

Alternative Report on Georgia's Compliance with the International Covenant on Civil and Political Rights

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**GEORGIAN
YOUNG
LAWYERS'
ASSOCIATION**

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Introduction

The report is prepared by a coalition of human rights organizations – Human Rights Education and Monitoring Center (EMC) and Georgian Young Lawyers' Association (GYLA). It critically assesses the fulfillment of recommendations issued by the Committee within the framework of the fourth monitoring cycle, as well as the performance of the Government of the Covenant throughout the past 6 years. Information and assessments in the report are based on research, field work, strategic cases litigated by these organizations and their analysis. Where relevant the report relies on the information provided by the state, assessments of Public Defender of Georgia (hereinafter "PDO"), and local and international human rights organizations.

I. Alternative Evaluation of the Concluding Recommendations issued by the Committee

1. Antidiscrimination Legislation (Paragraph 6 of the Committee Recommendations)

See Coalition's assessment under Article 2

2. Antidiscrimination and Gender Equality (Paragraph 7 of the Committee Recommendations)

See Coalition's assessment under Article 3

3. Discrimination on the grounds of sexual orientation and gender identity (Paragraph 8 of the Committee Recommendations)

See Coalition's assessment under Articles 2 and 3

4. Domestic violence and corporal punishment of children (Paragraph 9 of the Committee Recommendations)

The measures taken by the state in recent years for combating domestic violence and gender-based violence against women have to be assessed positively. In this regard, the most important step was the ratification of the 2011 Council of Europe Convention on "Preventing and Combating Violence against Women and Domestic Violence" (Istanbul Convention). Certain measures and reforms have already been adopted on the domestic level for the fulfillment of obligations in the Convention. However, the legislation is not still in full compliance with Convention provisions.¹

Despite legislative recognition of gender equality, still, enforcement of these rights is problematic. Clear vision about what is a gender-based motive is crucial. Although in the recent years, the Prosecutor's office and the Court changed their approaches and act more positively and responsibly, identification of a motive, and its reflection in the courts' judgments is still problematic.²

Prevention of femicide and effective fulfillment of judicial and law enforcement functions remain problematic. The highest number of murders against women was observed in 2014 (35 incidents), in the coming years this number decreased (18 incidents each for 2017 and 2018 years).³ However, this number is still alarming in 2020, as by March 8, 8 women had been killed.⁴

It is noteworthy, that on September 5, 2017, GYLA in cooperation with European Human Rights Advocacy Centre (EHRAC) submitted the case on femicide to the Committee on the Elimination of Discrimination

¹ Urgent Issues of Domestic Violence and Violence against Women - GYLA, Tbilisi, 2019 available at: <https://bit.ly/2CO7x2y>.

² *ibid*: pg. 36 available at: <https://bit.ly/2CO7x2y>

³ Femicide Monitoring Report 2014-2018 – PDO, Tbilisi, available at: <http://ombudsman.ge/res/docs/2020070314085795380.pdf>.

⁴ GYLA's Assessment of Women's Rights, 2020, available at: <https://bit.ly/333cMpt>.

against Women (CEDAW).⁵ The case concerns state inaction to prevent femicide and inadequate investigation of the crime, which illustrates systemic problems of discrimination against women in Georgia. These tragedies demonstrate that state measures are largely chaotic and fragmented, which decreases the effectiveness of preventive mechanisms.

One of the core components in combating domestic violence and violence against women is the protection of victims and their support. To identify victims' needs, it is crucial to develop coordinated and complex responsive mechanisms, which will consider issues of criminal responsibility and prevention of future violence, as well as components of victim support.

Recommendations:

- Create systemic preventive mechanisms, which will plan preventive measures for equitable representation of women, among others on the following issues: domestic violence, sexual harassment, early and forced marriage;
- Develop and implement professional training programs and shelter services for the economic strengthening of women;
- Timely develop and implement behavior modification programs of those persons, in relation to whom a protective order has been issued;
- Law-Enforcers should examine in each femicide case whether the victim addressed the police and/or prosecution officers and how timely, effective, and adequate their response was.
- Continuously train law enforcers and judges so that the ground of gender and the gender-related motive is identified in crimes against women.

Questions:

- What steps are planned for economic strengthening of women (employment; professional training) and whether the development of shelter services is planned for the next period;
- In case protective order is issued, whether the behavior modification program is legislatively regulated, what kind of measures are carried out in this direction, and whether there is a concrete agency, which is responsible for carrying out programs towards perpetrators.

