

# *Violations of the Rights of Lesbian, Gay, Bisexual, and Transgender People In Georgia*

Submitted to the United Nations Human Rights Committee by:



**იდენტობა | Identoba**

For Gender Equality and LGBT Human Rights

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## **INTRODUCTION**

Identoba is a Georgian gender equality and LGBT rights organization. This report provides additional information about the Government of Georgia's compliance with its obligations under the International Covenant on Civil and Political Rights (ICCPR) with regard to LGBT people specifically.

The report covers events that occurred in Georgia after Identoba's establishment in November 2010 through September 2013. Identoba collected the information presented in this report from individuals who have contacted the organization as well as from other LGBT organizations and human rights activists in Georgia. Media sources and legislation also were consulted.

The information presented in this report is not exhaustive. It reflects the limited amount of information that is available regarding the violations of LGBT people's rights in Georgia. Examples of specific incidences and rights violations are intended to provide a fuller picture of the experiences of LGBT people in Georgia. These cases are not the only incidents that have been brought to Identoba's attention, and were selected because they are examples of the overall trends described in this report.

## EXECUTIVE SUMMARY

According to recent independent polls, 88% of the Georgian public believes that homosexuality can “never be justified.”<sup>1</sup> 37% of Georgians think that protection of LGBT people’s rights is “not important at all,” and another 15% think that protection of LGBT people’s rights is “not important.”<sup>2</sup> Another recent survey found that 24% residents in Tbilisi, Georgia’s capital supported deporting LGBT people from the country.<sup>3</sup>

The strong social stigma against LGBT people manifests in hostility, discrimination, and acts of violence against LGBT people or those who are believed to be LGBT. There is a culture of legal impunity in Georgia for violations of LGBT people’s rights and disregard for the Government’s obligation to protect and promote the rights that the ICCPR guarantees to LGBT people.

Public violence is the most serious problem facing LGBT people. LGBT people are regularly harassed, attacked, and physically assaulted in public places. Consequently, LGBT people live in a constant state of insecurity and fear. LGBT people also experience discrimination in nearly every aspect of their everyday lives, and the State has not taken steps to protect LGBT people from discrimination or prevent discrimination. Most LGBT people conceal their sexual orientation at work for fear of being harassed and losing their jobs. LGBT children are bullied in schools and their families have abused them.

LGBT people also have been unable to enjoy their rights to express themselves and to assemble, and the State has not provided the physical protection necessary to secure the free exercise of these rights. An independent poll found that 79% of Georgians disapproved of the anti-homophobia demonstration that LGBT and human rights activists organized on May 17, 2013. 52% approved of the counter-demonstration, which was carried out with the intent to prevent LGBT activists and their supporters from holding their brief, peaceful, and silent demonstration.

LGBT people rarely report violations of their rights due to fear of discrimination from the authorities. When victims have reported violations, particularly violence and harassment, authorities have not investigated their complaints and have not punished perpetrators. The authorities also have not on a single occasion enforced legislation passed in 2012 that allows the State to prosecute hate crimes as separate offenses.

Despite these persistent and widespread rights violations, the Government’s 4<sup>th</sup> periodic report does not mention LGBT people or issues. Identoba has submitted this shadow report to provide the Committee with additional information about the State’s failure to prevent, investigate, and punish violations of LGBT people’s civil and political rights. Although the ruling government has changed since the Government’s report was submitted, the situation for LGBT people remains the same.

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<sup>1</sup> *Caucasus Barometer 2012*, Caucasus Research Resource Centers (2012).

<sup>2</sup> *Public attitudes in Georgia: Results of a June 2013 survey carried out for National Democratic Institute by Caucasus Research Resource Center* (June 2013).

<sup>3</sup> *Survey Analysis and Consulting Team (2013)*, available at <http://www.national-democratic-institute.org/act-gr/index/index/831>.

<sup>3</sup> Survey, Analysis and Consulting Team (2013), available at: <http://www.act-gr.com/eng/index/news/831>.

The new ruling government has been more accepting of LGBT people's existence in Georgia and recognizes LGBT people's right to physical integrity, which is a step forward from the attitude of the previous authorities. However, at the same time, the new ruling government has not shown a commitment to improving the situation for LGBT people, and has not adopted the policies and practices that are necessary to guarantee LGBT people's rights.

