



# THE RIGHT TO NON-DISCRIMINATION IN PRACTICE FOR VARIOUS GROUPS IN GEORGIA

2018 REPORT BY THE COALITION FOR EQUALITY



კოალიცია თანასწორობისთვის

**THE RIGHT TO NON-DISCRIMINATION  
IN PRACTICE FOR VARIOUS GROUPS IN  
GEORGIA**

**2018 REPORT**

**Tbilisi  
2019**



The Coalition for Equality is an informal alliance established in 2014 with the support of Open Society Georgia Foundation. It unites ten nongovernmental organisations. The members of the Coalition are: Open Society Georgia Foundation; Human Rights Education and Monitoring Centre (EMC); Article 42 of the Constitution; Union Sapari; Georgian Young Lawyers' Association (GYLA); Women's Initiatives Supporting Group (WISG); Partnership for Human Rights (PHR); Georgian Democracy Initiative (GDI); Tolerance and Diversity Institute (TDI) and The Human Rights Center (HRIDC). The essential goal of the Coalition is to enhance the mandate and competences of antidiscrimination mechanisms and to support the effective fight against discrimination.

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# INTRODUCTION



**O**n 2 May 2014, the Georgian parliament passed the Law of Georgia on the Elimination of All Forms of Discrimination. Since the enactment of this law, the Coalition for Equality evaluates the progress of securing equal rights of certain minority groups, and publishes reports. This report aims to assess the current status of the right to equality of various groups in Georgia.

The third annual report, analyses the realisation of the rights of various groups in Georgia, the outcomes of the fight against discrimination, main challenges, state policy, legislation and practice. The report seeks to analyse core policy development, legislation and practice in 2018, which has influenced the condition of human rights for certain groups.

Coalition for Equality intends that this report will assist the relevant government agencies to implement effective measures to eradicate discrimination, improve legislation and above all, ensure equality in Georgia.

### Methodology

The report analyses the right to non-discrimination for the 11 following groups in 2018: children, persons with disabilities, women, sex workers, LGBTQI, minority religious groups, ethnic minorities, aliens, minority group prisoners, internally displaced persons (IDPs) and human rights defenders. The organisations of the Coalition have focused the research on the above-mentioned groups covering 2018, Coalition for Equality does not rule out the possibility that other unidentified groups, are also suffering from discrimination.

The right to equality has been analyzed by examining national standards, practices and the general analysis of international best practice. Coalition for Equality will present recommendations to the state to create, empower and improve conditions, which will aid the eradication of discrimination for each of these groups.

The findings of this report are based on the information received from the following sources:

- **Public information** – The member organisations of the Coalition have requested public information from different agencies, which has been analysed in this report.
- **Legal proceedings** – The evaluations provided in this report are also based on legal cases, which are being processed by the Coalition and as well as the identified flaws highlighted during the proceedings.
- **The analysis of legislation and the relevant international standards** – The re-

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port evaluates the right to equality of the certain groups based on Georgian legislation and international standards.

This report also takes into account the reports and surveys of the Public Defender of Georgia and other authoritative organisations.

### Core findings

The Coalition has not recorded any significant changes in legislation or practice in regards to the human rights standards of the concerned groups. Therefore, a majority of the recommendations of previous years' reports are still relevant and necessary.

One positive advancement to note during this reporting period is the establishment of the Human Rights Protection Department in the Ministry of Internal Affairs of Georgia. This department has been assigned to monitor the ongoing investigations for the cases of domestic crime, violence against women, crime motivated by discrimination and hatred, and administrative case proceedings.

Violence against children, exploitation of labour, child poverty remain as key challenges, which the state has not taken sufficient measures to eradicate. Various analyses on violence against children make it clear that reporting the crime has increased, however, establishing the facts by the authorities and securing a response continues to be difficult. Due to heavy social-economic problems, minors are often forced to live in an environment endangering their lives and health and the steps taken by the state for eliminating this problem is overdue and ineffective. Due to poverty and hard living conditions, children are required to undertake tasks, which are unsuitable for their age and psycho-social development. This remains as a systemic problem and the state has not produced an adequate action plan to regulate the dubious, precarious functioning of orphanages to protect children's best interests.

Hitherto, the state has not been able to substantially improve human rights conditions of persons with disabilities, whom are often subjected to discrimination and marginalisation. The attitude of the state towards persons with disabilities has not changed and is still based on the medical model of evaluation. Due to the lack of programmes, the beneficiaries of support are unable to benefit from the needed services. Large-sized institutions, such as psychiatric establishments, continue to exist and represent a source of systemic discrimination. Domestic law has not defined the concept of "reasonable accommodation", nor has it established that refusing reasonable accommodation is a form of discrimination. The inconsistent politics of the state and the lack of understanding hinder the employment of per-

sons with disabilities. Children who have special educational needs are unable to realise their educational rights effectively. Until now, the state does not have an action plan to support independent living nor a vision to ensure the successful integration of persons with disabilities into society. The nonexistence of social security, and mechanisms supporting independent living, rehabilitation/habilitation and housing considerably hinder the equal participation of persons with disabilities in social life. Further, they are not fully involved in the politics and voting.

Despite some positive steps taken by the state with regards to the eradication of violence, the crime of violence against women is still increasing. The country does not possess a national mechanism to prevent domestic violence. Social workers are undertrained and under resourced and cannot effectively intervene in families experiencing conflict and violence. Sexual violence continues to be the most serious, hidden and unpunished forms of gender violence. The definition of sexual violence in Georgian legislation is not in line with international standards. Gender violence is still stigmatised and women rarely report cases to the law enforcement agencies. When reports are filed, the recording and investigation of the crime is not undertaken with gender-sensitive methodology and understanding. Inadequately, a large amount of evidence is required to start a criminal prosecution for a sexual offence. In the end, this results in the offenders' impunity. The nonexistence of the policy to empowering women in political life is also a challenge.

Sex-workers have remained as one of the most vulnerable groups of 2018. The state has not undertaken any changes in the policy, practice or legislation for improving their rights. Persons involved in prostitution experience systemic oppression and structural inequality, they do not have access to justice and become victims of discrimination. Sex-workers also suffer from stigma and marginalisation due to their work in prostitution. One of the most hindering barriers to accesses justice for sex-workers is created by discriminatory legislation which defines prostitution as an administrative offence. The criticism of the legislation is intensified regarding even more marginalized groups, that of transgender persons; who are subjected to repeated arrests.

Still, LGBTQI individuals come across multiple systemic problems and barriers, which is a result of stigma and deeply rooted stereotypes of the society against them. This is exacerbated by the state's ignorance of the group's special needs, which ultimately results in the group suffering violence and discrimination. Crimes committed against LGBTIQ are motivated by hate continues to be a problem without solution. As the local police level lack a response and specialized investigation methods, there is an insufficient victim-orientated police service which hampers the investigation of crimes against marginalised groups. Most of the crimes committed against the LGBTQI persons, identifying the motives and documenting them

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adequately is remains a problem. This kind of practice is most common in relation to domestic crime committed on the basis of sexual orientation and gender identity. Transgender people living in Georgia still do not have an access to quality health care services, since the country does not have an established clinical guideline, protocol or care services specialised for transgender persons.

In 2018, the state has failed to take important steps to protect the freedom of religion. Responses to several of long-term, important cases concerning oppression with religious motives remain awaited. Attention must also be paid to important decisions of the Constitutional Court of Georgia regarding the Tax Code and the State Property Law, which explained equality and the unjustified benefits possessed by the Orthodox Church, once again reinforcing the guarantees of equality between the religious organisations. In 2018, the executive and the legislative branch representatives put forward several regressive initiatives concerning the freedom of religion. These initiatives do not show an encouraging sign of positive changes in the mentioned field. One of the main challenges for religious organisations is the discriminative policy is the restitution of property that was confiscated during the Soviet times. This policy does not give minority religious organisations the possibility to return to their historical buildings, as is their right under ownership.

Further, no positive political changes have been made regarding the protection of the rights of ethnic minorities. The integration of political minorities into mainstream politics and the issue of their political participation are not considered as an important part of the political agenda. The politics concerning ethnic minorities are often based on the perspective of safety, rather than social and political inclusion and protection of rights, which makes it difficult to create a fair and equal political and social environment for ethnic and religious minority groups. The rate of ethnic minorities' political participation at the level of central government is considerably low. Political parties are motivated by electoral interests on issues of ethnic minorities and frequently, become active in the pre-electoral period, however, communication with the community is lost afterwards. The issue of political participation is also connected to knowledge of the language. Despite some reforms applied to the educational system, the existing policy is unable to provide adequate learning possibilities of the official language for ethnic minorities, which hinders them from actively getting involved in civic life. The problem of inadequate education causes deepened social, economic and political ostracism of the minority ethnic groups.

In 2018, a growing tendency of violence, aggression and xenophobia against aliens (especially citizens of Asia and Africa) and migrants has been observed. 2018 witnessed the first homicide, allegedly of racist and xenophobic motives. Besides the

aggression of separate organised groups and individuals, the state politics concerning aliens is also problematic. Foreign nationals, especially the persons from Asia and Africa face barriers when requesting residency in Georgia. Refusing residency applications is, in most cases, legally unsubstantiated, the high rate of which hints to the possible discriminative policy of the government towards aliens hailing from certain countries, regions, and have a certain color of skin and/or belong to a certain race.

Due to the flaws in the legislation and to the vicious practice, aliens, stateless persons, persons of religious, ethnic and sexual minorities often become victims of unequal treatment in the penitentiary facilities of Georgia. For foreigners, stateless persons and ethnic minorities, who in penitentiary facilities, the language barrier is a hindering factor from benefiting from a number of rights. Visiting rights and the right to a family life are difficult to maintain pertaining to the fact that the prisoner's family are in another country. To note, legislation concerning incarcerated religious minorities corresponds to international standards, except acknowledging the provision of clothing and food for those prisoners according to their demands or needs. LGBTQI prisoners represent one of the most vulnerable groups in prison and face discrimination, verbal, psychological and physical abuse.

IDPs up to now remain amongst one of the most vulnerable groups, which are restricted from their right to adequate housing and the state fails to support them sufficiently. A number of IDPs have not yet received safe, suitable housing from the government, and as of the separate settlements, created by the state for IDPs long-term living, the living spaces do not meet the minimal standards of adequate housing – concerning the technical features (the materials used to build the houses, low-quality maintenance, faulty sewerage system and so on), as well as the physical location. The location of these settlements limit the IDPs' possibility to freely benefit from their right to education and to have access to medical services, employment places and other resources.

In 2018 a new group, targeted to attacks and discriminative treatments, has been identified-human rights defenders. During 2018, this group has suffered from, physical assault, discrediting campaigns from the highest state officials, initiation of legal procedures and even murder. The negative attitude of neo-Nazi groups towards the human rights defenders often supported with the rhetoric of the state. The critical attitude of government against non-governmental organisations was particularly evident in the pre-election period of the presidential elections.



**CHILDREN**



**T**he problems concerning the protection of children’s rights remain unchanged despite the positive ratifications of key legal instrument in previous years<sup>1</sup>. Violence against children, exploitation of labour, child poverty persist and are the main challenges. Effective measures are required in order to eradicate the above.

### **Violence against children**

Protection from violence is one of the most fundamental rights of a child, which is a positive obligation on behalf of the state. Several analyses on violence against children make clear that the reporting the cases of violence has increased recently, despite this, establishing the facts and the responsible person continue to be a difficulty for the authorities . The cooperation between authorities is poor as there is not a system of referral in place; there is further no procedure in place for failing to refer a case of violence against children<sup>2</sup>.

Prevention and the timely identification of the facts of the violence, lack of protection and assisting measures, are the most problematic issues when discussing the violence against children in educational institutions. Bullying is widespread between students.<sup>3</sup> The fact that sexual, psychological and physical violence against children are present in the child protection system is unacceptable.

### **Child poverty and the exploitation of labour**

Child poverty and inadequate living standards are ongoing issues for the country. The lack of sufficient water supplies is often a reason for deaths of children and cause several illnesses.<sup>4</sup> Social programs created to reduce poverty, are best suited for the adult population and do not decrease the level of child poverty. It must

<sup>1</sup> The Georgian parliament has revised the special regulating law for the domestic violence; The Georgian parliament has ratified the third additional protocol of the Convention on the Rights of the Child, which has given the child the possibility to address Committee on the Rights of the Child (directly or via a representative) to defend his/her certain rights.

<sup>2</sup> According to the letter (#MIA51802537851) of the Ministry of Internal Affairs, in 2016-2018 years, the facts of administrative punishment for those persons, who were obliged to and did not report the case of violence against a child, is zero.

<sup>3</sup> The survey of Public Defender of Georgia “On teaching Human Rights and the teaching environment in General Educational Institutions”, 2018, P.4 [seen on 19.04.2019]<https://bit.ly/2IkQHs8>;

<sup>4</sup> The welfare monitoring survey 2017 shows that more than 4% of children living in rural Georgia live in households, which do not have the improved sources of drinking water. More than 9% of the children in cities and 33% of children from rural regions live in households, which do not have adequate sanitary-hygienic conditions – p. 172;

be pointed out that a positive change has been made in 2018, the financial aid for socially vulnerable children has been increased fivefold. This is not enough to eradicate poverty, but a positive step nonetheless. Due to heavy social-economic pressures, minors are often live in an environment endangering their health and lives. Steps taken by the state for relieving this problem is ineffective.<sup>5</sup> Child poverty can be often connected with the infringement of the rights of children to health, education and development.<sup>6</sup>

In 2018, child labour continues to be an active issue which requires urgent legislative action. The legislation concerning child labour rights is not abiding by international standards. The state still does not have an effective mechanism for monitoring child labour rights.<sup>7</sup> Due to poverty and harsh living conditions, children are required to undertake tasks, which are unsuitable for their age and psycho-social development and this fact remains as a systemic problem.

### Access to the court

Pursuant to the law of Georgia, a child under the age of 14 years should be represented in court by a parent or a legal representative, in the absence of such, the Social Service Agency assumes responsibility. When a child's rights are violated by the state, the minor is devoid of any legal possibility of protecting their rights with the help of a lawyer in court. For minors aged 14-18, according to Georgian legislation, in certain situations they may have the right to independently address the court. After which, the court is obliged to involve the legal guardian and the care agencies in the case. Therefore, the representative is assigned to the minor at a later stage, when the proceedings have already commenced. The minor must file the lawsuit, paperwork, describe the factual circumstances and secure evidence independently. In the beginning, no other person can help him/her with this function, since they do not have the right to be registered as a representative. In 2018, the Public Defender of Georgia prepared a recommendation<sup>8</sup> for the Georgian parliament and the Georgian government, advising legislative changes, ensuring the

<sup>5</sup> The 2018 report of Public Defender about the condition of Human Rights and Freedoms in Georgia, p. 338 [seen on 19.04.2019]<http://www.ombudsman.ge/res/docs/2019033019563052300.pdf>

<sup>6</sup> [http://unicef.ge/uploads/WMS\\_2017\\_FGE\\_UNICEF\\_branding.pdf](http://unicef.ge/uploads/WMS_2017_FGE_UNICEF_branding.pdf)

<sup>7</sup> According to the 03.05.2019 letter (№01/7864) of Ministry of Labor, Health and Social Defence, the child employment 2 cases have been detected in 2018. While conducting monitoring, the working environment of the minors in institutions/organizations was mostly satisfactory; the exploitation of labour or worst forms of labor have not been observed.

<sup>8</sup> In 2018, the Public Defender of Georgia has issued the recommendation N13/3535 based on the exhortation of the organization "Partnership for Human Rights".

right of minors of every age free legal assistance when addressing the court, with the possibility of being represented by a relative. Despite the Public Defender's recommendations, the legislative changes have hitherto not been undertaken.

### **The child orphanages**

Large-scale residential establishments for children have been closed within the child welfare system reform. Although, this reform did not include the institutions housing children with disabilities. Those include Kojori Disabled Children's House and Tbilisi Infant House.<sup>9</sup> Despite the process deinstitutionalisation having been started, according to the data of 2018, four large residential establishments for children are still operational.<sup>10</sup> Children continue to live in the Orthodox Patriarch's boarding house and Muslim confession, which are not up to state standards.<sup>11</sup> The state has not published an action plan for regulating the functioning of orphanages to protect children's best interests.<sup>12</sup>

Monitoring these kinds of establishments is problematic. The organisations and individuals defending children's rights are unable to gain access as only the ombudsmen, is permitted in those facilities. It must also be mentioned that during the visit to Saint Nino Boarding House for Orphans, Waifs and Children in Need of Care, the representatives of the Public Defender of Georgia were not given the opportunity to speak to the children.<sup>13</sup>

### **Recommendations**

#### **To the Ministry of Education, Science, Culture and Sport of Georgia**

- Holistically evaluate the environment of every public school in order to identifying the needs and create a specific action plan. In case of such needs, increase resources for each of the schools;

<sup>9</sup> According to the webpage information of State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking, the Kojori Disabled Children's House is functioning hitherto. [seen on 19.04.2019] <http://atipfund.gov.ge/geo/list/219/bavshvta-sakhlebi>;

<sup>10</sup> Government Action Plan Progress Report 2016-2017, p 72. [Seen on 19.01.2019] <https://bit.ly/2RQjLy0>

<sup>11</sup> There are 36 major residential institutions for children in Georgia (with 1146 children residing in them), which operate beyond the state regulations. A systemic violation of children's rights is frequently observed in the mentioned institutions. NGO Partnership for children, Equal treatment to the schools of faith, Final Report, 2016

<sup>12</sup> Implementation Report of the Human Rights Action Plan 2016-2017, p. 73, [seen on 19.04.2019] <https://bit.ly/2RQjLy0>

<sup>13</sup> "Partnership for Human Rights" announcement [seen on 19.04.2019] [http://phr.ge/home/content?content\\_id=804](http://phr.ge/home/content?content_id=804)

## CHILDREN

- Improve the involvement of parents and children in the school management;
- Ensure frequent meetings with the parents, as well as with the students.