5. Accountability for past human rights violations (paragraphs 10-12 of Committee recommendations)

Crimes Committed during the 2008 August War

During the 2008 Russian-Georgian war and in the coming period allegedly crimes against humanity and war crimes were committed. Since January 2016, these crimes have been investigated by the Prosecutor's Office of the International Criminal Court (ICC).⁶ Correspondence of March 2015 of the Justice Ministry of Georgia preceded ICC investigation, in which the Ministry informed the Prosecutor's Office, that the

⁵ GYLA asserts in the CEDAW that the State has committed discrimination against B.DZ., as it: a) failed to protect B.DZ's life; b) failed to protect B. DZ against inhumane treatment; c) failed to investigate the murder of B.DZ as a gender crime; d) failed to eradicate deeply established gender stereotypes and subordination, which played the major factor in the murder of B.DZ.

See GYLA's first communication on the femicide to CEDAWat: <https://bit.ly/2CTZYqY> .

⁶ Decision on the Prosecutor's request for authorization of an investigation issued by a pre-trial chamber of the International Criminal Court, 27.01.2016. available at: https://www.icc-cpi.int/CourtRecords/CR2016_00608.PDF .

national investigation initiated in 2008⁷ was suspended for an indefinite period. The Ministry indicated serious security problems on the occupied and adjacent territories as the reason for that.⁸ ICC Prosecutor's office has been investigating crimes committed during the August war for more than 4 years now. However, a responsible person has not been identified yet.⁹ In case perpetrators are identified, ICC will only establish the responsibility of high-ranking officials, while identification and prosecution of low-ranking perpetrators remain the duty of the national government.

Accordingly, despite the investigation of the ICC Prosecutor's Office, Georgia is obliged to continue the investigation on the domestic level. However, it is unknown for victims, whether the Georgian Prosecutor's Office renewed investigation. Despite requests, the Prosecutor's Office does not provide this information to the victims and leaves them in an informational vacuum.¹⁰ 12 years after the war, the Prosecutor's Office has not yet interrogated certain witnesses and victims, neither has victim status been granted,¹¹ although the conditions on the occupied and adjacent territories do not hinder such investigative measures.

Investigation of June 15, 2009 events

On June 15, 2009, participants of the protest rally, representatives of the PDO, and journalists were ill-treated by police officers during the dispersal of a peaceful protest, journalistic activities were disrupted and freedom of assembly of protest participants was violated.¹² General Prosecutor's office of Georgia commenced an investigation, however, 11 years after the events, investigation still does not have an outcome. Given undertaken investigative measures, it is clear that the purpose of the Prosecutor's Office is not the imposition of criminal responsibility on high-ranking officials, who planned dispersal of the demonstration, beatings, and detentions of participants, but sanctioning of low-rank police officers. The investigation is ongoing on the facts of exceeding official powers,¹³ which is problematic on its own, as the acts committed against certain protesters considering its severity, degree, and intensity amounted to torture and/or inhuman and degrading treatment.¹⁴ Despite requests, the investigative body had not changed qualification. Apart from that, since August 2018, the Prosecutor's office has not informed victims about the progress of the investigation.¹⁵

Prison Riot Cases

On March 27, 2006, the incumbent head of the penitentiary department of the Ministry of Justice carried out a special operation to suppress protest of prisoners, which had started in prison #5. As a result of the

⁷ Motion submitted by the Prosecutor's Office of ICC, 17.10.2015. available at: https://www.icc-cpi.int/CourtRecords/CR2015_21221.PDF .

⁸ Letter of the Justice Ministry of Georgia, March 17, 2015, available at: <https://bit.ly/3eS1PcJ> .

⁹ Georgian Coalition for International Criminal Court (GCICC), four years have passed since the Office of the Prosecutor of the International Criminal Court launched an investigation into the August 2008 War Crimes, 27.01.2020. available at: <https://bit.ly/345Up3R>

¹⁰ Correspondence with GYLA regarding progress of the investigation, February 7, 2017 #8-01/57-19 and the letter sent by GYLA lawyer on June 19, 2020, which was not answered by the General Prosecutor's Office of Georgia.

¹¹ GCICC, 10 Years after the August War: Victims of the Situation in Georgia, Tbilisi, 2019. available at: <https://bit.ly/3g3IWnD>;

¹² Ltd Studio Maestro and others against Georgia № 22318/10, 30.06.2015, Bekauri and others against Georgia, №312/10, 15.09.2015 and Menabde against Georgia №4731/10, 13.10.2015.

