



**ECOM**



# **Human Rights Violations Based on Sexual Orientation and Gender Identity in Georgia**

An “alternative report”  
as a commentary for the 135<sup>th</sup> Session of  
Human Rights Committee  
Review of the third periodic report by Georgia

May 2022

## **Human Rights Violations Based on Sexual Orientation and Gender Identity in Georgia.**

An "alternative report" as a commentary on the Fifth Periodic Report by Georgia.

135<sup>th</sup> Session Human Rights Committee Review of the fifth periodic report by Georgia.

**ECOM** - Eurasian Coalition on Health, Rights,  
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## Introduction

1. The report is prepared by a coalition of human rights organizations – ECOM – Eurasian Coalition on Health, Rights, Gender and Sexual Diversity, NGO “Equality Movement” and NGO “Tbilisi Pride”. It critically assesses the fulfillment of recommendations issued by the Committee within the framework of the fourth monitoring cycle, as well as the performance of the Government of the Covenant throughout the past 6 years. Information and assessments in the report are based on research, field work, strategic cases litigated by these organizations and their analysis. Where relevant, the report relies on the information provided by the state, assessments of Public Defender of Georgia (hereinafter “PDO”), and local and international human rights organizations.
2. Prior to commencing the reports on the actuality of the disadvantage in terms of human rights that the LGBT+ meet in Georgia, we would like to express our comprehension of the lengths the State Party has to go to in order to actualize and enhance the state of human rights on its territory based on HRCtee’s CO not only *de jure* but *de facto* as well. ECOM, “Equality Movement” and “Tbilisi Pride” are aware of the detrimental effects that the COVID-19 pandemic exercises upon the State party. We would like to commend and acknowledge the incredibly effective strategies that the government adopted in order to contain the pandemic and protect its people.
3. ECOM is a regional NGO that is adept in working with gay men, other MSM, and trans people specifically in the area of ensuring their right to health, which makes it competent in revealing drawbacks in state healthcare services and offering professional recommendations to amend them, which public servants may lack due to not having the necessary training. NGO “Equality Movement” is a non-profit non-governmental organization that aims at creating equal rights and opportunities for lesbian, gay, bisexual, trans, queer and intersex persons and women in Georgia; fostering their integration into society by the means of empowering LGBT+ community and women, carrying out awareness activities on LGBT+ and women rights issues, and advocating their interests. Tbilisi Pride is a member-based, LGBT-led non-governmental organization which aims to achieve policy change and reshape public opinion through placing issues affecting LGBT+ community on political agenda and reclaiming the freedom of assembly and expression. Together, we forward the following commentary in the hope to participate in tackling the ongoing stigmatization and discrimination of the LGBT+ that happens routinely still, despite the newly adopted legislative protections. Further work must be done to establish effective administration and enforcement of the mentioned guarantees.

## Background information

4. Georgia acceded to the Covenant in 1994 and has a “State party” status. During the first cycles of reporting, LGBT+ topics were not raised at all. For instance, issues of discrimination based on sexual orientation, gender identity and gender expression (SOGIGE) were not mentioned in the *List of issues* in relation to the third periodic report of Georgia ([CCPR/C/GEO/Q/3](#)) and in the relevant concluding observations ([CCPR/C/GEO/CO/3](#)). The [fourth Periodic Report](#) of Georgia, which covered the period starting from October 2007 until June 2012, also missed this thread.
5. Eventually, in the [List of issues](#) in relation to the fourth periodic report of Georgia, dated 14 November 2013, the HRCtte inquired about reports of discrimination, hate speech, public incitement to violence and harassment against LGBT+ persons (para. 7). Georgia was also requested to provide information on measures taken to combat discrimination against and social stigmatization of LGBT+ persons, including minors (para. 7). Besides, the HRCtte demanded information on reports of acts of violence against LGBT+ (para. 18). The State was requested to provide information on: (a) the prevention, investigation, prosecution and punishment of acts of violence and intimidation motivated by the victim’s sexual orientation or gender identity in line with article 53, paragraph 3, of the Criminal Code; and (b) investigations of physical assaults committed during and after the anti-homophobia demonstrations of 17 May 2012 and 2013 and their outcome. Allegations that LGBT prisoners face discrimination and violence in prison got into the spotlight of the HRCtte too (para. 18).
6. In the [replies](#) (11 February 2014), the authorities relied on the drafted Law on Elimination of All Forms of Discrimination according to which LGBT+ persons would fall under its protection. As to the facts committed on 17th of May 2013, the State party indicated that the court proceedings against the perpetrators were ongoing (para. 70). At the same time, no information was given about

the assaults of 2012. The State party also recognized the difficulties faced by GBT prisoners in the penitentiary system and the need for additional safeguards for the protection of their human rights (para. 82). In order to better understand the situation of GBT prisoners and meet their needs, the authorities encouraged the conduct of relevant assessments and activities of local organizations advocating for the rights of GBT persons in the penitentiary system. For instance, the authorities planned to include at least one GBT human rights defender non-governmental organization into the Public Monitoring Council.

7. At its 3157th meeting, held on 31 March 2015, the HRCtte adopted the relevant [concluding observations](#) (CCPR/C/GEO/CO/4). The Committee welcomed the adoption of the Law of Georgia on the Elimination of All Forms of Discrimination (Anti-Discrimination Law) on 2 May 2014 and noted that PDO was responsible for monitoring the implementation of anti-discrimination legislation (para. 6). However, the Committee expressed concern about: (a) the effectiveness of the enforcement mechanism in the absence of an independent body mandated to issue binding decisions and request the imposition of fines on perpetrators; (b) insufficient sanctions to discourage and prevent discrimination; and (c) insufficient resources allocated to PDO to carry out its new functions effectively.
8. The State party was requested to improve its anti-discrimination legislation to ensure adequate protection against discrimination in practice: (a) To continue to provide PDO with increased financial and human resources that are commensurate with its expanded role and enable it to carry out its new functions effectively. (b) To empower PDO to issue binding opinions and to request initiation of legal proceedings under its mandate to monitor the implementation of the anti-discrimination legislation, or set up a separate independent monitoring body and extend such powers to it. (c) To ensure that perpetrators are adequately sanctioned and victims of discrimination are provided with effective and appropriate remedies. (d) To raise awareness among the population at large about the Anti-Discrimination Law and the penalties for discrimination. Furthermore, the Committee voiced its concern with discrimination and social stigma, hate speech and acts of violence against LGBT+ persons and violation of their rights to freedom of expression and assembly (para. 8). In that regard, Georgia was asked to provide effective protection to LGBT+ persons and ensure the investigation, prosecution and punishment of any act of homophobic violence in accordance with article 53, para. 3<sup>1</sup>, of the Criminal Code. Georgia was also requested to take all necessary measures to guarantee the exercise in practice of the rights to freedom of expression and assembly of LGBT+ and defenders of their rights.
9. According to the [Fifth report](#) submitted by Georgia (14 February 2020), PDO has established a structural unit – the Department of Equality (para. 10). On 2 May 2019, the Parliament granted PDO the power to apply to a court if a legal entity or any other entity of private law failed to respond to or to consider its recommendation. As per the amendments, the PDO was also authorized to request through courts the enforcement of their recommendations addressed to legal persons of private law (para. 13). As to the cases of discrimination issues, Georgia indicated that they are considered by regional (city) courts under criminal, civil and administrative proceedings (para. 14). In that regard, the State party provided information about the number of cases considered during the period of 2016–2018 ([Annexes 1 and 3 to the Report](#)).
10. The authorities also claimed that legislative amendments to the Criminal Code were submitted to the Parliament of Georgia in 2018, whereby a crime committed on the ground of gender becomes an aggravating circumstance (para. 37). In January 2018, the Ministry of Internal Affairs of Georgia (MIA) established a Human Rights Protection Department that monitors investigations into hate crimes and the quality of administrative proceedings on administrative offenses. As a result, the identification of discrimination as a crime motive in criminal cases has increased in 2018. The successful activity of the Department led to the enhancement of its mandate in 2019 (para. 38). According to the State party, the 2018 statistics demonstrated the rise in the awareness of hate crime among investigators and the improvement of the identification technique of the motive during investigation (para. 40). The Report also specified that the authorities were also engaged in an intensified cooperation with the Council of Europe to improve statistics of crimes committed on the ground of discrimination. As a result of this cooperation, the events on the occasion of the International Day against Homophobia and Transphobia (May 17th) were conducted in a peaceful environment in 2017 and 2018. The offenders during these events were instantly detained and held accountable (para. 41). The State party reminded that considerable attention was paid to the awareness-raising of law enforcement personnel (paras. 43-51).

