

**Human Rights Council Universal Periodic Review  
(third cycle, 37<sup>th</sup> session, 2020)**

**Georgia**

**Coalition for Equality  
Report on Equality and Vulnerable Groups in Georgia**



*Coalition for Equality is a non-formal alliance consisting of eleven organisations. It was founded in 2014 with the support of the Open Society Georgia Foundation (OSGF). The aim of the Coalition is to strengthen the mandate of anti-discrimination mechanisms, increase their competencies and promote the effective struggle against discrimination.*

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## 1. Introduction

1. In May 2018, the Coalition for Equality submitted the Mid-term Review Report on Georgia's UPR Second Cycle which covered the period 2015-2018 (Annex 1). The report assessed the implementation of the accepted recommendations concerning equality and vulnerable groups such as racial, ethnic and religious minorities, aliens and non-citizens, women, children, persons with disabilities, LGBT community and internally displaced people. The implementation of recommendations to enhance the national anti-discrimination institutions was also evaluated.
2. The members of the Coalition have also submitted joint reports on the rights of discriminated and vulnerable groups (Annex 2) and women's human rights in Georgia (Annex 3) within the 2<sup>nd</sup> cycle of the UPR process. They have further engaged with Special Rapporteurs, the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, Beijing+25, the Committee on the Rights of the Child, among other international and regional mechanisms.
3. The present joint submission covers the period 2015-2020 and addresses the issues reflecting the situation of following vulnerable groups in Georgia in terms of equality:
  - **Discrimination of children** (lead organisation - Partnership for Human Rights (PHR))
    - 1.1. Family environment and alternative care
    - 1.2. Juvenile justice
  - **Disability discrimination** (Georgian Youth Lawyers' Association)
    - 2.1. Implementation of the Convention on the Rights of Persons with Disabilities (CRPD)
    - 2.2. Harmonisation of the national legislation with the Convention
  - **Gender discrimination** (Union 'Sapari')
    - Sexual violence against women
  - **Discrimination on the grounds of sexual orientation and gender identity** (Women's Initiatives Supporting Group (WISG))
    - Social stigma towards LGBTQI individuals and the lack of recognition of their rights
  - **Religious discrimination** (Tolerance and Diversity Institute (TDI))

- Property-related issues faced by religious minorities
- **Discrimination of ethnic minorities** (Human Rights Education and Monitoring Center (EMC))
  - Exclusion of ethnic minorities from participation in political, social and cultural lives
- **Racial and alienage discrimination** (Article 42 of the Constitution)
  - Racism, anti-migration populism and procedural deficiencies in obtaining asylum and residency in Georgia.

## 1.1 Methodology

4. The report has been prepared by the members of Coalition for Equality on the basis of their studies, research, practice, case law analyses, advocacy and lobbying at policy level. Certain provided information was acquired through interviews with directly affected individuals mentioned in the UPR recommendations of the 2<sup>nd</sup> cycle, namely victims of discriminatory treatment. Where relevant, the report relies on information documented by State agencies, the Public Defender of Georgia, local and international non-governmental organisations, as well as the UN Special Procedures and Treaty Bodies.
5. A further analysis of the recommendations touching upon the issues covered by the Coalition is available in the matrix annexed to the present report. (Annex 4 matrix)
6. The members of the Coalition participated in a meeting concerning the implementation of the 2<sup>nd</sup> cycle UPR recommendations, held by the UN OHCHR in Borjomi, Georgia (10-11 May, 2018). During the meeting, the Coalition provided various State agencies with their suggestions on the State's draft report on the implementation of the UPR recommendations.

## 2. Introduction to the national UPR context

7. The last review of Georgia under the 2<sup>nd</sup> cycle of the UPR was conducted in November 2015. Georgia received a total of 203 recommendations out of which 191 were supported and 12 were noted by the State.

8. Georgia received 26 recommendations on children's rights,<sup>1</sup> all of which were accepted by the State. Five out of the 26 recommendations were related to child marriage<sup>2</sup>, 1 concerning female prisoners<sup>3</sup>, 1 concerning children with disabilities<sup>4</sup> and 8 concerning minorities - racial, ethnic, linguistic, religious or descent-based groups<sup>5</sup>.
9. Georgia received 9 recommendations pertinent to the rights of the disabled. Five of these recommendations urged for the ratification of the Optional Protocol to the CRPD.<sup>6</sup>
10. All 57 recommendations addressing women's rights were supported by the State. Fifteen out of the 57 recommendations issued specifically regarded violence, including sexual violence, against women.<sup>7</sup>
11. Georgia received 9 recommendations in regard to LGBTQI rights, the majority of which were directed to eliminate social stigma towards LGBTQI individuals. Despite the State accepting 8 recommendations, Georgia has not implemented to any extent.<sup>8</sup>
12. With respect to the freedom of religion or belief, Georgia received 16 recommendations - 15 recommendations were supported and 1 was noted.<sup>9</sup> The State supported 2 recommendations concerning property-related issues of religious minorities, namely the ownership and maintenance

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<sup>1</sup> Recs. 116.1, 118.4, 118.5, 117.14, 117.57, 117.87, 117.88, 117.89, 118.33, 117.111, 118.41, 117.109, 118.44, 118.45, 117.107, 117.108, 117.64, 117.73, 117.17, 117.65, 117.15, 117.16, 117.90, 117.85, 118.51, 118.47.

<sup>2</sup> Botswana (rec. 118.4), Sierra Leone (rec. 118.5), Ghana (rec. 117.64), Egypt (rec. 117.17), Portugal (rec. 117.65).

<sup>3</sup> Croatia (rec. 117.57).

<sup>4</sup> Austria (rec. 117.111).

<sup>5</sup> Paraguay (rec. 117.87), Panama (rec. 117.89), Nigeria (rec. 118.33), United States of America (rec. 117.107), Nigeria (rec. 117.108), Turkey (rec. 118.51), Colombia (rec. 118.47), Turkey (rec. 117.88).

<sup>6</sup> Recommendations to ratify/accede Optional Protocol: Spain (rec. 116.2), Hungary (rec. 117.5), Slovenia (rec. 116.12), Austria (rec. 116.13), Turkey (rec. 116.14).

<sup>7</sup> Ghana (rec. 116.15), Italy (rec. 116.16), Turkey (rec. 116.17), Netherlands (rec. 117.6), Singapore (rec. 117.37), Honduras (rec. 118.14), Republic of Korea (rec. 117.38), Algeria (rec. 117.58), Slovenia (rec. 117.60), Spain (rec. 117.62), Republic of Moldova (rec. 117.68), Norway (rec. 117.69), Spain (rec. 118.13), Estonia (rec. 117.82), Italy (rec. 117.83).

[Note: the number does not reflect recommendations issued separately regarding domestic violence. See further Annex 4, matrix.]

<sup>8</sup> Poland (rec. 117.12), Netherlands (rec. 117.33), France (rec. 117.44), Belgium (rec. 117.46), Argentina (rec. 117.47), Canada (rec. 117.48), Brazil (rec. 117.49), Uruguay (rec. 188.9), Sweden (rec. 118.10) (noted).

