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促进和保护所有人权——公民权利、政治权利、  
经济、社会及文化权利，包括发展权

## 访问格鲁吉亚

## 防止基于性取向和性别认同的暴力和歧视问题独立专家的报告\*\*\*

## 概要

在关于其 2018 年 9 月 25 日至 10 月 5 日访问格鲁吉亚的报告中，防止基于性取向和性别认同的暴力和歧视问题独立专家 Victor Madrigal-Borloz 评估了现行有关打击基于性取向和性别认同的暴力和歧视的国家和国际人权标准的执行情况，并全面介绍了格鲁吉亚男、女同性恋、双性恋、跨性别者和性别多样化的人的人权状况。他根据访问之前、期间和之后收集的资料，查明了一些积极步骤和仍然存在的挑战，并就加强保护个人免遭基于恐惧的仇恨罪和暴力，以及就遏制并最终消除基于性取向和性别认同的歧视提出了一些建议。

\* 本报告概要以所有正式语文分发。报告正文附于概要之后，仅以提交语文分发。

\*\* 因提交方无法控制的情况，经协议，本报告迟于标准发布日期发布。



## **Annex**

# **Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on his visit to Georgia**

## **I. Introduction**

1. Pursuant to Human Rights Council resolution 32/2, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity conducted an official visit to Georgia from 25 September to 5 October 2018. The purpose of the visit was to assess best practices and gaps in the implementation of existing national and international human rights standards to combat violence and discrimination based on sexual orientation and gender identity. During his visit, the Independent Expert worked in situ in Tbilisi, Kutaisi and Batumi. He was unable to assess the situation in Abkhazia or the Tskhinvali region/South Ossetia.

2. During his visit, the Independent Expert met with representatives of the executive, legislative and judicial branches of government, local authorities and the Public Defender's Office (Office of the Ombudsperson). He visited a shelter for victims of violence, a centre for information and counselling on reproductive health and rights and a clinic providing gender affirmation surgery. He thanks the Government for its cooperation before and during the visit and all the governmental agencies involved in the organization and execution of the visit for their exceptional professionalism and dedication.

3. The Independent Expert also appreciated the opportunity to have long discussions with the authorities representing the Patriarchate of the Georgian Orthodox Church and other religious denominations, including the Mufti of all Muslims of Georgia and the Chair of the Jewish Council of Georgia. He was deeply encouraged that, despite differences of opinion on other matters, common ground was identified among the religious leaders during all of these dialogues: violence and discrimination on the basis of sexual orientation and gender identity were never justified and had to be condemned and discouraged; and tolerance had to be fostered through dialogue. He appreciated the willingness expressed by the religious leaders to continue the conversation on how to create spaces of peaceful and respectful coexistence.

4. The Independent Expert met with representatives of several civil society organizations, which facilitated contacts with dozens of lesbian, gay, bisexual, trans and gender diverse persons who shared their life experiences and, in some cases, stories of great suffering. He wishes to acknowledge the essential role played by civil society in the furtherance of the work against violence and discrimination and expresses his gratitude to everyone who shared their stories and expertise.

5. He also thanks the United Nations country team and particularly the Tbilisi-based office for the South Caucasus of the Office of the United Nations High Commissioner for Human Rights (OHCHR) for their support and assistance in the preparation and execution of the visit.

## **II. Context and background**

6. Georgia separated from the former Soviet Union in 1991. Since then, it has endured periods of armed conflict and civil unrest that have caused destruction and significant displacement of civilians (A/72/847, para. 14).

7. Over the past decade, the country has benefited from significant progress in the political, social and economic fields, reflected in improved human development, governance, and social and economic indicators.<sup>1</sup> Current reforms are directed towards enhancing the independence of the judiciary, ensuring the protection of human rights and liberties, and addressing remaining challenges in the election system.<sup>2</sup>

8. At the regional level, Georgia is a member of the Council of Europe and a participating State in the Organization for Security and Cooperation in Europe (OSCE). In June 2014, Georgia signed an association agreement with the European Union and in 2016, it signed a free trade agreement with China.

9. Georgia has carried out significant legal and institutional reform on matters of gender, violence and discrimination. In particular, as part of the 2017 ratification process of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, it amended 30 normative acts to align domestic law with the Convention and adopted a plan of action for the period 2018–2020. The Independent Expert commends the State for having taken these positive steps.

10. Similar developments to strengthen the institutional, legal and policy framework related to violence and discrimination based on sexual orientation and gender identity illustrate the political will of the State. Nevertheless, all State and non-State interlocutors the Independent Expert met during his visit concurred that there were major gaps in effective implementation, and there was significant disagreement on how adequate, relevant and appropriate the measures taken were, as well as the pace set for change.

### III. Institutional, legal and public policy framework

#### A. Legal framework

11. Georgia is a State party to most major international<sup>3</sup> and regional instruments<sup>4</sup> for the protection of human rights and it has created solid institutional frameworks for the implementation of its international obligations.

12. The Independent Expert registered a broad consensus among those with whom he spoke that the domestic legal framework contained adequate provisions conducive to the eradication of violence and discrimination. The principle of equality is enshrined in article 14 of the Constitution and, although it does not expressly list sexual orientation and gender identity among the prohibited grounds for discrimination, the Constitutional Court of Georgia ruled in 2008 and 2014 that the list is not exhaustive and should be interpreted as including sexual orientation, among other grounds.<sup>5</sup>

13. Male homosexuality was criminalized in 1933 in the former Soviet Union under article 121 of the Criminal Code. Since Georgia achieved independence in 1991, this provision fell out of use and was officially removed from the Criminal Code in 2000. Legislative reforms to combat violence and discrimination based on sexual orientation and gender identity include:

(a) The incorporation of the prohibition of discrimination on the basis of sexual orientation in the Labour Code (art. 2) in 2006 and the extension of the protection to pre-contractual relations in 2013;

<sup>1</sup> See *United Nations Partnership for Sustainable Development: Georgia 2016–2020* (Tbilisi, 2015).

<sup>2</sup> See [www.ge.undp.org/content/georgia/en/home/countryinfo/](http://www.ge.undp.org/content/georgia/en/home/countryinfo/).

<sup>3</sup> See [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=65&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=65&Lang=EN).

<sup>4</sup> See [www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/country/GEO/RATIFIED?p\\_auth=C sazifUB](http://www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/country/GEO/RATIFIED?p_auth=C sazifUB).

<sup>5</sup> See *Beridze v. Parliament of Georgia*, case No. 392, judgment of 31 March 2008; and *Asatiani v. the Ministry of Labour, Health and Social Affairs of Georgia*, case No. 2/1/536, judgment of 4 February 2014.