¹³ Criminal Code, Article 333 (3) (b).

¹⁴ Criminal Code, 144¹ and 144³.

¹⁵ GYLA's alternative reports on the state of enforcement of judgments/decisions of the strasbourg court, available at: <https://bit.ly/3eORRcc>,

special operation, 7 prisoners died and 22 of them received bodily injury. The European Court of Human Rights (The ECHR) in its decision of April 2, 2020, assessed the force used by special task officers during the special operation as disproportionate and excessive.¹⁶

Since 2006, the General Prosecutor's office has been investigating facts of exceeding power during suppressing the so-called prison riot. Even though 14 years have passed since the riot, these facts are not appropriately investigated, neither have necessary investigative measures been carried out, accordingly, perpetrators are not still identified.¹⁷

Recommendation:

- On a national level, effectively investigate crimes committed during the 2008 August war, on June 15 and during a prison riot, appropriately involve victims in the ongoing investigation, also identify and adequately punish perpetrators.

6. Administrative Detentions (paragraph 13 of the Committee recommendation)

Administrative Offences Code establishes administrative sanctions and foresees procedures of imposing sanctions for minor wrongdoings. Accordingly, positive changes in the sphere of criminal justice are not affected administrative offenses legislation, as persons cannot enjoy fair trial guarantees and unsubstantiated arrest, the imposition of administrative detention or a fine is a widespread practice.¹⁸

Although administrative detention time decreased from 90 days to 15 since August 18, 2014, risks fundamental rights violations are not lowered. With the existing legislation, a person is left without adequate legal guarantees.

Administrative detention is the most severe sanction under the Administrative Offences Code, which requires the use of procedural guarantees linked with criminal offenses. Nevertheless, the Code foresees much lower standard, than the defendant enjoys in a criminal case; does not envisage requirements of presumption of innocence; does not oblige the judge to follow the standard of beyond reasonable doubt. Tight procedures for case consideration and imposition of sanctions cannot guarantee effective legal representation (case consideration may last 10-15 minutes). Accordingly, fundamental rights and international obligations undertaken by Georgia are violated.¹⁹

The above consideration was confirmed by the court's blanket approach towards mass detentions following the events of June 20-21, 2019. Instead of study and assessment of individual circumstances, judges prioritized fast consideration of cases and merged unrelated cases.²⁰

The Code foresees administrative arrest and administrative detention. An administrative arrest is a provisional measure, while detention is the harshest sanction for administrative wrongdoing. The Code

¹⁶ Kukhalashvili and others against Georgia №8938/07 and №41891/07, 2.04.2020

¹⁷ Letter of the General Prosecutor sent to GYLA's lawyer, April 24, 2020, #13/22565.

¹⁸ Human Rights Watch, *Administrative Error: Georgia's Flawed System of Administrative Justice* (January 2013), <https://www.hrw.org/sites/default/files/reports/georgia0112ForUpload.pdf>; Report 26 May Analysis of Human Rights Violations during and related to the Dispersal of the May 26 Assembly, GYLA, 2011 <https://goo.gl/nKDmpz>; Political Neutrality in the Police System, EMC, 2016 <https://emc.org.ge/2016/09/07/emc-130/>; Protests Considered to be an offence, GYLA, 2017 <https://goo.gl/ocENXL>; GYLA's report "Beyond the Lost Eye – legal assessment of the 20-21 June events" Chapters 4 and 5, available at: <https://bit.ly/2OR8OZW>

¹⁹ How to End Georgia's Unconstitutional Use of its Administrative Offenses Regime Judicial Independence and Legal Empowerment Project (JILEP) October 15, 2013 available at: <https://bit.ly/3aoNdB6>.

²⁰ GYLA's report "Beyond the Lost Eye" p. 82

foresees a 12-hour maximum time for an arrest, however, if the person's arrest coincides with non-working days, it may last for 48 hours.²¹

In 2019, 1802 persons were arrested for an administrative offense.²² Each time during the consideration of an administrative offense case, at every stage of proceedings, fundamental rights are violated and adequate legal guarantees are absent. Administrative detention is a sanction characteristic to the administration of criminal justice. Administrative wrongdoings shall not foresee sanctions, that interfere with a person's freedom to a similar degree.²³

Recommendations:

- Undertake a fundamental reform of the Administrative Offences Code, which will amend existing law in line with the Constitution and international standards;
- Revoke administrative detention as a sanction for administrative wrongdoing;
- Transfer wrongdoings of a criminal nature to the Criminal Code as a misdemeanor
- Ensure procedural rights guaranteed to the defendant by criminal procedure legislation apply to wrongdoings of a criminal nature foreseen in the Administrative Offences Code.

