



**Stakeholders' Submission as a Midterm Update on
Follow-up to Accepted Recommendations by Georgia
for the 23rd Session of the UN Universal Periodic Review
(2015)**

Analytical Center for Interethnic Cooperation and Consultations

Article 42

Georgian Democracy Initiative

Georgian Young Lawyers Association

Human Rights Center

Identoba

Multinational Georgia

Transparency International Georgia



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The views expressed in this publication are those of the author/s and do not necessarily represent those of OHCHR or UNDP.

The Coalition of Non-Governmental Organizations submits its summary report to the United Nations Human Rights Council as a midterm update on follow-up to the implementation of accepted recommendations by the Georgian authorities within the first cycle of Universal Periodic Review. The member organizations of the Coalition are long-standing actors in various fields of human rights protection and are in the position to present independent analysis, credible and reliable information on the ground. The summary report aims at contributing to the improvement of the human rights situation in Georgia.

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I. Executive summary

1. In January 2011, Georgia presented itself at the 10th session of Universal Periodic Review (UPR). As a result of the review process, Georgia received 169 recommendations concerning a wide range of human rights and freedoms, out of which 141 were accepted.

2. In order to facilitate the submission of an alternative midterm report on the follow-up to the accepted recommendations in accordance with Human Rights Council Resolution A/HRC/RES/16/2, para. 18, UNDP Georgia selected leading civil society organizations in various fields of human rights forming a Coalition. The following stakeholders are part of the effort who contributed to the compilation of the respective parts of the report:

- 1) **Constitutional and legislative framework** (prepared by - Georgian Young Lawyers' Association, Transparency International Georgia and Georgian Democracy Initiative);
- 2) **Right to life, liberty, security and humane treatment of the person** (including situation in the Penitentiary System) (prepared by - Article 42 of the Constitution, Georgian Young Lawyers' Association and Identoba);
- 3) **Administration of justice and the rule of law** (prepared by - Georgian Young Lawyers' Association, Article 42 of the Constitution and Transparency International Georgia);
- 4) **Freedom of expression** (prepared by - Transparency International Georgia, Georgian Democracy Initiative and Analytical Centre for Interethnic Cooperation and Consultations with Minority Rights Group Europe);
- 5) **Freedom of association and peaceful assembly** (prepared by - Georgian Young Lawyers' Association and Human Rights Centre);
- 6) **Freedom of religion** (prepared by - Georgian Democracy Initiative, Analytical Centre for Interethnic Cooperation and Consultations with Minority Rights Group Europe and Multinational Georgia);
- 7) **Equality and non-discrimination** (prepared by - Analytical Centre for Interethnic Cooperation and Consultations, Identoba, Georgian Democracy Initiative and Public Movement Multinational Georgia);
- 8) **Gender Equality and protection against domestic and gender based violence** (prepared by Identoba)

3. In order to ensure the information about human rights situation in Georgia for the second cycle is as comprehensive, accurate and robust as possible, this document seeks to provide an alternative assessment of the progress since January 2011. In particular, the midterm report analyzes the progress made by the Georgian authorities in fulfillment of some of the recommendations in the context of specific rights. The report, where applicable, complements the official assessment. The document also contains recommendations the stakeholders have to offer to improve the existing situation.

4. The submission reveals that despite the commitments undertaken by Georgia to implement the recommendations made during the first cycle of UPR, a number of issues remain unaddressed. In those instances where either institutional or legislative changes were effected practical realization of particular rights and freedoms remains problematic. The report differentiates those cases where the State under review takes positive steps to honor its

international obligations from those instances that show the reluctance of State authorities to act towards resolving the problems.

5. In the sphere of constitutional and institutional reforms, especially in the field of justice and rule of law numerous problems remain unaddressed. E.g. failure to implement Venice Commission's recommendations on constitutional amendments, ensuring judicial independence through life tenure of judges and removal of probationary period, transparency of selection and appointment of judges, bringing policing closer to international standards, including psychological violence within the definition of domestic violence.

6. Prison conditions and treatment of inmates in penitentiaries still are major concerns despite the recent reforms initiated after the eruption of a major scandal involving widespread ill-treatment in prisons. Abuse, violence, crowded living space, inadequate health care still need addressing. Violence against LGBT inmates is particularly grave. Prosecution of officials accused of ill-treatment is still problematic and many get away with lenient or no punishments. The state also failed to provide the victims of ill-treatment in prisons with financial compensation and medical rehabilitation. Transferring the respective investigating powers to the Ministry of Internal Affairs defeats the principle of objectivity.