11. In the [List of issues](#) in relation to the fifth periodic report of Georgia, dated 19 January 2021 (para. 5), the HRCtte inquired about the measures taken to address the social stigmatization and harassment of, and violence and discrimination against LGBT+ and defenders advocating for their rights. The State party was requested to indicate the measures taken to ensure, in practice, their right to peaceful assembly and freedom of expression, including by providing adequate protection to LGBT+ persons from violent attacks by members of extremist groups. The HRCtte inquired about the reports of: (a) the authorities' failure to promptly and effectively investigate cases of violence based on SOGIGE, to identify hate crimes and to prosecute and punish perpetrators; (b) the underreporting of hate crimes, including for reasons of social stigmatization and lack of trust in the authorities; and (c) the prevalence of homophobic and transphobic rhetoric by politicians, public officials and religious figures. Georgia was also asked to describe the current legislation and procedures concerning change of gender marker in line with gender identity.
12. In the [Replies to the list of issues](#), dated 2 December 2021, the State party indicated that the Government of Georgia elaborated the second National Human Rights Strategy of Georgia for 2021–2030. The strategy actually has never been adopted, and right now the government is working on strategy for 2022-2030. Out of the four key priorities of the document, one is dedicated to promoting equality, with special focus on the protection of rights of minorities and elimination of all forms of discrimination (para. 20). In 2020, Georgia also adopted the policy document on SOGIGE rights as part of the National Human Rights Action Plan (para. 21).
13. As for the allegedly ineffective investigation into hate crimes, the authorities responded that in 2020, 22 individuals were prosecuted for hate crimes on the ground of SOGIGE elements, including 11 persons for discrimination on the ground of gender identity and 11 persons for discrimination on the ground of sexual orientation; 28 individuals were granted victim status, including 13 persons for discrimination on the ground of gender identity and 15 persons for discrimination on the ground of sexual orientation (para. 23).
14. Furthermore, the State party indicated that, according to the Georgian legislation, if a person submits a document issued by a medical institution to the State Service Development Agency, which confirms the change of his/her biological sex, the person has the right to request a change of name/surname and make changes related to sex in the relevant act records (para. 24).

### **Positive Aspects and the Progress Made by the State Party**

15. ECOM, "Equality Movement" and "Tbilisi Pride" commend Georgia on several monumental achievements it made within its legislation. The adoption of the Anti-Discrimination Law in 2014 with consequential amendments was a huge step towards laying the right foundation for ensuring the equality of all people regardless of their attributes. SOGIGE were included as protected grounds that serve as aggravating circumstances in case they are the motive for committing a crime (Article 53<sup>1</sup> of the Criminal Code).
16. In July 2017, the Constitutional Court of Georgia overturned the ban on blood donation by gays and bisexuals, declaring it unconstitutional. In its decision, the court pointed out that modern technologies make it possible to detect HIV in donated blood, which makes the ban unnecessary. In 2020, the Ministry of Health changed its order and allowed MSM to donate blood without any specific restrictions.
17. In September 2020 first ever Memorandum on Cooperation on Collection of Data on Hate Crime [was signed in Georgia](#) in the framework of the project supported by the Council of Europe. As a result, recommendations regarding the new data collection methodology, specific guidelines and data collection templates on hate crime, discrimination and hate speech in line with ECRI recommendations and current needs were developed.
18. However, despite these achievements, the actual picture is less colorful: the civil society and community members report further discrimination by the police and medical workers; assaults from the general public are being made; and the freedom of peaceful assembly and expression are not fully protected by the government.

## Prevailing Problems

19. Despite the rights guaranteed by Georgian law and international instruments, the LGBT+ community remains to be one of the most marginalized and vulnerable groups in the country<sup>1</sup>. The given alternative report is meant to serve as additional information regarding the wider non-discrimination of the LGBT+ people in Georgia, and as an instrument to further advance and speed up positive changes that will amend the current ineffectiveness of the administration and enforcement of the non-discrimination clauses that impale the reduction of stigma and discrimination based on SOGIGE. This document identifies at least several issues that, in our opinion, require clarification from the Georgian authorities. The following are, one after the other, topics that, in our opinion, are worthy of the attention of the Committee. In fact, the events of July 5, 2021 demonstrated simultaneously the violence caused by discrimination, hate speech, and the violation of freedom of assembly, that is, they concern almost every component analyzed in the present report. We also comment on the responses of the State party to relevant questions that in one way or another affect the LGBT+ agenda. In conclusion, in addition to recommendations, we formulate the questions that would be desirable for the Committee to put to the State party at the forthcoming session.

### **Discrimination and Violence on the Grounds of Sexual Orientation and Gender Identity (arts. 2, 7, 9, 17, 19, 21 and 26)**

20. Violence – both public and non-public (for instance, domestic) – is the most serious problem that LGBT+ people face. According to a study of 2018<sup>2</sup>, among LGBT+ respondents, 88.3% confessed to be victims of hate crimes since 2015. Psychological and emotional violence was experienced by 85.5%, 61.7% experienced sexual violence and harassment, while 29.7% were victims of physical violence. Georgian LGBT+ NGOs also state that LGBT+ are frequently subjected to domestic violence, yet the State rarely investigates these crimes as hate crimes based on SOGIGE. Despite such high figures, only 16.8% of hate crime victims from said study reported their incidents to the police. The fear of having to disclose the identity (forced outing), re-victimisation, the lack of trust in the law enforcement institutions, and homophobic attitudes coming from police officers cause underreporting of the hate crimes. The lack of legal prospects, the low awareness of the anti-discrimination legislation and redress mechanisms, as well as poor access to justice, also contribute to an unwillingness to report<sup>3</sup>.
21. This factor contributes to the disparity between the MIA and NGO SOGIGE-based crime statistics. The hate crime statistics, especially when it comes to crimes committed on grounds of SOGIGE, do not represent the actuality of the situation with the actual hate crimes committed, number of victims, and commenced proceedings. The absence of a unified statistical methodology on hate crimes, with clear segregation by each protected attribute independently, concludes an essential barrier to combating hate crimes and planning Georgia's preventive policies. Georgia's report and replies do not provide the Committee with the ability to fully grasp the situation in the country regarding violence based on SOGIGE.
22. The situation itself leaves much to be desired. During 2021 there was a rise in attacks against LGBT+ persons and those perceived to be associated with the LGBT+ community. July 5, 2021 was one of the saddest days in the country's recent history, when the State responsible for protecting human rights and security was actually not operating. On July 5, when Pride March was planned to take place, several hundreds far-right demonstrators violently rioted through Tbilisi, destroying an opposition protest site at parliament, [attacking NGO offices](#), and [assaulting](#) more than 50 [journalists](#); rainbow flags were torn apart and [burnt](#). One Polish tourist was stabbed, allegedly for appearing to be associated with the LGBT+ community. The police [failed](#) to provide [protection](#). On July 6, hundreds showed up to protest against anti-LGBT violence and the failure of the police. On July 11, thousands came to the streets again and called for the resignation of the Prime Minister after cameraman Aleksandre Lashkarava was found [dead in his home](#). Lashkarava was one of those attacked by mobs while covering anti-LGBT+ demonstration the previous week. He was operated on and released on July 8. The Prime Minister released a statement on July 12 [denying any responsibility](#) for the violent attacks and Lashkarava's death, which was followed by firm [civil society criticism](#). Seven NGOs jointly [demanded](#) government accountability.

<sup>1</sup> The main challenges of the social protection system for various vulnerable groups in Georgia: The [report](#) of the Coalition for Equality, 2022. Page 61.

<sup>2</sup> Human Rights Violations Based on Sexual Orientation and Gender Identity in Georgia. An "[alternative report](#)" regarding Concluding Observations of the Committee on the Elimination of Discrimination Against Women. June 2021. Para. 7. See also the relevant part in: [Submission to the Independent Expert](#) on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity.

<sup>3</sup> "Visit to Georgia: report of the Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity", Victor Madrigal-Borloz, UN. Human Rights Council, 2019, para. 40.

