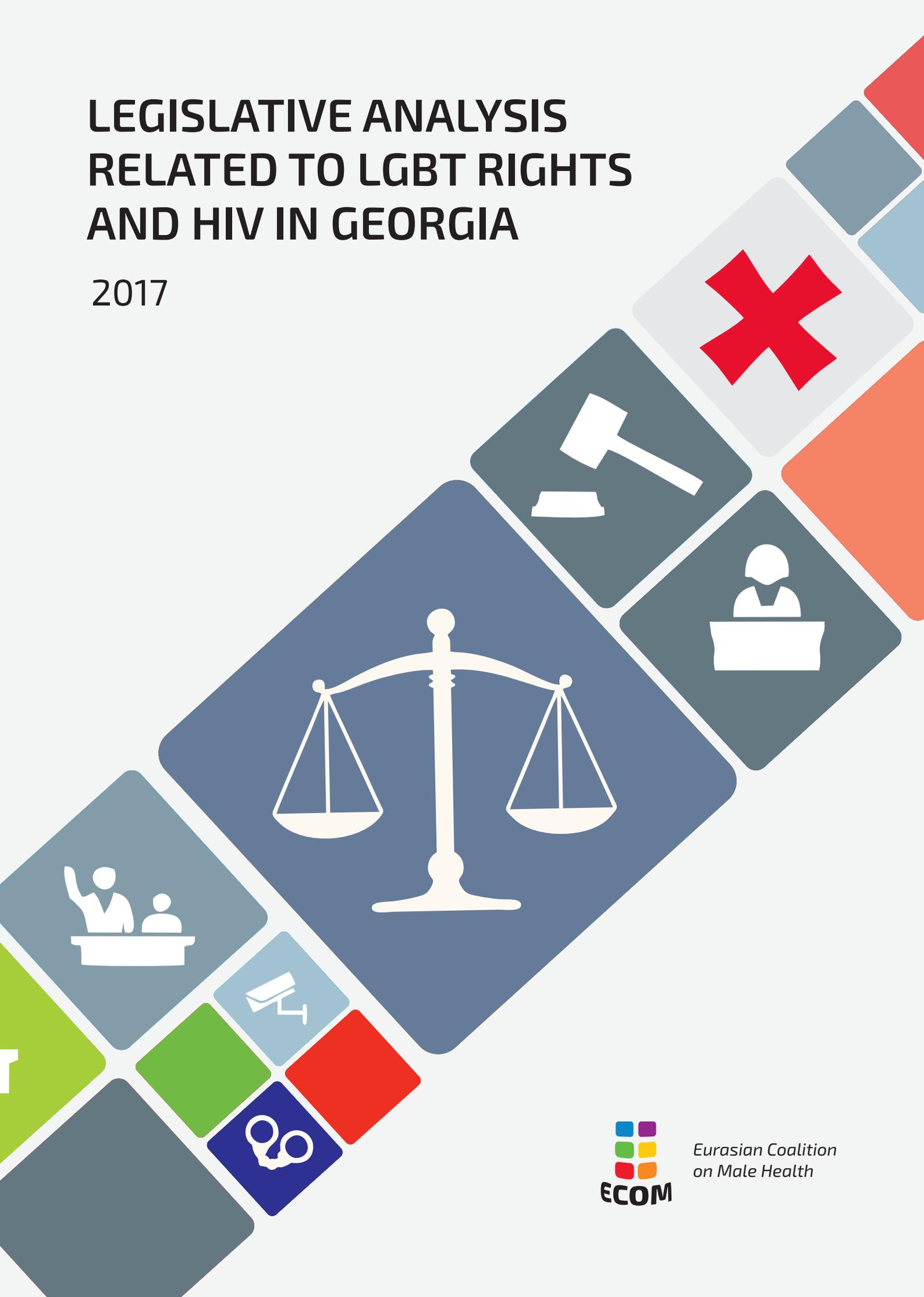


# LEGISLATIVE ANALYSIS RELATED TO LGBT RIGHTS AND HIV IN GEORGIA

2017



Eurasian Coalition  
on Male Health

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The information presented in this review may be useful both for non-governmental organizations and community activists and for the government, when planning advocacy processes, promoting the rights of PLWH, gay men, other MSM, and trans\* people and eliminating the barriers hindering their access to services.

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EURASIAN COALITION ON MALE HEALTH

**LEGISLATIVE ANALYSIS RELATED  
TO LGBT RIGHTS AND HIV IN GEORGIA**

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Tallinn - 2017

# Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
ART	antiretroviral therapy
CAR	Civil Acts Registry
CSO	civil society organizations, umbrella term with includes non-governmental organizations, professional associations, and community organizations
ECOM	Eurasian Coalition on Male Health
ECRI	the European Commission against Racism and Intolerance
EMC	Human Rights Education and Monitoring Center
GB	the Global Fund
HIV	Human Immunodeficiency Virus
IDAHOT	International day against homophobia and transphobia
Intersex	people who are born with any of several variations in sex characteristics including chromosomes, gonads, sex hormones, or genitals that, according to the UN Office of the High Commissioner for Human Rights, "do not fit the typical definitions for male or female bodies"
FtM	transgender male, person in transition from female to male
LGBT	Lesbian, Gay, Bisexual, and Trans*people
MSM	men who have sex with men
MtF	transgender female, person in transition from male to female
ODIHR	the Office for Democratic Institutions and Human Rights OSCE
OSCE	Organization for Security and Co-operation in Europe
NCDC	the National Centre of Disease Control and Public Health
NGO	non-governmental organization
PLWH	people who live with HIV
PWID	people who use injection drugs
PWUD	people who use drugs
SOGI	sexual orientation and gender identity
STD	sexually transmitted disease
SR	sub-recipients
Trans* birth	people who have a gender identity or gender expression that differs from their assigned sex
TB	tuberculosis
UN	United Nations Organization
UNHRC	United Nations Human Rights Committee
WISG	Women's Initiatives Supportive Group



The goal of this review is to identify the legal barriers for people living with HIV, gay men, other men who have sex with men and trans\*people in exercising their rights in different areas. To conduct such review, ECOM developed a methodology and a survey questionnaire, which we filled in with the help of our local partners. When analyzing legal practices, consideration was given both to judicial practices and to the information provided by activists, received from the organizations documenting cases of human rights violations and protection of such rights, news in mass media, and reports of non-governmental organizations submitted to the international agencies.

Both legislation and law enforcement practices were analyzed in terms of their compliance with the international and European standards. Besides, we analyzed the recommendations received by Georgia within the international monitoring mechanisms as well as performance of such recommendations by the government.

