had constant conflicts as a husband was assaulting all time but first-time father-in-law called the police because she was being abused and had threatened M.T. with murder out of jealousy by his son. Second-time M.T. called the police had been abused verbally and physically she had even called an ambulance and received medical aid. M.T. also stated that she had been subjected to systematic verbal abuse and threats. On the same date, M.T. was interviewed by an inspector-investigator, the report of which reclassified L.M.'s beating of M.T. to a less serious "nudge", adding that "M.T. stated that she didn't need any kind of medical treatment". In any of this cases after calling the police, there was no investigation opened.¹³⁰

After one year of leaving together, M.T. moved to her mother, after what he had been threatening to kill her. Police officer's report of that day states that M.T. submitted that she had been receiving insulting messages and threats from L.M. and she asked the police to help her end this aggression. From their side, police officers explained that they could arrest L.M. only at the scene of violence, after what M.T. lodged a criminal complaint and L.M. was summoned and interviewed by police where he said that he wanted to get back together with M.T. but he was warned to stay away. After this events, L.M. was noticed near her work and flat one-time M.T. even had to run to escape from him and reach her flat safely, after what he tried to stop her and had almost crashed into her car. On none of this circumstances were opened investigation instead of the fact that M.T called several times for asking help. On 17 October 2014 L.M. came to M.T.'s workplace, asked her out for a conversation, and when she went outside shot her dead with an illegal firearm right afterward he turned the gun on himself and committed suicide.¹³¹

Applicant in the European Court of Human Rights is a mother of M.T. and she complains under Articles 2 and 14 of the Convention of the failure of domestic authorities to protect her daughter's life from domestic violence and their refusal to investigate the potential liability of the police officers involved as after she sent a letter to the prosecutor's office, requesting that an investigation has to be opened into alleged negligence committed by the police officers dealing

¹³⁰ Ibid.

¹³¹ Ibid.

with the case no reply was received. It is not still clear will the Court consider case as admissible and deliver judgement but from case conditions, it is completely clear that in this case, police officers did not consider the domestic violence that happens beside the closed family doors serious and sententious to provide an effective response.¹³² The main problem of Georgia in fighting domestic violence is the silence, victims itself suffering in silence, relatives, family members, neighbors everyone who prefers not to open their mouse because someone thinks it is families business, someone thinks it is normal, someone thinks that women deserve it by their behavior, someone simply does not have belief in official institutions and sees no point in raising voice.¹³³

III. Analysis of the Impact/Effectiveness of the International Standards on Domestic Situation in Georgia?

3.1. Impact of the International standards on Domestic Legislation/Cases

This research examined to what extent the legislation in force at the international, European level as well as at the national level has reflected the situations on modern families in cases of domestic violence. For this purpose, the thesis examined the main international directives and provisions that regulate domestic violence issues around the world and lays obligations on national authorities to provide national legislation in force in conformity. The research

¹³² Ibid.

¹³³ Ibid.

concentrated on the Georgia which can be distinguished on the basis of religion, strong traditions and a high percent of child marriages in relation to domestic violence issues. This research is directed on the results of the several analysis provided on the domestic violence in connection to the main international bodies of human rights that deal with the domestic violence issues to understand the effectiveness of broadly adopted measures and their mandatory essence for preventing domestic violence and supporting victims inside the borders of the country.

Article 3 of the Georgian Law on Domestic Violence which was adopted on 25 May 2006 gave the definition of the term of domestic violence for the first time in Georgian law as a “violation of constitutional rights and freedoms of one family member by the other, in conjunction with physical, psychological or sexual violence, coercion or threat to undertake such actions”¹³⁴ It is the state’s responsibility to protect women living inside its borders from violence, even from domestic abuse behind closed doors. Authorities can do this by creating national laws that criminalize violent acts against women, providing support services like safe sheltered accommodation or different programs for providing at least some type of education for women who need it. In such cases as Georgia, this includes work to change public attitudes and challenging the stigma around the country. By denying a vulnerable group of people the benefits necessary to access safe accommodation and support, the Government is failing its obligation under international human rights law to act with due diligence to respect, protect and fulfill the human rights of all people within its jurisdiction. But the question is what kind of obligation does state have for supporting the victims of domestic violence, is it the state who fails or is it the lack of international obligatory measures that has to be set by international organizations?

What has changed after applying international obligatory provisions in the domestic legal acts including measures for preventing domestic violence, violence against women and supporting victims of crime? Before adopting Georgian Law on Domestic Violence in 2006 in Georgia there was not almost any response and measures for domestic violence instead of the fact that Georgia had obligations from several international instruments. According to the NGO Caucasus Women’s Research and Consulting Network (CWN)¹³⁵ published in 2006, over 90 percent of

¹³⁴ Georgian Law on prevention of Domestic Violence, Protection of Victims of Domestic Violence and help, 25.05.2006.

¹³⁵ UNFPA: 1999 Georgia Reproductive Health Survey, Atlanta 2001; UNFPA: 2005 Georgia Reproductive Health Survey, Atlanta 2005; Caucasus Women’s Research and Consulting Network (CWN): Family Violence on Women.

women across Georgia considered that the “woman should be more modest and try not to provoke violence and over 60 percent of women responded that “no matter what, whatever happens in the family should stay within the family”.