<sup>9</sup> Accepted: Republic of Korea (rec. 118.36), Canada (rec. 117.48), Nigeria (rec. 117.43), France (rec. 117.44), Philippines (rec. 117.92), China (rec. 117.93), Costa Rica (rec. 117.144), Ghana (rec. 117.91), Armenia (rec. 118.35), Botswana (rec. 117.94), Paraguay (rec. 117.87), Italy (rec. 118.34), Netherlands (rec. 117.33), Mexico (rec. 118.48), Djibouti (rec. 118.3), Noted: Russian Federation (rec. 119.6).

of places of worship, as well as the restitution and compensation for damages inflicted on religious denominations during the Soviet era.<sup>10</sup>

13. Georgia received 18 specific recommendations on ethnic minority rights, out of which, 5 were noted and 13 supported. The majority of the recommendations were related to the improvement of the quality of education and participation in civil, political and cultural lives.<sup>11</sup>
14. As concerns racial and alien discrimination, 9 recommendations focused on migrants and refugees.<sup>12</sup> Eight recommendations concerned racial discrimination, 7 were supported by the State and 1 was noted.<sup>13</sup>

### 3. Human Rights Issues

#### Issue 1. Discrimination of children

15. Out of the 12 recommendations concerning children's rights supported by Georgia,<sup>14</sup> 1 was fully implemented,<sup>15</sup> 7 were partially implemented<sup>16</sup> and 4 were not implemented at all<sup>17</sup>.

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<sup>10</sup> Italy (rec. 118.34): 'Strengthen efforts to promote freedom of religion or belief and to protect the rights of persons belonging to religious minorities, including by adopting measures both to address episodes of intolerance and hate speech against religious minorities and to solve outstanding issues related to the ownership and maintenance of places of worship and properties belonging to religious minority groups'; Armenia (rec. 118.35): 'Continue steps towards the recovery of physical and moral damage to the religious denominations suffered during the Soviet era'. Georgia supported these recommendations. SDG Goals #10.2, 10.3 and 11.4, 16.b also support the same ideas.

<sup>11</sup> Accepted: Turkey (rec. 117.88), Panama (rec. 117.89), Albania (rec. 117.103), China (rec. 117.107), Nigeria (117.108), NorthMacedonia (rec. 117.115), Austria (rec. 117.116), Nigeria (rec. 118.33), Germany (rec. 118.38), Colombia (rec. 118.47), Mexico (rec. 118.48), Armenia (rec. 118.49), Turkey (rec. 118.51). See also: Norway (117.23) in Annex 4, matrix.

Noted: Armenia (rec. 118.50), Turkey (rec. 118.52), Russian Federation (recs. 119.4, 119.5 and 119.7)

<sup>12</sup> See particularly recommendations: Honduras (rec. 117.19) - Harmonise the law with the Convention relating to the Status of Refugees; Republic of Korea (rec. 117.17) - Take the necessary steps to address concerns over the rights of vulnerable groups, including internally displaced persons, refugees and migrants, and carry forward measures to integrate them effectively into the broader social and political systems.

<sup>13</sup> Sierra Leone (rec. 117.13) - implemented; Djibouti (rec. 118.3) - implemented; Belgium (rec. 117.46) - partially implemented, Nigeria (rec. 117.42) - not implemented, Nigeria (rec. 117.43) - partially implemented, Philippines (rec. 117.92) - not implemented, Chile (rec. 117.45) - partially implemented.

<sup>14</sup> Excluding the above-mentioned recommendations concerning child marriage and children belonging to ethnic minorities.

<sup>15</sup> Portugal (116.1)

<sup>16</sup> Austria (117.111), Belarus (118.41), Singapore (117.109), Oman (118.44), Portugal (118.45), Paraguay (117.73), Croatia (117.85)

<sup>17</sup> Estonia (117.14), Hungary (117.15), Poland (117.16), Ukraine (117.90)

### 1.1. Family environment and alternative care

16. Due to a malfunctioning social security system<sup>18</sup> and crisis in the childcare system, the State fails to prevent child abandonment and places children in large, mostly unlicensed residential facilities. There are significant differences in the nutritional status of children from varying socio-economic groups. Child poverty also remains high – every fifth child lives in a household where their basic needs are unmet and there is a considerable increase in the share of children living below the subsistence minimum. By 2016, there were 36 large child institutions functioning outside of State regulation, hosting 1146 children. In 2019, the Government started to extend State regulations<sup>19</sup> and standards to some of these institutions<sup>20</sup> however, there remains cases of children living in unlicensed institutions.<sup>21</sup>
17. Despite the commencement of the deinstitutionalisation process and amendments to Georgian legislation, over 900 children remained in 38 unregulated institutions, mostly boarding houses run and financed by the Patriarchate of the Orthodox Church, or under Muslim Confession, and local municipalities. At present there are 5 large residential institutions in Georgia which are licensed to conduct educational activities.<sup>22</sup> Two of these facilities constitute residential institutions for children with disabilities housing about 80 children with severe and multiple disabilities.<sup>23</sup>
18. What is especially problematic is that the responsible entities lack information regarding these religious boarding schools and the number of enrolled children as the state control and monitoring mechanism for the identified institutions are weak.<sup>24</sup> This leaves underage students of these

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<sup>18</sup>UNICEF Georgia, *The Well-being of Children and their Families in Georgia*, 2018, accessible at <https://www.unicef.org/georgia/reports/wellbeing-children-and-their-families-georgia-fifth-stage-2017>.

<sup>19</sup> See Ukraine (rec. 117.90).

<sup>20</sup> According to Article 3(1) and (2) of the Law of Georgia on Licensing of Educational Activity, the rules and conditions of conducting an educational activity are defined in a relevant legal act and it is prohibited to conduct educational activity in breach of these requirements.

<sup>21</sup>*Equal treatment to the schools of faith*, NGO Partnership for children, Final Report, 2016; According to the UN Convention on the Rights of the Child, a child temporarily or permanently deprived of his or her family environment shall be entitled to special protection and assistance provided by the State - Article 20 UNCRC.

<sup>22</sup> Not-for-profit (non-commercial) legal entity “St. Nino Boarding School for Orphans, Waifs and Children in Need of Care”, the Patriarchate of the Georgian Orthodox Church; Not for-profit (non-commercial) legal entity “St. Apostle Matthias Foundation’s Boarding School in Village Feria”; Rehabilitation Centre for Children and Adolescents in Bediani, the Patriarchate of the Georgian Orthodox Church. Tbilisi infant house and Kojori house of children with disabilities.

<sup>23</sup> *Association Implementation Report on Georgia*, European Commission, 2020, pgs 4-5 available at [https://eeas.europa.eu/sites/eeas/files/1\\_en\\_document\\_travail\\_service\\_conjoint\\_part1\\_v4.pdf?fbclid=IwAR14ZZwN8U1kyEPfv\\_Z5qr0qEZM-np9KDA\\_7dQbCrjY6LlgXcaA1MLmm6x0](https://eeas.europa.eu/sites/eeas/files/1_en_document_travail_service_conjoint_part1_v4.pdf?fbclid=IwAR14ZZwN8U1kyEPfv_Z5qr0qEZM-np9KDA_7dQbCrjY6LlgXcaA1MLmm6x0).

<sup>24</sup> A serious problem in the institutions is the maintenance of relevant documentation and record of information. This problem is especially acute in Muslim boarding schools.

institutions without protection.<sup>25</sup> Boarding schools may, as a punishment, pull ears, pull hair, put children in the in the corner and temporarily restrict participation in religious rituals. At the same time, children are often not given the possibility to protest against such treatment. Children in religious boarding schools are largely deprived of possibilities to freely express their opinions and views. The restrictions established in the institutions, a strict method of discipline and the sheer number of minors does not give rise to a family-like inclusive environment.

## 19. Recommendations

- Register all non-licenced establishments by the end of 2020 and grant them with licence if the licensing requirements are met;
- Immediately accommodate children living in institutions which do not meet the licensing requirements in alternative care facilities and/or fulfil their needs;
- Complete the de-institutionalisation of licenced orphanages subordinated to religious confessions and/or self-government bodies by 2022.