(b) The inclusion of the prohibition of discrimination based on sexual orientation in the Law on Health Care (art. 6) in 2010;

(c) The introduction in 2012 in the Criminal Code (art. 531) of sexual orientation and gender identity, among other factors, as discriminatory grounds to be considered aggravating circumstances when passing sentence for all the crimes provided for in the Code;

(d) The prohibition of broadcasting programmes aimed at the humiliation and defamation of a person or group based, among other things, on their sexual orientation, in the Law on Broadcasting of 2012 (art. 56);<sup>6</sup>

(e) The incorporation of sexual orientation, gender identity and gender expression as prohibited grounds of discrimination in the Law on the Elimination of All Forms of Discrimination (art. 1) on 2 May 2014;

(f) The inclusion of the violation of human equality on the basis, among other things, of sexual orientation and gender identity or expression, carrying a sentence of up to two years, in the Criminal Code (art. 142) in 2014;

(g) The introduction of hate speech in the Criminal Code (art. 2391) in 2015.<sup>7</sup>

14. The strength of this legal framework notwithstanding, all stakeholders agree that there are major issues in terms of implementation. One of these is the lack of awareness about the laws, which is connected to underreporting of crime by victims: despite the fact that lesbian, gay, bisexual, trans and gender diverse communities are among the most discriminated against in the country, only 8 per cent of the cases of possible discrimination received by the Public Defender's Office between 2017 and 2018 relate to sexual orientation or gender identity.<sup>8</sup>

## B. Institutional and policy framework

15. In recent years, Georgia has considerably strengthened its institutional framework to ensure coordinated action with regard to human rights. Among the measures adopted are:

(a) The establishment of the Human Rights Secretariat of the Administration of the Government of Georgia in 2014 to ensure coordination among the executive branch when elaborating and implementing human rights policies;

(b) The identification of the Public Defender's Office as the monitoring body for the implementation of the Law on the Elimination of All Forms of Discrimination, in 2014. A Department of Equality has since been set up to examine cases of discrimination and make recommendations or general proposals to public and private entities. The Public Defender has highlighted, however, that the work of the office is hampered by the fact that private persons and entities, unlike public agencies and officials, do not have a statutory obligation to submit information.<sup>9</sup> The Public Defender also monitors places of deprivation of liberty;

<sup>6</sup> This provision has nonetheless been subject to significant criticism because the broadcasters' self-regulatory mechanisms often refuse to discuss complaints filed by non-governmental organizations, and their decisions are not subject to appeal.

<sup>7</sup> This provision has been criticized by several groups on the grounds that the wording is unclear and imprecise, leading to a risk that it will be used against, rather than for the protection of minority groups.

<sup>8</sup> See Public Defender's Office, "Special report on the fight against discrimination, its prevention, and the situation of equality, 2018", available at [www.ombudsman.ge/res/docs/2019042317142950340.pdf](http://www.ombudsman.ge/res/docs/2019042317142950340.pdf).

<sup>9</sup> See the 2015, 2016 and 2017 Public Defender's Office special reports on the fight against discrimination, available at [www.ombudsman.ge/eng/190308041856angarishebi/sakartvelos-sakhalkho-damtsvelis-spetsialuri-angarishi-diskriminatsiis-tsinaaghmddeg-brdzolis-misi-tavidan-atsilebisa-da-tanastorobis-mdgomareobis-shesakheb-2018](http://www.ombudsman.ge/eng/190308041856angarishebi/sakartvelos-sakhalkho-damtsvelis-spetsialuri-angarishi-diskriminatsiis-tsinaaghmddeg-brdzolis-misi-tavidan-atsilebisa-da-tanastorobis-mdgomareobis-shesakheb-2018).

(c) The creation of the Inter-agency Human Rights Council in 2014.<sup>10</sup> Chaired by the Prime Minister and serviced by the Human Rights Secretariat, the Council elaborates the human rights action plans and coordinates and monitors their implementation. Under its aegis, several specialized commissions have been established;

(d) The establishment within the Ministry of Internal Affairs of a Human Rights Protection Department<sup>11</sup> in January 2018 to monitor the investigation of domestic violence, hate crime and crimes committed by minors and against them. In parallel, training programmes on the prohibition of discrimination and investigation of hate crimes were carried out for representatives of the Prosecutor's Office, lawyers and police officers. The same year, with the assistance of a civil society organization, a perspective related to sexual orientation and gender identity was integrated in training modules on violence against women and girls and domestic violence.

16. In addition, new positions have been created to incorporate specific focus areas within the work of governmental agencies. Key among these are the Human Rights Adviser to the President and the Assistant to the Prime Minister on Human Rights and Gender Equality Issues.

17. Georgia has also implemented valuable policy actions in the field of human rights and to combat discrimination. A National Strategy for the Protection of Human Rights in Georgia for 2014–2020 has been adopted. Under strategic path 12 (guarantee equal rights and the protection of the rights of minorities), the Strategy includes the task of combating discrimination on the basis of sexual orientation or gender identity. The annual plans of action adopted to achieve the objectives set in the Strategy constitute the first policy documents outlining measures to promote and protect the human rights of lesbian, gay, bisexual, trans and gender diverse persons in Georgia.

18. The human rights action plans for 2014–2015 and 2016–2017 included several tasks and objectives related to sexual orientation and gender identity, such as the promotion of non-stereotypical ways of thinking and diversity (including sexual orientation) in school textbooks,<sup>12</sup> ensuring effective punishment of hate crimes, training, collecting statistics, addressing domestic violence based on sexual orientation or gender identity, and providing shelters for victims.<sup>13</sup> The 2018–2020 action plan foresees the drafting of a specific chapter on gender identity and equality. The Independent Expert was informed that the plan would be finalized by the end of 2018, and that specific measures related to sexual orientation and gender identity would be incorporated therein.

19. Taken together, these public policies reveal strategic thinking to combat discrimination and violence based on sexual orientation and gender identity. Unfortunately, as subsequently detailed in the present report, a very significant majority of the targets set have not been met, and very little progress can be observed on most of them. This is consistent with the lived experiences shared with the Independent Expert by lesbian, gay, bisexual, trans and gender diverse persons, who described a situation in which public measures had not yet had any meaningful impact.

20. Such testimony indicates a telling lag in the implementation of the State's strategic thinking. Until such time as actions are completed and have an impact, the question that remains is whether the formal framework in place is indeed an effective and efficient means to address violence and discrimination.

21. In addition, the Independent Expert observes that some key issues remain unaddressed in the legal and policy framework. These include the right of trans persons to legal recognition of gender identity, regulation of and access to gender-affirming treatment, and ensuring the human rights of lesbian, gay, bisexual, trans and gender diverse persons deprived of liberty.

<sup>10</sup> The Council has, however, not convened since 2015 and some stakeholders are questioning its effectiveness.

<sup>11</sup> Renamed the Department of Human Rights Protection and Quality Monitoring in 2019.

<sup>12</sup> Human rights action plan for 2014–2015, sect. 12.5.1.

<sup>13</sup> *Ibid.*, sect. 14.4, and human rights action plan for 2016–2017, sect. 13.2.

### **C. Access to justice**

22. Throughout his visit, the Independent Expert met with representatives of the judiciary, including from the Supreme Court, Kutaisi City Court and the Batumi city courts.

23. Discussions with judges revealed deeply entrenched prejudice within the justice system and led the Independent Expert to believe that negative perceptions towards diverse sexual orientations and gender identities might be one of the key elements that could explain the virtual absence of jurisprudence related to discrimination based on sexual orientation, gender identity or expression and the fact that judges had never considered such discrimination to constitute aggravating circumstances when sentencing perpetrators of hate crimes committed against lesbian, gay, bisexual, trans and gender diverse persons. The application of article 531 of the Criminal Code is indeed left to the discretion of judges and, in one court, when discussing a specific case, the Independent Expert was told that, in retrospect, all elements for the application of article 531 appeared to be present and the judge could not remember why it had not been applied. The Legal Aid Bureau concurred, stating that it was perplexed as to why, in many cases in which a homophobic or transphobic motive had been a clear line of investigation, it had not been pursued.