The bright side in relation to this percent is that Based on the information provided by the Ministry of internal affairs the number of cases on domestic violence resulting in restraint warrant in 2015 was doubled in comparison with 2013 that increased from 227 to 2.598 cases. One of the reasons for the growth of this index is the fact that during the analysis in 2009 it was found that 78.3% of citizens considered domestic violence as the family business and even in cases of serious grave violations victims and relatives preferred to be silent and not to notify official departments.¹³⁶ From some point the number of cases and the attitude of people is somehow understandable as in 2009 there was not almost any effective measure for victims of domestic violence, even the helpline one of the important measures to prevent violence and especially support victims was created only in 2010 with the support of Un Women Georgia.¹³⁷

The analysis made in 2017 and published by UN women Georgia, the national statistics office of Georgia and European Union together provided information on the attitude of people from all over the country in relation of domestic violence.¹³⁸ After 2009 it was the first analysis made on national level that brought to light the attitude of people about the domestic violence issue. Almost one-fourth of women (22%) and one-third of men (31%) considers that beating women

Multi-Component Research, 2006. The 1999 RHS was the first population-based national survey of this type that was conducted in Georgia. A sample of 7,798 women aged 15–44 years was interviewed, including 1,655 internally displaced women living in government facilities. The second RHS was conducted in the first part of 2005. The surveys were similar in design and content, but the 2005 RHS did not include a separate sample of internally displaced women living in public housing. The CWN conducted interviews with 1,000 women across Georgia who had lived with a man for at least a year. The interviewees were randomly selected. Due to differences in methodology and wording of the questions the findings of the two RHSs on the one hand and the CWN on the other hand vary with regard to some of their findings.

¹³⁶ UN Women Georgia, Attitude of community on domestic violence in Georgia, approaches and tendencies, 24.02.2016, Accessible at: <http://georgia.unwomen.org/ka/news/stories/2016/02/public-attitudes-towards-domestic-violence-in-georgia---trends-at-a-glance>

¹³⁷ Ibid.

¹³⁸ UN women Georgia, the national statistics office of Georgia and European Union, “Analysis on the frequency of domestic violence and attitude of the population in relation to domestic violence around the country” accessible at: <http://georgia.unwomen.org/ka/news/stories/2017/02/georgia-to-conduct-nation-wide-study-on-violence-against-women-with-eu-support> and <http://www.tabula.ge/ge/story/130436-gaeros-qalta-organizacia-saqartveloshi-7-dan-1-qali-ojaxshi-dzaladobis-msxverplia>

(wife) is justified in some circumstances and it is normal. One-fourth of women (23%) and almost half of men (43%) considers that wife has to subordinate in any conditions even if she disagrees and does not matter how much.¹³⁹

The understanding of equality is very vague in Georgia from a different point of views, especially in the family life between man and woman. The common approach as it was mentioned above is that what happens in the family has to stay in the family and no one wants to interfere in family's private life even in cases of violence as it is considered as a common situation. But in comparison of analysis concluded in 2006 and in 2009 the impact of international obligations which Georgia started to comply is huge. One case that demonstrates the effectiveness of helplines and programs raising awareness importance is the case of Ia B. provided on the official site of United Nations Population Fund (UNFPA) about the woman who now is 45 years old and spent her 15 years in a marriage with an abusive husband.¹⁴⁰

She was a prisoner in her own home, as she had to ask for permission every time to leave the house and were punished for every act her husband was disapproving. Throughout the years she lived in constant fear as her husband controlled, harassed and battered her on a daily basis, even beat in front of their children and his parents, but she states that even worse she suffered her children were suffering.¹⁴¹ She suffered in silence 15 years as had no way to run from his perpetrator but one day she saw a TV public service announcement on domestic violence that said that it is a crime and provided the hotline number for victims who sought help to leave abusing relationships and she called helpline even before the end of the clip. Next day she was interviewed and offered accommodation for her and her children and instantly on that day she left home and entered shelter where she spent the next eight months recovering and finding peace with her children.¹⁴²

¹³⁹ Ibid.

¹⁴⁰ T. Vashakidze, Domestic Violence in Georgia: Breaking the Silence, United Nations Population Fund, 04.03.2013, Accessible at: <https://www.unfpa.org/news/domestic-violence-georgia-breaking-silence>

¹⁴¹ Ibid.

¹⁴² Ibid.

According to a national survey carried out by UNFPA Georgia in 2009, 75 percent of the women in Georgia believe that domestic violence is a private affair and should not be spoken about outside the family. The same research shows that only 2 percent of women reach out the police and other service providers when they face violence at home for which one reason is the lack of information about the fact that domestic violence is punishable under law and about existing protection mechanisms that is one of the leading reasons why women prefer to keep in secret domestic violence. But Ia after 15 years of violence finally started to speak because saw the possible support for her and her children outside the home and the only message she wants to deliver is not to wait as long as she had waited, because there are places and people who are able to help in starting a new life.¹⁴³