### 1.2. Juvenile Justice

20. In September 2019, Georgia adopted the Code on the Rights of the Child which will enter fully into force on 1 June 2020. It provides legal guarantees to empower the child to independently exercise and protect his/her rights.<sup>26</sup> Despite the Code, the right of the child to protect his/her rights remains unfulfilled in practice due to the absence of appropriate guarantees in the civil procedural law.
21. Legislation does not foresee a case of conflict of interest and the means to resolve it. Conflict of interest may arise in the case of parents as well as in guardianship and custodianship authority. Under the current legislation, guardianship and custodianship authority is a child's individual

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<sup>25</sup> Special Report on *Monitoring of child care system effectiveness of alternative care*, Public Defender of Georgia, 2019, pgs. 37-40, available at <http://www.ombudsman.ge/eng/spetsialuri-angarishebi/bavshvze-zrunvis-sistemis-monitoringi-alternatiuli-zrunvis-efektianoba-spetsialuri-angarishi>.

<sup>26</sup> According to the standards set by the Convention on the Rights of the Child and the European Court of Human Rights, a child must have an independent representative when a dispute arises against their legal representative *N. Ts. and others v. Georgia* App No 71776 /12 (ECHR 2 February 2016), p 43, 76.

assessor and often is their procedural representative simultaneously, which creates a conflict of interest. This issue is particularly problematic when a child is under State care and deems his/her rights violated by the guardianship and custodianship authority. As Georgian legislation does not specify the role and powers of an independent lawyer to represent a child, it is often impossible for a child to protect his/her rights through an independent professional.<sup>27</sup>

## 22. Recommendations

- Define the status of a social service agency as an individual child assessor in the Civil Procedure Code;
- Determine cases of conflict of interest involving children's legal representatives, including in the case of guardianship and custodianship authority in the Civil Procedure Code;
- Define the role and power of a child's lawyer and separate their powers from the powers of a procedural representative in the Civil Code.

## Issue 2. Disability discrimination

### 2.1. CRPD implementation

23. On 10 July 2009, along with the Convention on the Rights of Persons with Disabilities, Georgia further signed the Optional Protocol. Despite receiving 5 recommendations<sup>28</sup> in the previous cycle of the UPR, the Optional Protocol has not yet been ratified by the Georgian Parliament. Therefore, persons with disabilities remain unable to address the UN Committee on the Rights of Persons with Disabilities to complain about the violation of their rights, as protected by the Convention.

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<sup>27</sup> Georgian Young Lawyers' Association, *Observations and Opinions on the Code of the Rights of the Child 2019* accessible at

<https://gvla.ge/ge/post/saiam-parlaments-bavshvis-uflebata-kodeqstan-dakavshirebit-shenishvnebi-da-mosazrebebi-tsarudgina?fbclid=IwAR2vPOdbhxgu0DkZ9xs77pD-nMQv3pWAJLPexFzMAUMvc1PskGOb84xp5ro#sthash.Wk1nKvcc.Q9yFZf6A.dpbs>.

<sup>28</sup> Recommendations to ratify/accede Optional Protocol: Spain (rec.116.2); Hungary (rec. 117.5); Slovenia (rec.116.12); Austria (rec. 116.13); Turkey (rec. 116.14) (UPR of Georgia - Second Cycle).



24. In 2014, the inter-agency coordinating mechanism became responsible for the implementation of the CRPD,<sup>29</sup> while the Human Rights Secretariat at the Georgian Government was given a coordination mandate. However, the inter-agency coordination mechanism is no longer a functioning body and the Human Rights Secretariat proved itself to be an ineffective body to fulfil its obligations. Therefore, the Government has failed to establish an effective institutional framework for the implementation and coordination mechanism under Article 33 of the Convention.<sup>30</sup>

25. The problems in forming an effective State policy regarding the protection of the rights of persons with disabilities are the result of a number of factors, including the lack of unified statistical data on the number of the persons with disabilities in the country.<sup>31</sup>

## 26. **Recommendations**

- Ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities no later than 2021 spring session of the Parliament of Georgia;
- Establish the institutional framework that will be responsible for the implementation and coordination of CRPD, with the active involvement of community organisations. Allocate the respective financial, administrative and human resources for its effective functioning no later than the end of 2021;
- All State agencies should collect comprehensive statistical data regarding persons with disabilities in the country in unified action across all State agencies, no later than the end of 2021.

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<sup>29</sup> The Preliminary Results of the Performance Monitoring of the Human Right Strategies and Action Plans (2016-2017) *Rights of Children, Rights of the Persons with Disabilities, Gender Equality and Rights of Women*, the Human Rights Education and Monitoring Center (EMC), 2018, p 53-54 available at <https://emc.org.ge/ka/products/adamianis-uflebata-datsvis-strategiebisa-da-samokmedo-gegmebis-shesrulebismonitoringis-pirveladi-shedegebi-2016-2017> last visited 16.02.2020.

<sup>30</sup> Final Results of the Monitoring of Human Rights-related Strategies and Action Plans (2016-2017) Human Rights Education and Monitoring Center (EMC), 2018 available at [https://emc.org.ge/uploads/products/pdf/Raport\\_1537452439.pdf](https://emc.org.ge/uploads/products/pdf/Raport_1537452439.pdf) last visited 16.02.2020.

<sup>31</sup> Statistics of Persons with Disabilities Living in Georgia, Institute for Development of Freedom of Information, 2018, available at [https://idfi.ge/en/statistics\\_of\\_pwds\\_living\\_in\\_georgia](https://idfi.ge/en/statistics_of_pwds_living_in_georgia) last visited 18.02.2020.

## 2.2. Harmonisation of the national legislation with the Convention

27. After the ratification of the Convention, the main changes were only connected with the review of concepts and the processes concerning the legal capacity reform. Despite the reform having been passed, the problem of its effective implementation is still a challenge.<sup>32</sup> The attitude of the State towards persons with disabilities has remained the same and is based on the medical model of evaluation.
28. The national legal framework has not been reviewed by Georgia and no substantial legislative amendments were introduced in conformity with the requirements of the CRPD. The main principles of the CRPD<sup>33</sup> have not been implemented in national legislation.<sup>34</sup>
29. Although the Ministry of Justice of Georgia elaborated and initiated the draft “Law on the Rights of Persons with Disabilities”<sup>35</sup>, the document has mainly a declaratory nature and in the most part, fails to introduce clear and concrete steps for the implementation of the CRPD. In some areas, the draft law sets a lower threshold than the Convention and does not define relevant standards (such as Universal Design, Reasonable Accommodation and Accessibility) in a detailed manner. Therefore, the above-mentioned draft amendments create legislative gaps which hinder people with disabilities from participating and being active in an equal manner.<sup>36</sup>

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<sup>32</sup> Human Rights Education and Monitoring Center (EMC), *The Assessment of the Legal Capacity Reform and its Implementation* 2016 p 50 accessible at <https://emc.org.ge/2016/06/07/emc-82/> last visited 16.02.2020.

<sup>33</sup> **Note:** For example, formal standards for Universal Design, Reasonable Accommodation and Accessibility.

<sup>34</sup> According to the current legislation (Article 2 Government Resolution N41 6 January 2014), public buildings had to be made accessible by 1 January 2019. According to accessibility standards, this obligation has not been fulfilled as there are no enforcement mechanisms, nor universal design standards, and no national access plan accessible at <https://matsne.gov.ge/ka/document/view/2186893?publication=0> Last visited 16.02.2020.

On 5 February 2020, the Parliament of Georgia adopted legislative changes which oblige the Government to adopt universal design standards by 12 May 2020 according to which buildings and transport should be rearranged. From 15 June 2021, the existing buildings and transport will have to be adapted to the universal design requirements within the time limit set by the Government accessible at <https://info.parliament.ge/file/1/BillReviewContent/243443> last visited 16.02.2020. At this stage in the implementation of the law, it is imperative that the Government make a timely resolution with the involvement of all stakeholders, otherwise the obligation will remain unfulfilled.