To present information on the legislation currently in force, in this review we used extracts from the regulatory documents, which are, unfortunately, not always correct and fail to comply with the international politically correct terminology standards. In this case, the original wording is presented to ensure objective demonstration of the existing regulatory framework and the language used in the matters analyzed. All quotations from the regulatory documents are given in quotation marks.

The information presented in this review may be useful both for non-governmental organizations and community activists and for the government, when planning the advocacy processes, promoting the rights of PLH, gay men, other MSM, and trans\*people and eliminating the barriers hindering their access to services. d trans\*people and eliminating the barriers hindering their access to services.



## Summary and key recommendations

According to current analysis Georgia took many steps forward to implement international and European standards and incorporate principles of equality of human rights for all groups of people, including PLWH, gay men, other MSM and trans\* people into the national legislation.

Georgia has adopted the Law on elimination of all forms of discrimination that includes sexual orientation and gender identity among protected grounds, and also made corresponding amendments to other key norms that regulate different areas of public life. All the amendments provide prohibition of discrimination on the grounds of sex and health status according to General Comments of the Committee on Economic, Social and Cultural Rights and UNAIDS policy guidance.

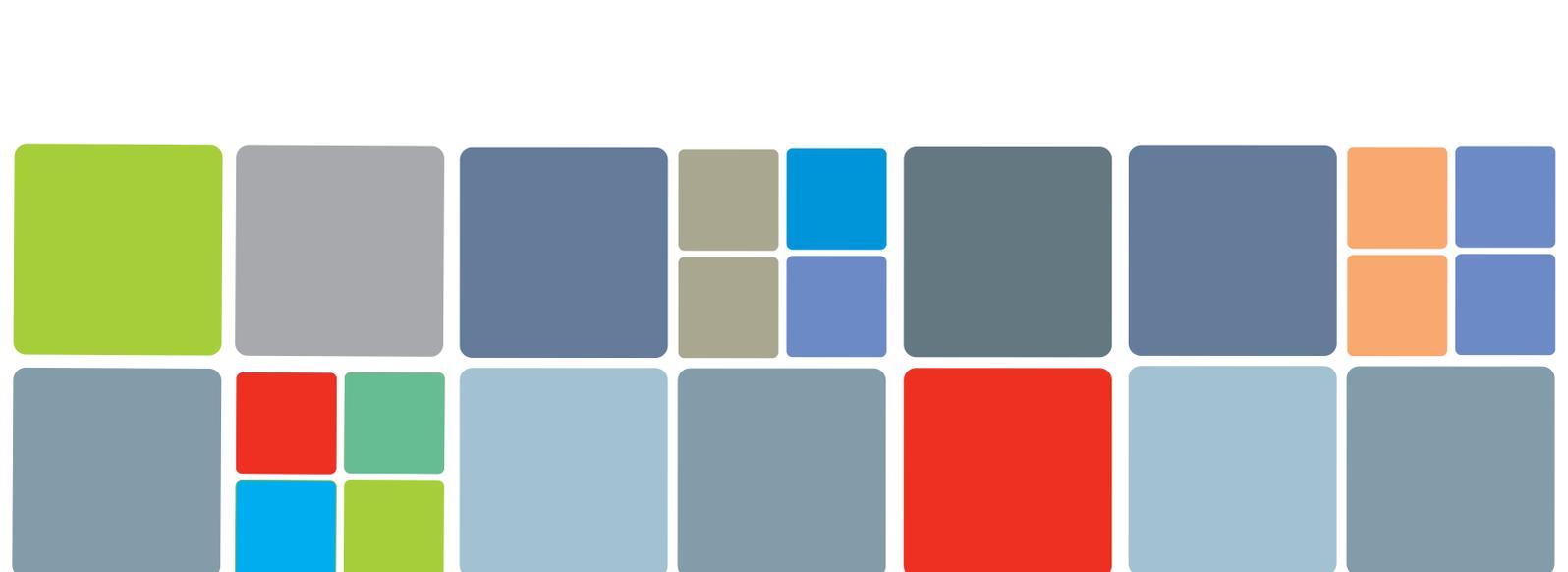
The Criminal Code of Georgia also considers motives, based on sex, sexual orientation and gender identity as aggravating circumstance for all relevant crimes, provided for by the Criminal Code. This rule corresponds to requirements, outlined in the recommendations of the Council of Europe Committee of Ministers and Jogjakarta principles.

A major step forward on the way of combating discrimination of gay men, other MSM is lifting blood donation ban for men who have sex with other men and planned amendments to the order of the Ministry of Health to reflect this.

However, despite of anti-discrimination legislation and strengthened criminal responsibility for hate crimes, such violations do not lead to proper investigation, this situation can be effectively changed by establishing effective investigation procedure controls. Georgian authorities should also focus on training law enforcement officers and judges on specific aspects of such investigations and judicial inquiry in order to improve situation in this area.

Other legal barriers for gay men, other MSM and trans\* people also prevent them from fulfilling their rights. Georgia should provide access to gender reassignment procedures for trans\* people. There are neither a mechanisms of gender reassignment, provided by the national legislation, nor sufficient health services in medical institutions. Being unable to access gender reassignment procedures, trans\* people cannot enjoy their rights. The European Court of Human Rights in its practice pointed out, that States must provide transgender persons a possibility to undergo surgery, leading to full legal gender recognition, and that surgery expenses should be covered by insurance plans as "medically necessary" treatment.

Same-sex marriage or partnership legalization, which corresponds to PACE Resolution 1547 (2007), would also be an effective step for Georgia. This would help gay men, other MSM and trans\* people combat discrimination, based on sexual orientation, and enjoy partnership rights, which include «some basic needs which are fundamental to the regulation of a relationship between a couple in a stable and committed relationship, such as, inter alia, the mutual rights and obligations they have towards each other, including moral and material support, maintenance obligations and inheritance rights». Such amendments would give same-sex couples an opportunity to adopt children, according to Article 8 of European Convention and Principle 24 of The Yogyakarta Principles that enshrine the right to find a family.