Ia is convinced that picking up the phone and calling the advertised hotline number was the best decision she has made in her life after what she spent many months in the government-run shelter where she was provided with physiological, medical and legal assistance and her children were able to go to school, do their homework and play for the first time in their life without constant fear and expectation of aggression on every step. Until a few years ago, such opportunities were not available to the victims of domestic violence in Georgia, national authorities began operating shelters for the survivors of domestic violence only in 2009 following active lobbying efforts by international aid organizations and local NGOs. Coordinator at the Tbilisi-based shelter for the victims of domestic violence Indira Robakidze says that Ia's life was in shambles when she first entered the shelter, she was pale, frightened and disoriented, but now she is a fit, self-confident elegant woman with bright eyes, fashionable clothes and good job enough to support her family and even going to buy a house that is how far she has come with help.¹⁴⁴

Violence against women and girls is a serious concern in Georgia. That's why as part of its work to develop the country's institutional capacity to respond to violence against women and girls, UN women supported the opening of Georgia's first-ever domestic violence crisis center only in 2016 that Tbilisi center was developed by Georgia's State Fund for the Protection and Assistance

¹⁴³ Ibid.

¹⁴⁴ Ibid.

of the Victims of Human Trafficking with UN Women's support in the framework of the UN joint Program for Gender Equality funded by the government of Sweden.¹⁴⁵

Special Report on Violence against Women and Domestic Violence in Georgia by Georgian ombudsman's office provides one very important issue that came to light after this analysis what has effect on the effectiveness of measures for preventing violence issues and supporting victims such as not one incident when from the side of police officers or district inspectors there was non-fulfilment of their official duties because of different circumstances.¹⁴⁶ Report exemplifying it with one case where a victim of violence woman called police several times for asking support, she was everyday abused physically and mentally, she had injuries every day in the end abuse became so grave that she even offered and asked police to do medical examination, medical test to prove her husband's crime and open investigation but no one listened to her.

When she understood that there will be no help from police she called hotline for domestic violence and said to help her otherwise or she will kill him or he will kill her, that was the last point when staff of hotline asked to call the police with them and give possibility to talk to them, that became a matter when police opened investigation.¹⁴⁷ It happens very often, when police say that when there is a dispute between husband and wife it is not my business they will resolve it in the family. The main recommendation by the ombudsman office is to try to look at this relationship and violence from the side of police just on violence between two private persons that will simplify the fact to see real signs of crime.¹⁴⁸

One more important program that was held by UNFPA to engage men and boys in the cause of ending domestic violence against women. Hundreds of men have been trained through the men-talking-to-men methodology, encouraging them to assume responsibility for ending violence against women and accepting gender equality. The project was launched in 2010 and is going on

¹⁴⁵ The First Crisis center for the Victims of Domestic Violence has been opened in Tbilisi, UN Women Georgia, 06.09.2016, Accessible at: <http://georgia.unwomen.org/en/news/stories/2016/09/the-frist-crisis-center-for-the-victims-of-domestic-violence-has-been-opened-in-tbilisi>

¹⁴⁶ Special Report on Violence against Women and Domestic Violence in Georgia, Georgian ombudsman, 2015, Accessible at: <http://www.ombudsman.ge/uploads/other/3/3361.pdf>

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

with further plans for deepening and widening the initiative as it is a country where virtually almost all decisions from policy issues to family affairs are made by men, having them as partners in the quest for zero tolerance against gender-based violence makes all the difference.¹⁴⁹

After 2006 as Georgia adopted Georgian Law on prevention of Domestic Violence, Protection of Victims of Domestic Violence and help country has made important progress in establishing and enabling environment for the protection of women's rights and of survivors of domestic violence in particular but country where the patriarchate culture is very strong and men are considered as decision makers without possibility to oppose and one of the main sayings is "women have to know their place" still has a long way ahead to this direction.

3.2. Special Programs and Recommendations from Monitoring Bodies and their Effectiveness.

Committee on the Elimination of Discrimination against Women Concluded observations on the combined fourth and fifth periodic reports of Georgia and provided some more recommendations to develop further the gender equality issues and measures on the elimination of discrimination against women.¹⁵⁰ The Committee underlines the importance of achieved progress since 2006 in taking legislative measures and in adoption of national action plan on gender equality, national

¹⁴⁹ T. Vashakidze, Domestic Violence in Georgia: Breaking the Silence, United Nations Population Fund, 04.03.2013, Accessible at: <https://www.unfpa.org/news/domestic-violence-georgia-breaking-silence>

¹⁵⁰ Concluding observations on the combined fourth and fifth periodic reports of Georgia, Committee on the Elimination of Discrimination against Women, /C/GEO/CO/4-5*, 24.07.2014.

action plan for the implementation of the gender equality policy, national human rights strategy and action plan for combating domestic violence and implementing measures for the protection of victims of domestic violence and etc.¹⁵¹

The committee regrets that, notwithstanding the efforts by the state party to implement the recommendations contained in its previous concluding observations and comply with its international obligations, patriarchal attitudes and stereotypes regarding the roles and responsibilities of women and men in the family and in society remain deeply rooted and are exacerbated by the increased sexualization of women in media, which undermines the social status, participation in public life and professional careers of women.¹⁵²

The Committee notes the fact that the article 1108 of the Civil Code, which allows for the marriage of a person at 16 years of age in exceptional circumstances with the consent of the parents or other statutory representatives or by decision of a court if there are legitimate reasons, provides room for forced child marriage and the continuing practice of unregistered marriage, including by the Orthodox Church, which leaves women in such marriages in a vulnerable economic situation and may also result in impunity for sexual intercourse with a person below 16 years of age.¹⁵³ The Committee suggests for prevention of the practice of unregistered marriage and if such marriage occurs to ensure that they are not used to sexually abuse girls below 16 years of age legislative measures which will safeguard the economic rights of women in such marriages.¹⁵⁴