## **SUBSTANTIVE VIOLATIONS**

### **Articles 2(1) and 26 (non discrimination) and Article 3 (gender equality)**

The State has not taken steps to prevent, investigate, and punish acts of discrimination on the basis of sexual orientation and gender identity in accordance with its obligations under Articles 2 and 26.<sup>4</sup>

#### 1. Discriminatory provisions still exist in laws and regulations.

Although the Georgian Constitution has been interpreted to prohibit discrimination on the basis of sexual orientation,<sup>5</sup> discriminatory provisions in the Criminal Code and government regulations remain in force.

The Criminal Code [Article 138] recognizes the crime of “homosexual, lesbian, or other perverted sexual intercourse committed under violence, threat of violence, or on a helpless victim,” which is a separate crime from forced intercourse. This distinction is unnecessary and discriminatory.

A Ministry of Health, Labor, and Social Affairs regulation<sup>6</sup> imposes a lifetime ban on blood donations from Men who have Sex with Men, commercial sex workers, and injecting drug users. By contrast, engaging in “risky sexual behavior” temporarily disqualifies heterosexual individuals. The regulation is premised on the stereotyped and discriminatory belief that a man having sex with another man is an inherently risky behavior. The regulation thus unfairly singles out Men who have Sex with Men and prevents all of them from donating blood, even though the general provisions of the regulation adequately address specific risky sexual behavior. The Ministry has not been willing to enact a regulation that does not discriminate against Men who have Sex with Men, despite repeated requests from Identoba and pending constitutional litigation over the issue.

#### 2. The State has not enforced legal provisions that prohibit employment discrimination.

Although the Labor Code explicitly prohibits employers from discriminating against an employee based on the employee's sexual orientation,<sup>7</sup> discrimination on the basis of sexual orientation remains common in the workplace. Employers have refused to hire LGBT people and have fired LGBT people after learning about their sexual orientation.

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<sup>4</sup> Toonen v. Australia, Communication No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (1994).

<sup>5</sup> *Shota Beridze v. Parliament of Georgia*, Constitutional Court of Georgia, (392)-2007 (31 March 2008).

<sup>6</sup> Order of the Ministry of Health and Social Protection #241/N (December 5, 2000).

<sup>7</sup> Labor Code of Georgia, Art. 2(3).

- In 2012, A. was fired from his job working as a server in a restaurant. Although the formal reason given for A.'s dismissal was that customers preferred women as servers, A.'s employer informally told him, "We know who you are and what you represent," i.e., that A. is homosexual.
- A security guard at A.'s workplace heard that A had participated in the May 17, 2013 demonstration against homophobia. The security guard told A.'s co-workers about A.'s participation in the demonstration. When A. next arrived at his workplace, the security guard threatened to physically assault A., and A's co-workers became aggressive toward him. A. was fired about a month after the demonstration, and was told that it was because he was a "faggot" who "supports faggots."

LGBT people who are able to remain employed have experienced harassment from bosses and coworkers.

- P. was working at a bar in Tbilisi considered to be gay-friendly, and P. was open about her sexual orientation with some of her co-workers. After P.'s manager heard about P's orientation, the manager began to verbally harass P. every morning with conversations about "morality" and "perversion." P. quit her job approximately a month afterward.

Only 15.3% of LGB people are open about their sexual orientation at work due to fear of discrimination.<sup>8</sup> Many LGBT people choose employment in sectors in which it is considered easier to hide one's sexual orientation, such as certain services (e.g., cafes and bars) and creative professions. They face greater barriers to entry in professions such as law and medicine as well as the public sector.

Although the government plans to adopt a new anti-discrimination law, a new law is not sufficient to ensure LGBT people's right to nondiscrimination in the workplace. The government needs to take additional positive steps to prevent workplace discrimination and provide a remedy for LGBT people whose rights are violated. The government does not have a policy document on discrimination in employment on the grounds of sexual orientation or gender identity, even though it has released policy documents on employment discrimination against ethnic and religious minorities. The Ministry of Health, Labor, and Social Affairs also has not encouraged employers to promote diversity and tolerance in the workplace, and has not facilitated the creation and enforcement of nondiscrimination policies and procedures.

### 3. The State has not taken steps to prevent service providers from discriminating against LGBT customers.

Service providers regularly discriminate against LGBT customers. 41.3% of LGB people report that they have experienced discrimination from service providers, including State-provided and State-funded services. Providers have harassed and refused to serve LGBT customers.

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<sup>8</sup> Note that all of the statistics cited in this report about LGB people's experiences were gathered in a 2012 Identoba survey of 150 LBT respondents in Tbilisi.

- On May 17, 2013, members of Identoba were traveling in a taxi to the anti-homophobia demonstration and were carrying posters for the event. The driver asked the passengers what was going on, and one passenger replied that they were going to take part in the demonstration. The passenger also stated that he was gay. The driver began to aggressively harass the passengers, and the passengers had to get out of the taxi before they arrived at their destination.