24. The Independent Expert was also struck by the fact that none of the judges he met could identify a colleague who was lesbian, gay, bisexual, trans or gender diverse and he was even told that if any such judges openly came out, they would face a lack of credibility and be challenged by lawyers.

25. Such examples illustrate the urgent need to incorporate non-discrimination as a mandatory subject in the training curricula for all justice personnel and to raise awareness about sexual orientations and gender identities.

### **IV. Lives of lesbian, gay, bisexual, trans and gender diverse persons in Georgia**

26. During his visit, the Independent Expert developed the conviction that systemic factors deny lesbian, gay, bisexual, trans and gender diverse persons the right to live free and equal in Georgia.

27. He encountered the pervasive notion that the aspects inherent to the sexual orientation or gender identity of lesbian, gay, bisexual, trans and gender diverse persons living in Georgia were sinful, shameful or pathologic. The societal goal appears to perpetuate a vision of Georgia as a country composed exclusively of heterosexual, cisgender persons. As a result, the majority view is that lesbian, gay, bisexual, trans and gender diverse persons must conceal their identity if they want to be recognized as citizens respectful of mores and values qualified as “good”. Those convictions are fuelled and reinforced by agents of the church, tolerated and at times sponsored by politicians, governmental and law enforcement agents, and replicated by mass and social media.

28. The consequences of this concerted attack are real. They include the threat for members of the community of exposure to violence and exclusion from health, housing, work and economic opportunities, and indeed all other basic elements fundamental to a person’s quest for happiness, through mechanisms of social exclusion and ostracism.

29. The Independent Expert had the opportunity to dialogue with many lesbian, gay, bisexual and transgender persons in Georgia. Many of them described intricate networks and communities, the manner in which thousands of them learned to recognize each other, maintained contact and provided and sought support. He was informed that, at a rough estimate, the trans community in Batumi could be as high as 100 persons and that thousands of gay men or men who had sex with men, as well as lesbian and bisexual persons, were active members of social networks.

30. Each lesbian, gay, bisexual, trans or gender diverse person in Georgia puts in place some sort of survival strategy. Very few are protected by status or wealth; others leave the country and break their family bonds to seek asylum elsewhere. Those who remain face the

choice of revealing their true self and being subjected to certain violence and discrimination or concealing that essential aspect of their identity and living in a parallel world. For them, the fate is the invisibility of their needs and their realities, non-existence in official data and constant fear of exposure. Testimonies of lesbian, gay, bisexual, trans and gender diverse persons have evoked the notion of freedom, a value highly cherished by all Georgians. “I am shackled, I cannot live free in this society. I have to lie to myself and to others all the time”, one gay man told the Independent Expert.

## A. At the root of violence and discrimination

31. Virtually all the conversations he had during the visit led the Independent Expert to conclude that violence and discrimination based on sexual orientation and gender identity are pervasive in Georgia: beatings are commonplace, harassment and bullying constant, and exclusion from education, work and health settings appear to be the norm. Although lesbian, gay, bisexual and trans and gender diverse persons are among the most vulnerable individuals in society, a recent Council of Europe survey revealed that only 33 per cent of people in Georgia think that it is important to protect their rights.<sup>14</sup>

32. Stigma associated with lesbian, gay, bisexual and trans and gender diverse persons, which is at the root of violence and discrimination against them, stems from various factors, including beliefs in the need to maintain traditional family units and “traditional values”; the view that diverse sexual orientation and gender identity is abnormal; and rigid expectations about how women and men should look and behave.

33. According to some studies, respect for gay and lesbian persons is rising among nearly all sociodemographic and socioeconomic groups, with the younger generation being the most tolerant.<sup>15</sup> For example, it is encouraging that the number of persons who declare that they do not want to have homosexuals as neighbours has gone down significantly from an astounding 80 per cent reported in 2010. However, the figure reported in 2018, 50 per cent, is a sobering reminder that members of the community face negative views from a large proportion of society and are at great risk of internalizing social prejudice.<sup>16</sup>

## B. Violence

34. A 2018 study suggests that attitudes towards the lesbian, gay, bisexual, trans and gender diverse community are worse than towards any other group, and that members of the community are the most at risk of being subjected to hate crime and hate speech.<sup>17</sup> The more “different” from the socially accepted norms lesbian, gay, bisexual, trans and gender diverse persons are, the more at risk of violence they are.<sup>18</sup> In this context, feminine gay men, trans persons and masculine lesbians are believed to be the most vulnerable to violence.

### 1. Domestic violence

35. Domestic violence is a key element in the downward spiral of social exclusion and marginalization affecting the community: a submission made to the Independent Expert before his visit by several human rights groups indicated that, in a 2018 survey, 84 per cent of lesbian, gay, bisexual and trans and gender diverse persons reported having experienced

<sup>14</sup> Council of Europe, *Hate Crime, Hate Speech, and Discrimination in Georgia: Attitudes and Awareness* (Strasbourg, Council of Europe, 2018), p. 24.

<sup>15</sup> See World Bank, *Gender Based Violence in Georgia: Links Among Conflict, Economic Opportunities and Services* (Washington, D.C., 2017).

<sup>16</sup> See European Bank for Reconstruction and Development, *Life in Transition Survey, 2016*, and Council of Europe, *Hate Crime, Hate Speech, and Discrimination in Georgia*.

<sup>17</sup> See Council of Europe, *Hate Crime, Hate Speech, and Discrimination in Georgia*.

<sup>18</sup> See World Bank, *Gender Based Violence in Georgia*.

some form of abuse by family members.<sup>19</sup> Members of the community are often subjected to psychological and physical violence and attempts to limit their freedom of movement and social contacts with their peers as a punishment for not conforming to socially acceptable behaviour and practices. For boys, engaging in activities or behaviour understood to be “feminine” is considered shameful and rejected by both family and society. Girls who display traits that are supposed to be “masculine” are dismissed as tomboys (*kalabicha*) and expected to change over time or face extreme violence.<sup>20</sup> During one conversation, a young lesbian woman told the Independent Expert how her father had repeatedly beaten her and put a gun to her head; when the case reached the police, the mother sided with the father because she considered her daughter’s sexual orientation to be an insult to the family.

36. The Independent Expert regrets the lack of progress made to take into consideration sexual orientation and gender identity in cases of domestic violence and violence against women, a measure the Government had planned to implement.<sup>21</sup> Measures taken to prevent and eradicate violence against women, gender-based violence and domestic violence, as well as support mechanisms for victims, appear to have been designed from a heteronormative perspective. In practice, lesbian, bisexual and trans women very rarely utilize these mechanisms. For example, a 2018 study showed that while more than 20 per cent of lesbian, gay, bisexual, trans and gender diverse persons who were victims of abuse by family members were in need of shelter, only 2.4 per cent applied for shelter.<sup>22</sup> A recent case also shed light on legal barriers faced by trans women in gaining access to such protection mechanisms, when the court refused a request for a restraining order on the basis that, in her identity documents, the applicant was listed as a man.<sup>23</sup> Domestic violence is closely connected with social vulnerability and homelessness and the State has yet to recognize this correlation.