<sup>35</sup> Bill on the Rights of Persons with Disabilities accessible at <https://info.parliament.ge/#law-drafting/19685>.last visited 16.02.2020.

<sup>36</sup> For example: Blind, hearing-impaired and mute people have the limited right to independently sign official documents, even though they are capable. Blind, hearing-impaired and mute persons can only independently sign official documents at the Public Register (Article 23 of the Order of the Ministry of Justice No. 4 of 15 January 2010 accessible at <https://matsne.gov.ge/ka/document/view/4380597?publication=0>. last visited 16.02.2020) and in Notaries (Article 27 of the Order of the Ministry of Justice No. 71 of 31 March 2010, Accessible at: <https://matsne.gov.ge/en/document/view/4380575?publication=0>. Last visited 16.02.2020).

A bill of law has been initiated in the Parliament of Georgia that provides for literate blind, hearing-impaired, and mute persons to independently sign official documents, however only in Public Register and in Notaries thus

## 30. Recommendations

### To the Parliament of Georgia:

- Based on research findings, enact the amendments to the national legislation during the next two years, to ensure full harmonisation with the CRPD;
- Introduce into law the terms such as Universal Design, Reasonable Accommodation and Accessibility as provided by the CRPD and define them in a clear and detailed manner.

## Issue 3. Gender discrimination

31. In 2017, Georgia ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) and therefore fully implemented corresponding recommendations.<sup>37</sup> A package of legislative amendments was passed in order to harmonise national legislation with the Istanbul Convention. Definitions of crimes were improved, new crimes were incorporated and procedural law was amended for the effective prosecution of sexual violence.<sup>38</sup> Further, committing a crime on the basis of gender intolerance became an aggravating factor in the determination of sentence under Article 53<sup>1</sup> of the Criminal Code of Georgia (CCG). Centres supporting women victims of gender violence, including sexual violence, have also been established as per the recommendations.<sup>39</sup>

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exempting other State institutions, banks and other important institutions, accessible at <https://info.parliament.ge/file/1/BillReviewContent/240769> Last visited 16.02.2020.

Legislative gaps are also found in the area of access to education. Existing legislation does not fully guarantee the right to inclusive education at all levels of education. The legislative framework for inclusive education does not create a structured and flexible system tailored to the individual needs of the child and student. Also, there is no proper infrastructure, training programmes, audio and braille textbooks, etc. The number and qualifications of special educators are still problematic today, Public Defender's Parliamentary Report (*State of Protection of Human Rights and Freedoms in Georgia*, pgs. 224–226, accessible at <http://ombudsman.ge/res/docs/2019101108583612469.pdf> last visited 16.02.2020.

<sup>37</sup> Ghana (rec. 116.15), Italy (rec. 116.16), Turkey (rec. 116.17).

<sup>38</sup> Law on Amendments and Changes to Criminal Code of Georgia, 04 May 2017 available at <https://matsne.gov.ge/ka/document/view/3664456#DOCUMENT:1>.

<sup>39</sup> Spain (rec. 117.62) and Honduras (rec. 118.14).

32. Notwithstanding these improvements,<sup>40</sup> other recommendations concerning sexual violence have been partially implemented or have not been implemented at all.<sup>41</sup> Sexual violence still remains one of the most concealed and unpunished forms of gender violence.<sup>42</sup> In measuring the degree of elimination of all forms of violence against women, Sustainable Development Goal (SDG) 5.2<sup>43</sup> relies on the proportion of women and girls aged 15 years and older subjected, inter alia, to sexual violence in the previous 12 months. According to a national study released jointly by UN Women and the National Statistics Office, in 2017, approximately 4,122 (0.4% of the respondents) women fell victims to sexual abuse by a spouse/partner and about 4,989 (0.4% of the respondents) women had experienced sexual abuse from other persons in Georgia.<sup>44</sup>
33. The root cause of the persisting sexual violence against women in Georgia is due to legislative and systemic problems. As opposed to Article 36 of the Istanbul Convention,<sup>45</sup> the definition of sexual violence does not focus on the lack of consent of the victim, but rather requires additional violence, threat of violence or using the helplessness of the victim as elements of rape.<sup>46</sup> The burdensome

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<sup>40</sup>Georgia Mid-term Report 2019 available at [https://www.upr-info.org/sites/default/files/document/georgia/georgia\\_upr\\_2nd\\_exam\\_mid-term\\_rep.pdf](https://www.upr-info.org/sites/default/files/document/georgia/georgia_upr_2nd_exam_mid-term_rep.pdf).

Georgia's First Voluntary National Review on Implementation of the Sustainable Development Goals (2019) available at <https://sustainabledevelopment.un.org/content/documents/10680SDG%20Voluntary%20National%20Review%20Georgia-.pdf>.

<sup>41</sup> See para. 10 of the present report. See also Annex 4 matrix.

<sup>42</sup>Georgian Young Lawyers' Association, *Sexual Violence Remains Unpunished Due to Existing Barriers* 2019 available at [https://gyla.ge/en/post/arsebuli-barierebi-seqsualuri-dzaladobis-dausjelobas-itsvevs?fbclid=IwAR0BDUcso91FD09XwRO5JG\\_BrMnn9YJ3NOgSrXGpix2wdQxDS\\_7mCLtSd9w#sthash.wuJrCTHw.hkUbZm8E.dpbs](https://gyla.ge/en/post/arsebuli-barierebi-seqsualuri-dzaladobis-dausjelobas-itsvevs?fbclid=IwAR0BDUcso91FD09XwRO5JG_BrMnn9YJ3NOgSrXGpix2wdQxDS_7mCLtSd9w#sthash.wuJrCTHw.hkUbZm8E.dpbs).

<sup>43</sup> Goal 5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.

<sup>44</sup>UN Women, *National Study on Violence against Women* 2018, pgs. 49-50, 56 available at <http://gender.geostat.ge/gender/img/publicationspdf/National%20VAW%20Study%20Report%20Geo.pdf?fbclid=IwAR3GI8BnB0BYxugFZUYs3PwpYiIDmD0S8-decaSBYhPuWCI0swd4EGZ558s#view=fit>.

See also the statistical data of crimes registered in 2018-2019 (January-December) by the Ministry of Internal Affairs of Georgia, para. 16: Crime against Sexual Freedom and Sexual Inviolability (Article 137-141) available at <https://info.police.ge/uploads/5e3bfa34e4aea.pdf>.

<sup>45</sup> The Netherlands (rec. 117.6).

<sup>46</sup> Articles 137 and 138 of the Criminal Code of Georgia,

The UN Women guidelines (p 24): rape and sexual assault laws should not require evidence of additional force as rape itself is a violent act and that additional violence should be considered an aggravating factor, which is also in line with the Istanbul Convention available at [https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2012/12/unw\\_legislation-handbook%20pdf.pdf?la=en&vs=1502](https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2012/12/unw_legislation-handbook%20pdf.pdf?la=en&vs=1502).

evidence requirements throughout legal proceedings deny justice to many survivors of sexual violence in Georgia.<sup>47</sup>

34. Despite the fact that committing a crime on the basis of sex is an aggravating circumstance,<sup>48</sup> the courts remain reluctant to identify the gender motive when handling cases of violence against women and do not collect statistical data in this regard.<sup>49</sup> By the same token, the index of identifying the discriminatory gender motive remains low in the Prosecutor's Office although, higher compared to previous years.<sup>50</sup>
35. Secondary victimisation also remains a problem due to the lack of sensitivity among law enforcement officers, as well as an absence of guiding principles prescribing the interview procedure of victims of sexual violence. Such victims consistently refer to the fact that they have to testify multiple times at police offices where confidentiality is rarely ensured.<sup>51</sup>

## 36. Recommendations

### To the Parliament of Georgia:

- Amend the definition of sexual violence in the CCG to ensure compliance with the Istanbul Convention;<sup>52</sup>
- Extend the scope of “aggravating circumstances” to include crimes against spouses and former spouses or partners.