As Georgian Civil Code generally provides the prohibition of civil marriage before 18 year Article 1108 of Code allows for the marriage of a person at 16 years of age exceptional circumstances in case of which such person can enter into civil marriage, one exception is the decision of a court if there are legitimate reasons and second if there is a consent of the parents or other statutory representatives that in reality provides big space and possibility for forced child

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

marriages.¹⁵⁵ For this reasons, the Committee gives the recommendation to take legislative and other measures to prevent the practice of unregistered marriage, including by the Orthodox Church which leaves women in such relationships in a vulnerable economic situation and may also result in impunity for sexual intercourse with a person below 16 years of age.¹⁵⁶

The Committee recommends that the State party further strengthen its efforts to overcome stereotypical attitudes regarding the roles and responsibilities of women and men in the family and in society and continue to implement measures to eliminate gender stereotypes by promoting the substantive equality of women. The Committee also recommends that the State party study the scale and consequences of child marriage and take urgent measures to prevent such marriage among all ethnic groups by taking comprehensive information and awareness-raising measures targeting the public, parents and religious and traditional leaders about the harmful impact of the practice on girls, in particular on their health and development potential.¹⁵⁷

The Committee suggests to continue raising awareness among women about their rights under the Convention as there are growing number of women who are murdered by their husbands or partners who are the victims of domestic violence and one of the main problems for the elimination of domestic violence against women in Georgia is the lack of State-funded crisis centers and shelters for women who are victims of domestic violence, especially in rural areas.¹⁵⁸ The Committee remains concerned also about the enrolment rate among girls in primary, secondary and tertiary education the biggest reason of which is the high rate of girls who drop out the secondary school after the 9th grade, reportedly owing to child marriage one of the reasons mentioned the absence of age-appropriate sexual and reproductive health and rights education, including on responsible sexual behavior, at all levels.

The Committee, however, concerned about the inequalities between the State party's urban and rural women with regard to their access to social and health-care services, access to economic

¹⁵⁵ Civil Code of Georgia, adopted 26.06.1997, entry into force 24.07.1997, Art 1108.

¹⁵⁶ Concluding observations on the combined fourth and fifth periodic reports of Georgia, Committee on the Elimination of Discrimination against Women, /C/GEO/CO/4-5*, 24.07.2014.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

opportunities and participation in political and public life, including in decisions relating to the agricultural sector. The Committee is also concerned about the lack of childcare facilities in rural areas and of shelters and other services provided to victims of domestic violence.¹⁵⁹ The Committee recommends that the State party ensure that rural women have adequate access to social, health-care and other basic services and economic opportunities, in addition to equal opportunities to participate in political and public life, in particular in decisions relating to the agricultural sector. The Committee also recommends that the State party ensure the availability of nurseries, in addition to shelters and other services for victims of domestic violence, in rural areas.

After this observations Georgia has achieved a huge progress in complying its' international obligations for preventing domestic violence and supporting victims of domestic violence, by establishing hotline 24/7, by opening shelters and crisis centers all over the country (in, providing trainings and seminars for officials to raise awareness and deliver the importance of domestic violence issues and its criminal nature. The prosecution rate for perpetrators has increased from 40% to 90%, and the number of restraining orders has increased almost tenfold since 2014.¹⁶⁰ In addition to Kakheti, there are shelters for victims/survivors of domestic violence in Tbilisi, Gori (Shida Kartli Region) and Kutaisi (Imereti, West Georgia). All four shelters were opened and able to provide services, as a result of technical assistance provided by Un Women, with the financial support of the Swedish Government, within the framework of the Un Joint Program for Gender Equality and currently, all four shelters are funded from the state budget.¹⁶¹ As a result of raising public awareness about the phenomenon of domestic violence and changing attitudes, the number of shelter beneficiaries is increasing all the time. By 2015, there were 155 women and children using shelters throughout the country (compared with 100 in 2013 and 114 in 2014).¹⁶²

¹⁵⁹ Ibid.

¹⁶⁰ More shelters for victims of domestic violence in Georgia, Un women Georgia, 05.04.2016, Accessible at: <http://georgia.unwomen.org/en/news/stories/2016/04/more-shelters-for-victims-of-domestic-violence-in-georgia>

¹⁶¹ Ibid.

¹⁶² Ibid.

Conclusion

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations on Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. This research listed all international instruments that aim to guarantee preventing of domestic violence and supporting of its victims. The research examined the Georgian law, different international analysis, reports, and national cases before and after

adopting international conventions, recommendations and measures to find the answers to this study. This research concentrated on intimate partner violence as one of the most common forms of violence against women that includes physical, sexual, and emotional abuse and controlling behaviors by an intimate partner. Based on all of the analysis mentioned above it is obvious that domestic violence against women is one of the most widespread human rights violation worldwide and in spite of applying laws and several measures the number of victims is huge regardless of age, race, sexuality, and class all over the world, that is commonly experienced by women and perpetrated by men.