Questions:

- Is fundamental reform of the Administrative Offences Code planned shortly?

7. Plea bargain and Zero Tolerance Drug Policy (paragraph 15 of Committee recommendation)

Repressive drug policy is a serious challenge for the country. The state is avoiding political responsibility and systemic reforms in this direction.²⁴

In 2017, the draft bill was registered in Parliament, which foresees fundamental reform of existing policy, addresses practically all challenges, that drug policy faces.²⁵ However, process is still suspended.

Drug policy reform became actual again after the events of May 12, 2018,²⁶ (see the assessment of Article 21), since then state authorities have not presented their position publicly concerning drug policy reform.

Criminal liability for drug crime corresponds to amounts of drug substances, which is not reasonably defined. Sanctions for the smallest amounts of drug substance possession is disproportional (e.g. trace of a drug substance in an empty syringe), carries a prison sentence of from 5 to 8 years.²⁷ The Parliament has not presented their views about implementation of the Constitutional Court's decision regarding strict sanctions for possession of certain amounts of drug substances.²⁸

²¹ Coalition for an Independent and Transparent Judiciary addresses United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, available at: <https://bit.ly/2E1SzpV>.

²² Official statistics published by the Ministry of Internal Affairs, available at: https://info.police.ge/page?id=283&parent_id=233

²³ Coalition statement regarding administrative detentions http://www.coalition.ge/index.php?article_id=123&clang=1

²⁴ *Human Rights Council Universal Periodic Review*, EMC and GYLA coalition joint submission, Third Cycle, 37 session, 2020, available at: <https://bit.ly/39xUZ1c>

²⁵ Draft Bill, available at: <https://info.parliament.ge/#law-drafting/14119>.

²⁶ A large-scale police operation in Tbilisi night clubs, EMC and GYLA, Tbilisi, 2018, EMC, website, available at: <https://bit.ly/2ZYNM2>,

²⁷ Human Rights Watch, World Report 2020, available at: <https://bit.ly/32TPlz3>,

²⁸ Decision of the Constitutional Court of Georgia, August 2, 2019 and of June 4, 2020 1/19/1265,1318

Drug abuser is automatically subjected to the restriction of additional civil rights. e.g. driving license, employment in a public institution, etc. from 3 to 20 years,²⁹ which complicates resocialization of convicts.³⁰ In addition to crimes, 2018, these restrictions relate to administrative offenses in case of consumption of marijuana. In this case, court is authorized to restrict mentioned civil rights for up to 3 years.³¹

Issues of street drug tests are critical, the police are authorized to transfer any person to a forensic drug examination, including only based on operative information.³² Neither judicial nor prosecutorial control applies to the credibility verification of operative information.³³

Persons addicted to drugs are not adequately provided with treatment tailored to their medical, psychological, and social needs.³⁴ (see Appendix N1, pg: 1-58).

Recommendations:

- Revive systemic drug policy reform;
- Revoke criminal responsibility for consumption of drugs;
- Revoke automatic deprivation of civil rights;
- Create referral commissions, treatment, support, and care services in line with the needs of drug consumers.

Question:

- What is the state vision of the drug policy reform and what are the processes ongoing in this direction, including in the Parliament?

8. Juvenile Justice (Paragraph 16 of Committee recommendation)

On June 12, 2015, Parliament of Georgia adopted the Juvenile Justice Code, which is largely progressive and envisages and affirms legal proceedings in line with the best interests of minors. According to the new Code, only specialized persons will participate in juvenile justice proceedings, it foresees individual approaches, diversion program, resocialization-rehabilitation of juveniles in conflict with the law, protection of juvenile victims' and witnesses' rights, etc.

However, the practice accumulated throughout the years revealed numerous problematic issues. Namely, in certain circumstances interviewing/interrogation of juveniles with witness status is permitted without the participation of a legal counsel, also interrogation is not recorded/videotaped.

²⁹ Law on Combating Drug-Related Crime, article 3.