Discrimination is a particular problem in health care, and the State has not taken the appropriate steps to operationalize anti-discrimination laws and monitor health care providers. Health care providers have discriminated against and harassed LGBT patients. At times, this harassment has forced LGBT patients to forgo immediate medical treatment.

- In 2013, A.O., a transgender person, was attacked and physically assaulted in Tbilisi. She went to Gudushauri Clinic for treatment of her injuries. The staff, however, mocked her and delayed provision of treatment. Ultimately, A.O. left the clinic without receiving treatment.
- In 2013, S.A., a gay/trans man, went to the Amtel Hospital First Clinic in Tbilisi after being beaten up in the street. The staff mocked him for having long hair and dressing like a woman. S.A. left the clinic without receiving a diagnosis or treatment.
- In 2013, L.M. sought dental care in a private clinic. The dentist, however, refused to examine or treat him because the dentist suspected that L.M. was gay.

Fear of discrimination from service providers has been cited as a major factor that discourages LGBT people from seeking medical treatment at all, especially for sexual health issues.<sup>9</sup>

#### 4. Barriers to Legally Changing One's Sex

The State has imposed discriminatory barriers on transgender people who seek to change their sex in official documents. The Civil Registry in practice has required transgender persons to submit a certificate indicating that they are a “true transsexual” in order to change their sex on their national identification cards, even though this is not required by law.<sup>10</sup> A “true transsexual” certificate requires that a person undergo hormone therapy or surgical intervention. The cost of these procedures amounts to approximately 19,000 GEL (11,500 USD), which is not covered by the State health care policies. In addition, the State does not permit changing one's sex on a birth certificate or university diploma.

These State policies also heighten the risk that transgender persons will experience additional rights violations. Many transgender people do not wish to have surgery or undergo hormone therapy, and those who may want to have surgery or hormone therapy likely do not have sufficient resources. As a result, many transgender people's national identification cards

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<sup>9</sup> *Stigma and Discrimination in HIV-related Services: Qualitative research among men who have sex with men*, Center for Information on Public Reproductive Health—Tanadgoma (2012), p.10.

<sup>10</sup> Note that there is no legislation or regulation that regulates the process for changing sex on national identification cards.

contradict their appearance. Presenting this card may force transgender people to reveal their birth gender against their will, and may lead to arbitrary interference with their right to privacy (Article 17).

The inability of transgender people to change their gender on their birth certificates and university diplomas also places them at risk of additional rights violations. For example, if a person loses her national identification card or passport, she may need to use her birth certificate to apply for a new card or a passport. Some visa applications also require submission of a birth certificate. Most employers require employees to submit copies of their university diplomas for their personnel files. Again, as a result of contradictory appearances and documents, transgender people may be required to reveal their birth gender against their will. In addition to violating the right to privacy, disclosure of birth gender or gender identity exposes transgender people to a real risk of employment discrimination (discussed above on pages 5 - 6).

### **Article 6 (Right to Life)**

The State has failed to ensure a legal environment in which private individuals respect the right to life of LGBT people.

- D. was violently murdered in his apartment in western Georgia in April 2013. Although D. was not openly gay, he was known to have secret sexual relationships with men. D.'s body had multiple injuries to his head and face. The injuries were inflicted with a blunt object. D. also was stabbed multiple times, and the cause of death was asphyxiation. D.'s friends who visited the crime scene reported that the word "homosexual" also had been spray painted in D.'s apartment. The crime was investigated and prosecuted as a robbery, with no mention of the evidence that D.'s murder was a hate crime.

Many Georgian LGBT people, especially those who reside in the regions outside of Tbilisi, are not open about their sexual orientation. Violations of LGBT people's right to life are publicized and prosecuted as simple murders, even when there is evidence that victims have been murdered because of their sexual orientation. Consequently, there is little information about violations of LGBT people's right to life.

The State also has not taken the positive measures that are necessary under Article 6 to protect LGBT people's right to life. Authorities have not prosecuted individuals who have threatened LGBT people's lives, and the authorities have not informed victims of the progress or status of investigations.

- In May and June 2012, two Identoba employees received death threats on Facebook. Identoba sent 2 complaints about the threats to the Prosecutor's Office, but never received a response.
- In April and May 2013, D.B. repeatedly and personally threatened several Identoba staff members, including with murder (see details on page 10). D.B. on several occasions also showed one staff member that he was armed. Identoba has filed several complaints with the Prosecutor's Office about D.B. The Prosecutor's Office opened an investigation, but



the Office has not provided Identoba with additional information about the status of the investigation, and D.B. remains free.