37. Shortcomings in addressing domestic violence involving this community include a lack of data, which must lie at the heart of public policies. The conceptual framework and systems that would allow for the disaggregation of data on domestic violence have not been completed and further refinements are needed when it comes to acts of domestic violence motivated by the victim’s sexual orientation and gender identity. The Supreme Court, for example, recorded 1,578 cases of domestic violence for the first eight months of 2018 but could provide no information whatsoever regarding which of those cases was linked to sexual orientation or gender identity.

38. The Independent Expert is nevertheless encouraged by the work initiated by the Ministry of Internal Affairs and the Prosecutor’s Office to gather statistics and by the proposal submitted by that Ministry to the Parliamentary Committee on Human Rights to add sexual orientation and gender identity as aggravating circumstances in such cases. There are also a number of encouraging initiatives being carried out with the support of non-State actors aiming at integrating the needs of lesbian, gay, bisexual, trans and gender diverse persons into relevant legislation and policies. A series of training programmes on sexual orientation and gender identity are also being rolled out to sensitize various professionals and service providers for victims of gender-based and domestic violence.

## 2. Hate crimes

39. Hate crimes on the basis of sexual orientation and gender identity are presumed to be commonplace.<sup>24</sup> Yet, there are almost no cases of hate-motivated crimes on the grounds of sexual orientation and/or gender identity going through the chain of justice. The number of cases identified by civil society organizations is significantly higher; one such

<sup>19</sup> The Equality Movement, the Women’s Initiative Support Group and the International Lesbian and Gay Association (ILGA)-Europe.

<sup>20</sup> The United Nations Entity for Gender Equality and the Empowerment of Women, *National Study on Violence against Women in Georgia 2017*, pp. 92–94.

<sup>21</sup> National Action Plan for the Protection of Human Rights, 2016–2017, task No. 13.2.4.

<sup>22</sup> Submission from Equality Movement, the Women’s Initiative Support Group and ILGA-Europe.

<sup>23</sup> Tbilisi City Court, case No. 3/605-18 brought by Sapari, judgment of 5 February 2018.

<sup>24</sup> Council of Europe, *Hate Crime, Hate Speech, and Discrimination in Georgia*.



organization reported having worked on 38 such cases in 2017 and 40 in the first nine months of 2018. However, this must be regarded as the tip of the iceberg. The vast majority of violence against lesbian, gay, bisexual, trans and gender diverse persons remains undocumented and, when reported, it is rendered invisible by improper qualification or recording.

40. Victims report being unwilling to refer incidents to the police – the first link in the chain of justice. Among the reasons are the stigma associated with the community and the fear of having to disclose a diverse sexual orientation or gender identity; the lack of trust in the authorities and the fear of phobic behaviour and attitudes from police officers; and even the feeling of shame due to internalized phobia. 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>25</sup> Prejudice among police officers is particularly acute towards trans sex workers: the Independent Expert received repeated complaints of abuse of authority, transphobic attitudes, verbal and physical abuse, and degrading or humiliating treatment.<sup>26</sup> He also heard allegations that police officers traded protection for sexual intercourse with trans women under the auspices of well-established relations that have continued for years. Yet, examples of such instances of abuse are entirely absent from the information bases of the police oversight mechanisms. This clearly means that such cases will not be investigated and will remain unpunished, reinforcing impunity.

41. Law enforcement bodies rarely link article 53<sup>1</sup> or article 142 of the Criminal Code to cases of violence against lesbian, gay, bisexual, trans and gender diverse persons, 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. Furthermore, until 2016, cases of violence based on sexual orientation and gender identity were invisible in the official data.

42. Some progress has been made in this regard since early 2018. The creation of the Department for Human Rights Protection at the Ministry of Internal Affairs appears to have created a qualitative difference in the Ministry's ability to deal with the issue, and in 2018, criminal charges were brought in 15 cases on the basis of sexual orientation and in 12 cases on the basis of gender identity.<sup>27</sup> In addition, the Department is carrying out awareness-raising campaigns to make clear that such offences will be dealt with effectively and appropriately; a special police training module on hate crime is currently under development, and measures are being taken to improve data collection and management. To complement these positive measures, the Independent Expert recommends establishing a dedicated unit to investigate hate crimes.

43. At the prosecutorial level, there have been commendable efforts taken to increase the knowledge of prosecutors and the judiciary on hate crimes and discrimination. In 2016, the Division of Human Rights of the Prosecutor's Office issued a recommendation for prosecutors on the use of article 531 of the Criminal Code on aggravating circumstances and training has been provided on the identification of hate motives in the course of investigations and proceedings. These efforts have led to a steady increase in the identification of hate crimes based on sexual orientation and gender identity. The Independent Expert welcomes these positive developments, while underlining his concern that many cases do not reach this stage in the proceedings and urging the prosecutorial authorities to intensify their efforts.

<sup>25</sup> ACT, *Human Rights and Justice in Georgia: Public Perceptions and Awareness*, final study report commissioned by the European Union and the United Nations Development Programme (February 2017); and Council of Europe, *Hate Crime, Hate Speech, and Discrimination in Georgia*.

<sup>26</sup> This information is in line with the findings of the Public Defender's Office. See, for example, its special report on the fight against discrimination, 2018, p. 23.

<sup>27</sup> Data received from Georgia after the mission.

44. At the judicial level, there seems to be a different pattern altogether. All the representatives the Independent Expert met during his visit explained that the hate motive included in article 531 had never been applied by judges when sentencing and that consequently there was no jurisprudence concerning aggravating circumstances in homophobic or transphobic crimes. While the Supreme Court, for example, explained that this might be due to a lack of prosecutorial information, the Independent Expert nevertheless concludes that transphobic crimes are at times rendered invisible by a lack of proper identification of the victim. The fact that trans women are as a rule registered with sole reference to the gender marker in their official identity documents leads to most of them being registered as men, literally erasing the problematic that they face.

45. For these reasons, the Independent Expert concurs with the findings of the Public Defender's Office that the current strategy for tackling hate-motivated violence fails to address the systemic nature of the problem. Root causes must be visible before they can be addressed. To date, despite a marked improvement in data collection, major gaps remain, especially with regard to the accuracy of data and inconsistencies in the methodology for its collection. Stigma associated with sexual orientation and gender identity creates a vicious cycle in which all persons and State agents involved in a situation consider, at best, that it is in the best interest of the victim to conceal the true cause of violence and, at worst, that the violence is justified. None of these extremes is conducive to proper notice, investigation and registration of crimes motivated by prejudice against lesbian, gay, bisexual and trans and gender diverse persons.

46. In this context, the Independent Expert welcomes the implementation of several projects under the auspices of the Council of Europe, the OSCE Office for Democratic Institutions and Human Rights and OHCHR that seek to combine legislative, capacity-building and awareness-raising actions to ensure appreciation for diversity in Georgia and the possibility for everyone to enjoy their rights freely, with a particular emphasis on the design of data gathering and management systems.