³⁰ EMC, Drug Policy in Georgia - Canceled Reform and New Tendencies, 2019, p.33, available at: <https://bit.ly/2TGqxW5>; Human Rights Watch, Harsh Punishment – The Human Toll of Georgia's Abusive Drug Policies, 2018, pp. 53-55, available at: <https://bit.ly/33eJtyr>.

³¹ Administrative Offences Code, article 45¹, paragraph 12 of the Note.

³² Order №725 of the Minister of Internal Affairs, September 30, 2015 on approval of instruction for establishing the fact of consumption of narcotic drugs and/or Psychotropic Substances, article 3.

³³ Law on operative-investigative activities, article 21, paragraph 2.

³⁴ Human Rights Watch, Harsh Punishment – The Human Toll of Georgia's Abusive Drug Policies, 2018, p. 24, available at: <https://bit.ly/33eJtyr>.

An unfortunate case, where GYLA provides legal representation illustrated the said problematic issues. During the interrogation of a minor L.S., psychological violence by the law-enforcers had tragic consequences.³⁵

The case showed shortcomings of the Code and its implementation. Namely, mandatory participation of a counsel is not always guaranteed. For reducing risks of possible violence and pressure, a counsel must be involved in the case right after a minor has the first contact with law enforcement bodies. It is also problematic, that prosecution alone assesses and facilitates the involvement of psychologists during the investigation. The case of L.S. showed that precisely the prosecution officers caused psychological stress of the minor.

L.S. case also showed that insufficient sensitivity of participants in specialized proceedings is a challenge.³⁶ It is true that investigators, in this case, are specialized in juvenile justice,³⁷ however, mere specialization does not verify a person's qualification or sensitivity towards the issue.³⁸

Recommendations:

- Timely adopt legislative changes, according to which participation of a counsel in all interviewing/interrogation procedures of a minor will be mandatory.
- Ensure effective control of Juvenile Justice Code implementation.
- Enhance specialization standard for persons involved in juvenile justice proceedings and regularly train, so that their sensitivity is increased.

9. Internally Displaced Persons (IDPs) (Paragraph 17 of Committee recommendation)

Adequate housing of IDPs remains challenging. By 2020, out of 90 861 families (more than 282 000 IDPs) 41 263 had been provided with long-term housing.³⁹ In turn, certain places, where IDPs were settled, do not correspond with minimal standards of adequate housing. Existing social-economic circumstances pose significant obstacles for access to medical services, the realization of the right to education, accessing subsistence resources, and employment.⁴⁰ Despite existing harsh conditions, services offered by the state are not sufficient for the improvement of their circumstances. Accordingly, IDPs are left without the adequate and effective support of the state.

Recommendation:

- Strengthen efforts to improve the socio-economic circumstances of IDPs and ensure their integration.

³⁵ On December 11th 2019, a minor was found, who had jumped from the 9th floor of a residential block of flats, who later passed away, available at: <https://bit.ly/2Y4ZwNV>.

³⁶ GYLA statement: On February, 12 pre-trial session will be held in the case of L.S. available at: <https://bit.ly/31UEWAX>

³⁷ Some of the investigators in the case of L.S. were trained in juvenile justice before 2015, when the new Code had not been adopted yet.

³⁸ A special report on the protection of procedural rights of juvenile defendants, witnesses and victims in the area of criminal justice, PDO, 2020, available at: <http://www.ombudsman.ge/res/docs/2020052512261337628.pdf>

³⁹ The Situation in Human Rights and Freedoms in Georgia 2019, PDO, <http://www.ombudsman.ge/res/docs/2020040215365449134.pdf>

⁴⁰ GCICC, 10 Years after the August War: Victims of the Situation in Georgia, 17.07.2020

Question:

- What are the steps undertaken or planned by the state for improving the socio-economic circumstances of IDPs and ensuring their integration?

10. Freedom of Religious Belief (Paragraph 18 of Committee recommendation)

see coalition assessment under the article 18 implementation

11. Rights of Minorities (Paragraph 19 of Committee recommendation)

see coalition assessment under the article 27 implementation

II. Alternative Evaluation of Covenant's Implementation

1. Article 2: Anti-discrimination Legislation, Constitutional and Legal Framework, and Access to Legal Remedies

Law on Elimination of All Forms of Discrimination was enacted in Georgia in 2014, which was followed by relevant amendments to dozens of legislative acts. However, due to weak provisions on the authority of enforcement mechanisms, the law could not ensure a high standard of protection and achievement of a legal outcome for the victims of discrimination. Despite frequent calls from the PDO and human rights organizations, changes for the law's effectiveness was only adopted in 2019, which partially strengthened enforcement mechanisms.