- In May 2013, S.A. was in the street with his boyfriend when he was attacked and assaulted. The attackers took S.A.'s identification card, and then attacked him in his home a few days later. S.A. also began receiving death threats via social networks. Strangers contacted S.A.'s family members on a social network website and told the family that S.A. was gay, and S.A. was forced to move to a domestic violence shelter. He continued to receive death threats. When Identoba asked the Prosecutor's Office to investigate the case, the prosecutor responsible for the case stated that the authorities cannot investigate all of the "foolishness and buffoonery" that occurs on social networks. When Identoba expressed its concern that the individual who was threatening S.A. knew that S.A. had moved, the prosecutor dismissed the complaints, stating that it was impossible to determine whether the same person was threatening S.A.

### **Article 7 (Freedom from Torture and Cruel, Inhuman, and Degrading Treatment) and Article 9 (Right to Liberty and Security of Person)**

LGBT people regularly experience acts of violence and harassment that rise to the level of cruel, inhuman, and degrading treatment. These acts also have a serious impact on LGBT people's right to liberty and security of person.

1. LGBT people lack security in public because they frequently are targeted for violence and harassment.

LGB respondents in Identoba's 2012 survey reported that their lack of personal security in public is the biggest problem that they face. 32% of survey respondents had experienced physical violence at least once in the previous 2 years, and 45.8% of those incidents took place in public places such as parks or streets.

- On April 9, 2013, Z.S., a gay man, was entering the Tbilisi metro with two companions when another man approached him and asked Z.S. to join him outside the metro. As Z.S. and his companions exited the metro, 3 men attacked Z.S. Before Z.S.'s companions fled the scene, the attackers asked them, "Why are you with him? Don't you know that he's a faggot?" Z.S. suffered a concussion, the facial bones on one side of his face were destroyed, and he needed major reconstructive surgery after the attack.
- On May 22, 2013, 4 transgender people, two of whom were minors, were attacked by a group of people as they exited a bar in the Gardabani district. Some of the attackers used a chair to physically assault the victims, who needed medical treatment for their injuries.

Violence also has occurred during public demonstrations in 2012 and 2013. On May 17, 2012, LGBT and human rights activists held the first-ever public demonstration relating to LGBT issues. Activists marched down a major street in Tbilisi to mark the International Day Against Homophobia and Transphobia. During the march, approximately 60 counter-protestors representing ultra-Orthodox Christian factions encircled the small group of demonstrators and blocked their way. The counter-demonstrators threatened the LGBT activists and then physically assaulted them. The designated police escort did not step in to protect the demonstrators, and

police officers did not intervene until after the counter-protestors began attacking the demonstrators.

On May 17, 2013, LGBT and human rights activists were attacked again when they attempted to hold an anti-homophobia demonstration in Tbilisi. Thousands of well-organized counter-demonstrators, led by Orthodox clerics, surrounded the small group of demonstrators. Counter-demonstrators broke through police cordons and attacked the activists, screaming, “Kill them! Tear them to pieces!” and “Don’t let them leave alive!” The police evacuated many activists on buses, which the mob also attacked. The mob surrounded one minibus, smashed the windows, and dragged out the occupants. The mob also surrounded a house where some activists had hidden, threatening to “drag them out” and “stomp them to death.” Another small group of activists sought refuge in a grocery store. When a police escort later evacuated the activists, the escort was attacked and chased. A total of approximately 30 people, including journalists, suffered injuries, primarily to the skull and chest, as a result of the attacks.

Identoba has received information about 34 incidents of violence and intimidation that occurred during and after the May 17, 2013 anti-homophobia demonstration. Identoba estimates that the Ministry of Internal Affairs has received information about 50 cases. The Public Defender (human rights ombudsman) also has received information about 32 cases of violence that occurred during and after May 17, 2013. These acts occurred against LGBT people and people whom the perpetrators believed were LGBT.