## Recommendations

- Creation of a special department within the Ministry of Internal Affairs to combat hate crimes, in order to keep statistics and effectively respond to the investigation of these crimes.
- Further education of law enforcement officers and judges to effectively investigate and prosecute hate crimes and non-violent cases of discrimination is crucial to make sure anti-discrimination legislation provides effective remedies to victims.
- Amendments to the Georgian law "On the Elimination of All Forms of Discrimination", which expand the powers of the Ombudsman, which in turn will improve the effectiveness of its work in the process of combating discrimination.
- Amendments to legalize same-sex partnership or marriages are needed to make sure same-sex couples enjoy same rights as married opposite-sex couples, including the issue of health care and others.
- The authorities of Georgia should provide access to gender reassignment in health service institutions and make it available for trans\* people who need it in order to fulfill obligations of Georgia as a member of Council of Europe.
- Georgian government should decriminalize transmission of HIV by PLHW. It is necessary to exclude from the Criminal Code unnecessary article which establishes responsibility for creating the threat of "intentional infection of another person with AIDS". This prosecution adds to the stigma and discrimination faced by people with HIV. It places the burden of preventing HIV transmission on those living with HIV and portrays those living with HIV as potential criminals.
- Eliminate stigmatizing "Law on HIV/AIDS" in Georgia, according to which HIV-positive person is obliged to inform the sexual partner and/or spouse about his/her HIV-status.



## Prohibition on travel and immigration for people living with HIV

Law of Georgia on the Legal Status of Foreigners and Stateless Persons, Article 18<sup>2</sup> defines the grounds for denying the issuance of Georgian residence permits. According to the article, a foreign citizen and/or stateless person might be denied a residence permit in Georgia if "f) he/she has infectious or other diseases, the nature, severity, or duration of which may pose a threat to the population of Georgia". Same rule is applied to those who want to enter the country or get a visa. The Ministry for Labour, Health and Social Affairs of Georgia established the list of such diseases and it includes health state caused by human immunodeficiency virus (HIV). Asymptomatic infection status caused by HIV virus is not included.



## Criminalization of HIV transmission

Georgian legislation criminalizes transmission of HIV by PLWH. Article 131<sup>3</sup> of the Criminal Code of Georgia establishes the responsibility for creating a threat of "intentional infection of another person with AIDS", the punishment is prison term for up to three to five years. Infecting intentionally other person with AIDS is punished by imprisonment for up to four to seven years. There is also criminal sanction for health workers in part 3 of the Article 131 of the Criminal Code<sup>4</sup> of Georgia for infecting another person with AIDS by negligence when performing professional duties, which is punished by imprisonment for a term of two to five years, with deprivation of the right to hold an official position or to carry out a particular activity for up to three years. Infecting two or more persons, or knowingly infecting a pregnant woman or a minor is punished by imprisonment for a term of five to nine years, with deprivation of the right to hold an official position or to carry out a particular activity for up to three years.

According to Law on HIV/AIDS<sup>5</sup>, HIV-positive person is obliged to inform the sexual partner and/or spouse about his/her HIV-status. and deprivation of the right to hold certain positions and/or carry out certain activities.

## Prohibition for MSM to be blood donors

Until 2014, according to the Order N241/N homosexuals were prohibited to donate blood. Homosexuality fell under the high-risk behavior that was the reason to restrict the right to donate blood. In 2014, the Constitutional Court (CC) declared the following regulation unconstitutional. Soon the Ministry of Health changed the regulation and instead of "homosexuals" indicated "MSM population". In July 2017, the Constitutional Court discussed the following regulation again and declared it unconstitutional as well. According to the CC decision<sup>6</sup> the prohibition/restriction must not be connected to sexual orientation and/or belonging to one of the social groups but to the risky behaviors. The Court pointed out that modern technologies allow for the detection of HIV/AIDs in donations, making a ban unnecessary. Noting that the immediate abolition of the ban could come with certain risks, the Court set a deadline of 1 November 2017 for the government to amend the norm. Currently, the topic is unregulated. The Ministry of Health is working on the new redaction of the regulation in order to meet the standards set by the Constitutional Court decision.

There is no mandatory medical examination of MSM donors according to the above-mentioned Order medical examination requirements are equal for all persons.



## Access of NGOs working with MSM or LGBT to the state funding to provide social and health services

Civil Society Organizations have specific competences that should be recognized by the National Programs to combat TB and HIV/AIDS, such as reaching out to vulnerable groups, mobilizing communities, channeling information and framing effective service delivery models. The Government of Georgia also recognizes the need of involvement of CSOs actors for the success of the nationwide TB and HIV/AIDS response and strengthening the partnerships with the civil society establishments.

CSOs are currently contracted by the State, for example by the governmental agency the National Centre of Disease Control and Public Health (NCDC) to implement HIV prevention and care interventions (Currently NGOs "Equality Movement" and "Tanadgoma" are contracted by NCDC to provide HIV prevention programs for MSM/T\* population). Georgian legislation, precisely the Law of Georgia on Public Procurement ensures that state authorities are entitled to provide funds for NGOs. Therefore public procurement mechanism defined by the following law enables CSOs to become sub-contractors and receive funds from the state. However, as some NGOs and researches report there are some technical difficulties faced by NGOs, such as the requirement of the bank guarantee for advance payments for services. More in-depth analysis of existing regulations and consultation with key authorities will be needed to uncover potential difficulties not only in terms of the bank guarantee requirement, but also about other regulations under the state procurement that may create barriers to local NGOs.

There is the same mechanism for contracting NGOs for any service in any sphere in Georgia. Therefore, in the social sphere as well as in health sphere the Public Procurement Mechanism is used to contract NGOs for providing different services. For example, the Ministry of Youth Affairs contracts non-governmental youth organization that organizes summer camps for high schools students every year.

HIV-service organizations do not receive funding from governmental sources (the State budget). They have been receiving the funds from the Global Fund Program that is administered by NCDC based on the Public Procurement Mechanism because NCDC represents the governmental authority. Therefore, funds from GF Program are distributed to NGOs according to the Public Procurement Law. Besides prevention activities for MSM/T\*, HIV-service organizations work with the populations of people who inject drugs (PWID), sex-workers, PLHIV, prisoners.

HIV-service NGOs including providing HIV-services to MSM and Trans\* people also do not receive governmental funding to work with MSM and Trans\* people. HIV-service NGOs such as "Equality Movement" and "Tanadgoma" have been implementing the Global Fund funded HIV-prevention programs (to work with MSM and Trans\*) for the last two years. These organizations have been sub-contractors in the following program. NCDC represents the Principal Recipient (PR) for the Global Fund programs in Georgia. NCDC is a legal entity of public law under Ministry of Health. Therefore, sub-recipients (SRs) "Equality Movement" and "Tanadgoma" have been receiving funds based on the Public Procurement mechanism. The Global Fund will continue to fund these programs until 2018 when it finally leaves the country. Therefore, from 2018 the state will have to allocate funds for prevention and treatment programs.



## Legislation and policies in the sphere of sexual orientation and gender identity

### Same-sex relations

There are no legal provisions or practice of criminalization of same-sex relationships in Georgia. Georgian legislation does not differ the age of consent for having sexual relationships based on sexual orientation. The Criminal Code provide punishment irrespectively of sex orientation for major sexual intercourse with minors (under 16 years)<sup>8</sup>.