### 3. Deprivation of liberty

47. All available studies and reports confirm that persons with diverse sexual orientations or gender identities in detention are extremely vulnerable. A system of social ostracization has been put in place in some men's prisons whereby inmates perceived as having diverse sexual orientations are separated from the rest of the prison population and enrolled in the most menial work, such as cleaning services. These outcasts are subjected to mockery and offensive language from other detainees and sometimes even from administrative personnel. According to the tacit rules of this system, any other detainee who touches, speaks to or simply acknowledges the existence of those perceived to be gay – referred to as “roosters” – is automatically associated with them and ostracized as well. According to the Public Defender's Office, this ostracization results in such prisoners being less involved in rehabilitation or other activities implemented in penitentiary establishments.<sup>28</sup> Furthermore, the Independent Expert was informed that these inmates are also victims of sexual violence. To protect themselves while in detention, most would identify as heterosexuals.

48. The administration explains that such separation is carried out for security reasons. For the same reason, prison authorities sometimes place persons perceived to be gay in closed sections, allegedly for their own safety, although they should be placed in semi-open detention.

49. The current obstacles to legal gender recognition and the rigid interpretation of gender by the judiciary may 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 below.

<sup>28</sup> Public Defender's Office, *Human Rights Situation in Closed Institutions, 2016*, pp. 174–177; and additional, confidential input submitted by the Public Defender's Office during the mission.

50. After his visit, the Independent Expert was informed about the adoption in February 2019 of the Strategy and Action Plan on the Development of the Penitentiary and Crime Prevention Systems for 2019–2020. A core principle of the strategic documents is to ensure respect of human rights and fundamental freedoms, paying particular attention to vulnerable groups. The Independent Expert recommends that the State 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.

#### 4. Hate speech

51. Ignorance about issues related to sexual orientation and gender identity and misconceptions create fertile ground for the manipulation of public opinion. An analysis of Georgian media monitoring shows that, in public spaces, homophobic hate speech is most frequently used by political and religious figures. For the former, it is at its height during elections, as the theme of sexual orientation and gender identity is often used to political ends.

52. Those responsible for hate speech are rarely reprimanded publicly by the authorities, which thus condone and tacitly encourage such acts as a valid way to gain public approval, which the Independent Expert deeply regrets. The responsibility of authorities and public figures not to incite or exacerbate hatred and discrimination is a well-established obligation under international human rights law. These obligations notwithstanding, 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 clergy and 127 by civil organizations. Worryingly, a sharp increase was observed compared with previous years.<sup>29</sup>

53. Since 2016, members of ultranationalist and far-right groups have emerged forcefully in the public sphere, using hate speech against members of minorities, including lesbian, gay, bisexual, trans and gender diverse persons. 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.

54. To date, the legislative framework regulating hate speech fails to explicitly prohibit hatred based on sexual orientation or gender identity and, despite several codes of conduct restricting hate speech in the media<sup>30</sup> and the creation of self-regulatory mechanisms, homophobia remains the type of hate speech most recorded in 2017 in media outlets, with 255 such comments revolving around the myth of “propaganda for homosexuality” and equating homosexuality with perversion and paedophilia.<sup>31</sup>

55. In December 2018, the Code of Ethics for Members of Parliament was adopted, which prohibits degrading, obscene, sexist and discriminatory statements and actions and the use of hate speech. If parliamentarians violate the Code, a recommendation is made to them, and their name and a brief description of the violation are published on the parliamentary website. The Independent Expert welcomes the adoption of the Code but regrets that the mechanism envisaged to address the violations does not seem to have been effective to date.

<sup>29</sup> See Media Development Foundation, “Hate speech” (2018), available from [www.mdfgeorgia.ge/eng/view-library/91](http://www.mdfgeorgia.ge/eng/view-library/91).

<sup>30</sup> The Code of Conduct for Broadcasters, the Code of Conduct of the Georgian Public Broadcaster and the Charter of Journalistic Ethics.

<sup>31</sup> See Media Development Foundation, “Hate speech”.

## 5. International Day against Homophobia, Transphobia and Biphobia

56. Since 2012, the International Day against Homophobia, Transphobia and Biphobia has marked a widening in the rift in Georgian society.<sup>32</sup>

57. On 17 May 2013, a small group of members of the lesbian, gay, bisexual, trans and gender diverse community and their allies, who were commemorating the International Day in Tbilisi, was attacked by a crowd of thousands. For hours, the police failed to control the situation and the small group that had sought refuge in a building surrounded by the crowd was subjected to terror and assault, suffering physical and psychological harm. There is consensus on the fact that clerics from the Orthodox Church and members of extremist groups were involved in inciting the violence, and that groups from the population executed the attack under the influence of crowd dynamics.

58. The Independent Expert has been struck by the extent to which different stakeholders – the State, the lesbian, gay, bisexual, trans and gender diverse community, civil society and the Church – qualify those events as “a source of shame”, “societal trauma” or “the lowest point of Georgian society in recent times”. Some interlocutors opined that the celebration of the International Day in the public space had been seen as a breach of the tacit societal pact that displays of diverse sexual orientation or gender identity would be tolerated only as long as they remained in the private sphere.

59. Equally worrisome are the effects of these events on the ability of the community to make effective use of their freedoms of expression and peaceful assembly. Since 2013, strong limitations put in place by the Government with regard to participation in the 17 May demonstrations have hampered the ability of the lesbian, gay, bisexual, trans and gender diverse community to celebrate the International Day.

60. The chilling effect on such gatherings seems to be supported by a significant majority of the society: 80.5 per cent of the respondents to a survey considered that such rallies should be banned by law. To have such a significant part of society convinced that a whole community does not possess the rights to freedom of expression and peaceful assembly is of enormous concern to the Independent Expert. The fact that the State failed to publicly condemn the attacks perpetrated at the 2013 event and that the Church never made a public apology may have been understood by the general public as tacit acquiescence in the violence and may indirectly have fuelled discriminatory sentiments against the community.

61. In this context, the participation of the Deputy Minister for Internal Affairs and of the Head of the Human Rights Protection Department in the 2018 celebration of the International Day against Homophobia, Transphobia and Biphobia is most welcome, as was the announcement prior to that celebration that violence would not be tolerated. The Independent Expert also appreciates the fact that, during his dialogue with authorities of the Patriarchate, they distanced themselves and the Orthodox Church from the homophobic sentiments that had been expressed by some members of the clergy in May 2013, and reaffirmed that tradition should never be used to justify violence and discrimination.

62. In 2014, the Orthodox Church of Georgia declared 17 May as Family Purity Day. Since then, the Patriarchate has held annual demonstrations on 17 May, marching in Tbilisi city centre, occupying key locations and celebrating mass weddings. The Independent Expert conveyed to the Patriarchate his concerns in this respect: the establishment of a dynamic of peaceful coexistence must be a common objective, and other solutions should be found for different views to be expressed without creating risks of confrontation and a dynamic of competition.

63. There is a shadow over the investigation and prosecution of the very grave events of 17 May 2013, and this has left an open wound in society. Dealing with social trauma reveals the truth and creates a space for dialogue. The Independent Expert therefore

<sup>32</sup> See European Court of Human Rights, *Women’s Initiative Support Group and others v. Georgia* (application No. 73204/13), lodged on 15 November 2013 (pending); *Identoba and others v. Georgia* (application No. 73235/12), judgment of 12 May 2015.

encourages Georgia to take the necessary steps to ascertain the truth surrounding the events, establish responsibilities and take the necessary measures of reparation.