### **To the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia**

- Ensure the economic and social empowerment of families, identify and implement programs with the aim of eradicating child poverty;
- Identify an effective mechanism for protecting children from violence. As part of the mechanisms, increase the numbers of social workers and psychologists, improve their working environment.
- Ensure the creation of effective mechanisms for monitoring child labour rights protection.
- Ascertain effective social programs for supporting the needs of children and families facing different kinds of challenges.
- Prohibit the placement of children in large non-licensed residential institutions due to poverty, health problems, educational needs or for other reasons and strongly support keeping children with families by increasing the relevant additional services.
- Create a public monitoring mechanism ensuring the participation of civic society and experts to monitor residential and educational institutions.

### **To the Ministry of Internal Affairs of Georgia**

- Recognise the role of the police in response to working children ensure timely assistance and referrals;

### **To the Georgian Parliament**

- Undertake legislative change in order to ensure the access of a child to justice and eradicate discrimination on grounds of age.

# **LEGAL CONDITIONS OF PERSONS WITH DISABILITIES**



Persons with disabilities face continue to face undue amount of discrimination. Up to this point, the state has been unable to substantially improve the legal conditions of persons with disabilities, tackle discrimination and reduce their marginalisation. The challenges, which persons with disabilities face, have not changed from the previous years and reports.<sup>14</sup>

### The existing flaws of legislation

Harmonising the United Nations Convention on the Rights of Persons with Disabilities with the domestic law is a challenge. Since the ratification of the convention, the main changes implemented were only connected with the review of concepts and the processes concerning the legal capacity reform. The attitude of the state towards the persons with disabilities has remained unchanged and is based on the medical model of evaluation.

Hitherto, the discriminative terminology, such as “invalid”<sup>15</sup> and “handicapped”<sup>16</sup> is still present in legislation, which in turn, deepens the discriminative attitude towards persons with disabilities and is in violation with the Convention on the Rights of Persons with Disabilities.

The Georgian parliament has not ratified the optional protocol of the UN Convention on the Rights of Persons with Disabilities, which would enable the interested persons to engage in the complaint mechanism about state violation of the rights protected in the Convention.

The domestic law has not defined the concept of “reasonable accommodation”, nor has it stated that refusing reasonable accommodation is a form of discrimination, therefore, persons with disabilities encounter problems when addressing the court regarding cases concerning this specific form of discrimination. Due to the concept of “reasonable accommodation” not being defined in legislation, the persons with disabilities become victims of systemic discrimination, which results in a limitation of a number of rights for them, among those - labour and educational rights. This, in its turn, negatively affects the protection of human rights of persons

<sup>14</sup> “Coalition for Equality” 2017 report on the right to non-discrimination in practice for various groups in Georgia, year 2018, pp 37-39; “Coalition for Equality” 2016 report on the right to non-discrimination in practice for various groups in Georgia, year 2017, pp. 49-52.

<sup>15</sup> For example, Administrative Offences Code of Georgia, Civil Code of Georgia, Tax Code of Georgia, Law of Georgia on Enforcement Proceedings;

<sup>16</sup> For example, the decree N 119 of the Sachkhere Municipality Assembly, dated November 29<sup>th</sup> 2018, regarding the Determination of Budget for Sachkhere Municipality; The decree N 100 of Zugdidi municipality assembly, dated December 31<sup>st</sup> 2018 on Budget Resolution.

with disabilities and prevents them from getting involved in the public life.<sup>17</sup>

For a long time, the discriminative attitude toward people with severe and moderate disabilities seeking employment in the public sector<sup>18</sup> has been created by the existing legislation<sup>19</sup> which continues to be a challenge. According to the existing regulation, during service in the public sector, persons with disabilities are legally restricted from accessing the social package, which leaves them in an unequal and disadvantaged position compared to persons with disabilities' employment in the private sector, who are entitled to receive the social package. In comparison with persons with significant forms of disabilities and with limited eyesight who work in the public sector and receive the social package. In 2017, the Public Defender of Georgia has defined this issue as a direct form of employment discrimination and provided recommendations for the Georgian government to eradicate this inconsistency.<sup>20</sup> However, up to now no relevant measures have been taken to realise those recommendations and ensuring equality.<sup>21</sup>

Regulations, which discriminatively limit individuals from the right to participate in political and social life continue to represent a problematic issue. Particularly, pursuant to the electoral law, persons receiving support and in medical facilities are limited in their right exercise their vote in elections, referendums and plebiscites, in contrast with those who do not receive any support.<sup>22</sup> The mentioned regulation unequivocally violates Article 29 of the UN Convention and requires urgent revision to correct.

### The functioning of the institutional framework

Along with the flawed legislative framework, the functioning of the institutional framework, which in line with the UN convention standards, should ensure that persons with disabilities benefit from their rights and freedoms equally as do other

<sup>17</sup> Partnership for Human Rights, "Enforcement of Anti-discrimination Legislation to Ensure Equality for Persons with Disabilities", July 2017 – June 2018, pp 30-34 [seen on 19.04.2019]<https://bit.ly/2RJ8uPQ>.

<sup>18</sup> Except for the persons with significant form of limited eye sight

<sup>19</sup> The Law on Determining Social Package, decree N 279 of the Georgian government, June 23<sup>rd</sup>, 2012, paragraph 6(4).

<sup>20</sup> "The Public Defender of Georgia has defined the direct employment discrimination of people with severe and moderate disabilities", 2017, available at <https://emc.org.ge/ka/products/sakhalkhodamtsvelma-mnishvnelovnad-da-zomierad-gamokhatuli-shezghuduli-shesadzleblobis-mkone-pirebis-dasakmebis-sferos-nishnit-pirdapiri-diskriminatsia-daadgina>; seen on 21.02.2019.

<sup>21</sup> The organization "Partnership for Human Rights" has issued a legal complaint in the constitutional court in order to eradicate the mentioned problem.

<sup>22</sup> Constitution of Georgia, Article 24 (2), Election Code of Georgia, Article 3 (A,C).

groups, is also problematic. Despite the obligations pertaining to Article 33 of the UN convention, the country still does not possess<sup>23</sup> the mechanisms for implementing and safeguarding the standards of the UN convention. Action needs to be taken to realise equal rights for this group, ensuring inclusive politics and social life equal to others.

### **The main challenges of the mental health policy**

Executing the mental health policy effectively has for many years now been an acute challenge in Georgia. The healthcare system, up to this stage, does not comply with the international standards of human rights established in the field of mental health. The Coalition has critically evaluated the functioning of large institutions, among them notably psychiatric facilities, since they are a source of considerable systemic discrimination. The existence of segregated, specialised facilities such as mental health hospitals and boarding houses for persons with disabilities lead to stigmatisation and encourages unethical and an often cruel attitude towards persons with psychosocial needs.

In 2014, the Georgian government instigated a strategic plan to improve mental health as part of the action plan 2015-2020<sup>24</sup>, which should have been the starting point for the deinstitutionalisation process with a view of securing human rights and minimising stigma. In spite of this, the required tasks to achieve the goals set out in the plan have still not been fully realised. The fact that deinstitutionalisation has not taken place and services based on the principle of basic human rights standards do not exist, has numerous times been highlighted in the special reports of the Public Defender<sup>25</sup> and the state has been repeatedly reminded about the importance of redoubling efforts of work, has not yet yielded the desired results.

One of the most impeding challenges hampering the implementation of the mental health policy is the lack of suitable housing for persons, who should not be hospitalised from a medical viewpoint, thus, due to a lack of housing services, this

<sup>23</sup> In 2014, the interagency coordinative council working on the issues of persons with disabilities has been declared responsible for implementing the convention. The coordinative mechanism was set to be the Human Rights Secretariat of the Georgian government administration, although, both of the mechanisms are now practically inactive.

<sup>24</sup> N762 decree of the Georgian government about the adoption of the “2015-2020 action plan and the strategic document on improving mental health”, dated 31st December 2014, available at: <https://matsne.gov.ge/ka/document/view/2667876?publication=0>

<sup>25</sup> The Public Defender of Georgia, national mechanism of prevention, the condition of Human Rights in the closed institutions, 2018, p. 47; The Public Defender of Georgia, national mechanism of prevention, the Monitoring Report of Psychiatric Institutions, 2015.

group of people are unable to leave institutions, since they either do not have a suitable place to live in or their family members are not in a position to care for them.<sup>26</sup> Due to the shortage of services supporting independent living, these people have to live permanently in the psychiatric institutions, isolated from society, in contradiction to the UN convention, as well as the aim of the state to support the independent living and thus, represents a case of systemic discrimination.<sup>27</sup>

### **The legal capacity reform flaws**

The state still faces the problem of successfully implementing the legal capacity reform. Due to the lack of the relevant programs, the subjects of support of the legal capacity reform up to this stage are unable to benefit from the needed services. The state has not worked out the general approach as to how persons receiving support can use different services by fully actualising their rights. We often come across cases of discrimination in the process of using banks, notaries and other everyday public services, which violates these group's fundamental rights and negatively impacts everyday lives.

### **Inclusive education**

Despite some steps taken by the state, the effective actualisation of the rights of the children with special educational needs still represents a problem. In most cases, the curriculum is not tailored according to the individual needs of children, which causes discrimination towards them. The Public Defender considers the following points to be the obstructing factors challenging the integration of children with disabilities in inclusive main stream education: the insufficient number of specialists (special teachers, psychologists, coordinators) and inadequate training, poor management strategy, inaccessibility of the school and surrounding environment, low teaching resources, transport, insufficient coordination between authorities and inefficient responses to cases of violence.<sup>28</sup>

Achieving the right to education fully is challenging. One of the most prominent obstructing factors is the geographical and availability of institutions. In cases of additional social requirements, persons with disabilities and persons with special

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<sup>26</sup> Regarding the mentioned challenges, view Human Rights Education and Monitoring Center (EMC), The Right to Adequate Housing - the Analysis of Basic Challenges, 2018 pp. 151-156.

<sup>27</sup> The Public Defender of Georgia, national mechanism of prevention, the Human Rights conditions in the institutions that are not open to access, 2018, p. 46

<sup>28</sup> The Public Defender of Georgia, on the condition of Human Rights and Freedoms in Georgia, 2018, pp 350,353

educational need to have adapted schools available with tailored programmes in order to the right to education and independent life.<sup>29</sup>

### **The employment policy of persons with disabilities**

A lot of factors hinder the employment of the persons with disabilities in Georgia requiring essential and systemic changes. The employers of private and public sector consider poor accessibility infrastructure to and around the working environment to be the most hindering factor.<sup>30</sup>

The public sector has strict employment criteria, including higher education, foreign language knowledge amongst others are often named as obstructing factors against the employment of persons with disabilities, even for some vacancies such requirements might not be necessary.<sup>31</sup> For some individuals with disabilities, one of the most challenging aspect of being employed in the public sector is the termination of the “social package”.

Persons with disabilities face across additional barriers due to problems such as non-user friendly and unadapted interfaces and web-pages, the nonexistence of first aid services and also, stigma at the workplace.

Politicians have not ensured a holistic approach towards improving the employability of persons with disabilities. On the one hand, the state is putting an effort into creating employment possibilities for persons with disabilities through programs. Although, due to the fact that the state does not possess the overall view needed to solve the problem in a complete manner, the steps taken are limited in scale. A flaw is that the government’s plan is not based on research identifying needs and challenges of persons with disabilities. Moreover, there are no available statistics concerning persons with disabilities employed in the private sector.<sup>32</sup>

<sup>29</sup> Human Rights Education and Monitoring Center (EMC), Partnership for Human Rights (PHR), Union “Sapari”, Final Results of the Monitoring of Human Rights-related Strategies and Action Plans (2016-2017 years), 2018, p 55.

<sup>30</sup> The 2018 research “The Labor of Persons with Disabilities form the Viewpoint of Employers”, „Article 42 of the Constitution’, available at <https://article42.ge/media/1001447/2019/03/28/65f21486eb2aeba9cba8f9caa5f01c58.pdf> [seen on 06.04.2019]

<sup>31</sup> Ibidem

<sup>32</sup> Human Rights Education and Monitoring Center (EMC), Partnership for Human Rights (PHR), Union “Sapari”, Final Results of the Monitoring of Human Rights-related Strategies and Action Plans (2016-2017 years), 2018, p. 42.

### **Involvement in political life**

Persons with disabilities are not fully involved in the political life and thus cannot access on equal footing the right to vote. Despite the steps taken by the state to protect political and electoral rights of persons with disabilities,<sup>33</sup> the challenge remains the same as buildings, roads, and transport are not adapted to special needs for example wheelchair access.<sup>34</sup>

It is also a serious problem that the State sees the right to participate in electoral / political life of people with disabilities mostly in adaptation of the voting process, and not, for example, in ensuring implementation of passive suffrage.<sup>35</sup>

### **Services supporting equal participation in social life**

The lack of relevant public services such as mechanisms for supporting independent living, rehabilitation, adapted housing and other mechanisms in the sphere of social security, considerably hinders the equal participation of persons with disabilities in social life of the country.

Elements of the “State Program for Child care and Social Rehabilitation” partially support the social rehabilitation of persons with disabilities. The programs, however, do not cover the demand and wait times to services are lengthy.<sup>36</sup> 50% of officially registered children with disabilities are left without any kind of access to services.<sup>37</sup>

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<sup>33</sup> Article 63 of the Electoral Code states that the election committee is obliged to ensure using the kind of technologies, which will enable the persons with limited eye sight to fill out the ballot paper independently. If the voter is unable to independently do so, he/she has the right to call for somebody’s help in the booth (taking into account some exceptions defined by the law). A movable ballot box is provided for those voters, who, due to health problems, are unable to visit the polling station. It must also be mentioned that a facility accessible to all of the voters must be allocated while setting up the polling station. In case such facility is not available, the building allocated for the polling station, if possible, must be adapted to ensure the accessibility of all the voters for the Election Day by the body who hands it over.

<sup>34</sup> A research of GYLA – The condition of the political/electoral rights realization of the persons with disabilities in 2016-2018, the challenges in legislation and practice.

<sup>35</sup> Human Rights Education and Monitoring Center (EMC), Partnership for Human Rights (PHR), Union “Sapari”, Final Results of the Monitoring of Human Rights-related Strategies and Action Plans (2016-2017 years), 2018, p. 24-29.

<sup>36</sup> The 2017 Parliamentary Report of the Public Defender, p. 302

<sup>37</sup> “Lack of Access to Services for Children with Disabilities – the Georgian State and the Denial of Social Inclusion”, p.5. Authors – Ana Arganashvili, Nana Gochiashvili, the report is available at: <https://bit.ly/2sKKA7G>, [seen on 24.01.2019].

The children on the autistic spectrum and other disabilities do not have equal access to services. As citizens of a third country, with permanent residency permission, access to the state municipality rehabilitation program is refused by the state. The unequal allocation of municipal services is leaving children in several municipalities devoid of services.<sup>38</sup>

It is challenging that several aspects of social security policy for certain groups of persons with disabilities are discriminative. For example, the Tbilisi Municipal Service of Emergency Shelter excludes persons without the ability to live independently from the beneficiary list.<sup>39</sup> The limit on accessing emergency shelter services for groups of persons with disabilities, taking into account the nonexistence of tailored and additional services, is a clear example of discrimination on behalf of the state.<sup>40</sup> Moreover, the accessibility is problematic not only for housing, but also generally regarding social security and health care as key municipal services. Since these services are of utmost importance, this problem discriminates against persons with disabilities according to where they live.

Until now, the state has not worked out a viable action plan to support independent living and integration of persons with disabilities in society. Upon reaching the age of 18, persons with disabilities, raised in shelters for children with disabilities, continue to live in specialised institutions instead of with the wider community. It must also be mentioned that the ongoing deinstitutionalisation process discriminatively excludes foster homes for children with disabilities, which have still not been closed due considering the reform activated in 2005, like all the other foster homes under the control of the state.<sup>41</sup> Moreover, when persons with disabilities living in communities lose their carers, often their parents, they are automatically placed in houses for people with disabilities and psychiatric institutions, since the state does not provide them with the necessary support and the needed services for independent living.

<sup>38</sup> Ibidem, p.7

<sup>39</sup> Tbilisi Municipal Government's order N 41.16.1192, on stating the action instruction in Registration of the Non-entrepreneurial (Non-commercial) Legal Entity "Lilo Homeless Shelter" and on approving the announcement forms of a homeless person.

<sup>40</sup> With regards to the mentioned challenge, see The Right to Adequate Housing - the Analysis of Basic Challenges by Human Rights Education and Monitoring Center (EMC), 2018 pp. 148-149.

<sup>41</sup> According to the webpage of State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking, Kojori Disabled Children's House is still functioning up to date. [seen on: 19.04.2019] <http://atipfund.gov.ge/geo/list/219/bavshvta-sakhlebi>

## Recommendations

### To the parliament of Georgia

- Make adjustments to the Law of Georgia on the Elimination of All Forms of Discrimination, which will include the principle of “reasonable accommodation” as an obligation, refusal of which will be considered as discrimination based on disability;
- Ratify the optional protocol on the rights of persons with disabilities, which will strengthen the guarantees and, in case of violation of rights guaranteed by the convention, will allow the right to petition the UN committee working on the issues of persons with disabilities;
- Make adjustments to the corresponding legislation in order to eliminate discriminative terminology, unequal treatment at the workplace and regulations limiting equal participation in political life;
- Take the necessary steps to implement the UN convention and create/activate coordination mechanisms, which will also pursue the policy of equal participation in social life for the persons with disabilities;

### To the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia

- Timely and effectively undertake the tasks set by the 2015-2020 action plan on mental health development;
- Take effective steps to support the deinstitutionalisation process and to implement family and community services;
- Start working on creating relevant housing, so that the persons living in specialised institutions are provided with adequate living facilities;
- Based on the equality principle, ensure equal accessibility across the country to services, especially to rehabilitation, social security, housing and healthcare programs for all persons with disabilities and eliminate discriminative practices;
- Increase the size and budget of the employment programs, and also take steps to collect statistic data of persons with disabilities working in the private sector;
- Plan campaigns within the framework of the state employment program to raise awareness, which will encourage the social responsibility of the private sector, including the adaptation of the web-pages;

- Draw up an action plan to integrate persons with disabilities into society and ensure their independent living by creating relevant community services;
- Create a holistic strategy in order for all persons to be able to use the state and private services equally.