<sup>47</sup> *Roadblocks to Justice: How the Law is Failing Survivors of Sexual Violence in Eurasia*, Equality Now 2019 p 8 available at [https://d3n8a8pro7vhm.cloudfront.net/equalitynow/pages/1581/attachments/original/1547485403/EN-Eurasia\\_Rpt\\_ENG\\_-\\_Web.pdf?1547485403](https://d3n8a8pro7vhm.cloudfront.net/equalitynow/pages/1581/attachments/original/1547485403/EN-Eurasia_Rpt_ENG_-_Web.pdf?1547485403).

<sup>48</sup> Article 53<sup>1</sup> and Articles 109; 115; 117 of the Criminal Code of Georgia.

<sup>49</sup> GYLA, *Significant Issues of Domestic Violence and Violence against Women* 2019, pgs. 32-34 and 35-36 available at

[https://gyla.ge/files/news/%E1%83%A4%E1%83%9D%E1%83%9C%E1%83%93%E1%83%98/Significant%20Issues%20of%20Domestic%20Violence%20and%20Violence%20Against%20Women%20eng\\_full.pdf](https://gyla.ge/files/news/%E1%83%A4%E1%83%9D%E1%83%9C%E1%83%93%E1%83%98/Significant%20Issues%20of%20Domestic%20Violence%20and%20Violence%20Against%20Women%20eng_full.pdf).

Letter no.1-0454/5068 of the Tbilisi City Court, dated 2 March 2020.

<sup>50</sup> Annual Report of the *Situation of Human Rights and Freedoms in Georgia*, Public Defender of Georgia 2018, pgs. 133-134 available at <http://www.ombudsman.ge/res/docs/2019042620571319466.pdf>.

<sup>51</sup> Ibid pgs. 134-135.

<sup>52</sup> 2016 Report of the Special Rapporteur, para. 99(i). See also CEDAW General recommendation on women's access to justice, 23 July 2015, para. 11(g): “Revise the rules on the burden of proof in order to ensure equality between the parties, in all fields where power relationships deprive women of the chance for a fair judicial treatment of their case.”

### **To the Prosecutor's Office:**

- Introduce a zero-tolerance policy in respect of sexual crimes against women;<sup>53</sup>
- Revise the requirement of the necessary amount of evidence for the initiation of a criminal prosecution by 2022;
- Adopt guidelines on applying gender-based motive as an aggravating circumstance as per Article 53<sup>1</sup> of the Criminal Code of Georgia when handling cases of gender-based violence against women by the end of 2020;<sup>54</sup>
- Provide mandatory trainings for prosecutors to increase their awareness on gender-based motives in 2021;
- Investigate and prosecute gender-related motives in all cases of sexual violence against women and apply these motives as an aggravating circumstance when imposing punishment.

### **To the Prosecutor's Office and law enforcement authorities:**

- Adopt a methodology of questioning victims of sexual violence, based on the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict by 2022.<sup>55</sup>

### **To the Judiciary:**

- Provide mandatory trainings for judges to increase their awareness on gender-based motives in cooperation with NGOs in 2021;
- Process unified and comprehensive statistical data regarding the index of identifying gender based motive in cases of violence against women.

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<sup>53</sup>*X and Y v. Georgia*, CEDAW 25 August 2015, para 11(ii).

<sup>54</sup> Dubravka Šimonović - the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia, report 22 July 2016, A/HRC/32/42/Add.3, para. 99(d).

<sup>55</sup> No.47 p 142.

#### Issue 4. Discrimination on the grounds of sexual orientation and gender identity

37. In 2019, the anti-discrimination law was amended to strengthen the effectiveness of the Anti-Discrimination Mechanism of Ombudsperson's.<sup>56</sup> In regard to hate crimes, the MIA created the Human Rights Protection and Investigation Quality Monitoring Department,<sup>57</sup> which inter alia, monitors investigations on hate crimes.<sup>58</sup> These changes should be welcomed; however, the unit has a much wider remit than proposed by the European Commission against Racism and Intolerance (ECRI)<sup>59</sup> and by UPR recommendations.<sup>60</sup> The Department is a centralised, coordinating body, giving rise to concerns that it may not be sufficient to address problems at the local level nor, for example, detailed issues arising in the investigatory process, also lacking a preventive approach.<sup>61</sup>
38. Even though the majority of the 2<sup>nd</sup> cycle recommendations were directed at eliminating social stigma towards LGBTQI individuals, no positive measures have been taken by the State. Accordingly, the existing social stigma against LGBTQI persons manifests itself in institutional homophobia as well, which results in homo/bi/transphobic hate crimes: according to 2019's statistics, criminal prosecution has been started on 32 homo/transphobic hate crime cases.<sup>62</sup> Correspondingly, 27 hate crime cases have been prosecuted on the grounds of SOGIE in 2018.<sup>63</sup> Notwithstanding the figures, the victims often refrain from reporting to law enforcement agencies because of the fear of forced outing and re-victimisation that results in a gap between the official

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<sup>56</sup> Available at <http://equalitycoalition.ge/ge/post/ra-cvlilebebi-gankhorcielda-antidiskriminaciul-kanonmdeblobashi-koalicia-tanastsorobistvis-ganckhadeba>.

<sup>57</sup> Order of the Minister of Internal Affairs N1 of 12 January 2018, available at <https://matsne.gov.ge/ka/document/view/3999709>.

<sup>58</sup> Details about the department available at <https://police.ge/en/adamianis-uflebata-datsvis-departamentis-mandati-gafartovda/12477>.

<sup>59</sup> ECRI Report on Georgia (fifth monitoring cycle) adopted on 8 December 2015, published on 1 March 2016, para. 68.

<sup>60</sup> Sweden (rec. 118.10.)

<sup>61</sup> It also lacks a preventive approach, which includes intergovernmental work to effectively prevent hate-motivated violence to occur.

<sup>62</sup> Response letter of 31.01.2020 from the Office of the Prosecution General of Georgia.

<sup>63</sup> Report of the Chief Prosecutor of Georgia, 2018 available at: <http://pog.gov.ge/uploads/docs/sizulviliTmotivirebulidanashaulebisanalizi.pdf>

and NGO statistics.<sup>64</sup> Considering the non-existence of the unified statistical data on hate crimes, it is impossible to determine the exact number of SOGIE-based hate crimes.

39. The enjoyment of the right to freedom of assembly and manifestation remains a challenge. Attempts to hold a Pride March in June and July 2019 failed when the authorities were unable to guarantee the safety of participants against threats of a violent counter-demonstration.<sup>65</sup> Despite the fact that homophobic groups appearing to form a “civil guard” unit were equipped with wooden clubs to attack participants and were publicly inciting violence, neither the leaders nor the members of this violent groups have been detained.<sup>66</sup>
40. The rights of trans people are not recognised in Georgia. They are forced to undergo unwilling, expensive and life-threatening procedures in order to change their gender marker. Unregulated Legal Gender Recognition has also been addressed by the UN Independent Expert (IE) on SOGI issues,<sup>67</sup> as well as 3 cases have been communicated to the European Court of Human Rights against Georgia.<sup>68</sup>

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<sup>64</sup> According to the recent study of 2018, among LGBT respondents, 88.3% (N=226) have been victim of hate crimes since 2015. Psychological/emotional violence has been experienced by 85.5% of respondents, 61.7% have experienced sexual violence and harassment, while 29.7% of respondents reported experience of physical violence. Despite such high figures, only 16.8% of hate crime victims have reported incidents to the police. Submission to the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity available at <https://women.ge/en/publications/194/>.