### Prohibition of “propaganda of homosexuality”

There is no such prohibition as of “propaganda of homosexuals” in Georgian legislation. The Parliament has not considered such draft-law. There have been initiatives to criminalize “propaganda of homosexuals” by some radical opposition groups but such law drafts were never submitted to the Parliament.



## Laws on gender identity/expression (legal gender recognition and related procedures)

The Ombudsman's report in 2013<sup>9</sup> states: “All surveys and reports on the situation of LGBT persons in Georgia<sup>10</sup> unanimously recognize that the needs of transgender persons are inadequately covered by the legislation, which in some cases ends up with violation of fundamental rights. On the basis of the Recommendation of the European Committee of Ministers on “measures to combat discrimination based on sexual orientation and gender identity”, the requirements for gender reassignment and legal gender recognition are established; in particular:

“Member states should take necessary measures in order to ensure full legal recognition of person's changed gender in all aspects of life; in particular, member states should ensure change of name and gender in official documents in an expedient, transparent and easily available manner; member states should also ensure, if necessary, relevant recognition of changed gender by non-state subjects and recognize other changes adopted in basic documents such as education diploma and employment record.”<sup>11</sup>

At the moment legal framework towards gender reassignment procedure in Georgia does not comply with the requirements of these Recommendation. As per paragraph 36 of the Recommendation, the states must regulate insurance policy in order to cover the above

expenses. In Georgia, transgender people are forced to cover the expenses. Necessary medical service, required for gender reassignment is not affordable to majority of transgender persons, due to socio-economic conditions. It is also important that legal procedure of this service is not regulated. In particular, there is no standard rule for the procedure that would be a standard for the medical facilities providing such services. The sequence/order of the procedures for legal gender recognition is not established as well.

Transgender individuals face problems when making the entry into the Civil Acts Registry (CAR) to change gender marker in documents, which is an impediment for education and employment processes. The law On Civil Status Acts sets forth the list of circumstances, which may serve as the grounds for entering amendment into the civil act record. One of such circumstances is the following: "change of gender – if a person is willing to change name and/or last name in relation to changed gender".<sup>12</sup> Though, there is no list of documents the person must submit for entering the amendment into the CAR. There is no definition of "change of gender", for the purpose of this law. On the basis of established practice, it is necessary to undergo full procedure of gender reassignment, including surgery to be able to make changes into the CAR. From January 2011 until now there has been no application requesting gender reassignment.

The report "Situation of LGBT persons in Georgia", prepared by non-government organization "Women's Initiatives Supporting Group" refers to the problems faced by transgender persons in relation to procedure of gender reassignment. According to the report: "some of transgender persons are not willing to undergo gender reassignment surgery; many adopt desirable social role and adjust their appearance (without surgical intervention); transgender persons, who are willing to be operated on, often do not have necessary funds; gender related surgery may not be recommended due to person's health condition<sup>13</sup>."

The same observations/evaluations were made in Open Society Foundation Georgia (OSGF) policy paper "Transgender Persons Rights and Public Policy" prepared in 2016. The problems mentioned in Ombudsman's 2013 report remain unsolved until this moment. NGOs that work on the topics of LGBT voiced the same problems in 2015 and 2016.



## Freedom of expression and assembly in the context of LGBT community

There are two laws that regulate these rights in Georgia: Law on Freedom of Speech and Expression and Law on Assemblies and Demonstrations. Both of them are general and guarantee the above rights to all citizens of Georgia regardless of any personal grounds.

In practice, government violates the freedom of expression and freedom of assembly of LGBT-community: prohibits (doesn't allow) gatherings, meetings of LGBT-communities or prides, doesn't ensure protection of peaceful gatherings and demonstration of LGBT-community from radical representatives of local communities, doesn't investigate cases of attacks towards the members of LGBT-community during the public gatherings and meetings.

The research shows the problems regarding government's understanding of the positive obligations under the international and national law to make sure all people in Georgia can exercise their rights. Georgian government doesn't officially deny the right to assembly for LGBT community and doesn't refuse to provide protection for the community during the public gatherings, but numerous NGOs, international organizations and activists highlight the ineffectiveness of governmental measures to ensure the implementation of the freedoms to and expression for LGBT community and for their protection. These observations were made based on the events that took place on May 17 in 2012, 2013 and 2017.

On May 17 2012 (IDAHOT), LGBT activists tried to organize small march on Rustaveli Avenue in the capital city, Tbilisi, participants were attacked by religious protesters who blocked the way and attacked the marchers.<sup>14</sup> The case was brought to the European Court of Human Rights by the LGBT organization IDENTOBA and other LGBT community members/activists who were the victims of the human rights violations on that day (verbal and physical abuse, uttering death threats and randomly resorting to physical assaults, coupled with the passivity of the police in the face of the violence, disrupted their peaceful march). The European Court in his decision<sup>15</sup> ruled that article 3, article 14 and article 11 of the European Convention had been violated, and issued sanctions on Georgia.

An anti-homophobic rally was held in Tbilisi, Georgia, on May 17, 2013, the International Day against Homophobia and Transphobia. LGBT rights activists holding the rally were met by thousands of protesters opposing homosexuality, who were allowed to break through a police cordon and violently pursue them, beating and throwing stones at them<sup>16,17</sup>.

In the last case only 4 people were detained for attacking rally' participants. Even though the violent attacks were made by thousands of people on this day only 4 cases were investigated. After 2 years of court hearings the Tbilisi City Court had ruled that these persons were not guilty and closed the case. The Women's Initiatives Supportive Group (WISG) and the Human Rights Education and Monitoring Center (EMC) prepared detailed analysis of the above court decision.<sup>18</sup>

US State Department, Bureau of Democracy, Human Rights and Labor, writes about May 13, 2013 events in its human rights report. According to state department: "Police did not protect the right to peaceful assembly at May 17 march in downtown Tbilisi in observance of International Day against Homophobia and Transphobia (IDAHOT) (see section 6), when thousands of counter-protestors, led by priests from the Georgian Orthodox Church, violently attacked peaceful participants, forcing the police to evacuate IDAHOT rally participants."<sup>19</sup>

In 2017, Equality Movement and other independent activists organized the demonstration on May 17 commemorating IDAHOT. In this case, Equality Movement could not organize the demonstration at the desired time and location. Organizers had to gather in the morning around 10 am instead of the evening and at different location (organizers were asking for permit to gather on the Rustaveli Avenue). This happened due to the compromises that were made during negotiations with the Ministry of Internal Affairs. If the organizers didn't agree with time and location change, the Ministry wouldn't guarantee safety for the demonstration participants. The demonstration was heavily guarded by the police and only the people who were registered to participate in the demonstration could enter the closed perimeter.