Despite legislative changes, enforcement of equality politics and its effective implementation in practice is still problematic. This is most acute for the LGBTQ community, which represents one of the most vulnerable groups in Georgia. Despite several legislative acts and national action plans, which provided the basis for obligations to protect the rights of LGBTQ people, those changes were not reflected in real life due to lack of its effective implementation.

Report of the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity in Georgia⁴¹ identifies the continuous discriminatory practices towards LGBTQ community and notes, that "beatings are commonplace, harassment and bullying constant, and exclusion from education, work, and health settings appear to be the norm."⁴² According to the expert, the fear of having to disclose the identity, the lack of trust in the law enforcement institutions, and homophobic attitudes coming from police officers cause underreporting of the hate crimes.⁴³ According to the official statistics of 2019, criminal prosecutions against crimes committed with discriminatory motives based on SOGI had been initiated against 32 persons. However, low reporting rates of violence due to the said barriers cannot reflect its actual scale, as the statistics documented by community organizations reflect a much higher rate than shown in official statistics.⁴⁴ The absence of a unified methodology for statistics is also problematic, which is an obstacle for crime analysis and prevention policy planning.

Georgia was advised by UPR in 2015⁴⁵ and ECRI in 2016⁴⁶ regarding the strengthening of the fight against hate crimes and the creation of a separate investigative unit, which would deal specifically with hate crimes as effective mechanisms against homo/transphobia. As a result, the Human Rights Protection and Quality Monitoring Department were established under the Ministry of Internal Affairs (MIA). However, as the department is not a substitute for a specialized investigative unit under the police system, it cannot be seen as part of a planned effort to strengthen investigation against hate crimes,⁴⁷ neither can it ensure the development of a victim-based approach and systemic prevention policy.

⁴¹ Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, 2019. see at: <https://bit.ly/3gUFYmO>

⁴² Ibid, para 31.

⁴³ Ibid, para 40.

⁴⁴ For example, according to the survey conducted by WISG in 2018, during 2015-2018, 226 respondents became victims of hate crimes or incidents (E. Aghdgomelashvili, From Prejudice to Equality, LGBTQI Persons in Georgia, 2018).

⁴⁵ Report of the Working Group on the Universal Periodic Review – Georgia, 2015, Recommendation 118.10

⁴⁶ ECRI REPORT ON GEORGIA (fifth monitoring cycle) Adopted on 8 December 2015 Published on 1 March 2016

⁴⁷ ECRI Interim Report on Georgia published on 5 March 2019 (CRI (2019) 4) on the implementation of the recommendations made in the report of 1 March 2016, available at: <https://women.ge/ka/news/newsfeed/226/>.

The scale of hate crimes is well illustrated by the rise of ultraconservative violent groups and their continuous and explicitly discriminatory practices against the LGBTQ community. On November 8, 2019, in Tbilisi, during the premiere of the film “and then we danced”,⁴⁸ various groups, including violent, gathered around the cinema and openly confronted those who came to watch the movie, as well as police officers. 27 administrative offenses were recorded, and an investigation was initiated. However, state indifference towards the statements of violent group leaders before the premiere, who made public threats and urged supporters to disrupt the premiere, is to be negatively assessed.⁴⁹ These activities point to mobilization practices of ultraconservative and violent groups and the cultivation of homophobia and transphobia in the society, which is not countered by effective preventive and punishment mechanisms.

The most vulnerable group among the LGBTQ community still are transgender people. Together with transphobic crimes, the inability to change records of gender in civil acts without undergoing surgery remains problematic. The requirement of a sex reassignment surgical intervention and a relevant medical certificate for changing records of gender violates **rights to private life, the prohibition of inhumane treatment, free personal development, and independent decisions on medical interference. Precisely on this issue, GYLA with a partner organization - EHRAC has applied to the ECHR.**⁵⁰

Recommendations:

- Strengthening institutional measures within the law enforcement system to effectively fight, investigate, and prevent hate crimes based on sexual orientation and gender identity.
- Develop and ensure the elaboration of the effective preventive policies against hate crimes/incidents through interagency and multispectral victim-based approach.
- Create transparent and effective administrative mechanisms for legal recognition of gender, which will be detached from a medical sphere and will not foresee inappropriate and intrusive medical intervention as a precondition in the legal recognition process.