7. In terms of freedom of speech, journalists face several difficulties in the discharge of their duties. Threats, abuse, illegal detention, physical attacks, pressure to release or not to release certain information, confiscation of equipment, prevention from recording certain events, etc., are some of the problems journalists have to endure. The submission cites several recorded incidents. Despite some legislative amendments the positive obligations of the State to secure the freedom of expression are often not fulfilled. With regard to the effective realisation of the right to peaceful assembly the submission offers recommendations on key legislative changes. It also identifies those instances, where the State failed to protect peaceful demonstrators and to secure their right to voice their opinions collectively.

8. Ethnic and linguistic minorities experience several difficulties in terms of education, vocations, promotion of their native language and culture. While the Constitution grants equal status to minorities, lack of specific laws that address and protect the minority concerns are absent. So are the efforts to encourage greater assimilation of the minorities.

9. The legislation in force favors the Georgian Orthodox Church over other religious institutions in forms such as tax relief for certain commercial activities. The submission identifies problems in the local community level and gives examples of documented instances where minorities were prevented from practicing their religion.

10. Linguistic minorities face several difficulties in terms of education due to the lack of availability of low number of schools, standard text books, quality translation, trained bilingual teachers, etc. These problems are particularly high in the field of higher education. Mainstream mass media coverage of local issues in minority languages is very limited. There are no specific laws that seek to promote minority languages and some languages such as the Udi languages are threatened with disappearance.

11. LGBT persons face tremendous amount of discrimination and social and legal hostility. Though homosexuality is decriminalised and discrimination is prohibited, the law still describes homosexuality in pathological terms and denies them certain rights. Abuse and violence in public places and prisons are common and reports against violence are met with inaction on the part of police and judiciary. Discrimination in employment opportunities and difficulties in accessing public and medical services are very high. This hostility is well documented in the physical attacks by religious groups on two peaceful demonstrations of the LGBT activists.

12. Though the state initiated several reforms towards women's rights, domestic violence, predominantly against women, is high. Yet, statistical record of domestic violence is not maintained efficiently.

II. Constitutional and legislative framework¹

II. i. International instruments

13. Georgian Young Lawyers' Association cites those international instruments of which Georgia is not a party yet despite recommendations. The following international treaties have neither been signed nor ratified:

- 1) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- 2) International Convention for the Protection of All Persons from Enforced Disappearance;

14. Georgia signed the Convention on the Rights of Persons with Disabilities on July 10, 2009 however has not ratified it to date.

15. Georgia acceded to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on August 3, 2010.

II. ii. National Legislation

16. The NGOs identified several constitutional, institutional and policy shortcomings as well as positive steps taken by the Georgian authorities of which the following are noteworthy:

17. Failure to implement the recommendations of the Council of Europe's Venice Commission on judicial reforms, especially in ensuring life tenure for the Supreme Court Judges², transferring the power to appoint them from the President of Georgia to the High Council of Justice³, removing the proposal for a probation period for judges;⁴

18. Failure to implement the recommendation not to impede access to detention centers by other national or international oversight mechanisms different from the national preventive mechanism established by the Optional Protocol to the Convention against Torture. Georgia has not adopted legislation that defines and clarifies the role and responsibilities of the Special Prevention Group with respect to the Office of the Ombudsperson.

19. Failure to amend the laws so that policing standard is brought to international standards;

20. Failure to amend definition of "domestic violence" in Criminal Code and bringing psychological violence into its fold; lack of victim protection and lack of statutory obligation of police to issue restraining orders in domestic violence cases, including ongoing trials;

21. Amendment of the Law of Georgia on Broadcasting in July, 2013, incorporating provisions on financial transparency of media agencies, "Must Carry/Must Offer" principle, provisions aimed at ensuring transparency and independence of the Public Broadcaster;

22. Ongoing discussion of draft constitutional amendments to address the recommendations of the Venice Commission regarding the relations between the powers of the parliament and the formation of the government.

III. Right to life, liberty, security and humane treatment of the person⁵

23. Despite the reform of the penitentiary system carried out in 2012-2013 and the refurbishment of nearly all penitentiaries, improvement of accommodation conditions is still a problem. Despite the release of almost 60% of prisoners in 2012, the recommended 4 m² living space for each prisoner still needs to be accomplished.