- D.B. harassed and threatened Identoba and its staff members repeatedly before, during, and after the May 17, 2013 anti-homophobia demonstration. On May 14, D.B. called S., an Identoba employee, and threatened the organization. He later continued to threaten S. on Facebook. On May 16, he came to Identoba’s office and again threatened to attack the anti-homophobia demonstration as well as Identoba. On May 17, he threatened and chased Identoba’s staff after the demonstration. On May 17, he also threatened S. via text on her mobile phone and threatened to kill an LGBT activist who was on a TV program at the time. Before and after May 17, he also has repeatedly approached R. in the streets of Tbilisi and threatened her with a gun.
- After the May 17, 2013 demonstration, A. was surrounded by young men at a restaurant in Tbilisi and physically assaulted. The next day, he was again attacked by a group of young men and his hair was set on fire, “in order to change his gay hairstyle.” The day after, A. was again physically assaulted.
- After the May 17, 2013 demonstration, a car driver attempted to run over an Identoba staff member. He then climbed out of the car, shouted at her, “You dirty lesbian,” and attempted to physically assault her.
- On May 18, two young women were walking down a street in Tbilisi when a young man saw them and shouted, “Look, she does not have breasts, she must be a faggot.” A group of young men then chased and physically assaulted the women, who had not attended the demonstration and are not LGBT activists.

2. The authorities have failed to prevent, investigate, and prosecute acts of violence, intimidation, and harassment.

72.9% of LGB victims of violence do not report violence to the police. 54.3% did not approach the police because they feared that the police would have a homophobic reaction or that the police would be ineffective. This fear is justified—of those who did report an incident to the police, 46.2% stated that they experienced a hostile, homophobic reaction from the police.

- In April 2013, Z.S. sought to file a complaint with the police after he was attacked (details about the attack are on page 9). When Z.S. told the officer that he was attacked on the basis of his sexual orientation, the officer replied that he would have to arrest Z.S. if Z.S. added this detail to the case file.
- On May 19, 2013, S. was physically assaulted in the streets of Tbilisi. After the attack, S., whose face and clothes were visibly bloodied, stopped a police car and asked for help. The officers asked S. why he had been attacked. When S. replied that he had been attacked due to his orientation, the officers drove away without offering S. any assistance.

In most cases, police are not purposefully homophobic toward victims. Rather, police homophobia generally is a result of the absence of proper LGBT sensitivity training. The Ministry of Internal Affairs has said that the Ministry, after the May 17th incident, is now including anti-discrimination themes in police academy curricula, but has not provided evidence to support that claim.<sup>11</sup>

Police also have discouraged LGBT victims of crimes from pressing charges against perpetrators.

- In April 2013, a young man was attacked in Tbilisi because he “looked gay” due to his manner of dress and “weak” physical appearance. The young man, a minor, sustained a concussion. Medical assistance was required to remove his dental braces from his cheek. Although the victim initially asked Identoba for assistance, the police pressured him to drop his case, and the victim subsequently recanted his testimony, stating that he had fallen and injured himself.

Police also have not taken action to arrest perpetrators of violence against LGBT people.

- On May 18, 2013, a woman who participated in the May 17 demonstration and who does not have a traditionally feminine appearance was chased by group of young people, who verbally and physically assaulted her. She stopped a patrol police car that brought her to safety, but the police did not detain her assailants.

When the Prosecutor’s Office has opened an investigation, it has not provided information to victims about the status or progress of investigations.

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<sup>11</sup> Identoba meeting with the Deputy Minister of Internal Affairs on September, 16, 2013.

- In June 2012, members of Shavrazmelebi (“Black Combatants”), an organization that was dedicated to conducting physical attacks against members of the LGBT community, posted public incitements to violence against LGBT persons. For example, one member uploaded a photo of a T-shirt bearing the slogan, “Kill Gays.” Identoba requested the Prosecutor’s Office to open an investigation under Article 225 of the Criminal Code (organizing, directing, or participating in public violence), but received no response to its inquiry.
- In April 2013, a group called The Brigade Fighting against Pederasts appeared on Facebook. The group’s page included a video produced by a Russian skinhead group that showed LGBT people being physically assaulted and encouraged the murder of gays and lesbians, who were referred to as “mistakes of nature”. Members of the group also discussed torture and murder of LGBT people. Identoba referred this page to the Chief Prosecutor, but received no response.
- The Prosecutor’s Office has not provided information to victims about the status of investigations into death threats described on pages 8 and 9.

The authorities also did not take appropriate measures to hold accountable individuals who attacked LGBT activists and their supporters during public demonstrations. After the acts of violence that occurred on May 17, 2012, 2 individuals were detained for violating the Administrative Code and fined 100 GEL (approximately 55 USD).

Despite widespread violence at the planned anti-homophobia demonstration on May 17, 2013, the authorities filed charges against only 9 counter-protestors. It took the Ministry of the Interior 4 days before it filed the first charges. At that time, 4 individuals were detained for disorder and minor hooliganism, and fined 100 GEL (60 USD). Subsequently, 5 attackers (including 2 priests) were charged with violating the right to assembly,<sup>12</sup> which carries a maximum penalty of 2 years in prison and/or a fine.