<sup>65</sup> Threats of counter-demonstrations available at <http://go.on.ge/14kv>, <http://www.tabula.ge/ge/story/150531-vasadze-praidis-tsinaagmdeg-razmebs-vqmmit-iaraghi-iqneba-qamrebi-amit-shevukravt?fbclid=IwAR2Bu4S4rAjPYihg5W4NQ-RldyuoZW-3IILeAuQZ8L6R4633ckvnLjk-Qsg>.

<sup>66</sup> Despite the extensive availability of evidence, (including video footage) none of the suspected offenders were detained. Generally, despite numerous homo/bi/transphobic public threats by ultra-conservative and far right groups, there have been no cases where perpetrators have been prosecuted, despite the grave nature of the alleged offences committed, see the Response of the Human Rights Organizations available at <http://equalitycoalition.ge/en/post/koalicia-tanastorobistvis-ganckhadeba-14-ivnissa-da-16-ivniss-ganvitarebul-movlenebis-shesakheb>.

<sup>67</sup> Report of the Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity available at <https://undocs.org/a/hrc/41/45/add.1>, para. 90.

<sup>68</sup> *A.D. v Georgia, A.K. v Georgia*, App nos. [57864/17](#) and [79087/17](#), *Nikolo Ghviniashvili v Georgia*, App no. [55353/19](#).



#### 41. 4.1 Recommendations

- Establish a hate crime investigation unit within law enforcement system in order to strengthen the investigation/prosecution/prevention of hate crimes based on SOGI in line with the UPR, ECRI and IE<sup>69</sup> recommendations, before the next UPR review;
- Regulate the process of legal gender recognition in a way that it is based on self-determination of the trans person according to IE recommendation and SDG 10. Simplify the administrative process by exempting it from the abusive requirements and recognise non-binary identities, accessible for minors as well;
- Organise permanent educational campaigns in order to ensure awareness raising on SOGIE issues. Integrate SOGIE issues into all programmes concerned with policing, the criminal justice system and/or civil society.

#### 42. 4.2 Advanced questions

What measures have been taken by the Government:

- To fight homo/bi/transphobic hate speech (including, incitement of violence) and actual violence on the part of the hate groups in Georgia?
- To advance the right to freedom of assembly and manifestation?

#### Issue 5. Religious discrimination

43. Religious minorities encounter systemic discrimination in Georgia. Property-related issues are among the most acute problems. The two property-related recommendations supported during the 2<sup>nd</sup> cycle<sup>70</sup> have not been fulfilled by the State.
44. The Armenian Apostolic, Catholic, Evangelic-Lutheran churches, Jewish and Muslim communities are particularly affected by this problem. Since Georgia's independence, only the Georgian Orthodox Church (GOC) has regained the lost property under the terms of the

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<sup>69</sup> Report of the Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity, para 99 available at <https://undocs.org/a/hrc/41/45/add.1>.

<sup>70</sup> See para. 12 of the present report.

Constitutional Agreement<sup>71</sup>. There is no law on restitution or any kind of regulation for other minority religion. One of the reasons the State does not fulfil its obligation is the resistance from GOC, who claims ownership over the part of other religious organisations' historical property<sup>72</sup>. Another obstacle is discriminatory legislation; the Law on State Property does not allow religious organisations, except the GOC, to receive the state-owned property. The majority of houses of worship of religious minorities are monuments of cultural heritage. However, they are crumbling due to the State's negligence.

45. Religious minorities face obstacles in the process of building new places of worship. For instance, Muslims in Batumi are forced to pray in the open air. In 2017, the community purchased a land plot and applied to Batumi City Hall for a construction permit, which was rejected. The first instance court ruled in favour of the Batumi Muslims, identified discrimination and ordered the City Hall to reconsider the construction permit application. Instead, the City Hall appealed the decision and the case is currently pending before Kutaisi Court of Appeals. Other religious organisations (Catholic Church, Jehovah's Witnesses) also encountered similar problems in 2014-2018.<sup>73</sup>
46. Another obstacle is discriminatory legislation which does not give religious minority organisations the right to purchase State property. In 2018, the Constitutional Court made an unprecedented decision<sup>74</sup> and deemed Article 6<sup>75</sup> of the Law on State Property unconstitutional because of its discriminatory treatment of religious organisations. As of 2019, the Court is reviewing another constitutional claim of religious organisations. The applicants argue that granting the right to purchase State property only to GOC is discriminatory<sup>76</sup>.

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<sup>71</sup> Constitutional Agreement is the Concordat between the State and Apostolic Autocephalous Orthodox Church of Georgia, concluded in 2002, October 22. In hierarchy of laws, the Constitutional Agreement is superior to international agreements.

<sup>72</sup> For example, in 2017 the State transferred ownership of the Tandoyants Surb Astvatsatsin Armenian church to the Orthodox Church. GOC immediately started excavations on the church's grounds.

<sup>73</sup> Mariam Gavtadze and Eka Chitanava, *Georgia: State obstructs building new non-Georgian Orthodox places of worship*, Forum 18 available at [http://www.forum18.org/archive.php?article\\_id=2118](http://www.forum18.org/archive.php?article_id=2118).

<sup>74</sup> Judgments of the Constitutional Court of Georgia of 3 July 2018, Constitutional complaint # 811.

<sup>75</sup> Article 6, Law on State Property grants the right of the Georgian Orthodox Church to receive State property free of charge, while other religious organisations are deprived of this right.

<sup>76</sup> Article 3, Law of Georgia on State Property grants the right to buy or exchange agricultural and non-agricultural land to only for the Georgian Orthodox Church.

47. Furthermore, the role of the State Agency for Religious Issues (SARI) is problematic. Human rights organisations and minority religious associations were not afforded the opportunity to be part of the consultation during the process of establishing the mandate and the statute of the Agency in 2014. Therefore, the State failed to reflect on actual needs, interests and on the views of religious minorities both in policy and practice<sup>77</sup>. Rather than ensuring freedom of religion or belief for all, the State focused on the differentiation of religious communities and intruding into their autonomy ignoring the violation of their rights. SARI has been ignoring the most pressing needs of religious communities, including the key issue of restitution of religious property.<sup>78</sup>

#### 48. **Recommendations**

- Make an inventory of the damage inflicted by the Soviet totalitarian regime on the religious communities and document the confiscated property by the end of 2022 in close cooperation with affected religious organisations, Council of Religions under the Public Defender and NGOs;
- Initiate and adopt the law on restitution of religious property in 2021. The law should define detailed procedures for the restitution, responsible state agencies and timeframe not exceeding 5 years for the completion of the restitution process;
- Refrain from interfering with the full enjoyment of Muslims' rights notably by granting the building permit for the mosque in Batumi;
- Amend the Law on State Property to equally allow religious organisations to purchase, exchange or acquire free of charge the State property;
- Reconsider the problematic mandate and role of the SARI and the necessity of its existence. Instead, the Government shall scale up the cooperation with Council of Religions operating

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<sup>77</sup> The Assessment of the Strategy for the Development of Religious Policy of the State of Georgia, 2015, available at <http://tdi.ge/en/news/216-assessment-strategy-development-religious-policy-state-georgia>.