24. The requirements of providing adequate medical services to prisoners and ensuring the independence of prison medical services (inter alia, through integrating civil sector) from prison administration have not been met yet. Similarly, the state programs for the rehabilitation of ill-treatment victims are not provided at this stage.

25. The exposure of the widespread practice of ill-treatment in prisons in September, 2012, which was widely publicized in the media, rendered the debate on these issues highly topical. Previously, while criminal proceedings would be instituted, most of the cases were categorized not as torture or an inhuman or a degrading treatment but as the abuse of power, implying less stringent punishments. In the aftermath of September, 2012, some of the accused have been found guilty of torture or inhuman treatment. Though investigations and prosecutions are pending and the number of reports of alleged ill-treatment has come down, the impunity issue remains to be a matter of concern. The plea bargains reached would imply far lenient punishments than those the offenders would otherwise incur for their actions. One accused, charged with torture in various episodes, was completely exempted from the criminal responsibility.⁶

26. LGBT inmates face particularly severe problems in prisons in terms of discrimination, isolation, physical and sexual violence. The State has so far not provided any rehabilitation and support programs for victims of ill-treatment, many of whom need urgent medical and psychological care. Many of these victims depend on a few NGOs who are struggling to help them.

27. The decision to transfer the power to investigate allegations of excessive use of force by the law enforcement officers to the General Inspection of the Ministry of Internal Affairs is in conflict with the current Georgian legislation and the principle of effective and impartial investigation.⁷

28. The Code of Administrative Offences of Georgia still allows for administrative detention up to 90 days and, despite the efforts of the non-governmental sector and the Ombudsperson of Georgia, the Government does not consider revising this matter at this stage.

29. The Parliament's resolution of July 30, 2013 is a right step in the right direction.⁸ It requested all the state bodies to take executive measures to ensure the compliance of human

rights protection in the country with international standards. The resolution obliges the Government to safeguard the implementation of the Ombudsperson's recommendations through the Ministries.

IV. Administration of justice and the rule of law⁹

30. A number of reforms have been carried out in the **justice system** in compliance with the UPR recommendations. However, most of them still are in progress and it is premature to judge them especially in the light of problems that plague the system. Some of the most salient observations are listed below.

- 1) Low transparency and ambiguity about the assessment, selection, appointment processes and tenure of judges and failure to ensure a fully independent judiciary free from political influence; necessity to amend legislation to the effect of obliging the High Council of Justice to provide reasoning for its decision about selecting a candidate; failure to follow the recommendations of the Venice Commission concerning the appointment of judges for probationary period (not more than three years) and re-appointment of judges;
- 2) Eliminating political misuse of presidential powers such as pardons, and minimizing prosecutorial discretion in allowing criminals walk free without appropriate punishments

31. The stakeholders welcome the following positive changes:

- 1) Public trust in judiciary increased, the ban on telecasting, recording and photographing court room trials lifted, having contributed to transparency of administration of justice and greater involvement of general public;
- 2) Prior to the legislative amendments in 2012, disciplinary procedure against a judge was completely classified. It is presently partially open. "Gross violation of law by a judge" and "violation of internal employment regulations" were removed from the grounds of the disciplinary procedure against judges;
- 3) Legislative amendments in 2013 contributed to a better representation of the Disciplinary Board. Under new changes, a member of the Disciplinary Board could not concurrently be a member of the Council. The Disciplinary Board consists of five members, three of which are judges of the Courts of General Jurisdiction and other two are non-judge members. The judge members of the Disciplinary Board are elected by the Conference of Judges of Georgia, and the non-judge members – they are elected by the Parliament of Georgia by the majority of all MPs.

V. Freedom of expression¹⁰

32. On April 19, 2011, the Parliament of Georgia made amendments to the Georgian law on Broadcasting that made information concerning media ownership public and transparent. Despite the fact that the legislature has taken some commendable steps towards refining the law related to media freedom, media representatives and professionals face many problems in

practice. This concerns the positive obligation of the State to secure the right to freedom of expression.