This research is directed on the results of the several analysis provided on the domestic violence in connection to the main international bodies of human rights that deal with the domestic violence issues to understand the effectiveness of broadly adopted measures and their mandatory essence for preventing domestic violence and supporting victims. As it was provided Georgia has gone through big developments in relations to domestic violence issues, as 2017 analysis made and published by UN women Georgia, the national statistics office of Georgia and European Union together provided information on the attitude of people from all over the country in relation to domestic violence.¹⁶³ Intimate partner violence occurs in all settings and among all socioeconomic, religious and cultural groups but for purposes of this study research concentrated on Georgia as one of the most religious countries with 85% of orthodox believers and on a country with strong traditions. As several analysis showed instead of the fact that a lot has been done in Georgian law and regulations in connection to domestic violence preventing measures and for supporting domestic violence victims still big part of Georgian society thinks that women have to subordinate and part which wants to leave abusers can't see options without support and education that is why thousands are suffering for this reasons in silence.

That is why the question of this research, is, if all internationally established and adopted measures are really enough effective to guarantee the prevention of domestic violence and supporting victims of domestic violence in such country as Georgia? In the thesis, was examined

¹⁶³ UN women Georgia, the national statistics office of Georgia and European Union, "Analysis on the frequency of domestic violence and attitude of the population in relation to domestic violence around the country" accessible at: <http://georgia.unwomen.org/ka/news/stories/2017/02/georgia-to-conduct-nation-wide-study-on-violence-against-women-with-eu-support> and <http://www.tabula.ge/ge/story/130436-gaeros-qalta-organizacia-saqartveloshi-7-dan-1-qali-ojaxshi-dzaladobis-msxverplia>

to what extent the legislation in force at the international, European level as well as at the national level has reflected the situations on modern families in cases of domestic violence in Georgia. For this purpose, the thesis examined the main international directives that regulate domestic violence issues around the world and national legislation of Georgia in force before applying international obligations and after starting to comply with them. The research concentrated on the country of Georgia that can be distinguished on the basis of religion, strong traditions and a high percentage of child marriages (14%)¹⁶⁴ that occurred is one of the main problems of non-educated vulnerable group of women in country that results in domestic violence issues and impunity in relation to perpetrators.

Instead of the fact that a lot has been done from 2006 after adopting the Georgian Law on prevention of Domestic Violence, Protection of Victims of Domestic Violence¹⁶⁵ and Based on the information provided by the Ministry of internal affairs the number of cases of domestic violence resulting in restraint warrant in 2015 were several times more in comparison with 2013 that increased from 227 to 2.598 cases.¹⁶⁶ One of the reasons for the growth of this index is the fact that during the analysis in 2009 it was found that 78.3% of citizens considered domestic violence as the family business and even in cases of serious grave violations victims and relatives preferred to be silent and not to notify official departments.¹⁶⁷ But after several developments in domestic violence law and regulations based on Georgia's international obligations and with the help of supporting international organizations situation has been improved for victims of domestic violence and they have raised their voices to leave the abusive relationships with a help of different institutions. Georgia has applied 24/7 hour helpline, shelters all over the country, programs held by UNFPA to engage men and boys in the cause of ending violence against women and different raising awareness programs and trainings that resulted in improvement of society's attitude towards domestic violence issues and understanding that despite the fact that crime happens in the closed doors it is still a crime and requires the appropriate response from everyone.

¹⁶⁴ United Nations, Global Database on Violence against Women, accessible at: <http://evaw-global-database.unwomen.org/fr/countries>

¹⁶⁵ Georgian Law on prevention of Domestic Violence, Protection of Victims of Domestic Violence and help, 25.05.2006.

¹⁶⁶ Un Women Georgia, Attitude of community on domestic violence in Georgia, approaches and tendencies, 24.02.2016, Accessible at: <http://georgia.unwomen.org/ka/news/stories/2016/02/public-attitudes-towards-domestic-violence-in-georgia---trends-at-a-glance>

¹⁶⁷ Ibid.

According to the NGO Caucasus Women's Research and Consulting Network (CWN)¹⁶⁸ published in 2006, it was found that 90 per cent of women across Georgia considered that the "woman should be more modest and try not to provoke violence" and Over 60 per cent of women responded that "no matter what, whatever happens in the family should stay within the family".¹⁶⁹ Another problem in this kind of countries is an issue with raising awareness about domestic violence cases as for decades and centuries people are used to violence in families as the community stands on the strong belief in the patriarchy. It is considered as a normal common regime how things have to work in family life. Fortunately, a lot has been done for raising awareness across the country to implement the assessment that domestic violence is a crime that can be seen in the last analysis of society's attitudes. The way is still long but it goes in the right direction with the help of international organizations and their support.