<sup>78</sup> Report on the monitoring of the implementation of human rights strategies and action plans for 2016-2017, EMC available at <https://emc.org.ge/en/products/religiuri-umtsiresobebis-datsva-adamianis-uflebata-datsvis-strategiebisa-da-samokmedo-gegmebis-shesrulebis-monitoringis-angarishi>.

under the Public Defender of Georgia and utilise the Council’s expertise and recommendations, as recommended by ECRI and the Council of Europe Committee of Ministers.<sup>79</sup>

## Issue 6. Discrimination of ethnic minorities

49. The recommendation concerning the adoption of 2015-2020 State Strategy for Civic Equality and Integration, as well as its action plans, is implemented, which can be marked as a positive development.<sup>80</sup> However, these documents do not address the systemic challenges faced by ethnic minorities in Georgia. Further, their implementation was inadequate to overcome the deeply rooted isolation, stigma and oppression. Dominant discourse perceives minorities as guests and alien to Georgia. The minority policies are predominantly managed from the security perspectives which undermines integration. It is concerning that the State Minister Office for Reconciliation and Civic Equality (SMR)<sup>81</sup> is not equipped with the required political power and financial backing to overcome these challenges and only operates a coordinating function. Therefore, most of the recommendations concerning minorities’ integration in civil and political lives are either not implemented or partially implemented.<sup>82</sup>
50. The participation of minorities in political, social and cultural lives remains a challenge. The dominant political and cultural agenda suppresses their rights including the right to use their language when communicating with governmental authorities,<sup>83</sup> the right to exercise their culture freely and the right to effectively participate in decision-making process, etc.
51. There are no political parties representing the interests of the ethnic minorities. Recent sociological research revealed that 46% of respondents do not see their group interests reflected within political

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<sup>79</sup> Council of Europe Committee of Ministers, decision CM/Del/Dec(2019)1355/H46-8, 25 September 2019, para. 10.

<sup>80</sup> See annexed matrix – assessment of rec. 117.23. The strategy comprises of four pillars: equal participation in civil and political lives; equal social and economic conditions; access to quality education and improvement of state language knowledge; and maintenance of minority culture.

<sup>81</sup> State Minister Office for Reconciliation and Civic Equality, the responsible coordinative authority on integration and minority rights issues.

<sup>82</sup> See Annex 4 matrix – assessment of Mexico (rec. 118.48), Norway (rec. 117.23), Armenia (rec. 118.49), Albania (rec. 117.103), Germany (rec. 118.38), China (rec. 117.107) etc.

<sup>83</sup> Such a specific right is recognised by the Council of Europe for minorities when they are densely populated in specific regions, CoE Advisory Committee, para 18 accessible at <https://rm.coe.int/3rd-op-georgia-en/1680969b56>.

parties' agendas.<sup>84</sup> Under-representation of minorities in the political life and prohibition of political parties on a territorial principle remains an obstacle to their political participation.<sup>85</sup> Notably, 11 members of the Parliament are from ethnic minorities but they do not know the State language and are unable to effectively participate in political processes.<sup>86</sup>

52. Furthermore, there is no positive mechanism prescribed under legislation or in policy documents that could strengthen political participation of national minorities. The only consultative mechanism that exists is the National Minority Council under the Public Defender's office. Law does not prescribe its steady and binding connection with the executive or legislative branches as a compulsory consultative mechanism. Therefore, ethnic minorities are not regularly involved in decision-making processes.<sup>87</sup>
53. The participation of minorities at the level of local government is also problematic. The latest sociological research indicates that more than 70% of minorities do not apply to self-government authorities.<sup>88</sup> One of the main reasons is the language barrier.<sup>89</sup> Local authorities as well as the territorial State agencies do not provide translation services in administrative proceedings and local social services, lack of bilingual operation of their official websites and social media pages which constitute a barrier for minorities. Since 2017, the Government conducts an internship programme for the graduates of a special university programme "1+4"<sup>90</sup>. However, the employment of minorities in the public sector, particularly on local government level remains critically low.

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<sup>84</sup> ISSA research, p 77 available at <https://osgf.ge/wp-content/uploads/2019/05/Analytical-Report-ISSA-GEO.pdf>.

<sup>85</sup> CoE Advisory Committee, para 20 accessible at <https://rm.coe.int/3rd-op-georgia-en/1680969b56>.

<sup>86</sup> The problem exists at local city council levels where ethnic minorities are still under-represented in municipalities where they represent the majority of the local population. See CSEM report, p 9 accessible at [http://csem.ge/wp-content/uploads/2018/06/Competing-for-Votes-of-Ethnic-Minorities\\_Eng.pdf?fbclid=IwAR2Ure\\_fskA2XI\\_ff-bqDy69l3UNqJ39sKZv0yVectuktuFsuI1lgSMAfMM](http://csem.ge/wp-content/uploads/2018/06/Competing-for-Votes-of-Ethnic-Minorities_Eng.pdf?fbclid=IwAR2Ure_fskA2XI_ff-bqDy69l3UNqJ39sKZv0yVectuktuFsuI1lgSMAfMM).

<sup>87</sup> This was also criticised by the last opinion of CoE Advisory Committee in the third opinion published in 2019, para 21.

<sup>88</sup> ISSA research indicates that 69.9% of respondents have never applied to the local self-government authorities for their private or family needs and 76.5% have not applied for public needs.

<sup>89</sup> According to the latest survey (2019) of the Social Research and Analytic Institute (ISSA), knowledge of Georgian language is the lowest among the Azerbaijani community. The highest level of State language knowledge is found among ethnic kists-22.11 point out of 25, Ossetians – 21.67, Armenians – 10.56 and Azerbaijanis 9.67, see ISSA research, p 67.

<sup>90</sup> The programme envisages simplified procedure for university entrance exams and the teaching of Georgian language for one year, Afterwards, minority students can commence a four-year bachelor programme. The timeframe for this special measure expires in 2020.

54. State policy in Pankisi Gorge, where Qists reside, is a clear example of the dominant security-based approach established historically towards ethnic minorities.<sup>91</sup> The illegal killing of 19 years old Temirlan Matchalikashvili by a State security officer, repression of the local population due to the opposition of the construction of hydroelectric plants<sup>92</sup> are the most recent examples of Qist minority group oppression. The Government neither conducted effective investigation<sup>93</sup> into the murder of Matchalikashvili, nor established any democratic dialogue formats.<sup>94</sup>

## 55. Recommendations

- Strengthen the mandate of SMR and its financial backing to proactively implement integration policies;
- Develop State policy to have specific measures to increase political participation of ethnic minorities; Adopt positive measures to encourage employment of minorities in central and local government institutions, with a particular emphasis on graduates of the university programme 1+4; Continue supporting the special high education programme 1+4 and further develop it;
- Establish effective and inclusive minority consultative mechanisms within the Parliament of Georgia and on executive level, as well as on local municipality levels in areas with a significant minority population;

<sup>91</sup> See EMC research on the formation of the Pankisi Gorge as the political epicentre in the context of historical circumstances, power configurations, and dominant discourses - *Under the Security Gaze: History, Politics, and Religion in the Pankisi Gorge* available at <https://emc.org.ge/en/products/usaftrkhoebis-mzeris-kvesh-istoria-politika-da-religia-pankisis-kheobashi>.

<sup>92</sup> Human Rights Organization's response to the use of police forces in Pankisi Gorge available at <https://emc.org.ge/en/products/adamianis-uflebebeze-momushave-organizatsiebi-ekhmianebian-pankisis-kheobashi-sapolitsio-dzalis-gamoqenebas>.

<sup>93</sup> Overview of the flaws of the ongoing investigation of the death of Temirlan Machalikashvili, available at <https://emc.org.ge/en/products/emc-temirlan-machalikashvilis-sitsotskhilis-khelqofis-sakmeze-samartlebrivi-shefasebit-da-motkhovnebit-sakhelmtsifo-utsqebes-mimartavs>; EMC assesses the restricted materials containing state secrets in Machalikashvili's case available at <https://emc.org.ge/en/products/emc-machalikashvilis-sakmeze-sakhelmtsifo-saidumloebis-shemtsvel-masalebs-afasebs>.