33. Investigations of alleged illegal actions, of which journalists were victims, remain a problem. Throughout the reporting period, investigations were often delayed or stopped altogether because law enforcement agencies could not discover any criminal wrongdoings. Though many journalists allegedly face the problems of interference in the discharge of their duties, physical and verbal abuse, threats, illegal detentions, prosecution of an accused often is terminated as the authorities fail to establish an act punishable by criminal law.¹¹ According to the statistical information provided in 2011 by the Ministry of Internal Affairs of Georgia, an investigation of the crimes committed against journalists was instituted in only five cases, from which one was terminated due to the above reason. In 2013, out of thirty registered cases, investigations in eighteen cases have been terminated for the same reason.

34. There are numerous recorded cases where the pattern mentioned above has been witnessed, e.g., the report of blackmail of a reporter of the newspaper, Batumlebi, in 2011;¹² illegal temporary detention and confiscation of equipment of Maestro TV anchor and his crew by men in plainclothes; threatening and insulting email from a former regional prosecutor to the editor of the Kakheti Information Centre, etc. There were similar recorded incidents wherein journalists were prevented from covering certain events, especially involving the then ruling party representatives and government officials. In 2011, certain villagers were intimidated by the then ruling party from expressing favorable views towards opposition party to the media. These types of cases made it even more difficult for local journalists to report on political issues.¹³

35. In the case of the arrest of four press photographers in 2011, Transparency International and other civil society bodies allege violation of laws, illegal detention, intimidation and abuse of power by the then ruling government.¹⁴ A peaceful protest demonstration on May 26, 2011 was dispersed with the use of rubber bullets and journalists were prevented from recording the event.¹⁵ During and after the May 26 assembly's dispersal, journalists' rights to free expression, liberty, property, as well as the right not to be subjected to ill treatment were violated.¹⁶

36. During the pre-election period in 2012, TV channels supportive of the then opposition parties were not included in the cable TV packages, despite the law which mandates the cable TV service providers to offer and broadcast all channels. In July, 2012, the then ruling government seized several thousand satellite receivers and dishes belonging to opposition leaning Maestro TV, on the charges of bribing voters. The legality of this action is challenged by the Georgian Young Lawyers' Association and Transparency International.¹⁷ Political influence on mass media was strongly demonstrated by most TV channels in the politically biased coverage of the clashes in 2013 outside the National Library between the supporters of opposition and governing party members.

37. It is to be noted that in 2011, the press freedom index for Georgia has decreased in comparison with previous years. According to a survey published in 2011 by an international NGO - Reporters without Borders, Georgia was listed 104th in terms of press freedom, compared to 99th in 2010. The survey conducted by Freedom House ranks Georgia among semi-free countries.¹⁸

38. According to the study published by Reporters without Borders, the press freedom index in Georgia has improved by 5 points compared with the previous year, and moved to 100th

place from 105th. In the Freedom House report of 2012, Georgia moved from 55th to 52nd place.

VI. Freedom of association and peaceful assembly¹⁹

39. The Georgian authorities have been recommended to review the Law of Georgia on Assembly and Manifestation in order to secure unhindered enjoyment of the **right to peaceful assembly**.

40. On April 18, 2011, the Constitutional Court of Georgia declared those provisions of the Law on Assembly and Manifestation as unconstitutional, which were found restricting enjoyment of the right to peaceful assembly.²⁰ However, in the same year, the law was amended again re-introducing restrictions.

41. Current law places severe limitations on the right to peaceful assembly and demonstration by imposing unreasonable limits such as a 20 m restriction from Prosecutor's Office, railway stations, airports and ports. Five-day advance notice to the government about a planned demonstration restricts individuals' possibility to assemble spontaneously and express their positions on significant events in the country. Such blanket prohibition is against the essence of the right to assembly. The provision of the law, prohibiting the deliberate blockage of highways, unless required due to the number of people participating in an assembly or a manifestation, is excessive and problematic in view of practical enjoyment of the right. Ban on armed forces from exercising the right to assembly is "overly restrictive." This constitutional right should not be limited for these persons, "unless the reasons for restriction are directly connected with their service duties and only to the extent absolutely necessary in light of considerations of professional duty."²¹

42. While there are several UPR recommendations pertaining to elimination of excessive use of force, a survey conducted by the Georgian Young Lawyers' Association reveals several cases where the police used **excessive and disproportionate force** to disperse peaceful assembly of people. On May 26, 2011, five instances of loss of lives, inhuman treatment of demonstrators during dispersal, prevention of journalists from discharging their duties and confiscation of their equipment were observed.²² Georgian Young Lawyer's Association and Human Rights Center monitors registered violations of relatively small-scale manifestations as well.²³

43. The Government formed after October 1, 2012 has renewed the investigation into these cases. In relation to the events of May 26, 2012, charges were brought against the former Minister of Internal Affairs, several journalists were acknowledged as victims and the investigative bodies questioned witnesses, including the representatives of civil society who had been documenting the facts of human rights violations during these events.