23. The events of 5th of July show that the authorities not only failed to prevent violence against journalists, LGBT+ community, activists or citizens in general, which posed a real threat to their health and lives, but the discriminatory statements made by high-ranking officials even incited that violence. Unfortunately, in connection with large-scale violence of July 5, the Georgian Prosecutor's Office has not prosecuted any of the individuals for organizing or inciting group violence, despite the fact that according to the Public Defender, the publicly available evidence met the standard of probable cause for charging at least two individuals<sup>4</sup>. This exacerbates the environment of impunity and obviously further incites violence against members of the LGBT+ community, activists and journalists, which is a result of the policies pursued by the authorities.
24. A total of 31 individuals were charged in six separate criminal indictments as of year's end. The majority of those indicted, 27, were charged with participation in acts of group violence, prevention of journalistic duties, and unlawful entry and threats of violence. Three individuals were charged with raiding the Tbilisi Pride office, including participating in the use of violence and threats of violence as well as for violating private and public property as a group, while one person was charged with battering a civilian. The cases were in various stages of trial with two defendants pleading not guilty and one defendant pleading partially guilty, claiming he hit someone because he was provoked. All three defendants were released from pretrial detention. Authorities did not, however, make any formal arrests of individuals responsible for organizing the violence<sup>5</sup>.
25. On May 15, 2021 LGBT+ activists set up an installation with an inscription "welcome to the closet", decorated with rainbow colors. Shortly after, the leader of ultraconservative and far-right group leader Guram Palavandishvili, along with his supporters, arrived at the site, verbally abused the activists and violently damaged the installation. The MIA launched an investigation into the incident under Article 156 of Criminal Code of Georgia, however the investigation has not resulted in any outcome. [This incident](#) once again reaffirmed that formality is a sole purpose of State response when it comes to investigations into hate-motivated offenses towards LGBT+ people.
26. During 2021, individual attacks were also on the rise<sup>6</sup>. For example on April 30, a 17-year-old trans woman was attacked by two unknown suspects. On May 1, two individuals were charged for this crime and were released by the court on relatively low bail given the nature of the violent crime. On October 31, a man entered a massage parlor in Tbilisi and [attacked](#) two trans women with a knife, killing one and wounding another. The suspect was arrested and faced a charge of premeditated murder. The Prosecutor General's Office said the suspect "wanted to kill trans people on the grounds of intolerance of gender identity." On April 20, a man [attacked](#) a lesbian couple in front of their child outside their home in Tbilisi. The attacker, a neighbor, insulted them and demanded they move out of the building. Police arrested the man, who was released on bail on April 23. Two gay men were also verbally assaulted and received death threats – the police filed the case under 'threat', and established the bias motive.
27. While private persons commit the majority of violations, the State stays inactive and does not fulfill its positive obligations<sup>7</sup>. Even when the victim has contacted the authorities and a formal investigation has begun, the fact that, in most cases, presenting evidence is controversial, gives rise to a fear of retaliation, and that there is a lack of trust in law enforcement bodies, witnesses and victims fear testifying. In most cases witnesses are pressured or otherwise abused during the process of interrogation, thus the attendance of a lawyer is very important at the initial stage. The problems hindering the access of victims to justice also include obstacles in representing their interests on the part of human rights defenders and LGBT+ activists, and the unwillingness of the authorities to cooperate with civil society organizations.
28. Conducting investigation in a timely manner has remained problematic. Investigations initiated by investigative authorities are usually protracted without an outcome for years. The prompt appeal of the victim to law enforcement agencies plays a key role in identifying and catching criminals. It is also necessary to highlight the problem of the adequacy and proportionality of punishments, there are examples when attackers get off with a small fine.

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<sup>4</sup> See Public Defender's 2021 [Annual Report](#) on Human Rights Situation in Georgia.

<sup>5</sup> United States Department of State. Georgia 2021 [Human Rights Report](#). Pages 42-43.

<sup>6</sup> *Ibid.*, pages 75-77.

See also: <http://www.equality.ge/7153>; <http://www.equality.ge/7460>; <http://www.equality.ge/7040>; <http://www.equality.ge/7008>

<sup>7</sup> PDO. Written submission on Georgia's Compliance with the International Covenant on Civil and Political Rights, 2020, para. 40.

29. Another guarantee for the reparation of the victim is rehabilitation and compensation for unlawful actions of investigative bodies. According to the Fifth report submitted by Georgia, LEPL State Fund for Protection and Assistance to (Statutory) Victims of Human Trafficking offers various services to victims/statutory victims and alleged victims of violence against women and domestic violence (para. 77). Unfortunately, for LGBT+ people affected by hate-driven violence, there are no such opportunities.
30. The State party indicated in the Replies that a draft of legislative amendments is prepared by the MIA to the Criminal Code and the Code of Administrative Offenses on crimes committed on the grounds of discrimination. Unfortunately, we do not have information about the fate of this bill, whether it has been considered by the Parliament or not yet.
31. Georgia was advised by UPR in 2015<sup>8</sup> and ECRI in 2016<sup>9</sup> regarding the strengthening of the fight against hate crimes and the creation of a separate investigative unit, which would deal specifically with hate crimes as effective mechanisms against homo/transphobia. As a result, the Human Rights Protection and Quality Monitoring Department was established under the MIA. However, as the department is not a substitute for a specialized investigative unit under the police system, it cannot be seen as part of a planned effort to strengthen investigation against hate crimes,<sup>10</sup> neither can it ensure the development of a victim-based approach and systemic prevention policy. The new department was created to review hate crime investigations, not to carry them out. It therefore does not constitute a dedicated reinforcement of hate crime investigation capacity at law enforcement level<sup>11</sup>.
32. At present, there is no unified strategy that Georgia would follow to establish a national, delegated, and decentralized system of specialized divisions that would not only effectively react to SOGIGE-based crimes but would also invest in preventive activities. The MIA Human Rights Department, Prosecutor's Office, and Ombudsperson have their individual statistics on hate crimes, neither of which, unfortunately, represents the realistic picture. In addition, said Department is a centralized, coordinating body, giving rise to concerns that it may not be sufficient to address problems at the local level nor, for example, be competent enough to deal with detailed issues arising in the investigative process, also lacking a preventive approach<sup>12</sup>.
33. Thoughtfully creating and conducting science and evidence-based educational events to raise the abilities of law-enforcement officers to identify hate crimes, single out the exact motive and then apply the recommendations to their investigation is not enough to claim success in re-training/re-education. The law-enforcement has to be sensitized: it has to be taught on the issues of sexual orientation, gender identity and gender expression, as well as other nuances that concern the routine LGBT life as well the nuances of stigma and discrimination that befall them, serving as the motive for committing a respective hate crime<sup>13</sup>.
34. In 2018, Partnership for Human Rights requested that the MIA provide data on the number of restraining orders issued by the police relating to both gender-based violence and domestic violence by region and sex of the abuser and victim for the last five years. According to the information provided by the Information-Analytical Department of the MIA, the requested information is not processed in the requested way because the large array of data requires appropriate human resources<sup>14</sup>. Besides, according to the information received from the MIA, it appears that the Ministry does not keep statistics on the violation and re-issuance of restraining orders<sup>15</sup>.
35. Although the Anti-Discrimination Law is in place, its implementation and enforcement are still ineffective. More resources, attention, and intention should be allocated by Georgia's government to not only having the anti-discrimination provisions in place *de jure*, but to also have them work

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<sup>8</sup> Report of the Working Group on the Universal Periodic Review – Georgia, 2015, Recommendation 118.10.

<sup>9</sup> ECRI [Report](#) on Georgia (fifth monitoring cycle). Adopted on 8 December 2015, published on 1 March 2016.

<sup>10</sup> ECRI [Interim Report](#) on Georgia published on 5 March 2019 (CRI (2019) 4) on the implementation of the recommendations made in the report of 1 March 2016.

<sup>11</sup> ECRI [conclusions](#) on the implementation of the recommendations in respect of Georgia subject to interim follow-up. Adopted on 5 December 2018, published on 5 March 2019.

<sup>12</sup> Human Rights Violations Based on Sexual Orientation and Gender Identity in Georgia. An "[alternative report](#)" regarding Concluding Observations of the Committee on the Elimination of Discrimination Against Women. June 2021. Para. 8.

<sup>13</sup> *Ibid.*, para. 9.

<sup>14</sup> [Shadow report](#) of the Coalition For Equality and other NGOs to The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). October 2021. Page 6.

<sup>15</sup> *Ibid.*, page 6.

*de facto*. A unified national strategy should be swiftly developed in cooperation with LGBT+ NGOs and adopted to increase the awareness of the general population and the police about SOGIGE issues, not only in terms of hate crimes but also in terms of the LGBT being no less human and deserving honourable and respectful treatment than heterosexual and/or cisgender people.