<sup>94</sup> CoE Advisory Committee recommendation within the 3<sup>rd</sup> cycle of reporting, 2019, para 136: "The Advisory Committee calls on the authorities to formalize and make compulsory the consultation of the Council of National Minorities and the Council of Religions on matters of potential concerns for the persons and communities they represent. In this regard, it specifically calls on the authorities to effectively consult representatives of national minorities before designing and launching important infrastructural projects that may affect them".

- Strengthen coordination with the National Minority Council within the Public Defender's Office via consultations and recommendations to improve integration policies;
- Set up translation resources for important public documents and legal acts into the minorities' native languages, as well operating bilingual social media and web pages;
- Eradicate tense and arbitrary control practices on the part of the police/security authorities in Pankisi Gorge by establishing democratic dialogue formats;
- Investigate effectively and timely human rights violations, including the murder of Temirlan Matchalikhvili.<sup>95</sup>

## **Issue 7. Racial and alien discrimination**

56. Out of the 7 recommendations concerning racial discrimination supported by Georgia, 2 were implemented, 3 were partially implemented and 2 were not implemented at all.<sup>96</sup>
57. Georgia ratified the 1951 Convention on the Status of Refugees and its 1967 Protocol in 1999. The key legislative act regulating asylum in Georgia is the Law on International Protection, adopted in December 2016. The Migration Department of the Ministry of Internal Affairs of Georgia (MIA) is responsible for registering and examining applications for international protection. It is worth noting that the number of asylum seekers has been growing consistently since 2012.<sup>97</sup>
58. The Georgian Law on International Protection provides for the withdrawal of an application for international protection. The determining authority takes a decision to discontinue the examination of the previous application before having assessed all the relevant facts and circumstances.<sup>98</sup>

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<sup>95</sup> The case has been submitted to the ECtHR and is under consideration.

<sup>96</sup> Sierra Leone (rec.117.13) - implemented; Djibouti (rec. 118.3) - implemented; Belgium (rec. 117.46) - partially implemented, Nigeria (rec.117.42) - not implemented, Nigeria (rec. 117.43) - partially implemented, Philippines (rec. 117.92) - not implemented, Chile (rec. 117.45) - partially implemented.

<sup>97</sup> In 2019, a total of 1237 applications for international protection were registered by the MIA. During the same period, refugee status was granted to 42 persons and 35 persons were granted humanitarian status, 407 applications were rejected.

<sup>98</sup> For example, there have been cases that an applicant withdrew the application in the belief he may be allowed to remain in Georgia on some other ground or where the applicant failed to leave Georgia for another country; in other case an applicant requested the return of her passport from the MIA for the purpose of divorce which was automatically seen as withdrawal and she was forced to withdraw her case.

59. If the applicant, who previously withdrew the application, then changes his/her mind and wishes to pursue the previous application, the only possibility provided by Georgian law is that such applicants must submit a new application raising new elements or findings concerning his/her personal conditions or the situation in his/her country of origin. Thus, there is no guarantee for the applicant that the original application will be re-opened, nor any obligation for the State to re-open it.
60. In recent times, there has been a negative trend emerging in delaying the preliminary interview and suspending the issuing of a temporary identification card.<sup>99</sup> Consequently, asylum seekers are prevented from being issued personal documents which limits immediate access to health care, education and other basic social services, which compel many applicants to leave the country before their applications have been processed.
61. While granting residence permits to foreign nationals, the State policy is discriminatory based on race, nationality or citizenship. Most frequently residence permits are rejected<sup>100</sup> based on the conclusions of the State Security Service suggesting that the presence of the applicant in Georgia is not recommended.<sup>101</sup> 10,050 (82.6%) rejected applicants were of African or Asian descent.<sup>102</sup> At no stage of case proceedings are permit-seekers given access to the evidence gathered against them by the Security Service. During court proceedings, the permit-seeker is deprived of the possibility to submit an argument-driven counter-position, while the evidence submitted by State Security Service to the court is unknown to the parties.
62. Racism and anti-migrant populism have become alarming issues in Georgia. In September 2018, a Georgian national, human rights activist Vitaly Safarov, was killed on the grounds of racial

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<sup>99</sup> According to the Article 27(4) of the Law on International Protection, the preliminary interview shall be conducted within 10 days after the submission of the asylum application. After the preliminary interview, the asylum seeker receives a certificate issued by the MIA confirming their status as asylum seekers in the country. This document must be submitted to the Public Service Development Agency (hereinafter referred to as PSDA), which issues, within ten days, a temporary identification card.

<sup>100</sup> Public Service Development Agency (PSDA) is the body issuing residence permits; according to the Law of Georgia on the Legal Status of Aliens and Stateless Persons, PSDA has the obligation to get a recommendation from the State Security Service to take a decision on each residency case.

<sup>101</sup> According to the State Public Service Development Agency, during the period of 1 January 2012 to 27 October 2017, 12,168 foreign nationals were refused the permit with of the justification of posing a threat to State security, territorial unity and public order.

<sup>102</sup> They mostly represent the following countries: Nigeria, Cameroon, Egypt, India, Bangladesh and Pakistan, see more: Tolerance and Diversity Institute (TDI), *Racial Intolerance and Xenophobia, Rights of Foreign Nationals in Georgia*, 2019 accessible at [http://tdi.ge/sites/default/files/tdi\\_report\\_on\\_racial\\_discrimination\\_and\\_rights\\_of\\_foreigners.pdf](http://tdi.ge/sites/default/files/tdi_report_on_racial_discrimination_and_rights_of_foreigners.pdf).



discrimination and anti-Semitism.<sup>103</sup> Findings of public opinion polls also suggest that cultural diversity and immigration are perceived as a threat to Georgia.<sup>104</sup> Foreign nationals feel increasingly threatened due to the growing aggression, violence and xenophobia especially against citizens of African and Asian countries. Neo-Fascist and far-right groups assault people in public places and organise rallies with intimidating slogans targeting foreigners.<sup>105</sup>

### 63. Recommendations

- Ensure through law that an asylum seeker who reports to the competent authority after a decision to discontinue has been made is entitled to have his/her case re-opened or submit a new application on the same grounds. The applicant's claim should receive a full examination of the substance and the applicant should be granted a personal interview;
- Ensure that persons who may be in need of international protection are registered as asylum seekers and are given a preliminary interview;
- Continue to issue temporary identification cards to all asylum seekers in Georgia in a timely manner;
- Ensure appropriate justification of negative decisions while resolving the issue of granting residence permit to foreigners without any discrimination based on race/ethnic origin or other grounds;
- Develop a policy and a strategy on combatting and preventing hate crimes motivated by racial/ethnic intolerance and ensure an immediate and effective response to each racially motivated hate crime.

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<sup>103</sup> Human Rights Center, Case details and legal assessment of Vitaly Safarov's murder available at [https://hrdc.org/admin/editor/uploads/files/pdf/hrc2019/საგარეო\\_გადასახლება\\_2019-საქმე-eng.pdf](https://hrdc.org/admin/editor/uploads/files/pdf/hrc2019/საგარეო_გადასახლება_2019-საქმე-eng.pdf).

<sup>104</sup> CRRC, *Hate Crime, Hate Speech, and Discrimination in Georgia: attitudes and awareness* 2018 available at <https://rm.coe.int/hate-crime-hatespeech-and-discrimination-in-attitudes-and-awareness-e/16808ef62a>.

<sup>105</sup> On 10 December 2018, Georgian March and the Alliance of Patriots of Georgia, a political party together with various xenophobic groups gathered their supporters in a rally in front of the Public Service Hall with the purpose of barring entrance for foreign nationals preventing them from receiving services; On 17 May 2018, members of the Georgian National Unity, a fascist organisation, gathered supporters for a demonstration in celebration of the Family Holiness Day with fascist symbols in full view of the public; In April 2018, a group of migrants were physically abused and forced out of a football stadium by Georgians in Tbilisi.