The Prosecutor’s Office does not appear to be committed to prosecuting perpetrators of violence, particularly members of the clergy who incited and participated in the attacks. On August 1, at a preliminary hearing, the Tbilisi City Court dismissed the charges against one priest due to insufficient evidence. The judge ruled that rules of procedure require multiple pieces of evidence to support a charge and that the video evidence, which was the only evidence that the Prosecutor’s Office submitted in the case, was insufficient under this rule. The video showed the accused swearing and shouting, “We will kill you!” as the crowd, led by priests, ran towards the group of demonstrators. It was unclear why the Prosecutor did not submit the testimony of any witnesses, such as the police officers present at the demonstration or anti-homophobia demonstrators.

At the time of writing (August 2013), the second priest and the other 3 attackers still have not been prosecuted. The Tbilisi City Court has postponed hearing their cases several times.

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<sup>12</sup> Art. 161 of the Criminal Code.

3. Police, prosecutors, and judges have not implemented hate crimes legislation.

On March 27, 2012, Parliament passed amendments to the Criminal Code that added “homophobia” to the list of aggravating factors for crimes.<sup>13</sup> According to official documentation that the Prosecutor’s Office provided to the Public Defender (human rights ombudsman), a total of 0 perpetrators have been charged with the aggravating factors since Article 53(3) entered into force. There is evidence, however, that numerous criminal acts during this interval were motivated by bias against the victim’s sexual orientation or gender identity, including the violent acts that occurred during the demonstration May 17, 2013 (discussed on pages 9 and 10) and subsequent attacks on LGBT people.

Police, prosecutors, and judges all have failed to ensure implementation of the law. Police officers have not collected evidence of bias, prosecutors have not investigated bias indicators or presented evidence of bias to judges, and judges have not imposed additional penalties when determining sentences. The Ministry of Justice has not taken sufficient steps to ensure that police, prosecutors, and judges understand their responsibilities under the legislation, which also contributes to the lack of implementation of the law. Further, implementation also is hampered because many police officers, prosecutors, and judges do not fully understand the meaning of the concept of a hate-motivated crime and the legislation does not make clear what evidence shows that a hate crime occurred.

4. Police have assaulted and harassed LGBT people.

Police officers have at times harassed and assaulted LGBT people. Sex workers in particular report this problem. MSM (men who have sex with men) sex workers in Tbilisi have reported that they regularly experience physical and verbal abuse from police officers, in addition to that which they experience from their clients.<sup>14</sup> Since prostitution is officially illegal in Georgia, the sex workers are unable to seek redress for this behavior.

5. GBT prisoners are discriminated against and ill treated in prison.

GBT prisoners report that they experience discrimination and violence in prison. Prison administrators separate all GBT prisoners from other prisoners, with separate living quarters from other prisoners, referred to as a “henhouse” (ბებობა). Those GBT prisoners who do not identify themselves are encouraged to do so, otherwise they risk being attacked and murdered in their cells. Other prisoners who are socially ostracized and considered “weak” are also placed in the “henhouse.”

Prisoners state that the administration forces them to wear armbands to identify themselves so the general population will not touch them or “contaminate” them with “gayness.” Material conditions in the “henhouse” are significantly worse than those in the living quarters for the general population. These prisoners also are forced to work in the prisons, including cleaning the general population’s living quarters as well as the prison hospital morgue, which other prisoners are not required to do. These prisoners also serve as the forced prostitutes for the general population. One prisoner reported that he performs approximately 150 nonconsensual sexual acts

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<sup>13</sup> Article 53(3) of the Criminal Code

<sup>14</sup> Identoba submission to OSCE, 2012, p. 7.

per month. Many of these acts are unprotected, and expose the prisoners to sexually transmitted diseases.

### **Article 17 (Right to Freedom from Arbitrary Interference with Privacy, Family, and Home)**

LGBT people experience violations of their right to privacy when they seek medical treatment. Many medical services are performed in the presence of other patients waiting in line, and there is no confidentiality between doctors and patients. This situation forces LGBT people either to reveal their orientation in front of a group of strangers—a violation of their right to privacy—or conceal their orientation, thereby limiting their access to specialized sexual health information and services.<sup>15</sup>

In January 2013, the Prosecutor's Office released video footage of prominent men having sex with other men. The previous government had collected this footage in order to blackmail political opponents. Although the Prosecutor's Office took steps to conceal the identities of the individuals in the videos before releasing them to the public, some individuals in the videos were still identified. This act put victims at risk of identification and disclosure of their orientation against their will.