44. Two most notable, well recorded, publicized and televised events are the two peaceful marches/demonstrations that Identoba organized. Both peaceful demonstrations organized in observance of International Day against Homophobia, on May 17, 2012 and 2013, in Tbilisi were met by hostile and aggressive counter demonstrations composed of religious groups, among others, including representatives of the Georgian Orthodox Church. Violent groups set upon the LGBT activists, which left numerous individuals being injured. Though the police

saved the LGBT activists from further violence, they, and hence the State, failed in their positive obligations to protect demonstrators and to ensure the exercise of their right to peaceful assembly. On 14 January 2013, Identoba and the participants of the march filed an application against Georgia with the European Court of Human Rights.

VII. Freedom of religion²⁴

45. The normative acts of Georgia securing the right to freedom of religion ensure the protection and realization of the constitutionally guaranteed right. Nevertheless, there are certain flaws in the legislation, which create unequal conditions for various religious organizations. The Constitution of Georgia, e.g., recognizes the principle of neutrality with respect to religions (declares absolute freedom of religion and belief). However, at the same time, it underlines the special relationship between the State of Georgia and the Apostle Autocephalous Orthodox Church of Georgia, solidified by the Constitutional Agreement concluded between them.

46. One such example is the existing tax regime concerning religious organizations, which grants special privileges to the Orthodox Church of Georgia. The Tax Code of Georgia exempts “income of the Patriarchy of Georgia received from the sales of crosses, candles, icons, books and calendars for religious purposes” from corporate income tax.²⁵ Such exemption extends only to the Georgian Orthodox Church and not to other religious organizations. Consequently, in contrast to the Georgian Orthodox Church, in this case, all other religious organizations are taxed by 15%.

47. The Georgian Orthodox Church is exempt from property tax while carrying out both commercial and non-commercial activities and possessing the assets, whereas other religious organizations enjoy similar benefits only with respect to the property used for non-commercial purposes.²⁶ Accordingly, all religious organizations, apart from the Georgian Patriarchy, are obliged to pay land tax every year before November 15th.

48. Religious minorities, particularly Muslims, face severe discrimination especially in the practice of their religion. The following recorded incidents are a few examples.

49. On November 2, 2012, in village Nigvziani, Muslim members were not allowed by the Orthodox Christians to conduct prayers at the residence of a private individual.²⁷ A similar incident occurred in December, 2012 in the village of Tsinskaro where the Chief Mufti of Georgian Muslim Department was not allowed to participate in a religious ceremony.²⁸ Similarly, in June, 2013, in the village of Samtatskaro, Muslim villagers were not allowed to conduct weekly communal prayers. The disagreement escalated to the point where approximately 200 people forcibly removed the objects necessary for the prayers, broke into Imam’s house and threatened his family.

50. During all the above-mentioned events, the police refused to enforce law and protect the freedom of religion of the Muslim community. The authorities chose to limit themselves to the role of a mediator.

51. In the village Tchela, on August, 26, 2013, the Customs Department of Revenue Service dismantled the village mosque minaret. The police not only blocked all the roads leading to the village and beat up Muslim villagers wishing to pray in the mosque, they also fired a few warning shots into the air. Some members of Muslim community were arrested and later convicted for obstructing government officials. The bias of the authorities is evident in their approaches to issues pertaining to the religious minorities and the majority.²⁹

52. In the reports of 2009-2010-2011, the Ombudsperson underlined the unresolved issue of restitution of properties confiscated from several religious associations in the Soviet period.³⁰

53. The Law of Georgia on General Education explicitly prohibits using **educational process** for the purposes of indoctrination, proselytism or forced assimilation as well as the display of religious symbols on the territory of public schools for non-academic purposes. Safeguarding equality in public schools in the context of freedom of religion still remains problematic. Public schools mostly fail to meet legislative requirements and do not ensure adequate environment. The Ombudsperson's reports address this issue.³¹

VIII. Equality and Non-discrimination³²

54. There is no specific law on national minorities. Enactment of such a law is a part of the commitment taken by Georgia as a Member State of the Council of Europe.