**To the Ministry of Education, Science, Culture and Sport of Georgia**

- Evaluate the quality of inclusive teaching in every public school in a detailed manner. Draw up a plan based on research involving children, parents and representatives of the civic sector with relevant expertise, so that children with all kinds of disabilities have access to the right of quality education.

**To the Election Administration of Georgia**

- Continue the work started adapting infrastructure and increase the numbers of adapted electoral districts.

**To the local self-government bodies**

- Retrain the personnel of local self-government territorial bodies in terms of the rights of persons with disabilities, so that they are able to collect complete information and identify the community needs of the persons with disabilities.



**WOMEN**



In spite of the positive steps taken towards eliminating violence against women, the prevention of such kind of violence, as well as investigating sexual crimes and ensuring the criminal prosecution requires further work and resources. Politically disengagement and a lack of a policy for female empowerment are significant obstacles.

### Prevention of domestic violence

Domestic violence and violence against women is on the rise. The formation of the Human Rights Protection Department in the Ministry of Internal Affairs has significantly improved the response to investigation of domestic crime cases. In 2018, the police launched investigations into 4761 cases and criminal prosecution was registered in 3005<sup>42</sup> cases, in comparison to 2017, has doubled. The number of restraining orders issued by the police has also increased in 2018 reaching 7646<sup>43</sup>, while the number of orders in 2017 was 4370. Such change of data is linked to the formation of the Human Rights Protection Department in the Ministry of Internal Affairs, as well as to stricter criminal law politics on violence against women, and raised awareness in society (most importantly, women).

Regardless of this, the country still does not possess a national mechanism preventing domestic violence. Social workers are undertrained and under resourced and cannot effectively intervene in families experiencing conflict and violence. They are also untrained to work with the victims of violence. The number of social workers is alarmingly low with only 240 workers in total and their work is extremely hard.

Raising awareness in society is one of the most important factors in the process of fighting against domestic violence and is directly connected to the increased number of reports of domestic violence to the law enforcement agencies. Therefore, it is of utmost importance that the state remains active in this regard. The Ministry of Education, Science, Culture and Sport of Georgia has a determinative role in the mission of raising awareness, since it is the ministry who is responsible, ensuring that the issue of violence against women is integrated in the educational programs.

<sup>42</sup> Statistics of the registered crimes, available at: [https://info.police.ge/uploads/5c595f186e358.pdf?fbclid=IwAR3Pb6F1yeH\\_36cBukyEnXBLHHI5wlyxLzDlpjLR7iHutznPnZys-AY4Do](https://info.police.ge/uploads/5c595f186e358.pdf?fbclid=IwAR3Pb6F1yeH_36cBukyEnXBLHHI5wlyxLzDlpjLR7iHutznPnZys-AY4Do) [seen on 19.04.2019]

<sup>43</sup> Statistics of domestic violence available at: <https://info.police.ge/uploads/5c54077292fe2.pdf?fbclid=IwAR0cjkn78X46jr5avr14q6R154hi8gAtZow2UxiUvb5EBRTGkuQChj01xMA> [seen on 19.04.2019]

## Sexual Violence

Sexual violence remains a hidden and unpunished form of gender violence. Since ratifying the Council of Europe Istanbul Convention in 2017 on Eliminating Violence against Women and Domestic Violence, the Criminal Code of Georgia was amended regarding sexual offences. Despite this, the law still does not meet the Convention standards (Article 36) and international human rights standards, according to which the definition of sexual violence shall cover all forms of sexual acts committed without the victim's voluntary consent and the violence must be regarded as an aggravating circumstance.<sup>44</sup>

The current practice shows that investigations of sexual offenses are extremely problematic. Sexual violence is strongly associated with stigma and women rarely inform law enforcement agencies. On the other hand, reported crimes are not recorded properly and investigated with gender-sensitive methodology and approaches. Inadequately, large volumes of evidence are required to begin criminal prosecution for sexual violence, which often ends<sup>45</sup> with the offender's impunity. The system allows the constant challenging of the victim's testimony, especially if a woman leads a free sexual life. The judiciary frequently examines the woman's sexual experience and is skeptical of her testimony, especially if the victim has experienced a non-marital sexual relations.

Most investigators, prosecutors and judges do not have appropriate, sexual offense-related education and training. Taboo and stigma regarding sexual offences, affect women, and the victim's behavior is considered to be provocative and a hindrance to the execution of justice. The above is a feature of the misogynistic and sexist mentality, which requires broad awareness raising campaigns, both in the justice system as well as in the broader society.

## Political participation

Despite the repeated calls of women's movement organisations working on women's rights to demands to increase women's political participation, there has been no progress in this direction. On March 23, 2018, the Parliament of Georgia failed to support the draft law of gender quotas, which would have required a balanced gender candidates in the proportional electoral lists. Due to the failure of not

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<sup>44</sup> GYLA announcement, available at: <https://gyla.ge/ge/post/arsebuli-barierebi-seqsualuri-dzaladobis-dausjelobas-itsvevs#sthash.XEoT9BK5.dpbs> [seen on 19.04.2019]

<sup>45</sup> Roadblocks To Justice: How The Law Is Failing Survivors Of Sexual Violence In Eurasia, Equality Now, 2019: Available at: [https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/1581/attachments/original/1547485403/EN-Eurasia\\_Rpt\\_ENG\\_-\\_Web.pdf?1547485403](https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/1581/attachments/original/1547485403/EN-Eurasia_Rpt_ENG_-_Web.pdf?1547485403) [seen on 19.04.2019].

adopting this draft law, the gender imbalance will be maintained. Subsequently, the Speaker of Parliament announced that a new draft law of gender quotas would be reintroduced in the foreseeable future, however, it has not been retabled as of yet.

In the 2018 presidential elections, a woman candidate, who was openly supported by the ruling party, was elected as the first Georgian female president. The elected woman president is a major step forward, however, the pre-election period revealed disturbing tendencies. In particular, during the pre-election period, the female candidate vanished and was replaced by leading male politicians in election advertising. Such a replacement could be clearly seen in election posters around the cities where Salome Zurbishvili was replaced by leading male politicians' portraits. This was assessed as a hindrance to the idea of gender equality and a barrier for women's empowerment in politics.<sup>46</sup>

### **Women's economic empowerment**

Women's economic empowerment still remains a challenge. Today, there is no state strategy with a specific action plan in order to alleviate this problem. Georgia's labour market is characterised with both vertical and horizontal segregation; as a result, females work in the lowest paid sectors, not in ruling or management positions. There is a 36% gender pay gap between male and female salaries, which is a worryingly high rate.

### **Recommendations**

#### **To the Parliament of Georgia**

- Review the sexual offenses chapter of the Criminal Code of Georgia and introduce appropriate amendments to harmonise Article 137 of the Criminal Code of Georgia with best international standards
- Approve the law on mandatory quotas in order to increase women's rights in political participation.

#### **To the Government of Georgia**

- Implement domestic violence prevention mechanisms;
- Implement specific steps in government programs in order to narrow the gender pay gap and to ensure women's economic empowerment.

<sup>46</sup> Statement of Women's Movement, available at: <https://bit.ly/2FrXhwC>, (seen on 19.04.2019).



# SEX WORKERS



**S**ex workers<sup>47</sup> were one of the most vulnerable groups highlighted in 2018, the state has changed nothing neither in political and practical nor in legislative level to improve their protection of rights. Women involved in prostitution are suffering from structural inequality and systemic oppression, they do not have fair access to justice and are victims of discrimination. Further, due to their involvement in prostitution, sex workers also suffer from stigma and marginalisation from society.<sup>48</sup>

### Access to justice

The Committee on the Elimination of Discrimination Against Women (CEDAW) described girls and women involved in prostitution, as especially vulnerable groups prone to sexual violence. According to the Committee, certain groups of women, among them women involved in prostitution, disproportionately become targets of criminalisation and fines that prevent them from accessing justice.<sup>49</sup> One of the main barriers to accessing justice is the oppressive legislation in place, defining prostitution as an administrative offense.<sup>50</sup> Due to the fear of predictable sanctions for administrative offenses, sex workers are usually forced to work secretly, in hazardous environments and cannot rely on the law enforcement bodies regarding physical and psychological violence.

Physical, psychological, and sexual abuse is usually seen when sex workers are providing sex services. As a result, prohibition of prostitution and imposed sanctions only affect the sex workers, not on the purchasers, the clients, whom are free from any responsibilities. This forces sex workers to hide the violence experienced; they do not inform the law enforcement agencies of cases of beating, torture, inhuman or humiliating treatment, sexual or psychological violence due to the fear administrative consequences. They are forced to abstain from disclosing crimes committed against them and continue to live in the cycle of repeated violence. Thus, declaring prostitution as an offence, makes sex workers the object<sup>51</sup> of the law, rather than

<sup>47</sup> For the purposes of this report, the term “sex worker” and “woman involved in prostitution” are used as equivalent terms;

<sup>48</sup> The Report of GYLA “Gender Violence towards Sex Workers and Barriers to Access to Justice: International Standards and Georgian Experience”, available at: <https://gyla.ge/files/banners/GYLA%20GE.pdf>, (seen: 19.04.2019);

<sup>49</sup> Recommendation of the United Nations Committee on Elimination of All Forms of Discrimination against Women #33 CEDAW/C/GC/33, over women’s access to justice;

<sup>50</sup> Administrative Offenses Code of Georgia, Article 172<sup>3</sup>;

<sup>51</sup> The Constitutional Court of Georgia, on the made decision (May 11, 2018) regarding the case, “Tamar Tandazashvili vs the Parliament of Georgia” explained: “Article 17, sub-paragraph 1 of the Constitution of Georgia prohibits (Article 9, a new Constitution edition) to consider human as a naked object of

seen as the victim forcing them to remain silence. The state violates the obligation to create all conditions for fighting against torture, inhuman and humiliating treatment by seen sex workers as the object of the law rather than a victim.

The existing legislation enables the law enforcement authorities to abuse their power by carrying out physical, psychological, sexual violence in the context of the “fight against prostitution”. According to the sex workers, this fact is one of the most serious violations of their rights.<sup>52</sup>

In addition, the fact that prostitution is an administrative offense, it allows the client and the pimps to use force against sex workers with the comfort that this action will go unpunished aided by the silence of the victim. It also causes an unbreakable circle as the victim cannot cooperate with the law enforcement agency regarding the fact of the violence as they are the subject of the law.

Another barrier is that the law is unclear regarding the definition of prostitution. The chapter, under which the prostitution is considered as an offence does not satisfy the minimum requirements of administrative liability. Even after a reasonable and justified reading, it remains ambiguous as to which kind of action is banned and which particular action amounts to prostitution.

According to the note of Article 172<sup>3</sup> of the Administrative Offences Code of Georgia, a sex worker, who is a victim of human trafficking is known as a “sufferer” in the crime and is exempt from administrative responsibility for being involved in prostitution. In order to be devoid of responsibility, a person shall be involved in prostitution before receiving the status of a victim of human trafficking. This norm establishes differential treatments including the exemption from administrative responsibility which is taken into account only for trafficked victim. Other violent crime committed by the client or pimp is not taken into consideration.

Because of the historically engrained gender inequality and the uneven distribution of power and resources, most of sex workers are women, while most clients are men. Owing to the fact that the existing legislation imposes the responsibility of prostitution only on the sex worker (thus women), while the clients (men) are free from responsibility, this article has a disproportionate and discriminatory effect on women carrying out these activities who are systematic exploited and oppressed.

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the law and to use it as means of achievement. In this case, the state, in order to achieve a legitimate aim, uses ... the human being’s vulnerability as a means of achieving a specific public purpose and mentioned “a priori” makes the arguable norm to humiliate human dignity”.

<sup>52</sup> Report of GYLA “Gender Violence towards Sex Workers and Barriers to Access to Justice: International Standards and Georgian Experience”, available at: <https://gyla.ge/files/banners/GYLA%20GE.pdf> , (seen: 19.04.2019).

### Transgender sex workers

The criticism of the legal basis is also relevant in the case of transgender sex workers, who are even more marginalised part of the group discussed above. This is accompanied by the continued practice of their detention without ground. Essentially, the arrests are linked to women reporting homophobic or transphobic offences or incidents against them. In 2018, like in previous years, in order to arrest them, police relied on Articles 166 (minor hooliganism) and 173 (disobedience to the legal demand of law enforcement officers) of the Administrative Offences Code of Georgia. Despite the fact that during the reporting period there were frequent attacks on transgender sex workers,<sup>53</sup> the poor relationship with and lack of trust in the policemen affected negatively the number of calls made to the police, so many serious incidents remained unreported. This is why, special attention should be paid to the reduction of homophobic and transphobic prejudice in the police. The police must be trained in order to remove the, stereotypic attitude and lower unwarranted arrests of transgender sex workers group on a discriminatory basis.

### Recommendations

#### To the Parliament of Georgia

- Remove the Article 172 on prostitution from the Administrative Offences Code of Georgia, in which prostitution is considered as an offence. Abolishing this article will help to increase the access of sex workers to justice in cases of gender-based violence and prevents abuse of power by the police;

#### To the High Council of Justice and High School of Justice

- Retrain judges on the issues of intersectional discrimination against sex workers and barriers whilst accessing justice,;
- Ensure the protection of sex workers from sexual violence and access to justice;

#### To the Prosecutor's Office

- Law enforcement agencies should carry out effective investigation and prosecution on cases related to abuse of power towards sex workers and gender violence, and other crimes;

<sup>53</sup> Article of "Tabula" "Two Transgender Women Have been Physically Assaulted by 7 people," available at: <http://www.tabula.ge/ge/story/139548-2-transgender-qals-savaraudod-7-adamiani-fizikurad-gaustsorda> (seen on 19.02.2019).

## SEX WORKERS

### **To the Ministry of Internal Affairs**

- Retrain law enforcement officers on the issues related to gender-based violence against sex workers, to change the homophobic and transphobic prejudice;

### **To the Government of Georgia**

- Provide women, who are victims of violence and want to leave prostitution with access to women services and promote their integration into society.

# LGBTQI INDIVIDUALS



LGBTQI people still face many systematic problems or barriers, which are the result of society's well-established stigma and prejudice. When the state neglects specific needs of the group, violence and discrimination multiples. Nevertheless, the issues regarding LGBTQI rights was included in the special chapter of the 2018-2020 Human Rights' action plan, currently, the approved action plan only concerns the needs<sup>54</sup> of the group in terms of accessing sexual and reproductive health care services. Despite the establishment of the Human Rights Department by the Ministry of Internal Affairs in 2018, due to the absence of specialised services of investigation, the protection of victims and effective investigation remain as challenges.

### Hate-motivated crimes

Hate-motivated crime is still an insurmountable problem against LGBTQI people. As law enforcement agencies did not start collecting statistics until 2018, for years, NGOs were the only source for evaluating the scale of homophobic and transphobic crimes. According to the research of Women's Initiatives Supportive Group (WISG), 88.3% of respondents (N = 226) were victims of hate-motivated crime during the last three years. Psychological and emotional violence was experienced 85.5%, 61.7% experienced sexual violence and harassment, whereas 29.7% were victims of physical violence. Despite these figures, only 16% of engaged the law enforcement body<sup>55</sup>. According to the data of the General Prosecutor's Office, in 2018, 151 persons were prosecuted under hate-motivated crime, including sexual orientation as a cause of intolerance in 15 cases, and gender identity in 12 cases. However, this data still does not reflect the reality that the LGBTQI community members are facing. An analysis of the study on violence in the community shows that trust in law enforcement agencies remains a significant low.<sup>56</sup> The difference between official statistics and NGO-collected data indicates unreported incidents and thus, an insufficient reaction to them.<sup>57</sup>

In addition to the problem of secondary victimisation, in the large part of the offences against LGBTQI individuals, the correct identification of the motive still remains as a problem. Crimes committed within families under the motive of sexual orientation and gender identity are especially frequent. Domestic violence against

<sup>54</sup> 2018-2020 Human Rights Action Plan Of Georgia, available at: <http://myrights.gov.ge/ka/plan/Action%20Plan%202020> (seen on 14.02.2019)

<sup>55</sup> Agdgomelashvili, E., "From Predisposition to Equality" (Part II): LGBT individuals in Georgia WISG, 2018

<sup>56</sup> Ibidem.

<sup>57</sup> Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23682&LangID=E> [19.02.2019]

LGBTQI persons can be invisible crimes, however the negative social effect of crimes which were committed based on hate are not recognised by the state. This may create substantial danger to the development of a person's physical and mental health and might negatively affect on his/her socioeconomic condition.<sup>58</sup>

The particular problem is investigating and prosecuting these violent crimes effectively. For example, a case mentioned in the previous report, concerning the beating of Levan Berianidze, the executive director of "Equality Movement" and the activist Tornike Kusiani in 2017, still wait for effective investigations. Further, on September 28 2018, the Ministry of Internal Affairs concluded that the attack<sup>59</sup> on the office of organization "Equality Movement" was committed by their neighbors and was treated as a bilateral confrontation, with the aggressor and the victim considered as equal parties.