2. Article 3: Gender Equality

Women’s participation in the decision-making process is low in Georgia. Women make up 15% of the Parliament and 13.4% of the city councils.⁵¹ The Parliament adopted a mandatory quota mechanism. Gender quota for parliamentary lists is 1/4 until 2028 and afterward until 2032, 1/3.⁵² This quota for the local self-government level in proportional lists is 50%.⁵³ On parliamentary level in 2032 and on self-government level in the 2028 quotation system will be ceased. This is a step forward, though insufficient. Quota share is low and the timeframe, while this system will act to achieve natural equality, is short.

⁴⁸ Film deals with queer issues.

⁴⁹ See: <https://oc-media.org/georgian-ultraconservative-groups-vow-to-prevent-queer-romance-film-premier/>

⁵⁰ GYLA appealed Georgia’s refusal to legally recognize the gender of the transgender man before the EHCR, available at: <https://bit.ly/2DUpsaO>. Also, the ECHR has started substantive consideration of the case on the legal recognition of gender of the transgender man, available at: <https://bit.ly/2WTV0kR>.

⁵¹ Gender Equality in Georgia: Barriers and Recommendations, Part I, January, 2018, pg: 9, Available at: https://www.ge.undp.org/content/georgia/en/home/library/democratic_governance/gender-equality-in-georgia.html

⁵² Election Code of Georgia, Article 203(2).

⁵³ *ibid*, Article 203(8).

Recommendations:

- Increase women's role in politics, amend election code, and increase gender quota for election registration to 50% on the central level.
- The regulation should be in force on central and local levels until the equal representation is achieved.

Questions:

- What measures does the Government take to increase women's political participation on central and local levels?
- Is the existing mechanism enough to increase women's participation?

3. Article 6: Right to life

Violation of Temirlan Machalikashvili's right to life

In the reporting period, the killing of 19 years Temirlan Machalikashvili during the special operation planned by State Security Service (SSS) is one of the hardest violations of the right to life by the state authorities.⁵⁴ At night, 26 December in 2017, during the special operation at Pankisi Gorge, Temirlan Machalikashvili was wounded in his bedroom and deceased in several days in the hospital. Most of the witnesses examined during the investigation indicated, that entrance and shot in Machalikashvili bedroom were simultaneous and special forces did not warn him. Examination results reveal that at the time of shooting Machalikashvili was in a horizontal position. His phone activity history and damaged earphones raise doubts that he had most likely not even understood about the operation.

SSS defined that Machalikashvili was connected with the people killed during the antiterrorist operation in Tbilisi, held one month ago. But this allegation was not supported by reasonable evidence. Regardless, SSS without any reservation and legal examination tried to demonstrate Machalikashvili's guilt, which violated the presumption of innocence and his dignity.

With a violation of the fundamental principle of institutional independence, SSS arbitrarily carried out the primary and most important investigative actions related to the search and seizure of key evidence (including an officer's weapon, as if found a grenade, etc.). The Prosecution received case materials only 2 months later. By that time key evidence was already destroyed/changed (including the grenade, the weapon).

The investigation also revealed that SSS did not properly assess the circumstances while planned the operation and did not minimize the use of force. Examined officials did not indicate specific circumstances that created reasonable ground to expect resistance from the detainees. None of the detainees had weapons. SSS argued, that during detention he tried to activate a grenade, therefore special officer shot in his direction. But as mentioned above, the investigation raises critical questions regarding the grenade.

Despite the important questions related to the investigation still exists, without reasonable motivation, the Prosecutor's office unexpectedly ceased investigation on 27th January 2020. Machalikashvili killing case is under consideration by the ECHR.⁵⁵

This case demonstrates the state's repressive policy in Pankisi Gorge.⁵⁶ It is noteworthy that Machalikashvili's case critically brought to the agenda excessive power and contested competences of SSS,

⁵⁴ Critical Assessment of Investigation Proceedings Against Temirlan Machalikashvili, EMC, 2020, available at: <https://emc.org.ge/en/products/temirlan-machalikashvilis-tsinaaaghmddeg-mimdinare-gamodziebis-kritikuli-shefaseba>

⁵⁵ EMC applied to ECHR on Temirlan Machlikashili death case, 2019, available at: <https://emc.org.ge/en/products/emc-m-temirlan-machalikashvilis-sakmeze-evrosasamartlos-mimarta>

and weak parliamentary control.⁵⁷ Although Machalikashvili family asked for a parliamentary investigation commission, the governing political group did not consider such a necessity.