The latest research on the freedoms of expression and assembly prepared by Human Rights Education and Monitoring Centre<sup>20</sup> states: “The analysis of the freedom of assembly and manifestation shows that for LGBTI persons, this right is inherently problematic. The impunity of the individuals responsible for the raid on the peaceful demonstration on May 17, 2013, which was most likely not based on the principles of effective investigation and fair trial, illustrated the fallacious practices towards LGBTI persons prevalent in the country”.



## Anti-discrimination laws – in particular, in relation to sexual orientation, gender identity and gender expression

Article 14 of the Constitution of Georgia includes the prohibition of discrimination, although it does not explicitly mention SOGI as protected grounds. In 2014 Georgia adopted the Law On the elimination of all forms of discrimination.<sup>21</sup> Article 1 of this Law pointed that it is “intended to eliminate every form of discrimination and to ensure equal rights of every natural and legal persons under the legislation of Georgia, irrespectively of race, skin color, language, sex, age, citizenship, origin, place of birth or residence, property or social status, religion or belief, national, ethnic or social origin, profession, marital status, health, disability, sexual orientation, gender identity and expression, political or other opinions, or other characteristics”.

This Law shall apply to the acts by public institutions, organizations, and natural and legal persons in all spheres, only if exceptions are not regulated by other legal norms. This Law provide protection from both direct and indirect discrimination. When defining indirect discrimination, the Law makes an exception – “unless such situation serves the statutory purpose of maintaining public order and morals”. Such vague wording in this provision can lead to justification of discrimination towards LGBT because of moral, a category that is not clearly defined by any law.

Provisions prohibiting discrimination can be found in other specific laws, such as the Law on Health Care (Article 6.1.), Law on Patient Rights (Article.6.1), Law on General Education (Article 13.3.), the Higher Education Act (Article 3.2(t), and the Law on Gender Equality. The principle of non-discrimination on the basis of SOGI can also be found in Article 2, Paragraph 3 of the Labor Code of Georgia, which on 12 June 2013 expanded the boundaries of protection from discrimination to include pre-contractual relations.<sup>22</sup>

The Public Defender (Ombudsman) of Georgia has the power to supervise over the elimination of discrimination and ensuring equality. According to the law Ombudsman carries these major responsibilities: 1. Examine acts of discrimination based on applications or complaints, as well as on his/her own initiative and make appropriate recommendations; 2. Prepare and forward general proposals to relevant institutions or persons on the issue of preventing and combating discrimination; 3. Invite a victim of discrimination and an alleged discriminating person, and try to settle the case by mutual agreement of the parties. The Public Defender also has the right to prepare opinions regarding necessary legislative changes and submit them to the Parliament of Georgia as legislative proposals.

Some NGOs argue that it is not effective for the Ombudsman to provide only recommendations and proposals for the entities who behaved in a discriminative way, they argue that the Ombudsman should have repressive functions such as the right to punish the offenders.

Those opposing the idea of granting the Public Defender repressive functions appeal to the fact that the Constitution entitles the Public Defender to identify violations of human rights and freedoms, but that punishing the offenders is beyond its constitutional mandate.<sup>23</sup>

Further:

- If the Public Defender will be authorized to fine the offender, he/she will not be able to effectively discharge mediation functions, because a person who potentially committed discrimination will totally distrust the mediator, thus making mediation ineffective. In addition, such approach contradicts the essence of mediation in general;
- The Public Defender himself/herself may become the offender of human rights while discharging repressive functions. Imposing sanctions on private individuals always implies penetration into the domain of human rights. A fined person can appeal the imposed sanction, and there is always a probability that the court finds the Public Defender's actions illegal, hence negatively affecting the Public Defender's image.

Accordingly, to discharge this function it would have been expedient to set up an authority equipped with repressive function independent from the Public Defender, which would fine the offenders as provided in the original version of the draft Law.

Government is not involved in the in facilitation of LGBT rights protection mechanisms' efficiency, introduction of new mechanisms or development of the existing ones. Main stakeholders/mechanisms in this case are the Ombudsman and the court. But after the adoption of the Law On the elimination of all forms of discrimination, judges did not undergo special training to enable them to adequately process discrimination cases, which is why the system was almost completely unprepared for the challenges of dealing with the new types of cases, as pointed out by LGBTI activists.<sup>24</sup>



## Hate crimes

The Criminal Code of Georgia in Article 53 (3(1)) states: "Commission of a crime on the grounds of race, color, language, sex, sexual orientation, gender identity, age, religion, political or other beliefs, disability, citizenship, national, ethnic or social origin, material status or rank, place of residence or other discriminatory grounds shall constitute an aggravating circumstance for all the relevant crimes provided for by this Code."<sup>25</sup> Although it must be mentioned that the list of the grounds in the following article is not closed/imperative therefore any other sign that is not listed here but becomes the ground for the hate crime should also be covered.

In 2014, the UN Human Rights Committee<sup>26</sup> expressed concern about discrimination and social stigma, hate speech and acts of violence directed against lesbian, gay, bisexual and transgender persons, and recommended that the State should take effective measures to provide effective protection to this specific group and to ensure the investigation, prosecution and punishment of any act of violence motivated by the victim's sexual orientation or gender identity.

For taking effective measures against hate motivated crimes in 2015, Division of Human Rights Protection of the Office of Chief Prosecutor of Georgia developed a recommendation to prosecutors regarding the "Practical implementation of Article 53, part 3(1) as an aggravating circumstance". The purpose of the recommendation is to define the nature of this regulation and ensure its practical application. In the recommendation, terms like sexual orientation, sex, gender, etc. are explained. This document also covers issues such as: qualification of hate motivated crimes; issues that need to be considered during investigation and gathering evidence, collecting statistical data about hate motivated crimes. The recommendation was discussed by the Council of Europe experts' and entered into force on 22nd of January, in 2016.

In November 2015, in cooperation with the Council of Europe, the State started drafting special educational programs for prosecutors on discrimination. It also included education for trainers to work with prosecutors in future. Two Trainings of Trainers took place in 2015-2016. Overall 8 trainings took place in 2015 on the topic of elimination of all forms of discrimination and about hate motivated crimes. 90 representatives of prosecutor's office were trained. Some of these trainings were in cooperation with the Ministry of Internal Affairs, which facilitates establishing common approaches and practices.