- In April 2013, the Deputy Minister of Interior leaked one of the films on the Internet. The film showed sexual activities between Giorgi Paresishvili, a journalist who frequently criticized government officials, and two other people. Paresishvili had not previously disclosed his orientation to the public. The Deputy Minister responsible for the attack was fired, but has not been prosecuted.

In September 2013, the government partially destroyed the stockpile of footage, but it is likely that copies still exist. As a result, there is a real risk that other videos may be leaked and used to discredit prominent LGBT people who have not publicly disclosed their orientation.

### **Article 19 (Freedom of Expression) and Article 21 (Right to Peaceful Assembly)**

The State has failed to ensure that LGBT people are able to exercise their rights to express themselves and to assemble peacefully. On both May 17, 2012 and 2013, LGBT and human rights activists were not able to complete their demonstrations due to physical attacks. The authorities were informed about both of these events in advance, and they were aware that counter-protests were planned. Nevertheless, the authorities did not take all possible non-violent measures to ensure that LGBT demonstrators were able to exercise their rights.

For example, before the planned demonstration on May 17, 2013, the authorities promised to ensure that anti-homophobia demonstrators could hold their demonstration safely. However, the Ministry of Internal Affairs did not use all possible measures to ensure that LGBT demonstrators could hold their demonstration. The police did not appear to be prepared for the scale of the

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<sup>15</sup> *Stigma and Discrimination in HIV-related Services: Qualitative research among men who have sex with men*, Center for Information on Public Reproductive Health—Tanadgoma (2012), p.10.

counter-protest, which was announced in advance. Police officers were not equipped with appropriate non-lethal equipment to manage the counter-protestors, such as shields. In addition, barricades were weak—only a single line of police officers stood between the anti-homophobia demonstrators and the counter-demonstrators. Although the police were able to evacuate many of the demonstrators safely, the demonstrators were not able to exercise their rights to assembly and to expression.

In addition, after the attacks, the government has not attempted to counter two key mistaken public beliefs that contributed to the May 17 attacks: 1) there appears to be a lack of understanding among the public that citizens only have the right to express themselves and assemble *peacefully*; and 2) the mistaken view that LGBT demonstrations are a violation of the rights of Orthodox Christians' right to freedom of religion.

#### **Article 24 (Special Protection of Children)**

LGBT minors face special problems, particularly at home and in school. After LGBT children have disclosed their sexual orientation or gender identity to their families, family members have physically and psychologically abused them. The State has not always intervened as Article 24 requires,<sup>16</sup> nor has it provided LGBT-sensitive support services for those children.

- After 16-year-old B.K. disclosed his orientation to his father, B.K.'s father has verbally and physically abused him. B.K.'s father objects to B.K.'s "feminine behavior" and "feminine hairstyle." B.K.'s father also has requested that the family's social worker get involved and "make B.K. right."

Social workers also have refused to provide services to minors under special care because they believed that these minors were LGBT. Most government-employed social workers have not completed LGBT sensitivity training, and as a result are not prepared to handle these situations in an LGBT-friendly manner. Although the Georgian Association of Social Workers has asked Identoba to help them train social workers, the State neither provides nor has expressed any desire to provide such training.

Students also experience discrimination at school based on their actual or perceived sexual orientation or gender identity.

- After a school director recognized a girl who came to support the anti-homophobia demonstration on May 17, 2013, the director insulted the student during class. The director also threatened to kick the student out of the school if the student is involved in LGBT activism in the future.
- X., who was 12 years old, was expelled from school in 2013 after she showed too much affection to her female classmates. Parents of X.'s classmates put pressure on the school director to have X. kicked out of school to stop her from "perverting" their children. No

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<sup>16</sup> U.N. Human Rights Committee, *General Comment 17*, para. 6. (stating "[i]n cases where the parents and the family seriously fail in their duties, ill-treat or neglect the child, the State should intervene to restrict parental authority and the child may be separated from his family when circumstances so require.")

attention was given to the fact that X. was a victim of incest and was living in a State shelter at the time.

Students also have been bullied based on their actual or perceived sexual orientation or gender identity. Bullying has a serious effect on students' attendance and performance at school, which in turn has an effect on students' prospects for higher education and employment. It also encourages self-destructive behavior, such as self-mutilation, drug use, eating disorders, and sometimes suicide. School directors and teachers have not been trained to recognize and respond to bullying of LGBT students. Although the Ministry of Education requires schools to have inclusive policies, inclusive policies are not required to include reference to gender or LGBT issues specifically.