## **C. Discrimination**

### **1. Leave no lesbian, gay, bisexual, trans or gender diverse person behind**

64. To date, the lesbian, gay, bisexual, trans and gender diverse community is not only invisible in mainstream society but also in development strategies, policies, programming and budgeting. There is little knowledge about the community, its size, its vulnerability and its needs. To ensure that the human rights of these populations are anchored in the 2030 Agenda for Sustainable Development, lesbian, gay, bisexual, trans and gender diverse persons and communities must be included in the design, implementation and evaluation of all relevant policies.

65. Without urgent measures to render the community visible and to address violence and discrimination based on sexual orientation and gender identity, Georgia will fail to comply with its international human rights law obligations and to deliver on the promise to leave no one behind in the implementation of the Sustainable Development Goals. Urgent responses are required from the legislative, judicial and executive branches of government, as well as from non-State actors, such as civil society, faith-based communities, the media and the private sector.

### **2. Gender identity**

66. According to established practice, full sex reassignment surgery preceded by an assessment by psychologists and sexologists and hormonal therapy are a prerequisite for amending gender markers in identity documents. The Independent Expert was shocked to learn that, based on the assessment by psychologists and sexologists, the surgeon decides whether the patient is a “true transsexual”, depending on the patient’s will to undergo full or only partial gender affirmation procedures. The Independent Expert is extremely concerned that such abusive requirements are applied at the discretion of medical professionals who are evidently uneducated on sexual orientation and gender identity. Moreover, he notes that the surgery recommended to “true transsexuals” lead to completely unnecessary mutilation, sterilization, great pain and suffering.

67. Such treatments and procedures can lead to severe and lifelong physical and mental pain and suffering and, if forced, coercive or otherwise involuntary, can violate the right of persons to be free from torture and other cruel, inhuman or degrading treatment or punishment. Sterilization requirements run counter to respect for bodily integrity, self-determination and human dignity, and can cause and perpetuate discrimination against transgender persons.

68. Furthermore, the right to equal recognition before the law is a basic element in a well-functioning framework for protection from arbitrary arrest and detention, torture and ill-treatment, as it is well established that in all situations of deprivation of liberty the proper identification of the individual is the first guarantee of State accountability. Without it, trans persons are victims of discrimination in all aspects of their lives, including in employment and with regard to housing and access to social security, and they are socially excluded and subjected to high levels of violence. They may also face restrictions to their right to freedom of movement. For these reasons, 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 (see A/73/152).

### **3. Right to privacy and family life**

69. In the new Constitution of Georgia, which came into force in December 2018, the previous neutral definition of marriage was replaced with one that recognizes marriage “as a union between a woman and a man”, echoing the long-standing definition of marriage enshrined in article 1106 of the Civil Code.

70. During his visit, the Independent Expert was informed that the lesbian, gay, bisexual, trans and gender diverse community had never claimed marriage equality for same-sex couples. He was told that the proposal had been initiated by conservative political groups that wanted to fuel homophobic sentiment among the public with a view to gaining support when they then called for the preservation of “traditional” families. Currently, no recognized forms of same-sex partnerships exist in Georgia. The Independent Expert notes in that regard the European Commission for Democracy through Law (Venice Commission) draft opinions issued in 2017 on the proposed draft Constitution of Georgia. In those draft opinions, the Venice Commission 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>33</sup>

71. The Independent Expert calls on all relevant actors to reflect on how such unnecessary initiatives fuel negative sentiments and contribute to stigma and stereotypes. He also calls on political leaders to shoulder their responsibility to promote social peace and foster tolerance.

#### 4. Decent work and the right to an adequate standard of living

72. Although the Labour Code has, since 2006, explicitly prohibited discrimination based on sexual orientation, according to all available reports, such discrimination remains common in the workplace. Studies by non-State actors show that discrimination in employment is the most problematic sphere for the community, especially for trans persons. One study found that one person out of four had been denied employment due to their sexual orientation or gender identity and that only 15.3 per cent of lesbian, gay and bisexual persons were open about their sexual orientation at work due to fear of discrimination.<sup>34</sup> Most recently, a study revealed a low level of tolerance towards lesbian, gay, bisexual, trans and gender diverse persons at work, with 70 per cent of those consulted disapproving of people doing business with “homosexuals”.<sup>35</sup>

73. Many members of the community said that they concealed their sexual orientation or gender identity in order to have decent work. Those whose appearance did not correspond to social expectations, especially effeminate men and trans persons, said they were not hired or, when hired, were ostracized at work, subjected to slurs and mockery or fired if they came out. All lesbian, gay, bisexual, trans and gender diverse persons concurred that the most vulnerable and marginalized population was trans women. Unless they lived a double life, trans women had little chance of finding a formal job. That was compounded by the difficulties they faced in obtaining legal gender recognition, which meant that most trans women had identity documents that did not correspond to their true self. Many, therefore, worked in the informal economy, including as sex workers, and were subject to poor working conditions and remuneration.

74. The Independent Expert regrets the lack of information on homelessness among the community and its root causes, including the possible correlation between domestic violence and homelessness. He notes the absence of State policy and programmes in that regard and the absence of temporary accommodation<sup>36</sup> or shelters tailored to the specific needs of lesbian, gay, bisexual, trans and gender diverse persons. Young persons with diverse sexual orientations or gender identities are often banished from their home when

<sup>33</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.

<sup>34</sup> See Aghdgomelashvili, *From Prejudice to Equality (part II)* (English version forthcoming).

<sup>35</sup> Council of Europe, *Hate Crime, Hate Speech, and Discrimination in Georgia*. Terminology used in the publication.

<sup>36</sup> See LLC Milky Way and Equality Movement, *Community Voice against Stigma: Activism for Equality*, focus groups with members of the LGBTQ community – important findings and recommendations (Tbilisi, 2018).

“coming out”, and many find themselves in an extremely vulnerable situation, subjected to homelessness, poverty, violence and prejudice in public spaces.

## 5. Right to health

75. The Law on Health Care (art. 6) prohibits discrimination on the basis of sexual orientation, among other grounds, while the Law on the Rights of Patients protects the rights of citizens in the health-care system and prescribes respect for the dignity of all patients.

76. During his visit, the Independent Expert was shocked at the lack of awareness and the stigma attached to sexual orientation and gender identity by health professionals. According to a submission from a non-governmental organization, one 2015 study revealed that 39 per cent of the medical staff interviewed believed that homosexuality was a disease and could be cured, directly contradicting the position of the World Health Organization. The Independent Expert’s impression was corroborated by several other non-governmental reports and the testimonies of members of the community who have consistently reported that medical personnel display phobic attitudes towards them. As a result, many lesbian, gay, bisexual, trans and gender diverse persons refrain from seeking medical services and some even choose self-medication in order to circumvent medical professionals. Yet, according to the Public Defender’s Office, the State Regulation Agency for Medical Activities of the Ministry of Labour, Health and Social Affairs received only seven complaints concerning the provision of medical services to lesbian, gay, bisexual, trans and gender diverse persons in 2017, of which the Agency determined that signs of violations were detected in only a single case.