In 2016, prosecutors and investigators from prosecutor's office participated in trainings on – effective investigation of hate motivated crimes led by Georgian experts and OSCE/ODIHR representatives, 42 staff members of the Prosecutor's office were trained. That was the first training, which took place in cooperation with the Public Defender's Office, within the project of "Human Rights Academy of the Public Defender". Besides that, agreement has been reached between the General Prosecutor's Office and the ODIHR about carrying out PAHCT (Prosecutors and Hate Crimes Training). By implementing this, representatives of the prosecutor's office will get trainings on investigating hate-motivated crimes.

These facilitated establishing identification of hate motivated crimes and as the result in 2016, 8 criminal cases were qualified as hate motivated crimes. Four of them were on the ground of sexual orientation, one was on gender identity and three other cases were on religious intolerance. At this moment, court ruled against 7 individuals. All 7 cases were qualified as hate motivated crimes and aggravating circumstance was considered while making decision.

According to the data for the first six months of 2017, 3 criminal cases were qualified as hate crimes against three persons (1 – sexual orientation and the other two – gender identity). By now, 1 person has been sentenced and aggravating circumstance was applied in the ruling. In 2017, in cooperation with ODIHR, ToT (training of trainers) took place on effective investigation of hate-motivated crimes. As the result, 24 prosecutors and investigators were prepared.

## NGO observations and statistics on hate crimes:

Human Rights Education and Monitoring Centre (EMC) describes the problems regards to hate crime investigation and prevention in details in its research 'Legal Situation of LGBTI Persons in Georgia'.<sup>27</sup> According to the report by WISG and opinions of other LGBT organizations including Equality Movement to register and effectively respond to hate crimes, it is crucial that representatives of law-enforcement bodies have knowledge and skills necessary for identifying such crimes and incidents, as well as skills to assist and support the victims.

Nevertheless, in reality the article 53 of the Criminal Code is not applied, one of the reasons of non- is that until 2015 neither the Academy of the Ministry of Internal Affairs, nor the Chief Prosecutor's Office provided trainings for their staff on this issue. As we can find out from the state reports, the trainings were organized only from 2016. It must be mentioned that trainings cover hate crimes based on religious, ethnic identity, sexual orientation/gender identity and not specifically on homo/transphobic grounds. In addition, the Prosecutor's Office and other state authorities do not cooperate with LGBT organizations, local or international. The information about the training module is unknown to LGBT NGOs. Therefore, the only indicator of the following trainings is the quantity of trainings and its participants. Quality and reasonability remains impossible to be evaluated for now.

Best practices of other states show that effective way to investigate and prosecute hate crimes is to establish a specific unit within the police to deal only with such crimes. There is no special unit in Georgia that would receive complaints based specifically on hate or hate crimes, would investigate them and cooperate with LGBT organizations/group representatives to establish relations built on trust.

Hate speech on television and radio stations is regulated by the Law on Broadcasting. According to Article 56, Paragraph 3 of the Law, it is forbidden to broadcast any program aimed at the humiliation and defamation of a person or group based on their sex, sexual orientation, or specific emphasis on this feature or status. The media is obligated to establish effective disciplinary mechanisms for these violations. The broadcasters' self-regulatory mechanisms often refuse to discuss complaints filed by non-governmental organizations on cases of hate speech, as the latter are not considered as "stakeholders". Under this concept, the Law on Broadcasting envisages only those people, or group of people, directly or indirectly affected by specific actions. It should also be noted that the Law on Broadcasting prohibits the possibility to appeal the decision of the self-regulatory mechanism or the relevant Appellate Body in the National Communications Commission or in court.<sup>28</sup>

There is also a Media Ethics Charter<sup>29</sup> as a self regulated mechanism and voluntary for journalists to be a member. In 2010 Inclusive Foundation (the first LGBT NGO) has won the second ever case in the Charter against TV anchor that did not prevent hate speech in his broadcast (Inclusive Foundation v. Alexandre Elisashvili). The Charter Secretariat cannot apply any sanctions, but those journalists who sign the charter try do adhere to it and take into consideration its decisions.



## Legal status of same-sex couples

There is no regulation that recognizes the legal status of same-sex couples, although until this moment Georgia has kept the neutral regulation about marriage in the Constitution. Article 36, part 1 of the Constitution states: "Marriage shall be based upon equality of rights and free will of spouses". The Parliament has initiated the change of a definition of a marriage in the Constitution to declare it as a union exclusively between a woman and a man.<sup>30</sup> All the procedures for the changes have been fulfilled and the change could be finally enforced in fall 2017 at the Parliament hearing.

Article 1106 of the Civil Code<sup>31</sup> defines marriage as a voluntary union between a woman and a man for the purpose of creating a family. Georgian legislation does not provide any legal measure, such as registered partnerships, to recognize same-sex couples. Therefore, same-sex couples do not have access to rights and benefits that are enjoyed by the opposite-sex partners.

The law and judicial practice does not recognize unregistered domestic partnership of same-sex couples as a legal marriage assuming rights and obligations. Therefore, "the legal consequences of sex reassignment of a previously married transgender person are unclear. On the other hand, in case of legal recognition of transgender persons, the law does not prohibit them from entering a marriage with the opposite sex."<sup>32</sup>

At the end of January of 2016 LGBT rights lawyer Giorgi Tatishvili appealed to the Constitutional court to make amendments to the Civil Code claiming that definition of marriage as only a union between man and a woman is against the Constitution.<sup>33</sup> The Constitutional court rejected.

Alexandre Bregadze, former Deputy Minister of Diaspora, Soso Manjavidze, former member of Alliance of Patriots Party, and Zviad Tomaradze, Director of the Demographic Society XXI on 13 May 2016 suggested referendum about amending the Constitution. The proposed question to ask voters was: "Do you agree or disagree that marriage should be defined as a union of a man and a woman for the purpose of creating a family?" President Giorgi Margvelashvili did not support the proposed referendum because "there is already a proper definition of marriage in the Constitution". Prime Minister Giorgi Kvirikashvili has promised that if the Georgian Dream Party wins a sufficient majority in the October 8 election, a constitutional ban on same-sex marriage will be introduced directly by the Parliament, without holding a referendum.<sup>34</sup>



## ·Adoption

According to the Law on Adoption and Foster Care everyone who meet the requirements of adopting a child can do it (regardless sexual orientation and/or gender identity). The legislation itself doesn't differ the potential parents or receiving families on this ground. Regulations are neutral in this way; it doesn't mention LGBT or PLW in the following. There are no limitations or separate conditions for same-sex couples and single parents, including LGBT-community members' reports in the process of adoption

The procedures of adoption are entirely regulated by the Law on Adoption and Foster Care.<sup>35</sup> Equality Movement doesn't have the information about the practice/cases when LGBT community member was denied the right to adopt a child. Also, there are no reports on policies and practices about the process of adoption for LGBT in Georgia.