36. Another issue that hinders effective enforcement of the Anti-Discrimination Law is worth mentioning. Specifically, in the event of discrimination, PDO is authorized to develop recommendations and prepares and submits proposals on preventing and fighting discrimination to relevant individuals/entities. However, in practice, there is no mechanism in place that will allow PDO to force that individual or legal entity who commits a discriminatory act to exercise the respective recommendation/proposal. The optional recommendation is ineffective and fails to meet the goals set by the law, which ultimately makes the relevant provisions regarding PDO's powers declarative. The Anti-Discrimination Law does not specify the time frames for submitting a complaint/application to PDO, which can be evaluated positively. Hence, a person who considers themselves a victim of discrimination may apply to PDO at any time after the discriminatory act happened or was identified. The law does not specify the timeframe for PDO to review the case and send recommendations/proposals to the individual/entity who committed a discriminatory act. Considering the victim's interests, it is important to set a deadline in the law within which PDO should complete the case<sup>16</sup>.
37. On 27 March 2012, Parliament passed amendments to the Criminal Code that added "homophobia" to the list of aggravating factors for crimes. At the same time, 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. Law enforcement bodies rarely link article 53<sup>1</sup> or article 142 of the Criminal Code to cases of violence against LGBT+, and courts have never applied the law regarding aggravating circumstances in relation to sexual orientation or gender identity. Authorities generally agree that the main problem lies in the incorrect qualification of hate-motivated crimes as ordinary crimes, which results from a lack of awareness and prejudice permeating the entire justice system<sup>17</sup>.
38. Any perpetrator, in practice, could have a mixed motive. In the legislative practice of some countries, the question of whether the doctrine of mixed motive is acceptable is treated differently<sup>18</sup>. For example, the OSCE / ODIHR considers it as best practice to take into account the mixed motive<sup>19</sup>. Moreover, the OSCE / ODIHR considers it correct to formulate a suspicion of a hate motive already at the very first moment – upon detection of a victim, upon receiving a crime report, etc. Of course, drawing such a suspicion does not guarantee future investigation into the existence of a criminal motive for hatred, but it helps to ensure that the inquiry and preliminary investigation do not bypass this issue<sup>20</sup>.
39. The authorities' possible predilection in favor of the "hooligan motive" or "economical motive" can set back adequate protection of victims. Other important consequence of ignoring the motive of hatred is the lack of clear statistics available to the public and the press, which would make it possible to judge whether the State battles against homophobic outbreaks. It should be recalled that the collection of data on hate crimes and the provision of it to the ODIHR is a political commitment of the OSCE member countries. The failure to recognize the motive for hatred also encourages the false sense of impunity that remains with criminals and pushes them to commit new crimes.
40. It should also be noted that within the community itself there are vulnerable groups that require increased attention when it comes to investigating the facts of violence.
41. For instance, the government not only fails to recognise, encourage and support women activists and human rights defenders and NGOs working on women's issues but itself contributes to the aggression against them. Women activists and human rights defenders have continued to face

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<sup>16</sup> Human Rights Violations Based on Sexual Orientation and Gender Identity in Georgia. An "[alternative report](#)" regarding Concluding Observations of the Committee on the Elimination of Discrimination Against Women. June 2021. Para. 10.

<sup>17</sup> "Visit to Georgia: report of the Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity", Victor Madrigal-Borloz, UN. Human Rights Council, 2019, para. 41.

<sup>18</sup> Legislation against hate crimes. A practical guide. Warsaw: OSCE / ODIHR, 2009. Pages 67-70 (<https://www.osce.org/odihr/36426>).

<sup>19</sup> *Ibid.*, page 72.

<sup>20</sup> See for more details: Hate Crime Monitoring and Data Collection Systems. A practical guide. Warsaw: OSCE / ODIHR, 2015 (<https://www.osce.org/odihr/datacollectionguide>).

threats and aggression for several years in Georgia<sup>21</sup>. Public aggression is frequent and even more acute towards women activists advocating for LGBT+ rights. Ana Subeliani, an LGBT+ activist, reported numerous threatening letters after the Our Freedom rally on 12-13 May 2018. Moreover, she was physically attacked when she was about to attend the film 'And Then We Danced' on 8 November 2019<sup>22</sup>.

42. Trans women, as well as lesbian, bisexual and intersex women very rarely utilise mechanisms for redress of gender-based violence and domestic violence<sup>23</sup>. Even in cases when the trans women decide to address police or the courts, they are faced to those legal barriers<sup>24</sup>.
43. Finally, we should recall the international obligations of Georgia in this area. On 16 December 2021, in the judgment of the ECHR ([CASE OF WOMEN'S INITIATIVES SUPPORTING GROUP AND OTHERS v. GEORGIA](#)) concerning the attacks on the LGBT+ community and supporters in Tbilisi on 17 May 2013, the Court noted that the scale of violence on May 17, 2013 was influenced by the Government's inaction and failure to conduct a timely and objective investigation into the previous attacks on the LGBT+ community<sup>25</sup>. To implement the 2020 ECHR judgment in the case of [Aghdgomelashvili and Japaridze v. Georgia](#), an investigation was ongoing in 2021 under Article 333 of the Criminal Code on the abuse of official powers. The victim's representatives launched a request with the Prosecutor's Office that the investigation cover Article 151 (threats), Article 156 (persecution) and Article 144 (torture)<sup>26</sup>.

### **Hate Speech, Xenophobia and Verbal Abuse Based on SOGIGE-Discrimination (arts. 2, 20 and 26)**

44. Hate speech is most frequently used by political and religious figures. The most common forms of discrimination are verbal discrimination (insults, humiliation, ridicule), as well as expulsion and spreading rumors<sup>27</sup>. It is at its height during elections, as the theme of SOGIGE is often used to political ends. While awareness about LGBT+ people's oppression and hate speech is high, public attitudes towards the community are negative<sup>28</sup> compared to any other vulnerable group<sup>28</sup>.
45. Since 2016, members of ultranationalist and far-right groups have emerged forcefully in the public sphere, using hate speech against members of minorities, including LGBT+. These groups are actively using social media to spread their phobic hate propaganda against the community, and to blackmail or launch violent online attacks against individuals. There is little evidence of a comprehensive State strategy to address cyberbullying, hate speech and online threats against minorities. Moreover, far-right group leaders who played a major role in July 5 attacks, established a political party "Conservative Movement - Alt Info" that was officially registered by the National Agency of Public Registry on December 7, 2021.
46. For HRCtee's consideration, among multiple other cases, we would like to point out with reference to the injustice when it comes to the impunity of hate speech among politicians.
47. On 3 April 2018, the politician B.D. insulted the former executive director of Equality Movement Levan Berianidze during an interview. Eventually, the Tbilisi Court of Appeals entrusted B.D to pay GEL 500 in damages to Levan Berianidze. The amount of punishment for the embarrassment, discomfort, and shaming of the victim on a TV programme amounts to a punishment way more than the one symbolically rendered by the court.
48. In 2019, a civil society organization reported that 731 homophobic public statements had been made in 2017, 255 by the media, 153 by politicians, 172 by other members of society, 24 by the

<sup>21</sup> [Shadow report](#) of the Coalition For Equality and other NGOs to The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). Page 8.

<sup>22</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2019, p. 194.

<sup>23</sup> [Shadow report](#) OF THE COALITION FOR EQUALITY AND OTHER NGOS TO THE Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). October 2021. Page 31.

<sup>24</sup> In a case, when the trans woman asked for the restraining order against the perpetrator, the court did not accept the application, stating: "The case included ID of the appellant and according to that document she was a man; Hence, she was not the subject of the protection under the Georgian Law on Violence against Women and/or Domestic Violence Prevention and the Protection of the Victims of Violence; thus cannot ask for the restraining order".

<sup>25</sup> [WISG and Others v. Georgia](#). See also: <https://minorityzaze.org/en/799-womens-initiatives-support-group-and-others-v-georgia>

<sup>26</sup> ILGA-Europe's Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Georgia (January to December 2021).

<sup>27</sup> Center for Social Justice, LGBTQI Group Social Exclusion Survey in Georgia, 2020, pg. 144

<sup>28</sup> Caucasus Research Resource Center (CRRC), Hate Crime, Hate Speech, and Discrimination in Georgia: Public Attitudes and Awareness, 2018. Page 67.

clergy and 127 by civil organizations<sup>29</sup>. Worryingly, a sharp increase was observed compared with previous years<sup>30</sup>. In June 2019, Tbilisi Pride organizers and LGBTI rights defenders, including Giorgi Tabagari, Tamaz Sozashvili and Mariam Kvaratskhelia, received [death threats](#) on their phone numbers from anonymous senders. Even though the Ministry of Internal Affairs had opened an investigation into the threats, the perpetrators have not been identified. The Minister of Culture, Sports, and Youth, Tea Tsulukiani [made](#) homophobic statements in March 2021 and members of the ruling party [made](#) anti-LGBT statements in June 2021.