55. The National Concept for Tolerance and Civil Integration and the relevant Action Plan adopted in 2009 envisage various activities to be carried out by authorities. However, this Action Plan cannot completely ensure cultural and religious dialogue between the government and the minorities, and full and active participation of minorities in public life. The Plan did not provide for any awareness raising activities to support anti-discrimination discourse and intercultural and interreligious dialogue.

56. The commentaries of the UN Human Rights Committee made in 2007 are still valid as the level of participation of **national minorities** in political or civic life across the country continues to be too limited. National minorities are not sufficiently represented in legislative and executive branches of the government or political parties. While national minorities are well represented in local governments, they do not have an opportunity to use their language in public administration, despite the recommendation of the Council of Europe Framework Convention for Protection of National Minorities.

57. **Religious minorities** continue to experience high levels of intolerance and face specific challenges, such as prohibition to worship and construct places of worship (more details given in the section on **freedom of religion**).

58. Awareness raising campaigns aimed to increase religious tolerance and mainstream this issue in formal and informal human rights education are not taken up by the State or civil society.

59. In Georgia there are no discriminatory laws against **linguistic groups**, but at the same time there are no affirmative measures taken up for the preservation of minority languages. Law of Georgia on General Education of Georgia on General Education allows Georgian citizens whose native language is not Georgian to receive complete general education in their native language.³³ The same Law requires that schools on the basis of equality shall ensure the members of minorities use their native language, preserve and express their cultural values.”³⁴

60. However, there are many shortcomings in the implementation of the laws. In the minority areas, the bilingual textbooks are very difficult for the students and teachers to understand and the teachers who are proficient enough to teach in both native and Georgian languages are very few. Georgian Universities, with the exception of Zurab Zhvania School of Public Administration, do not provide higher education for teachers in minority languages. The amendment made in 2009 to the Law of Georgia on Higher Education allows the general abilities test to be taken in Abkhazian, Ossetian, Armenian and Azerbaijani, the test is yet to be available in Ossetian. There are no special efforts sought by the authorities ensuring that all minorities can learn their native language in schools and preserve it. Udi community and their language is one example of such neglect.

61. While news broadcasters air segments in minority languages, they often fail to cover local news, which are important to the local minorities.

IX. Discrimination on the basis of sexual orientation and gender identity³⁵

62. Georgia did not receive an express and specific recommendation through UPR on the **rights of LGBT persons**. However, the failure to examine the status and rights of one of the most vulnerable community in the society hinders the progress towards an inclusive society.

63. Despite the existence of equal rights laws, LGBT persons experience great deal of hostility, discrimination and violence in everyday life. There are multiple legal lacunae that facilitate institutionalized and legitimized discrimination against LGBT persons. Social intolerance is extended and reflected in official approach to LGBT persons. This results in LGBT persons living in a constant state of apprehension and concealment of their sexual orientation and self-expression. Both adults and younger individuals face harassment and bullying. Despite complaints of widespread violations of the rights, the authorities have consistently failed in enacting specific laws to address the issue. **Government’s 4th periodic report** does not mention the problems faced by LGBT persons at all.

64. Georgia decriminalized homosexual relations in 2000. Several Georgian laws such as Labor Code, Law on the Rights of Patients and Law on Healthcare were amended to outlaw discrimination on the basis of sexual orientation. However, legislative gaps and limitations are still present, which place LGBT persons in unequal positions. For example, several articles remain in the Criminal Code prohibiting forced homosexual intercourse, in addition

to a general prohibition of similar acts and refer to it as “distorted sexual intercourse”. Georgian legislation does not recognize same sex civil marriage or civil partnership; There are no provisions granting such couples some minimum benefits. Same-sex partners cannot legally adopt a child. Neither are they allowed assisted reproduction.

65. Decree no. 241/N (2001) of the Ministry of Health, Labor and Social Affairs lists the grounds that permanently prohibit men who have sex with men, commercial sex workers, and drug users from donating blood. It is considered that that people who fall in this categories form the high risk group for contracting various transmissible diseases such as HIV, Hepatitis, etc.³⁶ The law fails to take into consideration the fact that certain sexual acts are also practiced by heterosexuals.