An attack on the WISG's transgender outreach officer, who was beaten<sup>60</sup> on transphobic and homophobic grounds was another manifestation of violence in the course of reporting period. The case of WISG should be also mentioned here, as it was the Ministry of Internal Affairs district inspector-investigator who disclosed the information about plaintiff's gender identity. The Personal Data Protection Inspector found this to be a violation of law but due to the statute of limitation, it was impossible to take any administrative action. Furthermore, The General Inspection of the Ministry of Internal Affairs took disciplinary action, which resulted in his dismissal.<sup>61</sup>

The experience of 2018's celebration of International Day against Homophobia and Transphobia on May 17, is interesting in the context of freedom of assembly and expression. Sopho Kiladze, the Chairwoman of the Committee on Human Rights and Civil Integration, made an announcement that the Committee was not going to celebrate due to the continuing practice<sup>62</sup> of non-recognition and ignorance of human rights for the LGBTQI community. The Ministry of Internal Affairs announced their readiness to guarantee the security of the activists, the LGBTQI community abstained from holding a public event. The reason behind the cancellation,

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<sup>58</sup> Jalagania, Chutlashvili "Domestic Violence on The Basis of Sexual Orientation and Gender Identity, Legislative Gaps and Challenges of Policy", EMC, 2018.

<sup>59</sup> Available on the link: <https://emc.org.ge/ka/products/adamianis-uflebebeze-momushave-organizatsiebi-tanastorobis-modzraobis-ofistan-momkhdari-dzaladobis-fakts-gmoben>

<sup>60</sup> Available on the link: <https://bit.ly/2lcuwG9> (seen on 19.04.2019).

<sup>61</sup> Details of the case are available on the link: <http://women.ge/ka/news/newsfeed/216/> (seen on 19.04.2019).

<sup>62</sup> The statement of coalition is available on the link: <http://equalitycoalition.ge/ge/post/koaliciatanastorobistvis-parlamentis-da-adamianis-uflebebis-dacvis-komitetis-mier-lgbt-uflebebis-araghiarebis-problemas-ekhmianeba> (seen on 19.04.2019).

together with the lack of protection, was the risk and threat coming from the third parties, namely the neo-conservative and ultra-right gangs were holding the simultaneous countermarches to celebrate the day of Family's Holiness.<sup>63</sup> However, the LGBTQI community managed to organise small, partisan performance in five locations.<sup>64</sup>

At one of the meetings held in front of the government administration building, Nika Gorgiladze was attacked during his speech. An investigation was started timely, the Prosecutor's Office delayed to recognise Niko Gorgiladze as a victim<sup>65</sup>. Also, the state did not take appropriate steps to protect his safety. After the attack, he received several threatening messages through social networks and became the victim of aggression and abuse in streets and on public transport,<sup>66</sup> so he was forced to leave the country. The court returned above mentioned case to the prosecutor's office for diversion of the juvenile defendant, On December 6, 2018.<sup>67</sup>

### Hate speech

Homophobic hate speech was heard from the Parliamentary Tribunal during 2018 as well in statements of MP Koba Lursmanashvili about the liberalisation<sup>68</sup> of the drug policy or Sakrebulo's MP Otari Lortkipanidze's position<sup>69</sup> on social networks could stand as a striking example. Also noteworthy is the pre-election campaign of Sandro Bregadze, a member of the neo-conservative movement "Georgian March", which was replete with homophobic and discriminatory content.<sup>70</sup> The legislative package, which was elaborated by MP Emzar Kvitsiani in 2018, also evidences such intolerance. The package took into consideration removing the term "sexual orientation" and "gender identity" from Georgian legislation.<sup>71</sup>

<sup>63</sup> Available on the link: <https://bit.ly/2xoiWTh> (seen on 19.04.2019).

<sup>64</sup> Available on the link: <https://bit.ly/2Jalk4o> (seen: 19.04.2019).

<sup>65</sup> The statement of GYLA on the case of Nika Gorgiladze, available on the link: <https://bit.ly/2UwkJfQ> (seen: 19.04.2019).

<sup>66</sup> The same <https://bit.ly/2STVLW5>;

<sup>67</sup> The article of Radio Liberty (seen on 19.04.2019); Available at: <https://www.radiotavisupleba.ge/a/29641158.html> .

<sup>68</sup> Available at: <https://bit.ly/2IN3xB8> (seen on 14.02.2019).

<sup>69</sup> Available at: <https://bit.ly/2LsMvWt> (seen on 14.02.2019).

<sup>70</sup> Available at: <https://bit.ly/2krFY2b> (seen on 14.02.2019).

<sup>71</sup> Available at: <https://imedinevs.ge/ge/saqartvelo/96192/kvitsiani-kanonidan-terminebis-seqsualuri-orientatsia-da-genderuli-identoba-amogebas-itkhovs> (seen on 14.02.2019).

### Constitutional changes

In 2018, the constitutional definition<sup>72</sup>, which defines marriage as the union between woman and man was enacted. This marked a step backwards in recognising the LGBTQI community. Moreover, Georgian legislation does not recognise any form of civic partnership. The legislation<sup>73</sup> does not recognise the intimate partner as a member of the family, so same sex couples are not protected in cases of violence from an intimate partner and cannot be granted protection mechanisms like restraining and protective orders. Notwithstanding, that the most common forms of violence come from the intimate partner, involving physical, sexual, psychological and/or economic violence and systematic control of partner's behavior. According to WISG's 2018 research, 83.6% of respondents, have at least once, experienced one of these forms of violence during last three years.<sup>74</sup>

### Access to health care services

In 2018, the healthcare sector was still a difficult issue in the inclusiveness context of LGBTQI people. Transgender people, who live in Georgia, still have no access to quality health care services because there are no clinical guidelines, protocols or care services for transgender people in the country. Due to a number of institutional, financial or legal barriers, services, which are fragmented in several medical institutions, are not available for transgender people.<sup>75</sup> It needs to be stressed that gender reassignment surgery remains a mandatory requirement for gender recognition.

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<sup>72</sup> The Constitution of Georgia, Article 30.

<sup>73</sup> Law of Georgia on the Prevention of Violence and / or Domestic Violence against Women, Protection and Assistance of Violence Victims.

<sup>74</sup> Available at: [http://women.ge/data/docs/publications/WISG\\_Submission\\_INDEPENDENT-EXPERT\\_2018.pdf](http://women.ge/data/docs/publications/WISG_Submission_INDEPENDENT-EXPERT_2018.pdf) (seen on 14.02.2019), also: [https://emc.org.ge/uploads/products/pdf/Domestic-violence-based-on-SOGI-final-2018\\_1544786801.pdf](https://emc.org.ge/uploads/products/pdf/Domestic-violence-based-on-SOGI-final-2018_1544786801.pdf)

<sup>75</sup> In order to provide an investigation of the anti-discrimination mechanism, WISG provided the Public Defender with 5 cases of unreasonable refusal to grant transparency medical services on the basis of gender identity. Since transgender persons are deprived of equal access and alternatives to financial assistance, they consider themselves to be the victims of discriminatory treatment on the basis of gender identity.

## Recommendations

### To the Government of Georgia

- Implement informative and awareness raising oriented campaigns, which will reduce hate-motivated homophobic and transphobic crimes, existing prejudice and stereotypes of LGBTQI groups and will promote their integration into society;

### To the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:

- Prioritise LGBTQI individuals' social and health needs, action plans and health care strategies;
- Ensure LGBTQI individuals' access to the health care services, which will be based on international standards and will take into account the possibility of financing such services;

### To the Parliament of Georgia:

- Review the law of Georgia on the prevention of violence against women and/or domestic violence, the protection and assistance of violence victims in the manner where the intimate partner will be identified. This is necessary in order to improve LGBTQI individuals' access to the domestic violence prevention mechanisms;

### To the Ministry of Internal Affairs of Georgia:

- Ensure full implementation of freedom of assembly and expression for LGBTQI people and effectively implement positive obligations which are imposed on the Ministry;
- Ensure the effective functioning of the Human Rights Department, which should be oriented on protection of victims and prevention of hate-motivated crimes;
- In the course of fight against discriminatory crimes, create systematic preventive policies and institutional mechanisms, which will be based on intensive cooperation with organisations that work with research and the rights of the community and individuals.



# RELIGIOUS MINORITIES



In the year of 2018, no significant steps were taken by the state in respect of securing freedom of religion. Reforms (including creation of the Human Rights Department) regarding discrimination crimes, launched by the Ministry of Internal Affairs and Prosecutor's Office should be positively assessed. However, there is no adequate response to some important and continuing cases of persecution on religious grounds. The Christian organisation Jehovah's Witnesses point out cases where police were indifferent and ineffective during the investigation of crimes, which were committed against their members in 2018<sup>76</sup>. In 2018, in the human rights protection report, the Public Defender highlighted that during the year 2018, they examined 19 criminal cases concerning effective investigation into offences, committed on alleged religious grounds, in all cases different unlawful actions were targeted against Jehovah's Witnesses<sup>77</sup>. Special attention should be paid to the very important decisions made by the Constitutional Court of Georgia on the Tax Code and the Law on State Property, which have made remarkable clarifications on the issues of equality and unjustified preferences for the Orthodox Church. Due to this, the guarantees of equality between religious organisations become strengthened.<sup>78</sup> In 2018, representatives of the executive<sup>79</sup> and legislative<sup>80</sup> authorities initiated several regressive reforms regarding freedom of religion, which does not seem hopeful of positive changes in this field.

### **The important decisions of the Constitutional Court of Georgia on the issue of religious discrimination**

On July 3 2018, the Constitutional Court of Georgia dealt with two lawsuits concerning religious organisations.<sup>81</sup> The Court found a violation of Article 14 of the

<sup>76</sup> Announcement of Christian Congregation of Jehovah's Witnesses in Georgia, 11.02.2019

<sup>77</sup> 2018 Report of the Public Defender of Georgia, <http://ombudsman.ge/res/docs/2019033019563052300.pdf>

<sup>78</sup> The Constitutional Court satisfied two lawsuits of religious associations: <http://tdi.ge/ge/news/600-sa-konstitucio-sasamartlom-religiuri-gaertianebebis-ori-sarcheli-daakmaqopila>; Decision of the Constitutional Court, N1 / 2/671 of 3 July 2018; Decision of the Constitutional Court, 3 July 2018, 1/1/811;

<sup>79</sup> The representative of the Religions Agency spoke about teaching the subject of religion at school: <http://liberali.ge/news/view/12429/religiebis-saagentos-tsarmomadgenelma-skolashi-religiis-sagnis-tsavlebis-shesakheb-isaubra>;

<sup>80</sup> We do not welcome the creation of a special law on religious organizations - Council of Religions: <http://liberali.ge/news/view/42898/religiuri-organizatsiebis-shesakheb-spetsialuri-kanonis-shem-ushavebas-ar-mivesalmebit--religiata-sab>; Low of religion is considered with a participation of religious organizations: <http://amag.ge/index.php/news/item/474-2019-02-02-12-13-12>

<sup>81</sup> In both cases, interests of claimants are represented by Tolerance and Diversity Institute (TDI) and Tbilisi Free University's Constitutional Law Clinic.

Constitution (equality right / prohibition of discrimination) and considered the norms of the Tax Code and the Law on the State Property, which had created unequal conditions for religious organisations, to be unconstitutional:

1. The norm of the Tax Code, exempting the Georgian Orthodox Church from paying value added tax in situations of restoration, construction and painting of churches and temples,<sup>82</sup> was considered to be unconstitutional by the court.
2. The Court considered the norm of the Law of Georgia on State Property, which allowed the Georgian Patriarch to have ownership of state property free of charge, as unconstitutional.

In addition, that Court satisfied the lawsuit of religious associations, it also gave an important reasoning on the role of the Orthodox Church of Georgia. *“Recognition of special role of the church is related to its historical merits and does not serve to create a privileged legal position for the Orthodox Christian religion. Historical merits cannot be considered as the source of the privileged legitimacy. Differentiation and creation of legally superior conditions for the church is not the aim of the Constitution. [...] Empowering the church with certain rights does not mean preventing other religious organisations from enjoying the same rights”.*

### **The construction of a new mosque in Batumi**

In the year 2018, the construction of a new mosque in Batumi was a topical issue. The construction of a new mosque in the political and cultural centre of the Autonomous Republic of Adjara is a historic demand from the Muslim community in Batumi. In the scope of proceedings over the proposed Batumi mosque, the Court held a single session in 2018, which resulted in the postponement, aiming at negotiation between the parties, the Court cancelled the session by the initiative of the Batumi Municipality City Hall. Within the framework of negotiations, the conditions offered by Batumi Mayor on withdrawing the appeal and transferring the purchased plot of land to the Administration of Muslims of All Georgia proved to be unacceptable for NNLE Batumi Mosque Construction Fund.<sup>83</sup> From the very beginning, the proposal of the City Hall was discriminatory and continued the policy of concrete religious organisations’ support and instrumentalism.<sup>84</sup> Due

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<sup>82</sup> Constitutional complaint №671; see the decision of the Constitutional Court: <https://bit.ly/2y0gHmK> Constitutional claim №811; see the decision of the Constitutional Court: <https://bit.ly/2Mq53rd>

<sup>83</sup> Tarel Nakaidze: Mayor’s proposal was obvious lustration and discriminatory: <http://batumelebi.netgazeti.ge/news/130802/>

<sup>84</sup> Freedom of religion – the criticism of discriminatory and non-violent policies of the state, EMC, p. 84-106, available at: <https://emc.org.ge/ka/products/kvleva-religiis-tavisufleba-sakhelmtsifos-diskrimi-natsiuli-da-arasekularuli-politikis-kritika>

to unsuccessful negotiation, the Batumi City Court was repeatedly asked to define the date of the session, but the session was not scheduled<sup>85</sup> until the end of the year, which is an unreasonable delay.

### **Discrimination policy of restitution and the case of Tandoiantsi church**

The discriminatory policy of the restitution of property seized during the Soviet Period remains as an obstacle for religious organisations. It does not allow non-dominant religious organisations, with rights of ownership, to have religious historical buildings returned. Despite the fact that the 2016-2017 Human Rights' Governmental Action Plan envisaged activities related to the settlement of disputes over religious buildings, the State Agency for Religious Issues, which directs government policy in the field of freedom of religion, did not take any tangible steps forward.<sup>86</sup> Moreover, it did not even formally play the role of moderator between different religious organisations, notably in the process of settlement of disputes regarding historical buildings such as Tandoiantsi church and Imam Ali mosque.

The reporting period had revealed new cases of disputes emerging regarding historical buildings. In particular, on July 10 2017, the National Agency for State Property, on the basis of Patriarch's request, abolished the state ownership rights on real estate in Tbilisi, where the historic Armenian church of Tandoyants is located. Based on this decision, on July 26 2017, the National Agency of Public Registry transferred the real estate to the Georgian Patriarch.<sup>87</sup> The historical church was transferred to the Patriarch without proper consideration of the issue and the Armenian Diocese in Georgia was informed only a few months after the transfer. The Armenian Diocese has initiated court proceedings in 2018. An independent historical assessment of the church shows that it is truly an Armenian church, built in the 1850s century and was confiscated in 1924. With the help of modern day historical sources, research shows that it is not possible to confirm the existence of another church in that territory. The litigation on the current case has not brought

<sup>85</sup> The court hearing of the new mosque construction case in Batumi is still delayed: <https://emc.org.ge/ka/products/batumshi-akhali-mechetis-msheneblobis-sakmis-sasamartloshi-gankhilva-kvlavchianurdeba>; EMC and TDI are pointing out a delay of the new mosque construction in Batumi: <https://emc.org.ge/ka/products/emc-da-tdi-batumshi-akhali-mechetis-msheneblobis-sakmis-gachianurebase-utiteben>

<sup>86</sup> Protection of Religious Minorities - Monitoring Report on Human Rights Strategies and Action Plans, EMC, available at: <https://emc.org.ge/ka/products/religiuri-umtsiresobebis-datsva-adamianis-uflebata-datsvis-strategiebisa-da-samokmedo-gegmebis-shesrulebis-monitoringis-angarishi>

<sup>87</sup> EMC and TDI on the arbitrary transfer of the Armenian Historical Church to the Patriarchate <https://emc.org.ge/ka/products/emc-da-tdi-sapatriarkostvis-tandoiantsis-eklesiis-tvitnehuri-gadatsemis-sakmeze>

any tangible results, which is due to the national legislation that fails to recognise the right of religious minorities to reobtain property seized in the Soviet Period, as well as the narrow approach<sup>88</sup> of the courts. It should be noted that despite the State Agency for Religious Issues granted religious organisations the rights to temporarily use property seized in the Soviet Period (which cannot be assessed as restitution), the Armenian Church was not returned any historical church in this process.

In the context of restitution in the case of Imam Ali mosque in Marneuli should also be mentioned. It is one of the most influential mosques in Marneuli, ruled democratically and its governing bodies have never had institutional, financial or other type of connection with LEPL – the Administration of Muslims of All Georgia. The state transferred Imam Ali mosque to a state supported religious organisation. The litigation on the current case on behalf of the local mosque board is underway.<sup>89</sup>

### **The case of Kobuleti boarding house**

After a four year dispute regarding the case of Kobuleti Muslim pupils, the Supreme Court of Georgia has partially satisfied EMC's cassation complaint attributing responsibility to the Ministry of Internal Affairs.<sup>90</sup> Due to the indifference and inactivity of the police, the Court considered that the Ministry failed to fulfill its positive obligation in effectively preventing persecution and violence. Unfortunately, the court did not accept the defendant's claim that police inactivity was due to discrimination. At this stage, in order to reconsider the claim, the case is returned to the Kutaisi Court of Appeal. Despite the decision of the Supreme Court, it does not appear that the Ministry of Internal Affairs has made any effort to secure the safety of the boarding house and its daily functioning. It is noteworthy that the Batumi City Court found that Kobuleti municipality did not fulfill the recommendations of the Public Defender regarding the boarding house. The court requested the respondent body to take necessary steps to attach the sewerage system to the boarding house. This dispute marks the first precedent with the Public Defender, as an equality mechanism, applied to the Court following up an non-compliance of

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<sup>88</sup> The case of Tandoyants Church – Collective memory dilation policy: <https://emc.org.ge/ka/products/tandoiantsis-eklesiis-sakme-kolektiuri-mekhsierebis-tsashlis-politika>

<sup>89</sup> EMC began a court dispute over the issue of restitution of Imam Ali mosque in Marneuli: <https://emc.org.ge/ka/products/emc-ma-marneulshi-imam-alis-mechetis-stitutsiis-problemastan-dakavshire-bit-sasamartlo-dava-daitsqo>

<sup>90</sup> In the case of a Muslim boarding house in Kobuleti, the Supreme Court recognized the problem of inactivity of the Ministry of Internal Affairs: <https://emc.org.ge/ka/products/kobuletsi-muslimuri-pansionatis-shss-s-umokmedobis-problema-aghara>

recommendations.<sup>91</sup> Unfortunately, the local municipality appealed the decision of the Batumi City Court through an appellation procedure, which is denying human rights standards and an attempt to delay the execution process.