49. Preceding the Tbilisi Pride (March of Dignity), planned for July 2021, government representatives and religious leaders [made countless](#) anti-LGBT+ statements. On June 17th 2021, while speaking on air on "TV Pirveli", the chairman of the ruling party Georgian Dream Irakli Kobakhidze made the [following statement](#) about the pride parade: "I have my attitude towards this issue and I think that, in light of the whole context, these people must be refused to conduct this event". When asked whether statements similar to the one made by Irakli Kobakhidze violate rights of minorities, David Sergeenko member of the same party and the vice-chairman of the Georgian Parliament, gave the following answer: "It is hard to say. I don't think that it is a restriction of rights. Nobody is hindering them from doing what these people are willing and determined to do". Civic platform "No to Phobia!", "Coalition for Equality" and other civic organizations [condemned](#) these statements as they were homophobic and encourage discrimination.
50. On the eve of the Tbilisi Pride March on 5 July, Prime Minister Irakli Gharibashvili [stated](#): "95% of our population is against holding a propaganda parade, friends, we must all obey, this is the opinion of the absolute majority of our population". Civil society accused the government of contributing to the violent attacks the next day and the complete lack of police protection, investigation, and prosecution.
51. The aforesaid statements made by the public officials exhibit signs of tolerance towards violence, which as per the ECHR, "undermines public confidence in the principle of lawfulness and the State's maintenance of the rule of law"<sup>31</sup>. Additionally, the statements violate Article 11(3) of the Ordinance of the Government of Georgia on "Ethics and General Conduct in Public Service" (Ordinance No. 200) which prohibits public officials to use hate speech and/or to make discriminatory comments that can undermine impartial and objective exercise of his/her/their powers. According to the commentaries of the aforesaid Ordinance, homophobic or discriminatory statements made by public officials create reasonable doubt in the public that they are guided by bias while exercising their official powers<sup>32</sup>.
52. On 26 February 2022 Tbilisi Pride [called upon](#) the Georgian National Communications Commission and Parliament of Georgia to terminate Alt-Info's broadcasting authorization and prohibit the political party founded by Alt-Info<sup>33</sup>. Previously, in mid-April 2021, The National Communications Commission granted Alt Info national broadcaster status, obligating all TV providers in the country to provide the channel to subscribers. Alt-Info transmitted how the leaders of the political party were publicly planning brutal attacks against LGBT+ activists, their supporters and media representatives that eventually took place on July 5. The leaders of Alt-Info were the ones who guided large-scale and organized violence and committed crimes, however, instead of holding them criminally accountable for their crimes, [Alt-Info obtained authorization to begin broadcasting on national TV](#) and [was registered as a political party](#). "Conservative Movement" – a political party founded by Alt-Info – must be declared [unconstitutional](#) as it propagates violence, incites social strife, and poses a threat to human rights, democracy and sovereignty. Termination of its broadcasting authorization and prohibition of respective political party are of utmost importance to fight against violence, homophobia, corruption, and human rights violations.
53. The only piece of Georgian legislative framework that explicitly regulates hate speech for public officials (executive government representatives) is the above-mentioned Ordinance. However, there is unclarity as to the mechanism/body supervising, investigating and responding to alleged cases of hate speech under the Ordinance. Additionally, normative value/power of an Ordinance is not as

<sup>29</sup> "Visit to Georgia: report of the Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity", Victor Madrigal-Borloz, UN. Human Rights Council, 2019, para. 52.

<sup>30</sup> Media Development Foundation, "Hate speech" (2018), available from [www.mdfgeorgia.ge/eng/view-library/91](http://www.mdfgeorgia.ge/eng/view-library/91)

<sup>31</sup> Beghelauri and others v. Georgia, ECHR, no. 9099/09, 2014, para. 99.

<sup>32</sup> Aghapishvili, I., Beselia, G., Tsukhishvili, n., Ordinance of the Government of Georgia on "Ethics and General Conduct in Public Service": Commentaries, 2018, page 82.

<sup>33</sup> Alt-Info is a private TV Company and online information portal in Georgia. It was founded in 2019 as a conservative media platform to "counter aggressive liberal censorship".

high as of law. With regards to the Members of Parliament (MPs), Article 2 (b)(c) and 3 (n) of the Ethics Code for a Member of Parliament prohibit MPs to use hate speech based on race, sex, religion, and other grounds. Even though the Ethics Code formally establishes the Ethics Council whose mandate is to redress the use of hate speech by MPs, the Council is defunct, making it virtually impossible to execute the Code. While the adoption of the Code deserves acknowledgment, SOGIGE is not mentioned there and the liability mechanism outlined in it is ineffective. The authorities do not react, investigate, and punish people or public figures for homophobic and transphobic hate speech, which often alludes to the mythic "gay propaganda" and equalizing of homosexuality with perversion and pedophilia.

### **Freedom of Expression and Peaceful Assembly (arts. 2, 19, 21 and 26)**

54. In Georgia, the exercise of the right to freedom of assembly and expression by LGBT+ people is still a significant problem, which is related to the attempts of certain groups in the society to privatize public space<sup>34</sup>. The lack of security guarantees from the state and the strengthening of violent groups, as the practical restriction of the realization of these rights is accompanied by the constant active mobilization of homophobic groups<sup>35</sup>. In recent years, the failure to adopt measures to avoid confrontations among groups with different opinions and to prevent unlawful actions from demonstrators was identified as a particular problem; in some cases, disproportionate and unjustified force was used against peaceful demonstrators<sup>36</sup>.
55. Since 2012, groups affiliated with the Patriarchate and specific organizations have been trying to violate the real freedom of assembly of the queer community<sup>37</sup>. [Calls for violence](#) were heard from high-ranking clerics.
56. Having been originally scheduled on June 18-23, Pride Week 2019 was canceled in the face of violent counteracts, threats, and protests held by nationalist and far-right groups. The Ministry of Internal Affairs refused to ensure the safety of the participants during the "Pride March" and, [due to their own safety](#), offered a disproportionate alternative to hold the "parade" [indoors](#), at a nightclub or in a football arena. A properly substantiated decision on restricting the right to assembly was not made, which cannot be replaced by general explanation of the Ministry<sup>38</sup>.
57. This was added by the [official call](#) of the Georgian Patriarchate on the Georgian government not to allow holding of the "Pride March" organized by "Tbilisi Pride". In response, on June 14<sup>th</sup>, supporters of the Tbilisi Pride held a rally in front of the government chancellery demanding that the government guarantee their right to freedom of peaceful assembly. Things got heated quickly. Some of the rally's organizers and activists were confronted by ultra-conservative political and clerical groups. Leaders and members of these groups openly expressed their violent intentions and disregarded the principles of constitutional order. The participants of the far-right groups threatened and [verbally abused](#) the representative of the Public Defender of Georgia. It is also noteworthy that on June 16, a rally was held in the center of Tbilisi, where Levan Vasadze made extremely problematic and anti-state [statements](#), created "People's Legions" and [announced](#) patrolling the streets. His statement contained alleged signs of crime, and the MIA [launched](#) investigation. However, the civil society has not yet received any information about the effectiveness and results of the investigation. After the announced pride was disrupted twice, on July 8<sup>th</sup> the organizers managed to gather [spontaneously](#). The half-hour impromptu event, which was attended by 20 activists and supporters, ended after the participants learned that extremist groups were heading to [intervene](#).
58. Another target of homophobic groups was the premiere of the film "And Then We Danced" on 8 November 2019. Far-right groups gathered in front of the cinemas to openly confront both the viewers who came to see the film and the police officers. 27 administrative violations were registered

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<sup>34</sup> Alternative Report on Georgia's Compliance with the International Covenant on Civil and Political Rights. Human Rights Education and Monitoring Center (EMC) and Georgian Young Lawyers' Association (GYLA). August 2020. Page 33.

<sup>35</sup> Coalition for Equality, The Right to Non-Discrimination in Practice for Various Groups in Georgia – 2019, see: <http://equalitycoalition.ge/article/51>

<sup>36</sup> PUBLIC DEFENDER (OMBUDSMAN) OF GEORGIA. Written submission on Georgia's Compliance with the International Covenant on Civil and Political Rights, 2020, para. 64.