As mentioned above the Law of Georgia on Adoption and Foster Care doesn't pose any restrictions or barriers for adoption for people living with HIV also. The only regulation that can be questionable is the Order N101/N by the Minister of Labor, Health, and Social Affairs of Georgia about adoption of the child by the people who have health issues.



## Using international and regional mechanisms to change laws and practices in the area of human rights of gay men, other MSM, trans\* people and PLWH

UN Human Rights Committee published its concluding observation on Georgia on August 19, 2014. UN committee stress on anti-discrimination legislation and provides following recommendations to the State.

"6. The Committee welcomes the adoption of the Law on Elimination of all Forms of Discrimination on 2 May 2014 and notes that the Office of the Public Defender is responsible for monitoring the implementation of anti-discrimination legislation. However, the Committee expresses 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 the Office of the Public Defender to carry out its new functions effectively (arts. 2 and 26).

The State party should further improve its anti-discrimination legislation to ensure adequate protection against discrimination in practice. It should, inter alia:

- (a) Continue to provide the Office of the Public Defender with increased financial and human resources that are commensurate with its expanded role and enable it to carry out its new functions effectively;
- (b) Empower the Office of the Public Defender 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) Ensure that perpetrators are adequately sanctioned and victims of discrimination are provided with effective and appropriate remedies; CCPR/C/GEO/CO/4 3 (d) Raise awareness among the population at large about the Law on Elimination of all Forms of Discrimination and the penalties for discrimination."

Special Rapporteur on violence against women on her mission to Georgia in Report from 22 July 2016 noted that specific groups of women, including women from ethnic minorities, rural women, internally displaced women, women refugees, lesbian, bisexual or transgender women and older women tend to suffer multiple forms of discrimination, making them more vulnerable to specific forms of violence.

European Court of Human Rights held the decision on the case *Identoba and others v. Georgia*.<sup>36</sup> This case is mentioned in the chapter Freedom of expression and freedom of gathering for LGBT-community. European Court found violation of the Article 3 (no one shall be subjected to torture or to inhuman or degrading treatment or punishment) taken in conjunction with the Article 14 (discrimination on any ground such as sex...) of the Convention and violation of the Article 11 (right to freedom of peaceful assembly) taken in conjunction with the Article 14 of the Convention.

The Court found that “the attack on the applicants during the march of 17 May 2012 to mark the International Day Against Homophobia was instigated by those with a hostile attitude towards the LGBT community in Georgia. Furthermore, that violence, which consisted mostly of hate speech and serious threats, but also some sporadic physical abuse in illustration of the reality of the threats, rendered the fear, anxiety and insecurity experienced by all thirteen applicants.

Having regard to the reports of negative attitudes towards sexual minorities in some parts of the society, as well as the fact that the organizer of the march specifically warned the police about the likelihood of abuse, the law-enforcement authorities were under a compelling positive obligation to protect the demonstrators, including the applicants, which they failed to do. Lastly, the authorities fell short of their procedural obligation to investigate what went wrong during the incident of 17 May 2012, with particular emphasis on unmasking the bias motive and identifying those responsible for committing the homophobic violence. In the absence of such a meaningful investigation, it would be difficult for the respondent State to implement measures aimed at improving the policing of similar peaceful demonstrations in the future, thus undermining public confidence in the State's anti-discrimination policy.”

There were no individual complaints to the UN Committees in relation to PLWH or LGBT rights violations.

# Legislation:

- Law of Georgia on the Legal Status of Foreigners and Stateless Persons, 5 March 2014, N2045-IIs
- Order of Ministry for Labor, Health and Social Affairs of Georgia, N300/N.
- Criminal Code of Georgia
- Law on HIV/AIDS, 17 November 2009, No. 2042-IIs
- Order by the Minister of Health N241/N
- Law of Georgia On Civil Status Acts, 20 December 2011, 5562-ES
- Order of the Minister of Justice of Georgia on the Approval of Rules for Registration of Civil Acts, 31 January 2012, N18
- Law of Georgia on Freedom of Speech and Expression, 24 June 2004, No 220-RS
- Law of Georgia on Assemblies and Demonstrations, 12 June 1997, No 763– IIS
- Constitution of Georgia
- Law of Georgia On the elimination of all forms of discrimination, 02 May 2014, 2391-IIIb
- Civil Code of Georgia
- Law of Georgia On Adoption and Foster Care, 18 December 2009, No 2381-IIS
- Order by the Minister of Labor, Health, and Social Affairs of Georgia About adoption the children by the people who have health issues N101/N



## International and regional documents which were ratified/signed/passed the procedure of accession by Georgia



**3 May 1994**

International Covenant on Civil and Political Rights

Optional Protocol to the International Covenant on Civil and Political Rights

International Covenant on Economic, Social and Cultural Rights



**2 June 1994**

United Nations Convention on the Rights of the Child



**26 October 1994**

Convention on the Elimination of All Forms of Discrimination against Women



**28 October 1994**

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment



**20 May 1999**

European Convention on Human Rights



**22 August 2005**

European Social Charter



**13 March 2014**

Convention on the Rights of Persons with Disabilities

## The following shadow reports have been submitted by NGOs to UN treaty bodies recently:

1. Shadow report on LGBT issues in Georgia for UPR 23th session, Women Initiative Supportive Group (WISG), 2015<sup>37</sup>
2. Shadow report 'Violations of the Rights of Lesbian, Gay, Bisexual, and Transgender People in Georgia, submitted to the United Nations Human Rights Committee by IDENTOBA, September, 2013<sup>38</sup>
3. Shadow report 'Rights of LBT Women in Georgia" to the Committee on the Elimination of all forms of discrimination against women (CEDAW), Women Initiative Supportive Group (WISG), 2012<sup>39</sup>
4. Submission to the Human Rights Council for the 10th session of Universal Periodic Review Working Group "The status of lesbian, gay, bisexual and transgender rights in Georgia", 2010<sup>40</sup>

## Recommendations that were provided by the UN treaty bodies to the country:

- The US Department of State published a report on Georgia about Human Rights Practices for 2015. The report contains a separate chapter on sexual orientation and gender identity-based violence, discrimination and other bad practices.<sup>41</sup>
- The fulfillments of the following recommendations have not been evaluated by any entity yet.
- Universal Periodic Review – Georgia SOGIE Recommendations, 2015: <http://women.ge/news/newsfeed/57/>
- Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia 22 July 2016a About adoption the children by the people who have health issues N101/N