### **New risks of conflict escalation in the Adigeni municipality**

In 2018, in the Adigeni Municipality observed another illegal and religious conflict against the local Muslim community. Namely, the lands located in Dertseli village (8 acres), which over the years has been used by Muslim farmers was unfortunately illegally registered, in October 2018 and transferred to the Georgian Patriarch by the Property Management Agency. The Patriarch holds that there are church ruins on the lands. In addition to the fact that the state did not study the historical origins of existing ruins, it also transferred the surrounding territory and the neighboring mowing lands to the Patriarch. The Muslim community has not complain about the lands, but do not see the necessity of transferring the lands which are so vital to them. The Patriarch, moreover, acknowledges the legitimate use of these lands attested by various official documents and argues that the state agencies knew or should have known their legal interest in these lands.<sup>92</sup> Taking into consideration the context of violation and non-recognition of the Muslim community's rights and also the cycle of religious conflicts in the Adigeni municipality, (Chela (2013<sup>93</sup>), Mokhe (2014<sup>94</sup>), Adigeni (2016<sup>95</sup>)). The incident of Mokhe school in 2017<sup>96</sup>, should be characterised as harassment against the Muslim community. EMC advocates for the interests of Muslim peasants in administrative authorities and courts, and simultaneously attempts to use mediation mechanisms in order to prevent further conflicts.

<sup>91</sup> The Public Defender has sued the Kobuleti City Hall for a boarding house of Muslims, available at: <http://batumelebi.netgazeti.ge/news/142655/>

<sup>92</sup> Note: It is noteworthy that the challenge of property registration is not in only one region.

<sup>93</sup> A joint statement about the developments in the village of Chela, available at: <https://emc.org.ge/ka/products/ertoblivi-gantskhadeba-sofel-chelashi-ganvitarebuli-movlenebis-shesakheb>

<sup>94</sup> The statement on the gross violation of Muslim rights in Mokhe, available: <https://emc.org.ge/ka/products/gantskhadeba-mokheshi-muslimta-uflebebis-ukheshi-darghvevis-taobaze>

<sup>95</sup> Evaluation of EMC on the developments in Adigen, available at <https://emc.org.ge/ka/products/emc-s-shefaseba-adigenshi-ganvitarebul-movlenebze>

<sup>96</sup> EMC directs the Ministry of Education on the continuation facts of possible discriminatory harassment in the school of Mokhi, available at: <https://emc.org.ge/ka/products/mokhis-skolashi-shesadzlo-diskriminatsiuli-shevitsrobis-gangrdzobad-faktebze-emc-ganatlis-saministros-mimartavs>

### **The case of religious discrimination revealed in the village Akhalsheni**

This year, another violation was recorded in the village Akhalsheni (Tsalka municipality). In Akhalsheni (the same Kiriak) previously had ethnic Greeks, but today as a result of environmental migration, residents of Svaneti and Muslim Adjara are settled there. Nugzar Mgeladze, Muslim and resident of the village was building a house with a valid construction permit. However, after a collective announcement and protest on the part of local Svans, local self-government revoked the permission. The local self-government justified the decision by announcing that the house was located in the protected zone of Cultural Heritage, however, the circumstances of the distortion were not studied. It must be noted that at a meeting with EMC, the representatives of the local self-government were directly pointing out that this territory had been marked to build a mosque instead. The decision to cancel the permission was appealed by the EMC in court, where the claimant pointed out the problem of discriminatory treatment and lack of a proper examination of the facts. With a satisfied court claim at this stage, the case will be re-examined by the local government. N.Mgeladze's knowledgeable research confirms that despite the fact that a residential house is located in the visual protection zone of cultural heritage, it does not damage the surroundings. It should be mentioned that similar scales and types of buildings are located next to and in front of the mentioned dwelling house.<sup>97</sup> Signs of religious tension can be seen in the mentioned village, so by using legal mechanisms EMC tries to manage the problem. The State Agency for Religious Issues did not formally take the role of mediator.

### **The case of the arbitrary arrest of a religious leader Miratag Asadov in Azerbaijan**

On November 7 2018, on the Georgian-Azerbaijani border, the Azerbaijani law enforcement arbitrarily detained Sheikh Miratag Asadov, chairman of LEPL "Supreme Religious Administration of Georgia's all Muslims", which raised significant questions regarding the protection of religious freedom. Clearly a baseless administrative offence allegedly occurred in the Republic of Azerbaijan against Miratag Asadov generating doubts that his detention might be related to his public activities in Georgia.<sup>98</sup>

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<sup>97</sup> Art Expert Giorgi Patashvili's Art research, February 22, 2019.

<sup>98</sup> Religious and human rights organizations in Azerbaijan respond to Sheikh Miratag Asadov's arrest: <https://emc.org.ge/ka/products/religiuri-da-adamianis-uflebebbe-momushave-organizatsiebi-azerbajianshi-sheikhi-mirtagi-asadovis-dakavebas-ekhmianebian>

### Regressive legislative initiatives

The amendments made to the Constitution of Georgia in 2018 concern the freedom of religion and belief. On September 26, 2017, with the third reading, the Georgian Parliament approved amendments to the Constitution of Georgia by adding criteria to the interference of religious freedom. The criteria are: “State Security”, “Crime Avoidance” and “Justice Execution” that are not in compliance with international norms and cause a high risk of state interference into religious rights. In order to prevent possible interference of freedom of religion on an unreasonable basis the Council of Religions<sup>99</sup>, existing with the Public Defender of Georgia, NGOs, academic institutions and lawyers<sup>100</sup> have repeatedly addressed the Parliament of Georgia, the President, the Venice Commission and relevant international organisations. The Venice Commission, in its conclusion<sup>101</sup>, emphasised that the basis for restricting religious freedom does not complement or in compliance international standards and urged the state to undo the amended Constitution provision. As a result, due to the new initiated Constitutional amendments in 2017, the problematic criterias mentioned above, are removed. The Georgian Parliament, in the third hearing, approved final amendments with, on March 23 2018.<sup>102</sup>

In 2018, the Ministry of Education, Science, Culture and Sport of Georgia and State Agency of Religious Issues, presented an initiative to bring back the history of religions in school curriculums.<sup>103</sup> Where the state could not provide effective prevention<sup>104</sup> against religious indoctrination, proselytism, discriminative practices in public schools, reintroducing lessons of religion and religious history would promote religious intolerance.<sup>105</sup> Taking into consideration systemic challenges concerning the quality of textbooks, the learning process and teachers’ qualification, it is clear

<sup>99</sup> Statement of the Council of Religions, existing under the Public Defender: [http://tolerantoba.ge/index.php?news\\_id=928](http://tolerantoba.ge/index.php?news_id=928)

<sup>100</sup> See the Statement on the Restriction of Freedom of Religion in the Constitution 24.09.2017: <http://tdi.ge/ge/news/463-gancxadeba-konstituciashi-religiis-tavisuplebis-shezgudvastan-dakavshirebit>

<sup>101</sup> See Consideration of the Venice Commission on the amendments of the Constitution of Georgia, Paragraph 39, 22.09.2017 [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=C-DL-PI\(2017\)006-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=C-DL-PI(2017)006-e)

<sup>102</sup> The Constitutional Law No. 2071, March 23, 2018, the date of publication 02.04.2018

<sup>103</sup> Should children learn about religion in school: <https://www.radiotavisupleba.ge/a/shemdegigakvetili-religia/26618666.html>

<sup>104</sup> Freedom of Religion: Criticism of Discriminatory and Nonsecular Policies of the State, pp. 131-154. <https://emc.org.ge/ka/products/kvleva-religiis-tavisufleba-sakhelmtsifos-diskriminatsiuli-da-arasekularuli-politikis-kritika>; Religious Neutrality and Equality Problems in Public Schools: <https://emc.org.ge/ka/products/religiuri-neitralitetisa-da-tanastoruflebianobis-datsvis-problemebi-sajaro-skolebshi>

<sup>105</sup> EMC responds to the statement of Education Minister on bringing the subject of history: <https://emc.org.ge/ka/products/emc-religiis-istoriis-sagnis-shemotanaze-ganatilebis-ministris-gantskhadebas-ekhmianebe>

that with the current academic approaches within the existing education system is not prepared.<sup>106</sup>

During the reporting period, the Parliament announced a number of regressive initiatives regarding freedom of religion, including the prohibition<sup>107</sup> of wearing religious garments, such as the niqab and burka for Muslim women in public spaces and the criminalisation<sup>108</sup> of religious feelings. During the process of the above draft law's consideration, the Chairperson of the Human Rights and Civil Integration Committee initiated the establishment of a working group to discuss religious-freedom related issues. In the process of this discussion, the Chairperson of the Committee also<sup>109</sup> set up a special religious law, which presented a high risk of reversing the existing liberal principles over the definition of religion and religious organisation, as well as the rule of registration. The representative religious groups organisations oppose the adoption of this special law.<sup>110</sup>

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<sup>106</sup> Learning History of Religion in public schools: <https://www.tdi.ge/ge/page/religiis-scvaleba-sajaro-skolebshi>

<sup>107</sup> Ombudsman - wearing niqab and burka might be discriminatory, but I do not think that banning women from wearing these clothes will protect their rights: <https://www.interpressnews.ge/ka/article/528831-ombudsmeni-burkis-da-nikabis-tareba-shezazloa-iqos-diskriminaciuli-tumca-arpikrob-rom-kalebistvis-am-tanisamosis-tarebis-akrzalva-ikneba-mati-uplebebis-dacva/>; the restraint practice for Muslim women regarding wearing traditional headdress and human rights standards: <https://emc.org.ge/ka/products/muslimi-kalebis-traditsiuli-tavsaburavebis-shezghudvis-praktika-dadamianis-uflebata-standartebi>

<sup>108</sup> Coalition for Equality calls the Parliament not allow the adoption of the law regarding the criminalization of abused religious feelings: [https://emc.org.ge/ka/products/koalitsia-tanastorobistvis-moutsodebs-parlaments-ar-daushvas-religiuri-grdznobebis-sheuratskhqofis-kriminalizebis-kanonproektis-migheba/](https://emc.org.ge/ka/products/koalitsia-tanastorobistvis-moutsodebs-parlaments-ar-daushvas-religiuri-grdznobebis-sheuratskhqofis-kriminalizebis-kanonproektis-migheba;); Kvitsiani's initiative provides punishment for abusing religious feelings: <http://liberali.ge/news/view/35561/kvitsianis-initsiativa-religiuri-grdznobebis-sheuratskhyofistvis-sasjels-itvalistsineb>

<sup>109</sup> The Council of Religions considers that the creation of a special law on religious organizations should not be put on the agenda: <https://commerciant.ge/ge/post/religiata-sabchoshi-miichneven-rom-religiuri-organizaciebis-shezaxeb-specialuri-kanonis-shemushaveba-dgis-wesrigshi-ar-unda-dadges>

<sup>110</sup> They are against approving a special law on religious organizations: <http://netgazeti.ge/news/337867/>

**Recommendations:****To the Parliament of Georgia:**

- Review the Tax Code and State Property Law in accordance with the aspiration and reasoning of the decisions made by the Constitutional Court in July 2018. It should be noted that this process of legislative amendments is delayed and turning it into a priority consideration is an important. It is essential to work on the draft law with inclusive democratic participation of all religious organisations and human rights actors;
- Follow international standards on freedom of religion and do not allow any legislative amendments to negatively impact the freedom of religion and equality in Georgia;
- Enlarge legislation concerning the restitution of religious buildings inform the Soviet period.

**To the Government of Georgia:**

- Analyse the gaps in the activities of the State Agency for Religious Issues and ensure the fundamental transformation of its mandate and the strategy of its activity;
- Elaborate the policy on the restitution of property seized in the Soviet period, including the preparation of enlarged legislative proposals. Until the issue is resolved, suspend the practice of arbitrary transfer of historic religious buildings to other religious organisations;
- Revise the discriminatory, undemocratic and non-secular funding practices of religious organisations;
- Progress the development of positive programs concerning trust and dialogue building between communities, which are located in the religious conflict areas;
- In order to eliminate marginalisation of religious minorities and ensure effective protection of their rights and prevention of possible conflicts (Derzeli village, Akhalsheni village);

**To the Ministry of Internal Affairs of Georgia**

- Ensure the functioning of the Muslim boarding house in Kobuleti, and ensure safety and rights of its administration and beneficiaries;

## RELIGIOUS MINORITIES

- Provide effective, timely and proper investigation of offences committed against members of the Jehovah's Witnesses Christian organisation.

### **To Ministry of Education, Science, Culture and Sport of Georgia**

- Do not allow the history of religions to be introduced as a subject in public schools, because by taking into consideration existing context and resources, it creates risks for the implementation of proselytism and indoctrination practices;
- Ensure protection and restoration of historical architectural structures, which are in the possession of religious minorities.

### **To Batumi City Hall:**

- Take into consideration the construction of a new mosque in Batumi, the process of mediation and democratisation has to be started on time. Such actions will enable NNLE "Batumi mosque construction fund" to build the mosque.

### **To Tsalki City Hall:**

- Regarding N. Mgeladze's house construction, ensure the correct implementation of the law and investigate discrimination complaints.

# ETHNIC MINORITIES



**D**uring the reporting period, no important positive political changes have been observed of the human rights protection of persons belonging to ethnic minorities. The integration of ethnic minorities and the issue of their political participation are not considered as an important part of the political agenda. The politics concerning ethnic minorities are often based on the perspective of safety, rather than social and political inclusion and the protection of human rights, which makes it difficult to create a fair and equal political and social environment for minority ethnic and religious groups.<sup>111</sup>

### Political participation

According to the 2014 census, 86.8 % of the population of Georgia consists of Georgians, 6.3 %- ethnic Azerbaijanis and 4.5% - ethnic Armenians. Despite this ethnic composition, on the level of central government, the participation of ethnic minorities is clearly low. It is important to increase the political representation of ethnic minorities, if the government wants to support their political integration. The employment of members of ethnic minorities in public service is also low. According to the 2014 census, the population of Marneuli municipality is 104,300, which consists of 83.77% Azerbaijanis, 8.58% Georgians and 6.99% Armenians. Considering the ethnic population, it must be mentioned that that from the total of 8 employees at Marneuli municipality City Hall services, only 1 is from an ethnic minority, as of the 5 heads of the assembly which represent ethnic majorities. From the 11 members of Marneuli Assembly Bureau, only one is a representative of an ethnic minority.<sup>112</sup> The number of persons from ethnic minorities is also low in the administration of Samtskhe-Javakheti State Representative. In this administration, ethnic minorities do not occupy any of the leading positions (the Governor, deputy, the heads and the deputies of the agency and the services), when more than half of the population in the region belongs to ethnic minorities (50.52 % of Samtskhe-Javakheti's population is Armenian, 48.28 % Georgian).<sup>113</sup> According to the Public Defender, for many years the representatives of ethnic minorities are not holding positions in the city governance (City Hall, Assembly, and Municipality Offices). According to the statistics, more than 10% of the capital city's population is represented by ethnic minorities.<sup>114</sup>

<sup>111</sup> The announcement of the former minister of the State Ministry for Reconciliation and Civic Equality of Georgia, Paata Zakareishvili, [seen on 19.04.2019], available at: <https://www.facebook.com/tamta.mikeladze/videos/2275527355852545/>

<sup>112</sup> The report of the Public Defender, 2018, p 385, [seen on: 19.04.2019], available at <http://ombudsman.ge/res/docs/2019033019563052300.pdf>

<sup>113</sup> Ibidem

<sup>114</sup> Ibidem

Political parties are motivated only by electoral interests in relation to issues of ethnic minorities and the issues are only discussed in the pre-electoral period, but communication with and promises to the community are essentially forgotten. The issue of the integration of ethnic minorities is sparsely covered in their political programs. The political party structures and their work in regions is very weak and they do not mobilise enough resources to take part in the local processes.

The issue of political participation is also closely connected to the knowledge of official language. Despite some reforms applied to the educational system, the existing policy is unable to provide sufficient learning possibilities of the official language for ethnic minorities, which hinders them from actively getting involved in civic life. The state has positive responsibilities according to national legislation and according to the international conventions, obliging the state translate resources for administrative procedures in the regions populated by ethnic minorities. Since the state has not been fulfilling this responsibility, ethnic minorities, even on the self-government level, hardly get involved in the political and public participation. In the mentioned regions, the local self-government agencies, as well as territorial state institutions, do not translate resources for administrative procedures, nor do they operate their official web-pages and Facebook pages bilingually.