<sup>37</sup> On May 17, 2012, a peaceful procession of the queer community was violently attacked by a group organized by the "Union of Orthodox Parents" and the "Brotherhood of St. King Vakhtang Gorgasali".

<sup>38</sup> PUBLIC DEFENDER (OMBUDSMAN) OF GEORGIA. Written submission on Georgia's Compliance with the International Covenant on Civil and Political Rights, 2020, para. 67.

on site, and the investigation was [launched](#) into the facts of attacking the police, damage to the police car and violence against the politician Davit Berdzenishvili and physical violence against the civil-activist Ana Subeliani. The negligence of the authorities towards the statements of the leaders of the violent groups before the premiere of the film, who were publicly threatening and calling on the supporters to disrupt the film screening, should be assessed negatively. In Public Defender's assessment<sup>39</sup>, the main problem lied in the government viewing ultra-right groups as persons with different opinions exercising their right and applying those legal standards to threats emanating from them, which guarantees the right to assembly and expression of people protecting their rights and promoting equality in a peaceful manner.

59. In 2021, circumstances of the July 5th attack became another clear example of the situation when the state failed to take appropriate measures to facilitate exercise by the LGBT+ community of freedom of assembly. In spite of the intensity and magnitude of the attacks, the police were present in critically small numbers and failed to effectively intervene, which further contributed to the aggravation of the process<sup>40</sup>. As per the assessment given by the Amnesty International<sup>41</sup>, "*instead of planning for this turn of events and providing a robust response to violence, the government deployed inadequately small numbers of policemen who were only reacting to violent attacks, rather than providing an organized protection for LGBTI activists.*" No investigation has been launched under the scope of Article 161 of the Criminal Code which lays down criminal responsibility for unlawful interference with the exercise of the right to hold or participate in an assembly or demonstration using violence, threat of violence or official position<sup>42</sup>.
60. In violation of Article 21.1 of the Constitution of Georgia and Article 11 of the European Convention, the authorities failed to ensure the holding of the "March for Dignity" i.e. exercise of freedom of assembly by the members of the LGBT+ community, supporters and civil activists in a safe environment<sup>43</sup>. It is noteworthy, that on the one hand, the organizers of the march had offered the authorities an alternative route and had provided in advance information about the threats and the organized violence, while on the other hand the hate groups themselves had publicly announced their plans to disrupt the march. In light of these announcements, the organizers of the "March for Dignity" have asked the government for specific safeguards and preventive measures, which were not implemented. The government had no real will or interest to protect the rights of the LGBT+ community, hence neglecting its constitutional and international obligations.
61. All of the above-mentioned actions of the ultra-rightist groups religious fanatics are expressly based on hate towards the LGBT+ and yet, despite having so many people detained during these manifestations and attacks, their crimes as based on discrimination against the LGBT+, are not referenced in the hate crime statistics and the Report has not mentioning of these events or the aftermaths of the launched investigations. This proves that nationwide campaigns to raise the public awareness about sexual orientation, gender identity and gender expression are long overdue. Unless the government adopts steps to educate its population and the law-enforcement about the normality of SOGIGE issues, then the victims of hate will continue to remain in the shadows, will not receive fair protection and trial and prevention will remain a status quo.

### **Gender Identity Issues (arts. 2, 16-17, 26)**

62. The right of trans persons to legal recognition of gender identity, regulation of and access to gender-affirming treatment remains unaddressed in the legal and policy framework.
63. The ECtHR has established that the failure to recognize the legal status of post-operative trans individuals constitute, *inter alia*, a violation of the right to private life under article 8 of the European Convention<sup>44</sup>. Similarly, trans persons are entitled to protection from arbitrary interference with privacy with reference to Article 17 of the ICCPR.
64. Georgia failed to adhere to these standards as far as the provision of healthcare services and legal protection for trans individuals during gender reassignment is concerned. According to [established practice](#), reversible sterilization, hormonal treatment and surgical procedures are mandatory to

<sup>39</sup>Annual Parliamentary report of the Public Defender of Georgia – 2019. Pages 187-190.

<sup>40</sup> World [Report](#) 2022, Human Rights Watch, p. 270.

<sup>41</sup> "Georgia: The authorities' failure to protect Tbilisi Pride once again encourages violence", [Amnesty International](#), 06.07.2021.

<sup>42</sup> Legal Assessment of the Events of July 5-6, Social Justice Center, p. 13. See also the [analysis](#) of the July events by the Women's Initiative Support Group (WISG).

<sup>43</sup> See the detailed analysis in: Georgia Democracy Initiative: [March of Dishonor](#).

<sup>44</sup> Goodwin v. UK, para. 40; Van Kuck v. Germany, paras. 73, 90.

change the sex record in official documents. Such a demand runs counter to internationally recognized approaches<sup>45</sup>. The lack of documentation poses a threat to life and health during the provision of medical services, especially during the procedure of gender reassignment surgery.

65. In its report adopted in 2015, the European Commission against Racism and Intolerance (ECRI) recommended the government of Georgia to establish clear guidelines in this regard, albeit no progress has been made thus far<sup>46</sup>. Incompatibility of compulsory gender affirmation surgery with international human rights standards is also acknowledged by the United Nations High Commissioner for Human Rights<sup>47</sup> and the UN Human Rights Committee<sup>48</sup>. Three cases against Georgia on Legal Gender Recognition have been communicated by ECtHR<sup>49</sup>.
66. A new ID and birth certificate can be issued only when the person changes sex and only after he/she/they undergoes surgery<sup>50</sup>. In practice, civil registrar bodies deny trans people changing the gender marker unless they bring a certificate that proves they have undergone a sex reassignment surgery. Even then, not all would accept the application and be granted new documentation. The cost of these procedures is expensive and is not covered by the State health care policies. The law requires gender confirmation surgery for legal gender-identity change and does not provide options for trans individuals who do not wish to undergo confirmation surgery to change their gender identity<sup>51</sup>. In addition, the State does not permit changing one's sex on a birth certificate or university diploma. The process of introducing trans healthcare guidelines, based on the Ombudsperson's 2020 [recommendations](#), is stalled.
67. Many trans 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 trans people's national identification cards contradict their appearance and identity. Presenting this card may force trans people to reveal their birth gender against their will, and may lead to arbitrary interference with their right to privacy.
68. On March 25, 2021 a trans woman's demand was satisfied by the Tbilisi Civil Registry Service of LEPL Public Service Development Agency of the Ministry of Justice and her gender marker was [changed](#) from "male" to "female". First time in Georgia a trans person's gender has been legally recognised. This fact solely illustrates an established practice in the country that lacks a respective legal basis. Although it is a commendable achievement, having this one ground — undergoing sex reassignment surgery — for changing one's documents is very limiting and discriminatory<sup>52</sup>. The State party in the Replies underlined that the person has the right to request a change of name/surname in the relevant act records (para. 24), but did not say anything about the procedure of changing of gender marker.
69. The gender recognition system that allows trans persons to change their name and gender markers on identity documents should be a simple administrative process based on the self-determination of the applicant, and it should be accessible and, to the extent possible, free of charge<sup>53</sup>. Georgia should establish a dedicated commission to adopt the necessary laws and regulations in order to eliminate this discriminatory gap that leaves trans people virtually ignored by the law and degraded by the public that is denying them freedom of self-determination, gender identity, gender expression, and privacy. Trans people should be legally given the right to gender recognition regardless of whether they have undergone sex reassignment surgery or not, and the state should provide healthcare that the person needs during their transition.

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<sup>45</sup> Parliamentary Assembly Resolution 2048 (2015), Recommendation CM/Rec (2010)5 of the Committee of Ministers.

<sup>46</sup> ECRI Report on Georgia, 5th monitoring cycle, 2015, p. 30.

<sup>47</sup> UN Human Rights Council, A/HRC/29/23, report of the UN High Commissioner of Human Rights, paras. 69; 70.

<sup>48</sup> CCPR/C/UKR/CO/7, Concluding observations on the seventh periodic report of Ukraine, UN Human Rights Committee, 2013, para. 10.

<sup>49</sup> Human Rights Violations Based on Sexual Orientation and Gender Identity in Georgia. An "[alternative report](#)" regarding Concluding Observations of the Committee on the Elimination of Discrimination Against Women. June 2021. Para. 17.