77. The parliament’s Gender Equality Council observed that the health-care needs of lesbian, gay, bisexual, trans and intersex persons had not yet been studied at the national level and that policies, strategies and action plans on the health-care system did not cover or address their needs and interests.<sup>37</sup> The situation of lesbian and bisexual women is particularly striking in that regard as there seems to be a total absence of information regarding their access to health-care services and the identification of their specific needs.

78. This is also true for trans persons’ specific health needs and access to related services. Access to appropriate gender affirmation services, including psychological, endocrinological and surgical expertise, is unregulated. To date, there are no clinical guidelines with regard to gender affirmation procedures, despite a recommendation to that effect by the parliament’s Gender Equality Council,<sup>38</sup> and such procedures are not covered by private health insurance schemes or under the national universal health care or other programmes, making them unaffordable and therefore inaccessible to the vast majority of trans persons.

79. According to a 2014 study, some 17,200 men have sex with men in Georgia.<sup>39</sup> A 2015 study revealed that HIV prevalence among this group increased from 7 per cent in 2010 to 25.1 per cent in 2015 in Tbilisi, and that only 14 per cent of that group know their status.<sup>40</sup> According to a more recent study, homophobia and transphobia compounded by the social stigma associated with HIV/AIDS are major obstacles for the inclusion of lesbian, gay, bisexual, trans and gender diverse populations in HIV/AIDS prevention, testing and treatment services.<sup>41</sup> The Government has put in place a wide spectrum of targeted HIV prevention interventions and the new National HIV/AIDS Strategic Plan for 2019–2022

<sup>37</sup> Gender Equality Council of the Parliament, *Gender Equality in Georgia: Barriers and Recommendations*, vol. 2 (January 2018), p. 51.

<sup>38</sup> *Ibid.*

<sup>39</sup> See Ivdity Chikovani and others, “Population size estimation of men who have sex with men in Georgia”, technical report (Curatio International Foundation, 2014).

<sup>40</sup> See Natia Shengelia and others, “HIV risk and prevention behavior among men who have sex with men in Tbilisi and Batumi: bio-behavioral surveillance survey”, technical report (Curatio International Foundation, 2015).

<sup>41</sup> Eurasian Coalition on Male Health, “Brief of HIV among MSM [men who have sex with men] in Georgia” (2018), p. 2.

was designed with the participation of men who have sex with men. Stakeholders, however, have expressed concern at the fact that the trans population was not consulted when preparing the plan and that the particular vulnerability of this group has not been studied and taken into consideration in the final draft.

80. Stigma that translates into discriminatory practices in everyday life is exacerbated by regulations such as the prohibition against men who have sex with men from donating blood, a prohibition that has been continually struck down by the Constitutional Court only to reappear again. The Independent Expert was informed that, after having been invalidated twice by the Constitutional Court, which found the Ministry of Health's regulations discriminatory, a ban on blood donation has recently been reintroduced prohibiting men who have sex with men from donating blood for 10 years after having had sexual intercourse with a same-sex partner. As pointed out by the Court in its previous decisions, the fact that modern technologies allow for the detection of HIV/AIDS in donations makes a ban unnecessary. Such policies only add to the stigma associated with men who have sex with men and should be abolished.

## 6. Education, culture and sport

81. The Law on General Education (art. 9 (1)) and the Law on Higher Education of Georgia (art. 3 (2) (h)) prohibit discrimination, and the Code of Ethics for Educators (art. 3) obliges teachers not to subject students to verbal, physical or psychological abuse and to protect the students' health and personal safety.<sup>42</sup> There are, however, no specific policies or programmes to promote tolerance towards diverse sexual orientations or gender identities in educational settings and no regulatory documents with regard to bullying based on these grounds.<sup>43</sup>

82. A survey conducted in 2014 by a non-governmental organization shed light on the extent of bullying against lesbian, gay, bisexual, trans and gender diverse pupils in schools, with 7 out of 10 students surveyed reporting that they had been victims of bullying. Many members of the community testified about violence and isolation in school. The low level of awareness about variations in sexual orientation and gender identity as a normal phenomenon creates a hostile environment and breeds intolerance towards lesbian, gay, bisexual, trans and gender diverse students. Members of the community said that at times, parents and teachers joined forces to convince students to change their sexual orientation, including through psychological counselling, giving the erroneous impression that the child had to be "cured". 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.

83. The Independent Expert was informed that a new identification and referral mechanism was envisaged to address peer violence and violence against children in educational settings. Such measures should incorporate sexual orientation and gender identity and be complemented by the adoption of specific programmes to promote tolerance towards lesbian, gay, bisexual, trans and gender diverse persons in the education sector and to address bullying based on sexual orientation and gender identity.

84. While the Government has introduced the subject "Me and society", which aims at developing citizens who take care of their families, communities and the natural and cultural environment, sexuality education is not yet part of the school curriculum. Attempts to introduce issues related to sexual life, sexual orientation and gender identity have failed due to the strong opposition of neo-conservative and far-right groups.<sup>44</sup> This is of great

<sup>42</sup> Reportedly, the principles of ethics and integrity are emphasized in higher educational institutions through Order No. 07/N dated 31 January 2019.

<sup>43</sup> Public Defender's Office, "Survey of human rights in education and educational environment in general education field", 2018.

<sup>44</sup> Public Defender's Office, *Human Rights in the Context of Sexual and Reproductive Health and Well-Being in Georgia: Country Assessment* (2018). Available from [www.ombudsman.ge/res/docs/2019040211031497196.pdf](http://www.ombudsman.ge/res/docs/2019040211031497196.pdf).



concern, given the stigma, stereotypes and misconceptions surrounding gender, sexuality and lesbian, gay, bisexual, trans and gender diverse persons in Georgia.

85. Culture and sport are two powerful media to raise awareness among the general population, promote human rights and foster social inclusion. Systematically, in all meetings with all stakeholders, the urgent need to raise awareness and foster tolerance was highlighted as a key approach to eradicating violence and discrimination towards lesbian, gay, bisexual, trans and gender diverse persons. Unfortunately, to date, there is no State programme, policy or strategy to tackle this issue through culture or sport. On the contrary, when the vice-captain of the national football team of Georgia wore an arm band in support of lesbian, gay, bisexual, trans and gender diverse persons during a match in October 2017, it generated an extremely negative reaction, including a spike in homophobic comments and a demonstration in front of the Georgian Football Federation during which a rainbow flag was burned.<sup>45</sup> The Independent Expert regrets that in this highly visible instance, which created an obvious opportunity for social change, the footballer did not receive the vocal and unanimous support of the State, including the Ministry of Education and Culture.

## V. Conclusions

86. Georgia has made impressive progress in setting up the legal, policy and institutional framework necessary to tackle violence and discrimination based on sexual orientation and gender identity. There are, however, major gaps in terms of implementation that hinder the ability of the State to address this phenomenon. As a result, hate speech is on the rise, homophobic and transphobic hate crime remains rampant and discrimination is pervasive. Education and awareness-raising are key tools and must be considered a priority. To date, prevalent stigma and prejudice hinder the deployment of effective State measures and fuel intolerance, discrimination and violence against lesbian, gay, bisexual, trans and gender diverse persons.

87. Georgia must address the systemic factors that deny lesbian, gay, bisexual and trans and gender diverse persons the right to live free and equal in Georgia. Some may argue that this work takes one or many generations to accomplish, and that may be the case. But every Georgian who happens to be lesbian, gay, bisexual, trans or gender diverse deserves to see, today, decisive forward-looking action that paves the way to freedom and equality.