### **The right to Education**

The programme 1+4 must be evaluated positively, however, despite the educational reforms undertaken by the state, the educational policy is especially weak in the regions populated by ethnic minorities. The quality of education is poorer which, in the overall picture, causes deepened social, economic and political ostracism of the minority ethnic groups. Despite multiple attempts, there is no available framework, which could conceptually and thoroughly analyse the existing situation, challenges and possible solutions in the educational field. Creating this kind of framework would enhance ethnic minorities' education and the inter-agency coordination.<sup>115</sup>

The problems associated to accessing preschool education remain current issues and they hinder the learning of the state language from an early stage. As for those who have access to this kind of service, the bilingualism is quite low.

The ethnic minority youth have special needs when it comes to accessing quality education. Participation in general education differs according to the ethnicity of students. The students from ethnic minority backgrounds are less involved in edu-

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<sup>115</sup> The annual report of the Public Defender of Georgia, 2017, p.273, available at: <http://ombudsman.ge/uploads/other/5/5139.pdf>

cation in comparison to their Georgian peers. According to the statistics of 2011, only 59% of the ethnic minority youth frequently attend secondary level school while the same indicator for the Georgian youth is 85%.<sup>116</sup>

Upon graduation, the certificate and university exams are indirect indicators of the quality of education, it is clearly evident that the quality of education in non-Georgian schools is considerably lower than in comparison with the Georgian schools. Among the graduates of the non-Georgian schools, the percentage of failed students in various subjects ranges from 8.23% to 29.95%, whilst the same indicator for Georgian peers is between 1.5% and 4.5%.<sup>117</sup>

Limits in accessing education for the ethnic minorities is problematic due to several structural reasons in educational politics. Among those is the low quality teaching of the state language, problems connected with the contents of textbooks written in the ethnic minorities' first language, low qualification of teachers and also, low competence in the Georgian language, non-inclusive and discouraging teaching environment at schools.

### **Policy of weakening culture representation in Kvemo Kartli**

The Azerbaijani population in Kvemo Kartli highlights the practice of minimising cultural representation in the region, which can be seen by the erection of crosses in Muslim majority villages, alongside with removing Nariman Narimanovi's name from off the Marneuli Cultural Centre, and in the prominence of Georgian culture in the local public spaces.

Despite the existing policy, the Azerbaijanis are attached to their identity as well as their identification with the state of Georgia, the latter is observed in the Azerbaijani community especially amongst young people.<sup>118</sup> After completing the programme 1+4, young people acquire improved knowledge of the Georgian language, as well as the accurate political and social understanding of citizenship, and therefore they demonstrate a greater interest and readiness to be involved in political and social changes in their regions. However, unfortunately, the formal policy responds poorly to their interests, which could lead to social frustration.

<sup>116</sup> The educational needs of the ethnic minority students (research and policy documents), The Advising Center for Education, 2017, available at: <http://cdi.org.ge/uploads/pages/euss-inter-ge-2.pdf>

<sup>117</sup> Ibidem

<sup>118</sup> Identity Issues among Azerbaijani Population of Kvemo Kartli, EMC, 2018

### State policy in Pankisi and the case of Temirlan Machalikashvili

A special security operation of the State Security Service conducted on December 26, 2017, was the most acute manifestation of legal and social consequences of control-based policy<sup>119</sup> in the Pankisi Gorge, which resulted in the death of 19-year-old Temirlan Machalikashvili. In the previous days, T. Machalikashvili was at home; on the day of the special operation, he was helping his father in the meadow. The State Security Service (SSS) detained him, without any special operation, however, the power plant demonstration was the alleged purpose of the repressive policy. The current investigation in the Prosecutor's Office, concerning the case of T. Machalikashvili, is substantially formalistic and illusory.<sup>120</sup> The institutional independence has been violated during the investigation process at the initial stage, a significant amount of evidenced was fabricated or deleted. Machalikashvilis` family has not yet been granted victim status and they still have no access to the case file since it is classified as confidential. According to the local community, the death of Machalikashvili has left a deep feeling of insecurity, injustice<sup>121</sup> and mistrust towards law enforcement agencies. Despite the request of Machalikashvilis family and local community, a temporary parliamentary commission investigating Macalikashvili case has not yet been set up.<sup>122</sup>

This year, practices<sup>123</sup> of illegal and arbitrary participation of the police in the process of HPPs cascade construction in the valley, caused upset of locals towards law enforcement agencies.

<sup>119</sup> Under the Security Gaze: History, Politics and Religion in the Pankisi Gorge, EMC, 2018, available at: <https://emc.org.ge/ka/products/usaftrkheobis-mzeris-kvesh-istoria-politika-da-religia-pankisis-kheobashi>

<sup>120</sup> EMC summarizes the ongoing investigation on the case of Temirlan Machalikashvili's life-infringement, available at: <https://emc.org.ge/ka/products/emc-temirlan-machalikashvilis-sitsotskhilis-khelqofis-sakmeze-mimdinare-gamodziebas-ajamebs>

<sup>121</sup> Petition requested to create a Temporary Investigation Commission into Temirlan Machalikashvili case, available at: <https://radioway.ge/news/human-rights/item/860-petizia-temirlan-machalikashvilis-saqmeze-droebiti-sagamowiebo-komisiis-sheqmnis-motxovnit>

<sup>122</sup> Applicaton to the Parliament on creating an investigative commission into the Temirlan Machalikashvili life-infringement case, available at: <https://emc.org.ge/ka/products/mimartva-parlaments-temirlanmachalikashvilis-sitsotskhilis-khelqofis-sakmeze-sagamodziebo-komisiis-shekmnis-shesakheb>

<sup>123</sup> EMC's Statement, see: <https://emc.org.ge/ka/products/emc-moutsodebs-shinagan-sakmeta-saministros-shetsqitos-pankisis-kheobashi-adgilobrivi-aktivistebis-da-temis-tsevrebis-shevitsroebisa-da-kontrolis-praktika>

## Recommendations

### To the Parliament of Georgia

- Develop a strategy through democratic consultation that ensures high and effective political participation of non-dominant ethnic groups in legislative and executive government;
- Prioritise the issues of political and social inclusion of ethnic minorities, and implement effective parliamentary supervision over the enforcement of ethnic minority integration;
- Set up the temporary parliamentary investigation commission into the case of T. Machalikashvili to examine and supervise the lawfulness of the activities of the State Security Service and the Prosecution Service;

### To the State Minister for Reconciliation and Civil Activity

- Develop a new positive policy for promoting political participation of ethnic minorities, which would take into consideration special measures to increase the representation of ethnic minorities in representative and executive bodies;
- Develop special policy aimed at the employment of ethnic minorities in public services especially in local self-governments in the regions populated by ethnic minorities and strengthen and retrain serving public servants;
- Take additional special measures to encourage the employment of young people in public services and local self-government organisations following up on the completion of the programme 1+4;
- Develop specific action plans to ensure the integration of regions/communities populated by ethnic minorities, based on specific needs, interests and requirements of the local communities;
- Enhance the state language knowledge in ethnic minorities populated regions, the government shall review existing approaches and practice and create a distinctive-segment oriented educational-training programs;
- Coordinate the state apparatus in the regions densely-populated by minorities, and in parallel with the use of the state language, set up interpretation resources (as well as the bilingual operation of state bodies web pages) for important documents and acts to be translated into the first language of minorities;
- Enhance the policy of protecting culture, uniqueness and identity of minorities through the support of the state apparatus;

**To the Ministry of Education, Science, Culture and Sport**

- Make pre-school education affordable in the regions populated by ethnic minorities, where the state language competence will be improved through qualified bilingual personnel;
- Sustain the continuation of the term of the programme 1+4, as well as revision and improvement of the programme based on a survey over needs and shortcomings;
- Strengthen the public awareness on the programme 1+4, as well as its popularisation in regions;
- Ensure the creation and mobilisation of local young teachers in public schools of ethnic minorities;
- Increase non-formal education and intercultural exchange programs in the regions populated by ethnic minorities;

**To the Ministry of Internal Affairs, the State Security Service (SSS)**

- The police should intensify the promotion of employing local police officers in the regions with ethnic minorities in parallel to establishing trust in police policy;
- The Ministry of Internal Affairs (MIA) and the State Security Service (SSS) are to substantially reconsider their strategies operating in the Pankisi Gorge and also the policy oriented on repression, social control and intimidation has to be stopped;
- The Ministry of Internal Affairs is to ensure its activities in the Pankisi Gorge are in compliance with law requirements;

**To the Prosecutor's Office**

- Ensure effective investigation into the case of Temirlan Machalikashvili, grant the family of Machalikaavili the victim status and punish appropriate State Security Service officials;

**RACISM AND  
XENOPHOBIA;  
THE LEGAL STATUS OF  
FOREIGNERS**



In 2018, a growing tendency of violence, aggression and xenophobia against foreigners and migrants (especially those from Asia and Africa) was observed in Georgia. As well as in the same year, the first murder with alleged racist and xenophobic motives was committed. In addition to racist and xenophobic aggression supported by certain organised groups and individual citizens, the state policy in regard to foreigners is problematic as well.

### Racism, violence and discrimination

In Georgia, racism in relation to individuals from Asian and African countries is shown in various forms: verbal abuse, physical violence and aggression on the basis of origin, religion, nationality and/or skin color. Intolerance and discrimination on racial grounds takes place in public spaces, on transport, sometimes in educational and other private institutions.<sup>124</sup>

In 2018, a number of high-profile cases of racial intolerance were publicised, including attacks of physical violence and verbal abuse of people with different ethnicities and nationalities.<sup>125</sup>

On September 30, 2018, human rights activist and a citizen of Georgia, Vitaly Safarov<sup>126</sup> was murdered on the grounds of alleged racial intolerance. In April 2018, on Beliashvilisi Street, local Georgians kicked off a group of foreigner youths from a football pitch and assaulted them physically.<sup>127</sup> In December 2018, on a taxi man from Rustavi, physically and verbally abused a citizen of Cameroon living in Georgia on the ground of his skin color.<sup>128</sup>

In August 2018, video footage went viral on social networks Facebook and YouTube depicting the way individual Georgian citizens harass foreigners in Tbilisi. On Marjanishvili Square, a group of Georgians driven by the motives of “protecting

<sup>124</sup> Attitudes towards foreigners, see video and narrative interviews by TDI: <http://tdi.ge/ge/multimedia/mravalperovnebis-saxeebi-nigerieli-gogo-tbilisshi>; <http://tdi.ge/ge/page/zacheusi-julieta-da-mati-shvili-natali>.

<sup>125</sup> See TDI’s special report on „RACIAL INTOLERANCE AND XENOPHOBIA RIGHTS OF FOREIGN NATIONALS IN GEORGIA: [http://tdi.ge/sites/default/files/tdi\\_angarishi\\_rasobrivi\\_diskriminacia\\_ucxoelbis\\_uplebebi.pdf](http://tdi.ge/sites/default/files/tdi_angarishi_rasobrivi_diskriminacia_ucxoelbis_uplebebi.pdf) [last seen on: 05/04/2019].

<sup>126</sup> See the Civil Platform „No to Phobia!” A statement requesting to qualify the murder of Vitaly Safarov as organized crime, <http://tdi.ge/ge/statement/ara-pobias-vitali-saparovis-mkveleobis-jgupuradchadenil-danashaulad-kvalipikacias-itxovs> [05/04/2019];

<sup>127</sup> See the statement of NGOs regarding an assault against African students <http://tdi.ge/ge/news/585-ara-pobias-cevri-organizaciebis-gancxadeba-aprikel-studentebze-tavdasxmis-gamoziebis>

<sup>128</sup> See TDI’s information on the racial abuse case against a Cameroonian citizen <http://tdi.ge/ge/news/657-rasobrivi-diskriminaciashi-braldebuli-sasamartlom-damnashaved-cno>

their country from immigrants” were repeatedly stopping foreign citizens and demanding documents from them,<sup>129</sup> they were recording xenophobic videos at different buildings and referring to themselves as “Georgian Guards”.<sup>130</sup> Public information was requested from the relevant institutions, aimed at examining the state’s response to racial discrimination and crimes: in 2018, just one person was prosecuted<sup>131</sup> under Article 124<sup>1</sup> of the Criminal Code of Georgia (Racial Discrimination). In 2018, the Common Courts accepted 2 cases regarding the crime protected under Article 124<sup>1</sup> of the Criminal Code of Georgia, only one of the cases<sup>132</sup> was considered.

On April 20 2018, the Tbilisi Appeal Court approved a plea bargain for the offence covered by Article 124<sup>1</sup> of the Criminal Code. This case concerns the assault of African migrants that was committed by two individuals in the vicinity of Rustaveli Avenue, on September 19 2015. In a judgment of January 31 2018, the Tbilisi City Court found both persons guilty under Article 124<sup>1</sup> (3a) of the Criminal Code (racial discrimination committed by the group of individuals). The Tbilisi City Court sentenced both persons to 4 years’ imprisonment. With the plea agreement approved by the Court of Appeals, both convicts were reduced to one-year imprisonment in a penitentiary establishment, and three years on conditional sentence.

The above-noted official statistical data of offences might not reflect a picture of reality. The low level of statistics should be conditioned by the fact that the investigation is often not initiated or proceeded under the correct articles of the Criminal Code, on the basis of racial intolerance; besides, foreigners often refrain from reporting to the police and caused by mistrust, fear, lack of enough knowledge on legal mechanisms and in some cases language is a barrier as well.

The creation of the Human Rights Protection Department in the Ministry of Internal Affairs (MIA) in 2018 is complementary, which purpose is to ensure the identification and investigation of crimes committed on the basis of intolerance. This department is commissioned to monitor the ongoing investigations and administrative proceeding of offences motivated by hatred and discrimination.

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<sup>129</sup> See an article on „how the „Georgian Guard” oppresses foreigners on Agmashenebi Avenue, 13.09.2018, <http://www.tabula.ge/ge/story/136822-rogor-avitsroebis-saqartvelos-daraji-ucx-oelebs-aghmasheneblis-gamzirze>

<sup>130</sup> See an article „The Guard of Georgia” Against Foreigners, 13.09.2018, <http://netgazeti.ge/news/304123/> [last seen on 04.02.2019]

<sup>131</sup> Criminal proceeding under Article 124<sup>1</sup> of the Criminal Code of Georgia was started against 3 persons in 2015, in 2016 – against 14 persons, none in 2017.

<sup>132</sup> In 2018, the First Instance Court accepted just 1 case against 1 person under Article 124<sup>1</sup>, the court considered a single case against 2 persons; the Court of Appeals accepted a single case against two persons, there were no cases filed in the Court of Cassation.

In recent years, neo-fascist and ultra-nationalist groups often mobilise<sup>133</sup> in public spaces and assault people<sup>134</sup> with a specific nationality or identity. On December 10 2018, “Georgian March”, representatives of the political party “Alliance of Patriots of Georgia”, MPs and other xenophobic groups organised a protest outside Tbilisi Public Service Hall, and foreigners accessing services, were prohibited from entering the premises. Protesters were relying on external features such as color of skin to distinguish<sup>135</sup> Georgians from foreigners. The xenophobic groups objected the decision of the Constitutional Court of Georgia, which on a temporary basis abolished the restriction of foreign citizens buying allotments on the territory of Georgia.

Issuing of residence permits to people from Asian and African countries as well as buying agricultural land, are the key issues for populist groups and parties trying to manipulate the public. Their ideals are often built on ethnic, religious and racist stereotypes. They use socioeconomic and cultural arguments to justify and sustain their positions.

In addition to the ultra-nationalist groups, the members of the parliament (MPs), leaders of the main opposition political party and high-ranking politicians<sup>136</sup> also publish statements containing xenophobic, racist and hatred rhetoric.

Simultaneously with racial and xenophobic violence, politicians` rhetoric and public attitudes, the state policy is also problematic, which has been revealed in number of decisions and procedural issues.

### **State policy on<sup>137</sup> issuing the residence permit and access to the country**

Foreigners face many obstacles whilst trying to obtain a residence permit in Georgia. The denial to grant residence permits is often legally unreasonable and unfounded. A high rate of refusals of issuing of residence permits could demonstrate a possible state discriminatory policy towards citizens of foreign countries who are

<sup>133</sup> See „Anatomy of Georgian Neo-Nazism”, Transparency International Georgia, 2018 <http://www.transparency.ge/ge/blog/kartuli-neonacizmis-anatomia>, [last seen on 04.02.19]

<sup>134</sup> TDI`s appeal to the Ministry of Internal Affairs regarding the case of „Georgian Guards” 14.09.2018 <http://tdi.ge/ge/statement/tdi-mimartva-shinagan-sakmeta-saministros> [last seen on 04.02.2019]

<sup>135</sup> See „Protestors restrict foreigners from entering the Public Service Hall on the basis of xenophobia” 10.12.2018 <https://bit.ly/2GqBbdw> [last seen on 04/02/2019]

<sup>136</sup> See TDI`s statement concerning the xenophobic rhetoric of the third President of Georgia, 14.09.2018 <http://tdi.ge/ge/statement/tdi-mixeil-saakashvilis-ksenopobiur-gancxadebebs-exmaureba> [last seen on 05/04/2019]

<sup>137</sup> For detailed information see the special report of TDI „Racial Intolerance and Xenophobia; rights of foreign nations in Georgia” <https://bit.ly/2TUIVaF>

“different” on the grounds of country of origin, religion, skin color and/or racial belonging.

It is noteworthy that most of the rejections<sup>138</sup> are based on state and public security interests. The relevant authorised body, the State Security Service (SSS) is to prepare conclusions in this regard. The issuing of residence permits, is carried out by the Legal Entity of Public Law (LEPL) – the Public Service Development Agency - acting under the Ministry of Justice of Georgia. In the administrative proceeding, the Public Service Development Agency does not properly examine the interests of the residence permit seeker, which, for instance, is linked to studying or working in Georgia, as well as living legally together with their families.

The evidence obtained by the security service, confirming that the permit seeker is a threat to the interests of the state and/or public security, are confidential.

At any stage of the proceedings, the residence permit seeker is not granted to the case file. Consequently, in the course of such court proceedings, it is quite complicated to prepare a defense and to exercise the right to a fair trial. Furthermore, information on the type of evidence filed to the court is not disclosed, which naturally raises suspicion on how reasonable the decision is.