<sup>50</sup> WISG, Equality Movement, ILGA-Europe, submission to the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz ahead of country visit to Georgia, 2018, p. 11-12.

<sup>51</sup> United States Department of State. Georgia 2021 Human Rights Report. Page 77.

<sup>52</sup> Human Rights Violations Based on Sexual Orientation and Gender Identity in Georgia. An "[alternative report](#)" regarding Concluding Observations of the Committee on the Elimination of Discrimination Against Women. June 2021. Para. 18.

<sup>53</sup> "Visit to Georgia: report of the Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity", Victor Madrigal-Borloz, UN. Human Rights Council, 2019, paras. 66-68.

## Other Important Issues

### Asylum and non-refoulement

70. According to the Fifth report submitted by Georgia (14 February 2020) (para. 239), according to the Article 59(2) of the Law of Georgia on the Legal Status of Aliens and Stateless Persons, aliens shall not be removed to a country where he/she/they is persecuted for political opinions or for activities not regarded as a crime under the legislation of Georgia; where he/she/they is persecuted for protecting peace and human rights, for engaging in progressive social-political, scientific and creative activities; where his/her life or health is threatened.
71. As per Article 8 of the [Law of Georgia on International Protection](#), an asylum seeker or an internationally protected person shall not be returned or expelled to the border of the country where his/her life or freedom is endangered on the grounds of their race, religion, nationality, affiliation to a certain social group or political views. Article 10 of the aforesaid Law prohibits discrimination, stating that this law shall apply without discrimination to an asylum seeker and an internationally protected person, regardless of their **sexual orientation, gender identity and expression** among other grounds. The information provided by the State party also lacks statistics that would make it possible to understand whether there are legal cases in practice, according to which LGBT+ migrants applied for asylum in Georgia, fearing persecution in their native countries due to their belonging to the LGBT+ community.

### Education issues

72. Articles 8(1) and 13 of the Law of Georgia on General Education and Article 3 of the Law on Higher Education of Georgia prohibit discrimination, albeit the laws do not list sexual orientation and gender identity as prohibited grounds of discrimination. However, there are no regulatory frameworks with regard to bullying based on sexual orientation or gender identity. In the report on his visit to Georgia in 2018, the Independent Expert on protection against violence and discrimination based on SOGI, Victor Madrigal-Borloz noted<sup>54</sup> that the absence of such policies and lack of awareness create a "hostile environment" in schools and "breeds intolerance" towards LGBT+ students. As per the assessment given by the Independent Expert, "in such an environment, students internalize the negative attitudes and values of society, which may have a detrimental impact on their well-being and mental health and result in school dropout, self harm or violence."
73. In the Report of the Working Group on the UPR concerning Georgia (Human Rights Council, Forty-seventh session, 21 June–9 July 2021), it was recommended to adopt specific policies to promote tolerance towards diversity in matters of sexual orientation and gender identity in educational settings, and document and prevent bullying and discrimination based on these grounds, as well as to undertake educational and awareness-raising campaigns to address stigma, dispel myths and combat stereotypes related to sexual orientation and gender identity (paras. 148.60, 148.61). The Independent Expert made similar recommendations in 2019<sup>55</sup>.
74. The Georgian government needs to invest in supporting LGBT+ NGOs financially to raise the awareness about HIV for LGBT people, especially trans women, and decrease the stigma. Georgia needs to develop contemporary educational programs for secondary and higher education students, as well as for the general public, on the matters of sex and reproductive health, including SOGIGE issues. This has to be an awareness-raising and positively educational curriculum that will encompass issues of sexual identity, hygiene, gender, gender identity and expression, sexual orientation, friendliness and non-hostility towards people who have different sexual needs, and, of course, sexual health and reproductive health and safety during sex, and other sex-health related issues<sup>56</sup>.

### LGBT+ People in Detention

75. Prison conditions for LGBT+ individuals are extremely precarious, affecting the basic rights of the detainees and those of their visitors. LGBT prisoners report that they experience discrimination and violence in prison. Prison administrators separate all LGBT prisoners from other prisoners. Prisoners state that the administration forces them to wear armbands to identify themselves. These inmates

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<sup>54</sup> "Visit to Georgia: report of the Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity", Victor Madrigal-Borloz, UN. Human Rights Council, 2019, para. 16.

<sup>55</sup> *Ibid.*, paras. 120-121.

<sup>56</sup> Human Rights Violations Based on Sexual Orientation and Gender Identity in Georgia. An "alternative report" regarding Concluding Observations of the Committee on the Elimination of Discrimination Against Women. June 2021. Paras. 23-24.

are also victims of sexual violence<sup>57</sup>. To protect themselves while in detention, most would identify as heterosexuals.

76. According to the Fifth report submitted by Georgia (14 February 2020) (para. 227), there are several strategic objectives for the improvement of prison healthcare services (improvement of the healthcare and psychiatric services; rehabilitation services for narcotic and alcohol users). However, the authorities' report does not say a word about such a topic as providing medical care to prisoners living with HIV. None of our organizations has any specific information on this topic as well.
77. The current obstacles to legal gender recognition (see above) and the rigid interpretation of gender by the judiciary lead to situations where a trans woman is sent to a men's facility, and vice versa, with all the risks associated with such a practice. This is another illustration of the urgent need to eliminate abusive requirements as prerequisites for changing gender markers in identity documents, as highlighted above. The State should gather baseline information on the lesbian, gay, bisexual, trans and gender diverse populations in prison, including with regard to the size and the needs of those diverse populations, and incorporate components related to their care, protection and social integration in policy documents.

### **Civil Partnership Issues**

78. The European Commission for Democracy through Law (Venice Commission) in 2017 stated that the Constitutional definition of marriage should "in no case be interpreted as prohibiting same-sex partnerships" and that Georgia, like any other Council of Europe member State, was obliged to comply with standards set by the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and therefore "must provide legal recognition (such as civil unions or registered partnerships) for same sex couples"<sup>58</sup>. The Civil Code of Georgia recognizes marriage only between a man and a woman, excluding same-sex couples from getting married legally.
79. Several prominent civil society organisations in Georgia [have come out](#) in support of civil partnerships for same-sex couples. Georgia's PDO has also [called on](#) the government to legally recognise it.
80. The Annual UNHCHR Report A/HRC/29/23 indicates that while the international law does not oblige States to recognize same-sex marriage, UN Treaty Bodies call upon the recognition of same-sex couples (para 67). If the word "marriage" is of painful topic of discussion and has cultural coding that is intrinsic to a local culture (often times it is the wording that, for some reason, raises prejudice and aggression), states grant the LGBT+ people the right to form civil unions, which provide legal recognition of their relationship and provide them with the civil, social, and other entitlements that marriage usually entails. The Annual UNHCHR Report A/HRC/29/23 also states that the "lack of official recognition of same-sex relationships and absence of legal prohibition on discrimination can result in same-sex partners being treated unfairly by private actors, including health-care providers and insurance companies. The United Nations Children's Fund (UNICEF), the Committee on the Rights of the Child and the Inter-American Court of Human Rights have expressed concern at discrimination against, and the lack of legal protection of, children of same-sex couples" (para 68). LGBT+ people have the same fundamental human rights and freedoms as any other person, so denying them the right of legal recognition of their relationship is discriminatory. Not only that, the state, in fact, loses a great portion of potential, cultural, economic, social, civic, and other benefits that LGBT+ families could provide as integral parts of their local communities and the Georgian society at large. Therefore, we consider that the Georgian government should look in the right direction and award the LGBT+ their right to civil union.
81. It is important to mention, that usually state doesn't recognize domestic violence between the partners, unless they're legally married.

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<sup>57</sup> "Visit to Georgia: report of the Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity", Victor Madrigal-Borloz, UN. Human Rights Council, 2019, paras. 47, 49-50.

<sup>58</sup> Draft opinion 876/2017, CDL-PI(2017)006 of 22 September 2017, para. 38, and opinion 876/2017, CDL-AD(2017)013 of 19 June 2017, para. 63.