On the basis of the research it is obvious that country is very religious and based on this divorce are considered as one of the impossible things that women can do in their life, no matter how hard it is to live with husband and how much she suffers especially, if girl got married in early ages that is the serious basis for men to put women in subordinate position and easy to control them. Because of the religion and traditions, families of girls refuse to help victims of domestic violence as it will result in divorce and rumors as it is widely accepted that if a girl decides to marry she has to carry on instead of the problems and pain and save the family. In result it occurs that woman who is the victim of domestic violence has no way to run from perpetrator as her family refuses to her to return to family, victim is not educated, sometimes does not have even the basic education as a lot of girls leave schools in early ages after 9th grade as a result they do not have the possibility to work especially if they have children. To sum up, as it was provided almost half 43 % of men thinks that women have to take everything as it is their duty on the basis

¹⁶⁸ UNFPA: 1999 Georgia Reproductive Health Survey, Atlanta 2001; UNFPA: 2005 Georgia Reproductive Health Survey, Atlanta 2005; Caucasus Women's Research and Consulting Network (CWN): Family Violence on Women. Multi-Component Research, 2006. The 1999 RHS was the first population-based national survey of this type that was conducted in Georgia. A sample of 7,798 women aged 15–44 years was interviewed, including 1,655 internally displaced women living in government facilities. The second RHS was conducted in the first part of 2005. The surveys were similar in design and content, but the 2005 RHS did not include a separate sample of internally displaced women living in public housing. The CWN conducted interviews with 1,000 women across Georgia who had lived with a man for at least a year. The interviewees were randomly selected. Due to differences in methodology and wording of the questions the findings of the two RHSs on the one hand and the CWN on the other hand vary with regard to some of their findings.

¹⁶⁹ Ibid.

of understanding that in most cases women do not have any place to run that gives to men possibility to commit violence on everyday basis because they are used to impunity in cases of domestic violence.

From some point the number of cases and the attitude of people is somehow understandable as in 2009 there was not almost any effective measure for victims of domestic violence, even the helpline one of the important measures to prevent violence and especially support victims was created only in 2010 with the support of Un Women Georgia.¹⁷⁰ Despite the development in this field there is one important issue that stops women to raise their voices to the state officials police and supporting service the understanding that even in the case if the perpetrator will be punished and arrested women without any support from family's side, without education and without possibility to provide at least minimum to her children she will always prefer to stay in abusive relationship sustain the pain, suffer but guarantee at least the house and food to the children.

The biggest problem in Georgia and in the similar countries in relation to domestic violence is the lack of education for women which results in enforcing women in the subordinate position. After 2006 a lot has been done, as shelters all around the country, almost in all regions to give the possibility to women leave perpetrators and start new life but the main challenge for Georgia is the education for women, as Georgian law on domestic violence provides the time limits for staying in shelter that is only three months that can be prolonged in only exceptional circumstances. The idea that women have a place somewhere else to leave an abusive relationship is new in Georgia but for women who don't have support from family's side are alone physically and economically. The problem is that providing shelters for only three months will not give the real possibility to start a new life.

The recommendation to what this research came is the standards from international organizations that will lay obligation on states to operate a program for non-educated women all over world in such kind of countries where the percentage of child marriages are very high were education for women is secondary issue and it is the basis for men to apply the domestic violence, because in

¹⁷⁰ Ibid.

such cases men are convinced that women has no way accept to endure abusive relationship and violence that is the reason why in Georgia is the impunity in cases of domestic violence, as every non-educated women who don't have support from relatives and family understands that there is no way from the relationship, no one wants to leave on street and especially with children.

That is why this research recommends establishing the obligatory educational program with several steps for providing real assistance and support for women to start a new life. One beneficiary told to Radio liberty what the shelter meant to her, that there is a real comfort for her, as at home she used to fetch water from the well, she did not have any basic conditions and plus beating and everyday violence, but in shelter everybody are polite that she feels herself human in there. But she has a fair what she has to do after she leaves the shelter where to live, what to do that is the most dangerous, of course now she would prefer to leave under sky rather go back to her husband but she needs some conditions at least for her children.¹⁷¹

First step of the program will be the psychological and physical assistance to ensure the rehabilitation and preparation for victims' new lives, after what women have to be provided with an educational program in some field to give at least some understanding of their possibilities, field where they can work to start thinking not only about the leaving of perpetrator but about the bright future and lastly after giving some degree in specific fields government can ensure to at least provide the internship program for victims of domestic violence, while they live in the governmental shelters to give some belief in themselves that in spite of fact they lived in subordinate position several years, maybe some of them decides that they still can respect themselves believe in their possibilities and work for bright future without any violence.

To sum up, based on several international and national analysis it is obvious that international bodies, obligations based by international institutions and their directives have some effect on countries which take the obligations to ensure human rights and rights of women and children in this case, but in case of Georgia and similar countries where gender equality issues did not stand so high as in other countries and where even almost half of the women say that it is just family

¹⁷¹ More shelters for victims of domestic violence in Georgia, Un women Georgia, 05.04.2016, Accessible at: <http://georgia.unwomen.org/en/news/stories/2016/04/more-shelters-for-victims-of-domestic-violence-in-georgia>

life, where is a high percentage of non-educated women on different basis it can be said that the measures that are established internationally are not enough to give the effective prevention possibilities for domestic violence and enough supportive measures for victims of domestic violence. In this kind of countries where the religion, traditions one of which is the subordinate role of women in community and in family, where the understanding that domestic violence and any kind of this violence is a crime and not just disagreement inside family has only 30% of society, in this kind of cases there must be other measures also to give women possibility to leave perpetrators instead of the fact to be enforced to leave on the street or suffer.