Foreign nationals pursuing court disputes or are in the process of reapplication to the Agency to obtain a residence permit or citizenship, face a barrier related to the legal permission to remain in the country and the fact that this is low when challenging decisions. Further, this causes financial burdens too.

It should be noted that in 2018, several legislative initiatives were commenced<sup>139</sup> regarding residence permits, visa or citizenship obtaining rules. Part of reforms has a xenophobic angle, for example, attention is drawn to the demographic situation, the threat to social stability and “Alteration of ethno-cultural balance to the detriment of the indigenous people”.

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<sup>138</sup> TDI has repeatedly applied to the LEPL Public Service Development Agency and requested the statistical information on issuing the residence permit during 2018, however, as of March 2019, the agency has failed in providing the information

<sup>139</sup> For example, on May 10, 2018, the official web-site of the Ministry of Justice published information on legislative amendments to the regulations of residence permit, according to the late, drastic changes apply to the permanent residence, temporary residence, ordinary visa of C category, short-term residence permits;

On November 6, 2018, Legal Issues Committee of the Parliament of Georgia, with the second hearing, discussed the legislative initiative of MPs Gocha Enukidze and Ivliane Tsulaia regarding Law of Georgia on the „Legal Status of Aliens and Stateless Persons”.

Georgian Parliament also considers two more draft laws (initiated by Zviad Tomaradze and 30 000 Citizens and Faction „National Movement”), which creates further difficulties for foreign citizens while obtaining different types of residence permits.

In recent years, state policy in relation to immigration has been tightened. In a number of cases, certain nationalities are refused from entering Georgia on unreasonable grounds.

According to the data of the Ministry of Internal Affairs, 2018, witnessed the highest share of rejections at the border concerning Indian and Iranian<sup>140</sup> citizens (Iran – 3224, India – 2254). MIA does not maintain<sup>141</sup> statics about on the basis of denial.

If we compare the percentage indexes of people wishing to enter Georgia and the number of refusals in 2018, the rejection data<sup>142</sup> looks the following: Bangladesh (36%), Yemen (29%), Syria (22%), Nigeria (10%), Cameroon (10%), Pakistan (6.4%), Iraq (5.9%), Uzbekistan (5.95%), Egypt (5.6%), India (209%), Sri Lanka (2%), Iran (0.9%), Russia (0.05%), Turkey (0.05%) and Azerbaijan (0.03%).<sup>143</sup>

### Pre-election xenophobia

A number of political parties and politicians play a significant role in intensifying the racial and xenophobic sentiments. In this regard, the statements of presidential candidates Kakha Kukava<sup>144</sup>, Shalva Natelashvili<sup>145</sup> and Salome Zurabishvili<sup>146</sup> delivered during the pre-election campaign 2018, were contentious. The statements of the former president of Georgia and the leader of the main opposition party Mikheil Saakashvili, on July 31 2018, on air of TV company Rustavi 2", in addition to statements made on August 31 2018, as well as on September 1 and 9 on his

<sup>140</sup> For instance, Iranian citizen, under a stage name DJ Ahu, was not allowed to enter Georgia on November 30,2018. In accordance with the information spread by the club „Mtkvari“, the musician was to take part in their show held in Tbilisi, on December 1

<sup>141</sup> Georgian State Border Crossing statistics of 2018 <https://info.police.ge/uploads/5c499dc17ae74.pdf>

<sup>142</sup> A letter of the Informational- Analytical Department of the Ministry of Internal Affairs of Georgia NMIA 01900597923, 07/03/2019.

<sup>143</sup> These countries have been selected according to the statistical data of the Ministry of Internal Affairs – countries whose citizens have been given the most refusals, in addition to those counties (Bangladesh, Nigeria, Cameroon, Iraq, Sri Lanka) whose nationals frequently speak about discriminatory treatment in Georgia;

<sup>144</sup> „Georgia without Immigrants“ Published: 03/10/2018 [Last seen: 05/04/2019], Political Party „Free Georgia“ <http://bit.ly/2RKCeM9>

<sup>145</sup> „Turkish Colonialism in Georgian Aviation“ Published: 26/09/2018 [last seen on 05/04/2019], Georgian Labor Party <https://www.youtube.com/watch?v=MwMiWR3f9kl>

<sup>146</sup> „Salome Zurabishvili’s Xenophobic Statement“ Published: 03/10/2018 [Last view:05/04/2019], News Agency – Netgazeti <https://www.youtube.com/watch?v=mOdjO2N6CII>

own Facebook page<sup>147</sup>, also on November 4<sup>148</sup> and 18<sup>149</sup> 2018, were xenophobic. In his xenophobic statements, he spoke about poor tourists by emphasising their ethnic origin and stating that their visit contradicts the state's interests. One of his last statements has been assessed<sup>150</sup> as being anti-Semitic.

Such references label the citizens of a particular country as an “invader” or as individuals acting against the interests of the state, as if immigration and integration of foreign nations in Georgia hinders the economic development of the state and threatens cultural identity. All of this, intensifies xenophobic sentiments, increases the risk of committing hatred motivated offenses and enhances discrimination in society. During the pre-election period politicians apply xenophobic statements strategically. This is done in order to attract the sympathy of the xenophobic groups in the society and raise their popularity, such actions further aggravate the conflict between representatives of distinctive ethnic groups and significantly erodes the international authority of Georgia as a democratic state, which in turn negatively affects the potential for tourism development in Georgia.

### Recommendations

#### To the legislative and executive authorities

- Maintain anti-discrimination policies in relation to foreign nationals and develop a strategy and action plan to combat racism and xenophobia;

#### To the Ministry of Internal Affairs of Georgia (MIA)

- Ensure an immediate response to all offences committed on grounds of racial/national intolerance and have adequate qualification of the crime;

<sup>147</sup> „Saakashvili: „I advise pseudo-liberals to carefully read the book of McCain where he writes about me”, Published: 10/09/2018 [last seen on 05/04/2019], News Agency – Tabula <http://www.tabula.ge/ge/verbatim/136686-saakashvili-fsevdoliberalabs-vurchev-kargad-tsaikitxon-makkeinis-tsigni-sadacchemze>

<sup>148</sup> „Mikheil Saakaashvili: „We do not need gaunt, „jgani,, (close to ugly) tourists, who come arrive in our county, we need wealthy Sheikhs”, Published: 04/11/2018 [last seen on 05/04/2019], Georgian Public Broadcaster (GPB) – 1 TV <https://1tv.ge/news/mikheil-saakashvili-ar-gvchirdeba-gadzvaltyavebuli-turistebi-jghanebi-romlebic-chamodian-chvens-qveyanashi-gvchirdeba-mdidari-sheikhebi/>

<sup>149</sup> „Saakashvili calls an Israeli PR Specialist a „ Jewish swindler”, Published: 19/11/2018 [last seen on 05/04/2019], Broadcasting Company – Radio Free Europe/Radio Liberty (RFE/RL) <https://www.radiotavisupleba.ge/a/29607342.html>

<sup>150</sup> Civil Platform „No to Phobia!” Once Again Responds to the Statements Made by Ex-President”, Published: 20/11/2018 [last seen 05/04/2019], Georgian Democratic Initiative <https://gdi.ge/ge/news/platforma-ara-fobias-eqsprezidentis-gancxadebebs-kidev-ertxel-exmaureba.page>

**To the Prosecutor's Office of Georgia**

- Ensure adequate oversight during the course of investigation regarding the crimes committed on the grounds of racial/national intolerance, effective and objective investigation of the criminal case;
- Pay appropriate attention to the motives for racial/national intolerance in the likely offence and highlight it at the stage of investigation, in the events of having sufficient grounds in the case;

**To the common courts**

- In all cases, explore, in depth, the reasoning of the State Service Development Agency's refusals on issuing residence permits and examine the preconditions for releasing relevant recommendations on inappropriateness of issuing residence permits by the State Security Service;

**To the LEPL State Services Development Agency**

- Ensure the maintenance of an administrative-legal act on issuing residence permits, despite the negative conclusion of the State Security Service in connection with the residence permit issuance case;
- Shun racial and national or any other type of discrimination in the course of administrative proceedings regarding residence permits;
- For a sufficient and reasonable time span, retract the obligation to leave Georgia during ongoing court cases seeking to obtain a residence permit;

**To political parties and their representatives**

- Abstain from statements containing populist and hate speech, as well as legislative initiatives that encourage intensification of negative, xenophobic attitudes towards foreign nationals and migrants;



**THE RIGHTS OF  
MINORITIES AND  
FOREIGN NATIONALS  
IN THE PENITENTIARY  
SYSTEM**



**D**ue to legislative shortcomings and vicious practice in penitentiary establishments<sup>151</sup> in Georgia, foreign nationals, stateless persons, persons of religious, ethnic and sexual minorities often become<sup>152</sup> the victims of unequal treatment.

### Language barrier

In an attempt to exercise a number of rights, the language barrier is an impediment to stateless individuals or ethnic minorities in penitentiary establishments. Due to the language obstacle, it is impossible to effectively communicate with the institution administration, as well as with other prisoners, and this fact causes unequal treatment.

An interpretation service<sup>153</sup> should be available for stateless or foreign national prisoners, as well as for those belonging to ethnic minorities, in order to ensure access to medical care and providing them with in-depth<sup>154</sup> information on symptoms, diagnosis and treatment methods. It is preferable, if the interpreter is not an employee of the security or institution, to ensure medical confidentiality.

According to the national legislation, the legislation does not guarantee interpretation in the penitentiary system; correspondingly, as a rule, there is no practice of using an interpretation service. This is confirmed by information<sup>155</sup> received from the penitentiary institutions; more precisely, based on the medical requirements as the penitentiary establishments have not had the need to use interpreter services, except in N2 and N3 establishments.<sup>156</sup> It should also be noted that, the mandatory form of informed consent for receiving medical care is available only in Georgian, which is a significant drawback<sup>157</sup> as well.

<sup>151</sup> N61800815091 letter of 05.09.2018; N01800847306 of 14.09.2018; N11800840197 of 13.09.2018; N51800822911 of 07.09.2018; N11800833933 of 11.09.2018; N01800844066 of 13.09.2018; N31800830893 of 10.09.2018; N81800830366 of 10.09.2018; N51800802715 of 03.09.2018 and N91800829602 of 10.09.2018.

<sup>152</sup> „The Rights of Minorities and Foreign Nationals in the Penitentiary System”, Desk research, „Article 42 of the Constitution”, 2018, available at: <https://article42.ge/ka/kvlevebi/article/68290-umciresobebis-da-uckho-qveyinis-moqalaaqeebis-uflebrivi-mdgomareoba-penitencieur-sistemashi> [Last view: 20.03.2019]

<sup>153</sup> Recommendation of the Committee of Ministers of the Council of Europe CM/Rec (2012)12 Rule 31.4.

<sup>154</sup> Recommendation of the Committee of Ministers of the Council of Europe R (98) 7<sup>1</sup> par. 60.

<sup>155</sup> N51800839878 letter of 12.09.2018; N81800847304 of 14.09.2018; N31800840199 of 13.09.2018; N9180084465 of 13.09.2018; N61800830904 of 10.09.2018; N11800830639 of 10.09.2018; N01800823438 of 07.09.2018; N01800802747 of 03.09.2018; N01800829603 of 06.09.2018; N91800814996 of 05.09.2018 და N91800834039 of 11.09.2018.

<sup>156</sup> N3 establishment of the penitentiary department applied the interpretation service two times, whereas N2 establishment three times.

<sup>157</sup> The Law of Georgia on Patient Rights, Article 22;

As stated in the information obtained from the penitentiary establishment, there are no resocialisation programs for foreign nationals or stateless individuals, as far as these measures are carried out, they are in Georgian.

### Connection with family members

The fact that the families and relatives of foreign national prisoners live abroad increasingly complicates meetings with them, as well as maintaining a strong connection. For insolvent prisoners, it is even more unattainable to exercise this right. The regulations for enjoying the right to receive and make phone calls, in parallel to other means of communication, should be flexible enough to provide the foreign prisoners to contact people abroad, with the equal access to various types of communication.<sup>158</sup> With the view of optimising family connection, visits should be organised in a flexible manner that may include the possibility<sup>159</sup> of incorporating permitted visits. In addition, insolvent foreign prisoners should be assisted by<sup>160</sup> further tools of communicating with the outside world. By these recommendations, the Committee of Ministers of the Council of Europe calls upon the state to positively discriminate against foreign prisoners, which is essential for eliminating the unequal condition that they face in maintaining steady relationships with their families.

National legislative regulations do not create a favorable environment for foreign citizens to maintain contact with their family members. In particular, for a foreign national or stateless individual, with families living abroad, enjoying the right of video visitation is unavailable, as the family member wishing to make use video visitation has to be present in the Special Penitentiary Service System to make the video call with the permission of the official and through the official technical equipment, specially provided for video visits. Oversea phone calls and postings are costly owing<sup>161</sup> to high tariffs. As revealed from data received from the penitentiary establishments, foreign national prisoners from N2, N6, N15 and N18 establishments have not exercised the right<sup>162</sup> of sending private letters abroad. Although the reported statistics do not provide perfect information on the given issue, the data from 5 different establishments clearly demonstrates that prisoners do not or perhaps cannot exercise the right. According to the Public Defender of

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<sup>158</sup> Recommendation of the Committee of Ministers of the Council of Europe of Foreign National Prisoners to Member States, 2012, Rec. 22.3

<sup>159</sup> Recommendation of the Committee of Ministers of the Council of Europe of Foreign National Prisoners to Member States, 2012, Rec. 22.5

<sup>160</sup> See also Rec. 22.4

<sup>161</sup> Report of the public Defender on the Protection of Human Rights and Freedoms in Georgia, 2016, Chapter: Regarding the Situation Existing in Penitentiary System pp. 236-237

<sup>162</sup> As stated in data provided by N7 and N9 establishments, they do not maintain foreign national or stateless detainees.

Georgia, the cost of international calls and postings restrain foreign prisoners from contacting<sup>163</sup> their family members.

Due to the stigma linked to the sexual orientation and gender identity of LGBTQI prisoners, in most of the cases, their family members rarely or even never visit. Besides this, these prisoners do not have the opportunity to enjoy the right of a lasting visit with their partners, which further exacerbates the feeling of exclusion and isolation, and affects mental health and social reintegration process. As stated in the national legislation, a long-term visit is permitted with a spouse or a person with whom the prisoner has children with<sup>164</sup>. The spouse, in turn, implies a person<sup>165</sup> in a registered marriage. In Georgia, there is no legal status of marriage or civil partnership for non-heterosexual couples, which makes it impossible to file any documentary evidence and enjoy the right of lasting visits.

The already existing regulations place the LGBTQI community in an unequal position compared to the other prisoners and restricts their right to private and family life. As stated in the Principles of Jakarta, marital visits should be equally available to all prisoners and detainees<sup>166</sup>, regardless of the partner's sex. The necessity for a registered marriage record represents an obstacle to prisoners in unregistered marriages, including minorities and foreign national convicts.

### **Access to religious clothing and food availability**

In the penitentiary system the legislation protecting religious minorities is in compliance with international standards, except in the scenarios of facilitating specific food and clothes.

In accordance with national legislation, prisoners are allowed to participate in religious activities<sup>167</sup>, as well as to have access to religious literature and items<sup>168</sup>. Besides, the law<sup>169</sup> determining the procedures of the enjoyment of this right, as stated in the procedures, prisoners can perform religious rituals in their cell or without such possibilities, in purposely built buildings<sup>170</sup>. These norms are inherently in line

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<sup>163</sup> Report of the Public Defender on the Protection of Human Rights and Freedoms in Georgia, 2016. Chapter: Regarding the Situation Existing in Penitentiary System pp. 236-237.

<sup>164</sup> Second part of Article 17<sup>1</sup> of the Code of Imprisonment.

<sup>165</sup> Article 1151 of the Civil Code of Georgia.

<sup>166</sup> Jakarta Principles, Principle 2 (on Prohibition of the Rights to Equality and Freedom from Discrimination), March 2007.

<sup>167</sup> The Code of Imprisonment, Article 14. Paragraph First, Subparagraph „g”.

<sup>168</sup> See also Paragraph 3

<sup>169</sup> Decree No. 187 of the Minister of Corrections, Probation and Legal Assistance of Georgia, December 30, 2010

<sup>170</sup> See also Article 4

with international standards. However, according to the information<sup>171</sup> obtained from the penitentiary establishment, these norms are enforced by violating the principles of equality; an Orthodox corner is present in all establishments; other religions, apart from prisons N 5 and N6 penitentiary institutions, only have the opportunity to perform rituals in the cell. Furthermore, virtually, religious items, special food and religious literature is not made available for prisoners from religious minorities. Shops within institutions sell only items of the Orthodox religion. The legislation permits receiving religious literature and iconic items through the post, however, to exercise this right is especially onerous for foreign nationals or stateless individuals, due to the distance of their close relatives.

The national legislation leaves a gap regarding the regulation of wearing religious clothing; the practice shows that despite religious conviction, prisoners do not wear religious garments, which could be equivalent to the restriction of religious freedom.

International standards are distinctive from national legislation. Clothing provided to foreign prisoners should not hamper their cultural and religious beliefs; they should be allowed to take advantage of cultural and religious traditions by wearing the connected clothing<sup>172</sup>.

The Code<sup>173</sup> of Imprisonment of Georgia ensures that the supply of season-appropriate clothing to prisoners, the penitentiary institution is authorised<sup>174</sup> to give special clothes to the prisoner. In practice, the penitentiary establishments supply prisoners with working clothes only. Often, prisoners do not agree the provided clothing<sup>175</sup>. Nevertheless, according to data<sup>176</sup> provided by the penitentiary establishment, they do provide the prisoners in need of clothing, however, data has not been updated recently.