## VI. Recommendations

88. The Independent Expert recommends that Georgia take the actions detailed below.

### Legal framework

89. Amend the Law on the Elimination of All Forms of Discrimination, as recommended by the Public Defender.<sup>46</sup>

90. Ensure that the process of legal recognition of gender identity is based on self-determination by the applicant, is a simple administrative process, is exempt from abusive requirements, recognizes non-binary identities and is accessible to minors.

### Public policies

91. In order to assess to what extent its lesbian, gay, bisexual, trans and gender diverse populations are left behind, establish a knowledge base to assess the lived experience of these populations. When doing so, the following areas should be considered: health, education, economic well-being (including rates of poverty,

<sup>45</sup> See Media Development Foundation, "Hate speech".

<sup>46</sup> Special report on the fight against discrimination, 2018, p. 24.

homelessness and food insecurity), personal security and violence, and political and civic participation.

92. Ensure the availability of high-quality, timely and reliable disaggregated data to enable the formulation of policy changes deemed necessary for the social inclusion of lesbian, gay, bisexual, trans and gender diverse persons and the protection of their human rights. Data collection and management should be implemented in strict compliance with human rights standards, as an effective measure to prevent, punish and eradicate violence and discrimination.

93. Use the findings from data analysis to inform public policies and programming and set clear targets to tear down the invisible barriers that exclude lesbian, gay, bisexual, trans and gender diverse persons from the benefits of the development agenda. Civil society actors should participate in the elaboration, monitoring and assessment phases of these public policies and the State should make use of the leverage capacity of education, culture and sport to foster the sociocultural inclusion of lesbian, gay, bisexual, trans and gender diverse persons.

94. In cooperation with non-State actors, craft an education campaign on sexual orientation and gender identity with a view to addressing stigma, dispelling myths and combating stereotypes that create obstacles to the full implementation of the government strategy in that regard. Allies, for example political and religious leaders, artists and sports professionals, should be involved to amplify key messages of tolerance and connect with different sections of the population.

95. Implement objective, non-partisan sexuality education and awareness-raising as a crucial means to address the root causes of violence and discrimination based on gender, sexual orientation and gender identity.

96. When completing the chapter on gender of the 2018–2020 human rights action plan:

(a) Include an evaluation of the factors that have hampered the completion of targets under sections 14.4 of the action plan for 2014–2015 and 13.2 of the action plan for 2016–2017, formulate actions to address the findings, and provide the means for their realistic implementation in the period 2018–2020;

(b) Incorporate specific targets to address discrimination and violence based on gender identity, including access to legal gender recognition and the regulation of and access to gender affirmation treatment.

97. Continue and scale up efforts with regard to the training of all State officials on issues related to sexual orientation and gender identity, particularly police and penitentiary staff, judicial staff, health professionals and teachers. Sensitization campaigns should also target religious leaders, parliamentarians, politicians and the media.

#### **Domestic violence**

98. Redouble efforts to ensure the adequate identification and processing of domestic violence cases based on sexual orientation and gender identity, and the collection of the relevant statistics.

#### **Hate crimes**

99. 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 sexual orientation and gender identity.

100. 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. Analyse hate crime statistics to identify the root causes of such crimes and the obstacles hindering their proper identification.

### **Persons deprived of their liberty**

101. Take appropriate measures to dismantle discriminatory practices against gays and those perceived to be gay in detention, and to ensure their safety and dignity. In particular, 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.

102. Speed up the elaboration of a strategy and associated plan of action for detainees belonging to populations and communities historically subjected to discrimination, including lesbian, gay, bisexual, trans and gender diverse inmates, ensuring that they include components related to the care, protection and social integration of those inmates through training, awareness-raising and other activities. Such policies and programmes should be based on studies and surveys and should enable the assessment of the current situation of lesbian, gay, bisexual, trans and gender diverse persons deprived of their liberty and the measurement of progress in their treatment over time. Anonymity and confidentiality should be guaranteed throughout those processes, and the safety of the detainees should always remain the primary consideration.

103. In the meantime, scale up training for and awareness-raising among penitentiary staff and inmates on human rights, non-discrimination, sexual orientation and gender identity.

104. Ensure that the placement of inmates and the regime of detention is based on individual consideration of risk, not on stigma and perceptions.

### **Hate speech**

105. Ensure the prompt adoption of the standards on public service and the code of ethics envisaged under task 13.2.2 in the human rights action plan for 2016–2017.

106. Carry out an evaluation of the current legal framework, with the participation of non-State actors, to determine whether it is fully adequate to address hate speech and hatred against lesbian, gay, bisexual and trans and gender diverse persons, including online.

107. 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.

108. Adopt a zero-tolerance policy in relation to hate speech, publicly condemn such acts, investigate allegations and punish the perpetrators.

### **Freedoms of expression and peaceful assembly**

109. Adopt measures to ascertain the truth of the events of 17 May 2013, the establishment of different responsibilities for them and the measures of reparation that should ensue, including what assurances of non-repetition would be necessary.

110. Together with civil society actors, ascertain the measures necessary to enable the safe and peaceful celebration of the International Day against Homophobia, Transphobia and Biphobia and take preventive measures to deter violence, hatred and discriminatory attitudes and behaviour.

111. Launch mediation between the Orthodox Church and members of the lesbian, gay, bisexual, trans and gender diverse community to find solutions that allow for peaceful coexistence and avoid unnecessary confrontations during demonstrations.

### **Adequate standard of living**

112. Design a State programme offering temporary accommodation or specific shelters for lesbian, gay, bisexual, trans and gender diverse persons.

## **HIV/AIDS**

113. **Conduct a size estimate of the trans population and assess the specific needs of trans persons and the barriers that they face when accessing HIV/AIDS prevention and treatment services.**

114. **Ensure the participation of the trans community in the design and implementation of the national HIV/AIDS strategic plan.**

115. **Speed up the implementation of the new safety strategy and blood service reform, and comply with the Constitutional Court's decision by withdrawing discriminatory and stigmatizing legislation pertaining to blood donors.**

116. **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 centres, including HIV/AIDS testing and counselling services.**

## **Health**

117. **Take immediate measures to improve the health and well-being of lesbian, gay, bisexual, trans and gender diverse persons and guarantee their access to good quality health-care services and health-related information. This includes incorporating their needs and specificities in the State Strategy on Health Care and considering the provision of gender-affirming care as a State obligation that is neither dependent on a diagnosis nor a prerequisite for legal gender recognition.**

118. **Eliminate abusive requirements as prerequisites for gender marker change, including forced involuntary sterilization, medical procedures related to transition, surgery and hormonal therapies, and mandatory medical diagnosis, psychological appraisals or other medical or psychosocial procedures or treatment.**

119. **Adopt clinical guidelines on trans-specific medical procedures in line with international standards.**

## **Education and bullying**

120. **Adopt specific policies or programmes to promote tolerance towards diverse sexual orientations or gender identities in educational settings, and regulatory documents with regard to bullying based on these grounds.**

121. **Ensure that mechanisms to address bullying based on sexual orientation and gender identity are available and accessible in educational settings.**

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