66. Although the Labor Code explicitly prohibits employers from discriminating based on sexual orientation, LGBT persons have significantly different hiring opportunities and workplace treatment. There are no legal support and affirmative actions to address this issue. With regard to access to state funded services it is noteworthy that 41.3% LGBT persons claim that they faced discrimination. The situation is particularly severe in case of health care.³⁷

67. Similarly, transgender and transsexual people face severe institutional and legal problems on various fronts. For example, to issue a new national identity card with changed gender, the Civil Registry requests a person to have undergone sex reassignment operation. Similar requirements force transgender and transsexual persons to reveal their assigned sex at birth against their will. This amounts to a violation of right to respect for privacy.

68. In the context of the right to life, apart from the general hostility that LGBT persons experience, crimes against them, especially murders, are not categorized as hate crimes. The law in force fails to take this dimension into consideration, which certainly does little to fight these crimes.

69. According to 2012 survey conducted by Identoba, personal security is the biggest problem that LGBT persons face, 32% claiming they experienced physical violence at least once in past two years, 45.8% of the attacks taking place in public places (see in more details the section on **freedom of association and assembly**).

70. Role of the police, prosecution, courts and the legislature in these incidents suggest a systemic bias against LGBT persons, a reluctance to prosecute those accused of hate crimes, and pass and implement relevant laws so as not to upset the majority. Failure of the police to book cases against those responsible for violence, or book them under trivial cases instead of the category of hate crimes, reluctance of the prosecution to rigorously pursue these cases, and the courts’ reluctance to convict despite video evidence bear testimony to these impressions. This view is further strengthened by the fact that though on March 27, 2012, the Parliament passed amendments to the Criminal Code that added “homophobia” to the list of aggravating factors for crimes, according to official documentation that the Prosecutor’s Office provided to the Ombudsperson, a total of 0 perpetrators have been charged with the aggravating factors since Article 53.3 entered into force. As a result, most LGBT persons do not approach the police or courts for protection, justice and redress. 72.9% of LGBT victims of violence do not report violence to the police. 54.3% did not approach the police because they feared that the police would have a homophobic reaction or that the police would be

ineffective. Of those who did report an incident to the police, 46.2% stated that they experienced a hostile, homophobic reaction from the police. The police are also accused of being physically and verbally abusive towards LGBT sex workers. Here, the police and the judiciary cannot be accused of being deliberately discriminatory. Many lack a clear understanding of the nature of hate crimes and also their role in protecting the rights of the LGBT individuals.

71. LGBT persons are often placed in uncomfortable situation and have to reveal their sexual orientation and particular health problems in the state medical facilities, which cannot afford individual consultations without the presence of other patients. This severely affects the right to respect for privacy and discourages LGBT people from resorting to health services. Collection, storing and release of sensitive information by the State, especially if the sexual orientation is at stake, can be undermining the right to respect for privacy as was the case in January, 2013. With regard to special vulnerability of children, those LGBT minors who reveal their sexual orientation suffer discrimination, mental and physical violence and abuse from their own family members and at educational institutions. The State has not always intervened, nor has it provided LGBT-sensitive support services to those children.

72. Another area of concern is **domestic violence and discrimination against women**. On April 2, 2012, the Parliamentary Council on Gender Equality and the Interagency Council for the Prevention of Domestic Violence set up a working group to harmonize existing legislation with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. Articles 111 and 126 were added to the Criminal Code of Georgia, which criminalized domestic violence. Nevertheless, at this stage, only the Gender Equality Action Plan has been elaborated, which cannot be considered to be a sufficient instrument for the elimination of all forms of discrimination on the grounds of sex and gender identity. However, the identification of what constitutes discrimination on the grounds of sex and gender identity remains one of the key challenges, especially in case of labor rights of women in public and private sectors, which is confirmed by the absence of relevant court practice in Georgia.

¹Prepared by Georgian Young Lawyers' Association, Transparency International Georgia and Georgian Democracy Initiative.

² Final Opinion on the Draft Constitutional Law on Amendments and Changes to the Constitution of Georgia, Adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010), Opinion no. 543/2009, para. 86.

³ *Ibid*, para. 87.

⁴ *Ibid*, para. 91.

⁵ Prepared by Article 42 of the Constitution, Georgian Young Lawyers' Association and Identoba.