<sup>1</sup> Law On HIV/AIDS, Article 11 para 2, <https://matsne.gov.ge/ru/document/download/90088/1/ru/pdf>

<sup>2</sup> Law of Georgia on the Legal Status of Aliens and Stateless Persons, Article 18, [http://www.migration.commission.ge/files/matsne-2281442\\_2.pdf](http://www.migration.commission.ge/files/matsne-2281442_2.pdf)

<sup>3</sup> Criminal Code of Georgia <https://matsne.gov.ge/en/document/download/16426/157/en/pdf>

<sup>4</sup> Criminal Code of Georgia <https://matsne.gov.ge/en/document/download/16426/157/en/pdf>

<sup>5</sup> Law On HIV/AIDS, Article 11 para 2, <https://matsne.gov.ge/ru/document/download/90088/1/ru/pdf>

<sup>6</sup> Judgment of the Constitutional Court of Georgia "Citizens of Georgia - Gocha Gabodze and Levan Berianidze against the Minister of Labor, Health and Social Affairs of Georgia" <http://constcourt.ge/ge/news/saqartvelos-sakonstitucio-sasamartlos-ganchineba-saqmeze-saqartvelos-moqalaqeebi-gocha-gabodze-da-levan-berianidze-saqartvelos-shromis-djanmrteobisa-da-socialuri-dacvis-ministris-winaagmdeg.page>

<sup>7</sup> Criminal Code of Georgia <https://matsne.gov.ge/en/document/download/16426/157/en/pdf>

<sup>8</sup> Criminal Code of Georgia, Article 140-141, <https://matsne.gov.ge/en/document/download/16426/157/en/pdf>

<sup>9</sup> Gender Equality and Women's Rights, 2013, <http://www.ombudsman.ge/uploads/other/3/3311.pdf>

<sup>10</sup> Situation of LGBT persons in Georgia, WISG, 2012

<sup>11</sup> Recommendation of the European Committee of Ministers on "measures to combat discrimination based on sexual orientation and gender identity", - CM/REC(2010)5. paragraph 21

<sup>12</sup> Article 78, Law of Georgia On Civil Status Acts <https://matsne.gov.ge/en/document/download/1541247/4/en/pdf>

<sup>13</sup> Situation of LGBT persons in Georgia; WISG. Tbilisi, 2012 [http://women.ge/wp-content/uploads/2012/12/WISG\\_situation-of-lgbt-persons-in-Georgia\\_GEO-www.pdf](http://women.ge/wp-content/uploads/2012/12/WISG_situation-of-lgbt-persons-in-Georgia_GEO-www.pdf)

<sup>14</sup> <http://www.bbc.com/news/world-europe-18109022>

<sup>15</sup> Identoba and others v. Georgia, 12 May 2015, application no. 73235/12, <http://hudoc.echr.coe.int/eng>

<sup>16</sup> BBC: <http://www.bbc.com/news/av/world-europe-22565723/conservatives-attack-gay-activists-at-rally-in-tbilisi>; Times: [http://www.nytimes.com/2013/05/20/world/europe/georgian-officials-react-slowly-to-anti-gay-attack.html?hp&\\_r=0](http://www.nytimes.com/2013/05/20/world/europe/georgian-officials-react-slowly-to-anti-gay-attack.html?hp&_r=0)

<sup>17</sup> <https://web.archive.org/web/20141019042348/http://gyla.ge/eng/news?info=1570#sthash.dmgtkOF4.dpuf>

<sup>18</sup> 17 May 2013 court decision analysis <https://emc.org.ge/2015/12/22/17-maisi-shefaseba>

<sup>19</sup> Department of State, GEORGIA 2013 HUMAN RIGHTS REPORT, pg. 32, <https://www.state.gov/documents/organization/220492.pdf>

<sup>20</sup> Legal situation of LGBTI persons in Georgia, Human Rights Education and Monitoring Centre, 2016 <https://goo.gl/gscPka>

<sup>21</sup> Law of Georgia On the Elimination of all Forms of Discrimination, <https://matsne.gov.ge/en/document/view/2339687>

<sup>22</sup> Legal situation of LGBTI persons in Georgia, Human Rights Education and Monitoring Centre, 2016 <https://goo.gl/gscPka>

<sup>23</sup> <http://www.transparency.ge/en/blog/new-anti-discrimination-law-challenges-and-achievements>

<sup>24</sup> ibid by 20

<sup>25</sup> Criminal Code of Georgia, Article 53.3(1) <https://matsne.gov.ge/en/document/download/16426/157/en/pdf>

<sup>26</sup>

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GEO/CO/4&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GEO/CO/4&Lang=En)

<sup>27</sup> Legal situation of LGBTI persons in Georgia, Human Rights Education and Monitoring Centre, 2016  
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<sup>28</sup> Legal situation of LGBTI persons in Georgia, Human Rights Education and Monitoring Centre, 2016  
<https://goo.gl/gscPka>

<sup>29</sup> <http://qartia.ge/en/>

<sup>30</sup> <https://www.amnesty.org/en/documents/eur56/3993/2016/en/>

<sup>31</sup> Civil Code of Georgia, <https://matsne.gov.ge/ru/document/download/31702/75/en/pdf>

<sup>32</sup> Legal situation of LGBTI persons in Georgia, Human Rights Education and Monitoring Centre, 2016  
<https://goo.gl/gscPka>

<sup>33</sup> <http://dfwatch.net/georgia-ban-gay-men-donating-blood-48875>

<sup>34</sup> <http://dfwatch.net/georgian-president-blocks-referendum-bid-to-ban-same-sex-marriage-44376>

<sup>35</sup> <https://matsne.gov.ge/ru/document/download/1529579/8/en/pdf>

<sup>36</sup> Identoba and others v. Georgia, 12 May 2015, application no. 73235/12, <http://hudoc.echr.coe.int/eng>

<sup>37</sup> <http://women.ge/data/docs/news/UPR-23th-session-WISG-ILGA-Europe-LGBT-persons-in-Georgia.pdf>

<sup>38</sup>

[http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/GEO/INT\\_CCPR\\_NGO\\_GEO\\_15206\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/GEO/INT_CCPR_NGO_GEO_15206_E.pdf)

<sup>39</sup> [http://women.ge/data/WISG\\_LBT-women-in-Georgia\\_CEDAW-58th-session.pdf](http://women.ge/data/WISG_LBT-women-in-Georgia_CEDAW-58th-session.pdf)

<sup>40</sup> [http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/GE/JS3\\_JointSubmission3-eng.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/GE/JS3_JointSubmission3-eng.pdf)

<sup>41</sup> <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper, pg. 45>

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