## RECOMMENDATIONS

- Amend national human rights strategy documents and action plans so that they include combating discrimination based on sexual orientation and gender identity.
  - Parliament should conduct this process in consultation with LGBT organizations and experts.
- Ensure effective implementation of hate crimes legislation by addressing the respective law enforcement authorities' lack of information about the law, especially at the lower levels.
  - The Ministry of Internal Affairs should develop a task force on hate crimes, institute a hotline for victims, and create guidelines for responding to hate crimes. The Ministry also should educate police academy students and police officers about hate crimes and train them to ensure collection of evidence of bias.
  - The Prosecutor's Office should ensure that prosecutors present evidence of bias to judges and do not discard it. Prosecutors should be educated about hate crimes and trained to collect and present evidence of bias.
  - The Ministry of Justice and the Supreme Court should train members of the justice system, especially court personnel, to apply and utilize Article 53(3) of the Criminal Code. Judges should be educated about hate crimes and trained to identify evidence of hate crimes.
  - The courts, investigative bodies and the Ministry of Justice should start collecting statistics about hate crimes and publish them at regular intervals. Statistics should include a specific breakdown of hate crimes against each vulnerable group listed in Article 53(3) of the Criminal Code, including LGBT people.
- Increase support for LGBT victims of violence.
  - Ensure that state-supported domestic violence shelters have the resources and appropriate expertise to effectively respond to violence against LGBT people.
  - Establish a shelter specifically for victims of discrimination based on sexual orientation or gender identity.
  - The Prosecutor's Office should improve communication with LGBT victims of crime and take steps to ensure complainants' security. Prosecutors should provide periodic regular updates on the progress of investigations to complainants, even if the complainant has not been granted formal victim status.
- Thoroughly and promptly investigate all acts of violence that occurred during the anti-homophobia demonstrations on May 17, 2012 and May 17, 2013.
  - The Prosecutor's Office should keep victims and advocacy organizations that support victims informed about the status and progress of investigations.
- Ensure that the new anti-discrimination law effectively protects LGBT rights.

- Parliament should develop an action plan on LGBT discrimination and require training and sensitization programs for all government agencies on the new anti-discrimination law as it applies to LGBT people specifically.
  - All government ministries should adopt policies and action plans to prevent and respond to discrimination against LGBT people, especially the Ministries of Education, Health Care, Labor and Social Welfare, Defense, Internal Affairs, and Justice.
- Take steps to reduce employment and health care discrimination against LGBT people.
    - The Ministry of Health, Labor, and Social Affairs should adopt targeted policies on LGBT discrimination in employment and health care.
    - The Ministry of Health, Labor, and Social Affairs should institute a monitoring mechanism for businesses and healthcare service providers to ensure that those institutions comply with nondiscrimination legislation.
    - The Ministry of Justice should ensure that the Civil Registry allows people to change their gender in all identification documents. The Ministry also should ensure that Civil Registry staff does not require transgender people to submit unnecessary documentation, including a “true transsexual” certificate, in order to change their gender on identification documents.
- Combat discrimination and bullying of students who are LGBT or perceived to be LGBT.
    - The Ministry of Education should either institute diversity and human rights training curriculum for school directors and teachers that expressly covers LGBT issues or expand the definition of “inclusive education” to include LGBT students as a protected category.
- Take immediate steps to end abuse of LGBT prisoners.
    - If segregation from the general population is necessary to ensure LGBT prisoners’ safety, it should be done in a manner that provides them with equal living conditions and does not expose them to violence and discrimination.
- Ensure that LGBT activists are able to exercise their rights to expression and peaceful assembly.
    - The Ministry of Internal Affairs should improve preparation for future demonstrations and take appropriate steps to prevent attacks on demonstrators.

## QUESTIONS FOR THE GOVERNMENT

- How does the Government intend to respond to systematic violence, harassment, and intimidation of individuals on the basis of their sexual orientation and gender identity?
- How does the Government intend to address the problem of the police force's inadequate investigations into violence and harassment of LGBT people?
- Why have no perpetrators of violent crimes against LGBT people been sentenced under Article 53(3) of the Criminal Code? What concrete measures are being taken to clarify the respective roles and responsibilities of police, prosecutors, and judges with regard to Article 53(3) of the Criminal Code? Who is responsible for applying Article 53(3) of the Criminal Code?
- Why has there been a lengthy delay in the prosecution of the attacks that occurred against anti-homophobia demonstrators on May 17, 2013?
- What will the Government do to implement the new anti-discrimination law as it applies to LGBT people specifically?
- How does the Government plan to prevent future attacks on anti-homophobia demonstrations?
- How does the Government plan to ensure that LGBT minors are adequately protected against discrimination and violence in the home and in the public education system?