## **HIV and AIDS Social Stigma & Criminalization of HIV Transmission**

82. Stigma and discrimination against persons with HIV/AIDS are major barriers to HIV/AIDS prevention. NGOs reported that social stigma caused individuals to avoid testing and treatment for HIV/AIDS; some health-care providers, particularly dentists, refused to provide services to HIV-positive persons; individuals often concealed their HIV/AIDS status from employers due to fear of losing their jobs<sup>59</sup>.
83. The other healthcare related provision that contributes to the negative stereotype regarding the LGBT+ people, enforces the stigma towards them and impairs their right to health is the criminalization of HIV transmission. Notably, Article 131 of the Criminal Code reads: "Intentional exposure of another individual to a threat of getting infected with HIV is punished with imprisonment for a period three to five years." The article creates inconsistency in approaching the intent, the circumstance of the perpetrator being aware of their status and intentionally infecting the victim; the circumstance of the infection not occurring is also punishable. Georgia should reformulate the mentioned article in conformity with UNAIDS guidelines, i.e., "[States \[...\] should issue guidelines](#) to limit police and prosecutorial discretion in application of criminal law (e.g. by clearly and narrowly defining "intentional" transmission, by stipulating that an accused person's responsibility for HIV transmission be clearly established beyond a reasonable doubt, and by clearly indicating those considerations and circumstances that should mitigate against criminal prosecution)." In other words, only direct intent or negligence of the perpetrator who knew about their HIV-positive status (including the victim's informed consent when necessary) that resulted in the victim getting the virus should be punished (while observing mitigating circumstances and other UNAIDS recommendations). It should be noted that there are no separate laws/regulations for other sexually transmitted infections or viruses. In other words, it is a redundant law that, instead of establishing effective preventive guarantees and mechanisms, exacerbates the stigma around PLHIV and LGBT+.

## **Concluding Note**

84. Articles 4-6 of the Georgian Constitution proclaim it as a democratic and social state that observes social justice, social equality, and social solidarity. Such a state then has self-imposed limitations, which are the fundamental human rights and freedoms; and further laws should be adopted to realize their potential and not discriminate against them. Unfortunately, despite the Anti-Discrimination Act, on practice, the LGBT+ do not enjoy the same entitlements in terms of their fundamental rights and freedoms like the heteronormative Georgian majority does. They currently lack understanding from the political elite, law-enforcement officers, medical workers, and the general public. Although adopting prohibition based on SOGIE on a national level was a huge step forward, additional sensitization, education, and awareness-raising of the said categories of people together with the LGBT+ civil society is needed as soon as possible. Considering Georgia's momentous developments since the last CO of the Committee, we file this Alternative Report in hopes that the Georgian government will direct more attention at and invest more effort in LGBT+ persons as a diverse range of key population groups that have distinct civil, social, and political needs that require specialized regulations to decrease discrimination and stigma that currently impale their ability to lead healthy and fulfilling lives.

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<sup>59</sup> United States Department of State. Georgia 2021 Human Rights Report. Page 75.

## **RECOMMENDATIONS**

### **85. Regarding Hate Crimes, Harassment and Violence against LGBT+ Individuals, as well as Activists, Lawyers, Journalists, Human Rights Defenders (arts. 2, 3, 6, 7, 9, 14, 19, 20 and 26)**

- To strengthen institutional measures within the law enforcement system to effectively fight, investigate, and prevent hate crimes based on SOGIGE, using interagency and multispectral victim-based approach.
- To establish a dedicated hate crime investigation unit at the law enforcement level in order to strengthen the investigation and prosecution of hate-motivated crimes based on SOGIGE.
- To gather disaggregated data on gender-based violence and sexual and reproductive health and rights by sex, gender, age group, sexual and gender identity, social status, minorities and other vulnerabilities.
- To set up an electronic system of data collection and streamline the methodology used at the national level in order to ensure the accuracy and coherence of the data collected.
- To analyze hate crime statistics to identify the root causes of such crimes and the obstacles hindering their proper identification.
- To keep statistics on the violation and re-issuance of restraining orders issued by the police relating to both gender-based violence and domestic violence.
- To make sure that homo-/transphobic motivations are considered from the outset of judicial proceedings.
- To revise the Code of Ethics for Lawyers, to train the members of the Ethics Commission of the Georgian Bar Association on gender and LGBT+ issues.
- To increase the number of awareness-raising campaigns among the general public on domestic violence and sexual violence, with particular focus on ethnic minority regions and with the language understandable to such minorities.
- To conduct an impact assessment to evaluate the public servants' training and, if necessary, adjust them.
- To continue cooperation with the non-governmental sector on an ongoing basis, in accordance with the principle of equality, openly supporting human rights defenders to emphasise the importance of human rights protection.
- To ensure timely and effective investigation of possible criminal acts against human rights defenders and punishment of those responsible;
- To increase the number of psychologists working with victims of violence throughout the country and provide them with relevant trainings.
- To make available and disseminate translated publications of international instruments of LGBT+ human rights protection.
- To ensure that adequate laws are adopted along with preventive and protective measures, including shelters for LGBT+ victims of violations.

### **86. Regarding Hate Speech, Xenophobia and Discrimination (arts. 2, 20 and 26)**

- To adopt a comprehensive State strategy to address hate speech and hatred against lesbian, gay, bisexual, trans and gender diverse persons, including online hate speech and cyberbullying, to adopt a zero-tolerance policy in relation to hate speech, publicly condemn such acts, investigate allegations and punish the perpetrators.
- To introduce special legislative norms, designed to protect human rights defenders, including LGBT+ rights defenders, from unlawful interference into their professional activities.
- To ensure efficiency and effective functioning of hate-speech related redress mechanisms/bodies responsible for addressing hate speech when used by public officials and members of Parliament.
- To establish an effective monitoring system for racist and homo-/transphobic hate speech that is built on the expertise of the Public Defender and relevant NGOs.

### **87. Regarding Freedom of Expression and Peaceful Assembly (arts. 2, 19, 21 and 26)**

- To ensure the right of LGBT+ people to assemble and demonstrate, as well as the full enjoyment of freedom of expression and the effective fulfillment of the imposed positive obligations.
- To take appropriate measures to eliminate stigma and negative prejudices in the society, including through systematic education reform.
- To ensure that the pride parade takes place in a safe and peaceful environment.

### **88. Regarding Gender Identity Issues (arts. 2, 16-17, 26)**

- To create transparent and effective administrative mechanisms for legal recognition of gender, which will be detached from a medical sphere and will not foresee inappropriate and intrusive medical intervention as a precondition in the legal recognition process.
- To develop quick, transparent and accessible procedures, based on self-determination, for changing legal gender of trans people on birth certificates, identity cards, passports, educational certificates and other similar documents; make these procedures available for all people who seek to use them, irrespective of age, medical status, financial situation or police record.

### **89. Regarding Asylum and Non-refoulement**

- To adopt effective legislative and procedural safeguards against possible refoulement of LGBT+ individuals.
- To provide training to border guards on the rights of asylum seekers.

### **90. Regarding Persons Deprived of Their Liberty**

- To take appropriate measures to dismantle discriminatory practices against gays and those perceived to be gay in detention, and to ensure their safety and dignity.
- To instruct the staff of penitentiary institutions to take protective measures against physical assault and sexual abuse against detainees with diverse sexual orientations or gender identities and guarantee the equal access for such detainees to rehabilitation and other services made available in the penitentiary establishment and equal treatment.
- To speed up the elaboration of a strategy and associated plan of action for detainees belonging to populations and communities historically subjected to discrimination, ensuring that they include components related to the care, protection and social integration of those inmates through training, awareness-raising and other activities.
- To scale up training for and awareness-raising among penitentiary staff and inmates on human rights, non-discrimination, sexual orientation and gender identity.
- To ensure that the placement of inmates and the regime of detention is based on individual consideration of risk, not on stigma and perceptions.
- To include in the strategic objectives for the improvement of prison healthcare services the need of providing medical care to prisoners living with HIV.

### **91. Regarding Education and Bullying**

- To adopt specific policies or programs to promote tolerance towards diverse sexual orientations or gender identities in educational settings, and regulatory documents with regard to bullying based on these grounds.
- To ensure that mechanisms to address bullying based on sexual orientation and gender identity are available and accessible in educational settings.
- To transform existing education system by integrating human rights-based approach and sexuality education therein. Train teachers to increase their understanding and sensitivity towards SOGIGE and LGBT+ issues.

## **92. Regarding HIV and AIDS Social Stigma & Criminalization of HIV Transmission**

- To reformulate the article 131 of the Criminal Code in conformity with UNAIDS guidelines.
- To raise health professionals' awareness about sexual orientation and gender identity and make sure that lesbian, gay, bisexual, trans and gender diverse persons can access stigma-free treatment at health centers, including HIV/AIDS testing and counseling services.
- To provide comprehensive health services for HIV-positive people.
- To ensure the participation of the trans community in the design and implementation of the national HIV/AIDS strategic plan.