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<sup>171</sup> N51800839878 letter of 12.09.2018; N81800847304 of 14.09.2018; N31800840199 of 13.09.2018; N9180084465 of 13.09.2018; N61800830904 of 10.09.2018; N11800830639 of 10.09.2018; N01800823438 of 07.09.2018; N01800802747 of 03.09.2018; N01800829603 of 06.09.2018; N91800814996 of 05.09.2018 and N91800834039 of 11.09.2018.

<sup>172</sup> Recommendation of the Committee of Ministers of the Council of Europe, (2012)12, Rule 19.1 and 19.2

<sup>173</sup> The Code of Imprisonment, Point first of Article 22

<sup>174</sup> See also Point 4

<sup>175</sup> „The Rights of Minorities and foreign nationals in the Penitentiary System”, Desk Research, „Article 42 of the Constitution”, 2018, p.10, available at: <https://article42.ge/ka/kvlevebi/article/68290-umciresobebis-da-uckho-qveynis-moqalaqeebis-uflebrivi-mdgomareoba-penitencieur-sistemashi> [last seen on 20.03.2019]

<sup>176</sup> N51800839878 letter of 12.09.2018; N81800847304 of 14.09.2018; N31800840199 of 13.09.2018; N9180084465 of 13.09.2018; N61800830904 of 10.09.2018; N11800830639 of 10.09.2018; N01800823438 of 07.09.2018; N01800802747 of 03.09.2018; N01800829603 of 06.09.2018; N91800814996 of 05.09.2018 and N91800834039 of 11.09.2018.

### Conditions of LGBTQI prisoners

LGBTI prisoners are one of the most vulnerable groups in the penitentiary system. There is always the threat of discrimination, verbal, psychological and/or physical assaults. The European Committee for the Prevention of Torture (CPT) notes that violence involves a wide range of circumstances, starting with invisible forms of sexual abuse and ending with intimidation and physical clashes<sup>177</sup>. In certain situations, solitary confinement of prisoners is an effective protective measure, although, their identification should not be published, which is common in Georgian penitentiary establishments. As international standards state, an individual consultation is crucial before solitary confinement, since it is preferable if the isolation has the consent<sup>178</sup> of the prisoner. Besides, the separation must be a temporary measure, its grounds and proportionality should be assessed regularly to prevent continued isolation.

Prisoners employed in the institution are victims of permanent discriminatory treatment underneath the criminal subculture prevailing in the Georgian penitentiary system. This group of prisoners, in turn, is divided into two categories – prisoners attached to the LGBTIQ community, and individuals from majority groups. Unwritten law, however, is so strict that any prisoner who communicates with a person representing this group, is automatically granted the membership of the LGBTQI group.

Homosexual prisoners are work separately from other prisoners enrolled in the penal labour. The prison system considers them to be low level group. They are prohibited from visiting the cells of other prisoners, as well as speaking to them, shaking hands with them, sharing food or any kind of household items. These prisoners are obliged to clean toilets, common showers and yards. Prisoners of sexual minorities do not distribute food to other prisoners, which indicates that the prison administration recognises the existence of the unwritten law and agrees to the effective segregation in order to avoid the wave of dissatisfaction or protest. Discrimination against prisoners belonging to the LGBTQI group is confirmed by the fact that they are not engaged in rehabilitation programs together with other prisoners.

The most severe thing that the subculture law allows is the right to sexual intercourse with LGBTQI prisoners. As stated by the prisoners, however, these facts have not been witnessed<sup>179</sup> in recent years.

The administration of the penitentiary establishments itself has to recognise unwritten laws which often discriminates against the LGBTQI group of prisoners fur-

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<sup>177</sup> CTP/Inf (2001) Paragraph 27

<sup>178</sup> Nelson Mandela Rule, Rule 89

<sup>179</sup> Sturdy on the Needs of MSM Prisoners in Georgian Penitentiary Establishments, 2013. Research on HIV Prevention. P. 14

ther. The institution administration, in order to distinguish LGBTIQ prisoners from other prisoners by forcing them to wear a uniform and since abandoning the practice, hand bands were used to distinguish the prisoners<sup>180</sup>.

The prison administration, aiming to protect sexual minorities, in practice isolates them. Segregation and separation of this group of minorities from the rest of prisoners is outdated and unfair. It is crucial to integrate this group of vulnerable prisoners into the mainstream prison society. It is thus, necessary to evaluate and periodically revise the isolation of prisoners in solitary confinement. Otherwise, the permanent isolation of prisoners could be in violation of Article 3 of the European Convention on Human Rights (prohibition of torture, inhuman or degrading treatment or punishment).

### **Recommendations:**

#### **To The Ministry of Justice of Georgia**

#### **To the Special Penitentiary Service of the Ministry of Justice of Georgia**

#### **To the Parliament of Georgia**

- Review current legislative regulations with the use of short-term and long term visits, video visitations, as well as telephone calls and written correspondence, in order to enable foreign nationals to maintain a strong connection with their family members;
- Provide all prisoner in need with the appropriate, seasonal clothes by legislative amendments;

#### **To the Ministry of Justice of Georgia**

#### **To the Special Penitentiary Service of the Ministry of Justice of Georgia**

- Make available psycho-social rehabilitation programs to foreign national and stateless prisoners despite the language barrier;
- Regularly update and deliver magazines and newspapers in foreign languages, in addition to adding additional TV channels and ensuring TV and radio broadcasting in the language prisoners understand;
- The Special Penitentiary Service should stock the prison store with varied religious items of several religions ;
- Arrange a religious corner (e.g. separate space/cell) on the grounds of the penitentiary facility for prisoners of religious minorities;
- Establish a foundation through the Special Penitentiary Service to provide weather appropriate and adequate amounts clothing for prisoners in grave socio-economic conditions.

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<sup>180</sup> See also. P.17

**INTERNALLY  
DISPLACED  
PERSONS (IDPs)**



**A**s of 2018, there are more than 282,000 internally displaced persons living in Georgia. Of these, only 112, 099 IDPs (40,673 out of 92 051 families) have been provided with long-term housing<sup>181</sup>. Although the state has drawn up a strategy<sup>182</sup> and action plan<sup>183</sup> aiming to improve the rights of IDPs, in addition to the Law of Georgia on Internally Displaced Persons – IDPs and Regulations<sup>184</sup> on providing housing for the IDPs, adopted in 2014. IDPs remain vulnerable group who are restricted from the right of proper housing, and cannot receive adequate and effective support from the state.

### The right to adequate housing

An important international document in terms of IDPs rights and state obligations is the Guiding Principles of the United Nations organisation on (subsequently“Principles<sup>185</sup>”) Forcible Displacement.

The state has the primary obligation and responsibility to create conditions, as well as to facilitate the return of IDPs to their land with security, peace and dignity, or voluntarily resettle them in other locations<sup>186</sup> of the country. These principles identify three durable solutions to problems faced by IDPs:

- Returning to the permanent place of residence;
- Local integration;
- Resettlement in another part of the country.

It is believed that the long-term solution is achieved when IDPs no longer need any specific assistance in terms of placement and protection, and such people can

<sup>181</sup> N01/2097 letter of the Ministry of Internally Displaced Persons from Occupied Territories, Labor, Health and Social Affairs of Georgia, February 20, 2019;

<sup>182</sup> By the Decree N47 of February 2, 2007, the government of Georgia approved the State Strategy for Internally Displaced Persons –IDPs;

<sup>183</sup> By the Decree N 2566 of the government of Georgia, dated December 31, 2018, has been approved 2019-2020 Action Plan for Implementation of the State Strategy for Internally Displaced Persons – IDPs;

<sup>184</sup> By the Decree of the Minister of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia, dated August 9, 2013, has been approved the „Rules of Providing Housing for the IDPs”;

<sup>185</sup> Principles were approved in 1989 and there is a broad consensus on the international level around them. These principles, in the international law, represent the so called „Soft Law”, which, by its essence, unlike astringent law, is not mandatory for the state, however, it contains the norms of international human law and humanitarian law and complies with them;

<sup>186</sup> The UN Guiding Principles, Principle 28;

## INTERNALLY DISPLACED PERSONS (IDPs)

exercise their human rights without<sup>187</sup> discrimination on the ground of forcible displacement. The presence of adequate living standards is one of the criteria, which is used to evaluate the range of achieved durable solutions.

The gradual realisation of the obligation of the right to adequate housing depends on the country's resources, however, their shortage does not relieve the state of the minimum commitment of realising the right. Recognition of the right to adequate housing obliges the state to take measures to ensure the realisation of recognised rights, by all, including through legislative means.

The right to housing is not just to provide a shelter, it is considered [...] "to be the right<sup>188</sup> [...] to live anywhere in safe, peaceful and dignified conditions. The right to adequate housing should not be interpreted narrowly and equated [...] with just shelter-provision, rather, [...] it should be seen as the right [...] to live somewhere in security, peace and dignity. The Committee has pointed out that the term *housing* envisages another context as well, namely, the provision of this right to all human beings, regardless to their access to economic resources. Besides, it should be understood not only in the context of accommodation, but also in the context of proper accommodation. [...] Adequate housing means ... a separate apartment, proper living space, relevant security, lighting and ventilation, basic infrastructure and location in terms of labour and primary services [...]"<sup>189</sup>

The Georgian Law on Internally Displaced Persons from Occupied Territories – IDPs defines adequate housing as accommodation provided to IDPs in possession or lawful ownership, where the necessary conditions for satisfactory living are ensured terms of safety and sanitation, and infrastructure availability<sup>190</sup>.

Nevertheless, a certain amount of IDPs have not yet received secure, adequate housing from the state. Whereas, in other settlements, where the government has resettled IDPs, the provided accommodation do not meet minimum standards of adequate housing so in a poorly connected location. The IDPs settlement location restricts the IDPs from accessing the right to education, medical services or employment opportunity.

On account of the challenging living conditions, several IDPs, , refuse to take own-

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<sup>187</sup> The Scheme of Inter-Agency standing Committee (IASC) for Durable Solutions of Internally Displaced Persons, the Brooking Institution – University of Bern Project on Internal Displacement, p.5, 2010

<sup>188</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), general comment N4 on the right to adequate housing, para. 7;

<sup>189</sup> Un Committee on Economic, Social and Cultural Rights (CESCR), general comment N4 (1991) on the right to adequate housing;

<sup>190</sup> Article 4, subparagraph „n”

ership of the provided accommodation. For example, many inhabitants of Shaumi-ani IDP settlement have rejected properties. According to information<sup>191</sup> obtained from the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, after the Russo-Georgian war in August 2008, 184 IDP families – 500 IDPs from Tskhinvali region and its surrounding villages were housed in renovated buildings formerly a military base of borough Shaumiani, Marneuli; of these 184 families, just 13 IDP families totaling 22 IDPs have accepted and have been transferred the ownership of the housing.

### Recommendations

#### **To the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia**

- Take appropriate measures to ensure IDPs with adequate housing in due time;
- Take actions to improve the socioeconomic status of IDPs and guarantee their integration by improving facilities and access to services;

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<sup>191</sup> № 01/9585 letter of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, health and Social Affairs of Georgia, November 14, 2018



# HUMAN RIGHTS DEFENDERS



The reporting period revealed a new group objected to assaults and discriminatory treatments, human rights defenders. Murders and physical abuse of human rights activists, discrediting campaigns run by high officials of government and initiation of legal proceedings were not uncommon in 2018. Neo-Nazi groups are actively engaged on social networks using Facebook to disseminate<sup>192</sup> xenophobic, homophobic and other hateful messages. This platform is also used to cultivate hatred against<sup>193</sup> human rights defenders.

### The case of Vitali Safarov

The case of Vitali Safarov, an employee of the local NGO, the „Center for Participation and Development” (CPD) who was stabbed to death on September 30, 2018, after a fight outside “Warszawa Bar”, near Tbilisi’s Liberty Square, represents a most grave development.

Before his murder, the human rights defender was organising tolerance camps and tackling hate and xenophobia among young children through teaching tolerance towards ethnic and religious groups. The clash allegedly broke out after he had addressed someone in foreign language. The attackers claimed that Vitali Safarov had to speak Georgian in Georgia. The fight started at Warszawa bar and continued outside, during the course of which Vitali suffered a fatal knife wounds that resulted in his death<sup>194</sup>.

At present, two persons are detained in connection with the murder case, initially, one was charged under Article 109 (d) of the Criminal Code (murder under aggravating circumstances due to grounds of racial, religious or ethnic intolerance). The other individual was charged under Article 376 (failure to report the crime)<sup>195</sup> of the Criminal Code. There was evidence that the accused, charged with failing to report the crime, was directly involved in the murder as he was beating the victim. This attack was established through testimonies of witnesses and a video recording, caught by surveillance cameras. Therefore, criminal prosecution against the defendants proceeded<sup>196</sup> not for failing to report the crime, but for participating in premeditated murder. Later, the Prosecutor’s Office charged the second accused

<sup>192</sup> <https://www.facebook.com/GeoNSM/>

<sup>193</sup> Facebook page – „Children’s Rights Protection Society”, [seen on 19/04/2019], available at: <https://bit.ly/2NbuAVC>

<sup>194</sup> „New Week” TV story, [seen on 19.04.2019], available at: <https://bit.ly/2Gw1olo>;

<sup>195</sup> A statement of the Civil Platform „No to Phobia!” on the „Case of Vitali Safarov”, [Seen:19.04.2019], available at: <https://bit.ly/2DQjPE1>

<sup>196</sup> The above

with the right qualification and now case is being reconsidered<sup>197</sup> in the court.

The case of Vitali Safarov demonstrates severe social consequences of reinforced and radicalisation of ultra-nationalist rhetoric. Unfortunately, the state does not have adequate social and law policy to prevent activates of such violent groups.

### Pre-election period

The negative attitudes of neo-Nazi groups towards human rights often are often in harmony with government rhetoric. The confrontational attitude of the government was particularly acute during the pre-election period of the presidential election when the Speaker of the Parliament of Georgia, Irakli Kobakhidze called Mikheil Benidze, chairman of the NGO “International Society for Fair Elections and Democracy”, a “fascism accomplice”.<sup>198</sup>

On October 22 2018, during the International Anti-Corruption Conference in Copenhagen, the Minister of Justice Tea Tsulukiani accused Eka Gigauri, the head of “Transparency International Georgia” of taking part<sup>199</sup> in the crackdown demonstration on November 7 2007. The ruling government team has not stopped this and during an interview on October 23, the chairman of the ruling party, Bidzina Ivanishvili, kept the practice of verbal attacks<sup>200</sup> on NGO sector representatives.

The campaign of the government against non-governmental organisations had been sustained by the sponsorship of various Facebook pages<sup>201</sup>. In the progression of the pre-election campaign, such support can be considered as election contributions, as pertaining to the law Article 2 (h<sup>4</sup>) of the Election Code, a contribution is anything of value given, including services, in addition to monetary funds and material goods, except for the cost of free airtime. Pages tend to support a particular candidate and discredit another, however, the operators of these pages remain hidden.

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<sup>197</sup> A TV story aired on „Rustavi 2” on April 16, 2019. [seen on 19/04/2019], available at: <https://bit.ly/2XvfPRv>

<sup>198</sup> An article of the Radio Free Europe/Radio Liberty – RFE/RL – Irakli Kobakhidze considers some of the representatives of NGOs to be „an accomplice of fascism”, [seen on 19.04.2019], available at: <https://bit.ly/2yFb0ez>

<sup>199</sup> Joint Statement of NGOs, [seen on 19.04.2019], available at: <https://bit.ly/2PIBHf4>

<sup>200</sup> Ibidem

<sup>201</sup> Facebook page, [seen on 19.04. 2019], available at: <https://www.facebook.com/naciaadamiani/videos/576928342738297/>

### The case of Giorgi Makarashvili

Government-supported hatred has been revealed in the particular violent actions against human rights defender, Giorgi Makarashvili. In October 2018, the Mayor of Gori, Konstantine Tavrazashvili caused controversy with a vague statement, in which he blamed Georgia for launching military operations in August 2008, during the Russo-Georgian war. On October 10, 2018, a civil activist Giga Makarashvili, together with his counterparts, held a peaceful demonstration outside the Gori Municipality. They brought wheat corn and manure wrapped in plastic bags. After a while, they threw them in the bin. Teimuraz Manvelashvili, the head of administration of the Gori Municipality City Hall, approached Giga Makarashvili from behind, and poured the contents of the bin, full of manure over<sup>202</sup> the head of the activist.

At present, Giga Makarashvili has been granted the status of the victim. Teimuraz Manvelashvili has resigned<sup>203</sup> and he had to pay 5 000 GEL bail<sup>204</sup>. The criminal proceedings against Teimuraz Manvelashvili under Article 144<sup>3</sup>, Part II(a) (degrading or inhuman treatment committed by the public servant)<sup>205</sup> of the Criminal Code of Georgia, are underway in the court.

### Recommendations

#### To high political officials

- Refrain from politically incorrect statements concerning human rights defenders.
- Support the work of human rights defenders.

<sup>202</sup> TV Imedi, October 10, 2018 – The Employee of Gori City Hall Put the Bin full of Manure and Cereal over the Activist's Head, [seen on 19.04.2019], available at: <https://bit.ly/2GvXYVY>

<sup>203</sup> The article of radio „Mosaic” - „, The head of the Administration of the Gory Municipality City Hall resigns today”, [seen on 19.04.2019], available at: <http://radiomosaic.ge/index.php/news/item/4013-2019-02-08-06-51-28>

<sup>204</sup> Article - „, Former Head of the Administration of the Gori Municipality City Hall is Imposed to 5 000 GEL Bail”, [seen on 19.04.2019], available at: <https://droa.ge/?p=42072>

<sup>205</sup> The court trail footages, [seen on 19.04.2019], available at: <https://www.youtube.com/watch?v=PPnHmkfxK4o>