⁶ <http://article42.ge/ge/sasdjelaghsrulebis-datsesebulebebshi-tsamebis-faqtebis-gamodziebastan-dakavshirebit-arasamtavrobo-organizatsiebi-ertobliv-gantskhadebas-avrtseleben/321>.

⁷ <http://www.ombudsman.ge/index.php?page=1001&lang=0&id=1797>.

⁸ <http://www.ombudsman.ge/index.php?page=1001&lang=0&id=1780>.

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- ⁹ Prepared by Georgian Young Lawyers' Association, Article 42 of the Constitution and Transparency International Georgia.
- ¹⁰ Prepared by Transparency International Georgia, Georgian Democracy Initiative and Analytical Centre for Interethnic Cooperation and Consultations with Minority Rights Group Europe.
- ¹¹ Article 154 of the Georgian Criminal Code punishes the illegal interference into journalists' professional activities, including coercing a reporter into spreading or not spreading information.
- ¹² See <http://www.ombudsman.ge/files/downloads/en/hcqkqyhbldxcayqiwg.pdf>.
- ¹³ See <http://transparency.ge/en/post/report/report-georgia-s-regional-media>;
http://www.media.ge/en/stories/the_ps_journalist_appeal;
<http://goo.gl/fY13J>.
- ¹⁴ See <http://www.ombudsman.ge/files/downloads/en/hcqkqyhbldxcayqiwg.pdf>;
<http://transparency.ge/en/post/general-announcement/ti-georgia-photographe-0>.
- ¹⁵ http://www.nplg.gov.ge/dlibrary/collect/0001/001047/full_en.pdf.
- ¹⁶ See http://www.nplg.gov.ge/dlibrary/collect/0001/001047/full_en.pdf.
- ¹⁷ Assessment of the Pre-Election Environment– Joint Briefing Paper –September 29, 2012 Transparency International Georgia; Georgian Young Lawyers' Association (GYLA) International Society for Fair Elections and Democracy (ISFED).
- ¹⁸ See <http://www.freedomhouse.org/report/freedom-press/2011/georgia>.
- ¹⁹ Prepared by Georgian Young Lawyers' Association and Human Rights Centre.
- ²⁰ Judgment of the Constitutional Court of Georgia, *Citizens' political union "Movement for United Georgia," citizens' political union "Conservative Party of Georgia," citizens of Georgia Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers' Association, citizens Dachi Tsaguria and Jaba Jishkariani and the Ombudsperson of Georgia versus the Parliament of Georgia*, Apps No 482, 483, 487, 502 (April 18th, 2011).
- ²¹ European Commission for Democracy through Law (Venice Commission) final opinion on the amendments to the Law on Assembly and Manifestations of Georgia, adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011), Opinion no. 547/2009, para.40.
- ²² <http://www.humanrights.ge/admin/editor/uploads/pdf/Georgian.pdf>.
- ²³ <http://gyla.ge/geo/news?info=468>; <http://www.humanrights.ge/admin/editor/uploads/pdf/Georgian.pdf>.
- ²⁴ Prepared by Georgian Democracy Initiative, Analytical Centre for Interethnic Cooperation and Consultations (ACICC) with Minority Rights Group Europe (MRGE) and Multinational Georgia).
- ²⁵ Article 99.1.d.
- ²⁶ Article 168.2.b of the Tax Code.
- ²⁷ <http://news.ge/ge/news/story/35912-nigvzianshi-martlmadideblebimusulmaneb-samlotsveloshi-ar-ushveben>.
- ²⁸ <http://news.ge/ge/news/story/38636-tsintsyarooshi-muslimebis-lotsvapolitsiis-datsvis-qvesh-chatarda>.
- ²⁹ <http://gdi.ge/?p=403>.
- ³⁰ Report of the Ombudsperson of 2010, p. 315.
- ³¹ Report of the Ombudsperson of 2012, p. 525.
- ³² Prepared by Analytical Centre for Interethnic Cooperation and Consultations, Identoba, Georgian Democracy Initiative and Public Movement Multinational Georgia.
- ³³ Article 4.
- ³⁴ Article 13.7.
- ³⁵ Prepared by Identoba.
- ³⁶ Order of the Ministry of Health and Social Protection no. 241/N (December 5, 2000).
- ³⁷ Stigma and Discrimination in HIV-related Services: Qualitative research among men who have sex with men, Center for Information on Public Reproductive Health—Tanadgoma (2012), p.10.