The recommendation to what this research came is the obligation for states to operate a program for non-educated women all over world in such kind of countries where the percentage of child marriages are very high were education for women is secondary issue and it is the basis for men to apply the domestic violence, because in such cases men are convinced that women has no way accept to endure abusive relationship and violence that is the reason why in Georgia is the impunity in cases of domestic violence, as every non-educated women who don't have support from relatives and family understands that there is no way from this kind of relationships, because they don't have other options without support in cases when they don't have education but has to take care of their children. From some point it can be said that this is a weakness from the states side and it is states responsibility to provide maximum care for its citizens but there would be no need of creating international organizations and international human rights instruments if states could apply their obligations in best possible ways. From point of view of this research international organizations have to take into account non-educational background of millions of women around world and apply such measures to give the best possible options for victims of domestic violence to leave abusive relationships.

Bibliography

Books and Articles.

1. Dutton Mary Ann, "Pathways Linking Intimate Partner Violence and Posttraumatic Disorder, 27.05.2009.
2. Smith R. K. M. International Human Rights, seventh edition, Oxford University Press, 2015.
3. Renucci Jean-François, Introduction to the European Convention on Human Rights, 2005.

4. Vashakidze T., Domestic Violence in Georgia: Breaking the Silence, United Nations Population Fund, 04.03.2013, Accessible at: <https://www.unfpa.org/news/domestic-violence-georgia-breaking-silence>
5. Indermaur, David, 'Young Australians and Domestic Violence', Trends and Issues in Crime and Criminal Justice, No. 195, Canberra, 2001.
6. James, M., 'Domestic Violence as a Form of Child Abuse: Identification and Prevention', Issues in Child Abuse Prevention, 1994.

Reports and Analysis.

1. Un Women Georgia, Attitude of community on domestic violence in Georgia, approaches and tendencies, 24.02.2016, Accessible at: <http://georgia.unwomen.org/ka/news/stories/2016/02/public-attitudes-towards-domestic-violence-in-georgia---trends-at-a-glance>
2. UN women Georgia, national statistics office of Georgia and European Union, "Analysis on frequency of domestic violence and attitude of population in relation to domestic violence around the country" accessible at: <http://georgia.unwomen.org/ka/news/stories/2017/02/georgia-to-conduct-nation-wide-study-on-violence-against-women-with-eu-support> and <http://www.tabula.ge/ge/story/130436-gaeros-qalta-organizacia-saqartveloshi-7-dan-1-qali-ojaxshi-dzaladobis-msxverplia>
3. T. Vashakidze, Domestic Violence in Georgia: Breaking the Silence, United Nations Population Fund, 04.03.2013, Accessible at: <https://www.unfpa.org/news/domestic-violence-georgia-breaking-silence>
4. Global and Regional Estimates of Violence Against Women, WHO, Department of Reproductive Health and Research, 2013.
5. Domestic Violence Roundtable, "The Effects of Domestic Violence on Children", Accessible at: <http://www.domesticviolenceroundtable.org/effect-on-children.html>
6. Environmental health in emergencies and disasters: a practical guide. World Health Organization, 2002.
7. Ministry of Internal Affairs, domestic violence accessible at: <http://police.ge/ge/projects/odjakhshi-dzaladoba>
8. UNFPA: 1999 Georgia Reproductive Health Survey, Atlanta 2001; UNFPA: 2005 Georgia Reproductive Health Survey, Atlanta 2005.
9. UN women Georgia, national statistics office of Georgia and European Union, "Analysis on frequency of domestic violence and attitude of population in relation to domestic

violence around the country” accessible at:
<http://georgia.unwomen.org/ka/news/stories/2017/02/georgia-to-conduct-nation-wide-study-on-violence-against-women-with-eu-support> and
<http://www.tabula.ge/ge/story/130436-gaeros-qalta-organizacia-saqartveloshi-7-dan-1-qali-ojaxshi-dzaladobis-msxverplia>

10. Un Women Georgia, Attitude of community on domestic violence in Georgia, approaches and tendencies, 24.02.2016, Accessible at:
<http://georgia.unwomen.org/ka/news/stories/2016/02/public-attitudes-towards-domestic-violence-in-georgia---trends-at-a-glance>
11. UN women Georgia, national statistics office of Georgia and European Union, “Analysis on frequency of domestic violence and attitude of population in relation to domestic violence around the country” accessible at:
<http://georgia.unwomen.org/ka/news/stories/2017/02/georgia-to-conduct-nation-wide-study-on-violence-against-women-with-eu-support> and
<http://www.tabula.ge/ge/story/130436-gaeros-qalta-organizacia-saqartveloshi-7-dan-1-qali-ojaxshi-dzaladobis-msxverplia>
12. T. Vashakidze, Domestic Violence in Georgia: Breaking the Silence, United Nations Population Fund, 04.03.2013, Accessible at: <https://www.unfpa.org/news/domestic-violence-georgia-breaking-silence>
13. Trial Monitoring on the cases of Domestic Violence, Domestic Crimes and Violence against Women, Georgian Young Lawyer’s Association, 27.03.2017. Accessible at: <https://gyla.ge/ge/post/qalta-mimart-dzaladobis-saqmeebi#sthash.esZtPoqH.dpbs>
14. The United Nations International Children’s Emergency Fund, “Behind Closed Doors, the Impact of Domestic Violence on Children” 2006. Accessible at: <https://www.unicef.org/media/files/BehindClosedDoors.pdf>
15. Caucasus Women’s Research and Consulting Network (CWN): Family Violence on Women. Multi-Component Research, 2006.
16. The First Crisis center for the Victims of Domestic Violence has been opened in Tbilisi, UN Women Georgia, 06.09.2016, Accessible at:
<http://georgia.unwomen.org/en/news/stories/2016/09/the-frist-crisis-center-for-the-victims-of-domestic-violence-has-been-opened-in-tbilisi>
17. Special Report on Violence against Women and Domestic Violence in Georgia, Georgian ombudsman, 2015, Accessible at: <http://www.ombudsman.ge/uploads/other/3/3361.pdf>

18. More shelters for victims of domestic violence in Georgia, UN women Georgia, 05.04.2016, Accessible at: <http://georgia.unwomen.org/en/news/stories/2016/04/more-shelters-for-victims-of-domestic-violence-in-georgia>
19. “WHO Global Consultation on Violence and Health. Violence: a public health priority”. World Health Organization, 02-03.12.1996.
20. World Health Organization, “World Report on Violence and Health”, Chapter 6: “sexual violence”, 2002.
21. Concluding observations on the combined fourth and fifth periodic reports of Georgia, Committee on the Elimination of Discrimination against Women, /C/GEO/CO/4-5*, 24.07.2014.
22. World Health Organization, ‘World Report on Violence and Health’, ed. By Krug, Etienne G., et al., Geneva, 2002.
23. Centers for Disease Control and Prevention, and Calverton, MD, ORC Macro, ‘Reproductive, Maternal and Child Health in Eastern Europe and Eurasia: A Comparative Report’, Atlanta, GA 2003.
24. Amnesty International, Georgia: “Thousands Suffering in Silence: Violence Against women in the Family”, Accessible at: <https://www.amnesty.org/en/documents/document/?indexNumber=EUR56%2F009%2F2006&language=en>
25. United Nations, Global Database on Violence against Women, accessible at: <http://evaw-global-database.unwomen.org/fr/countries>
26. UN women Georgia, national statistics office of Georgia and European Union, “Analysis on frequency of domestic violence and attitude of population in relation to domestic violence around the country” accessible at: <http://georgia.unwomen.org/ka/news/stories/2017/02/georgia-to-conduct-nation-wide-study-on-violence-against-women-with-eu-support> and <http://www.tabula.ge/ge/story/130436-gaeros-qalta-organizacia-saqartveloshi-7-dan-1-qali-ojaxshi-dzaladobis-msxverplia>
27. World Health Organization, “World Report on Violence and Health”, Chapter 4: “Violence by intimate Partners”, 2002.

28. United Nations and Spotlight initiative to Eliminate Violence against Women and Girls, Accessible at: http://www.un.org/en/spotlight-initiative/assets/pdf/Spotlight_Overview.pdf

International Legislation

1. Convention against Torture and other Cruel, inhuman or Degrading Treatment and Punishment, adopted 10.12.1984, entry into force 26.06.1987.
2. Human Rights Office of High Commissioner, Interpretation of torture in the light of the practice and jurisprudence of international bodies.
3. Convention against Torture and other Cruel, inhuman or Degrading Treatment and Punishment, adopted 10.12.1984, entry into force 26.06.1987.
4. General Recommendation No. 19, 11th session, 1992.
5. Convention on preventing and combating violence against women and domestic violence, adopted 11.05.2011, entry into force 01.08.2014.
6. General Comment N 2 on Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Committee against torture, 24.01.2008.
7. United Nations Universal Declaration of Human Rights, 10.12.1948, Art. 2.
8. Convention on Preventing and Combating Violence Against Women and Domestic Violence, adopted 11.05.2011, entry into force 01.08.2014
9. European Convention for the protection of Human Rights and Fundamental Freedoms, adopted 04.12.1950, entry into force 03.09.1953.
10. Human Rights Office of High Commissioner, Interpretation of torture in the light of the practice and jurisprudence of international bodies.
11. United Nations Declaration on the Elimination of Violence against Women, 20.12.1993,
12. International Covenant on Civil and Political Rights, adopted 16.12.1966, entry into force 23.03.1976.

13. Human Rights Committee, CCPR General Comment No. 28: Article 3 (The Equality of Rights between Men and Women).
14. International Covenant on Economic, Social and Cultural rights, adopted 16.12.1966, entry into force 03.01.1976. Art 6.
15. General recommendation N21 “Equality in marriage and family relations” 13th session, 1994.
16. United Nations, Economic and Social Council, E/CN.4/2005/43, 24.02.2005
17. Convention on preventing and combating violence against women and domestic violence, adopted 11.05.2011, entry into force 01.08.014.

Case Law

1. Tkhelidze v. Georgia, app no 33056/17, ECtHR 13.04.2017.
2. Rumor v. Italy Application no. 72964/10, ECtHR 27.05.2014
3. Osman v. the United Kingdom, ECtHR, 28 Oct. 1998, Reports 1998-VIII.

National Legislation

1. Georgian Law on prevention of Domestic Violence, Protection of Victims of Domestic Violence and help, 25.05.2006
2. Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence, 25.05.2006.
3. Criminal Code of Georgia, adopted 22.07.1999, entry into force 01.06.2000.
4. Civil Code of Georgia, adopted 26.06.1997, entry into force 24.07.1997