Recommendations:

- Investigate Machalikashvili killing case and raise the issue of legal responsibility of those who planned and conducted the operation;
- Reform SSS to decentralize its excess power and increase parliamentary and civilian control over it.

Questions:

- For what reasons investigation of Machalikashvili's killing was terminated and which evidence supports such decision?

Occupational Safety and the cases of death of workers

Due to the deregulated labour legislation since 2006, safety norms negligence and the cases of health damage and loss of worker's lives have dramatically increased. In 2011-2016, the number of death on working place was 270. Since 2014, within the Association Agreement between Georgian and EU, Georgia took obligation to approximate national labour legislation to international standards, which itself meant to implement ILO conventions and recommendations in national legislation and to create effective enforcement mechanisms.⁵⁸ Since 2015, Labour Inspection Department was created under the Ministry of Internally displaced persons, Labor, Health, and Social Affairs. However, International and local organizations several times referred to the drawbacks in existing inspection mechanism.⁵⁹ The Law on Occupational Safety was adopted in 2018, which prescribed mandatory mandate of inspection on the high-risk working places. Since 2019, the law gained the status of organic law, which enabled Labour Inspection Department, without prior notice, at any period of day or night, inspect occupational safety of any economic subject. The law also prescribed penalties and warning sanctions.⁶⁰ Due to the enlargement of authority of inspection department in terms of occupational safety monitoring, the number of death cases in 2019 is decreased.⁶¹

Although, safe jobs and unenforced labour rights remain challenging, creating persistent practices of harming employees' health and life. Legislative amendments were initiated by MPs in 2020 April.⁶² It is important, that the package prescribes increased mandate of labour inspection and full monitoring power, which will support reduction of high-risk labour practices.

⁵⁶ Under the Security Gaze: History, Religion and Politics in the Pankisi Gorge, EMC, 2019, available at: <https://emc.org.ge/en/products/usaftrtkhoebis-mzeris-kvesh-istoria-politika-da-religia-pankisis-kheobashi>

⁵⁷ Reform of the Security Service in Georgia, EMC, 2018. available at: <https://emc.org.ge/en/products/usaftrtkhoebis-samsakhuris-reforma-sakartveloshi-shedegebi-da-gamotsvevebi>

⁵⁸ Association Agreement between Georgia and EU, Article 229(2).

⁵⁹ Joint Staff Working Document, Association Implementation Report on Georgia, 2016, European Commission, https://eeas.europa.eu/sites/eeas/files/1_en_jswd_georgia.pdf

⁶⁰ Organic Law on Labor Security, Chapter 6-7

⁶¹ Report of Labor conditions inspection department, 2019, pg. 21.

https://www.moh.gov.ge/uploads/files/2019/Failebi/LCID_Geo_a4_1.pdf

⁶² Package of legislative amendments: <https://info.parliament.ge/#law-drafting/20311>

Recommendation:

- Increase inspection mandate to strengthen institutional capacity of labour inspection, create territorial units, and equip them with respective financial and technical, as well as with human resources.

Question:

- What measures are taken by state to eradicate the loss of employees' lives and damage to their health at the workplace?

4. Article 7: Prohibition of Torture

(Additionally, refer to the assessment of the Committee's recommendations para. 11-12)

Independent Investigative Mechanism

Effective investigation of crimes committed by the law-enforcement officials (hereinafter-officials) was challenging for years,⁶³ which raised an issue to create an independent investigative institution.⁶⁴

As an independent investigation body, State Inspector Service (*hereinafter "Service"*) was created. However, the enactment of legislation was postponed several times and Service could not enact until 1 November 2019.⁶⁵ For this reason, number of important cases were left without reaction.⁶⁶ The state could not mobilize sufficient financial resources.⁶⁷

The legislation does not sufficiently guarantee agency's institutional independence. State Inspector's position contains politicization risks. The Inspector shall be appointed by Parliament (an absolute majority),⁶⁸ though the Prime Minister plays a crucial role in this process, as he/she presents a candidate to the legislative body. This allows the ruling party to select a loyal candidate for the Inspector's position.⁶⁹

The investigative power of the Inspector is limited by specific types of crimes that do not ensure effective investigations of all crimes committed by officials.⁷⁰ Furthermore, the inspector does not have investigative authority towards Minister of Interior Affairs (MIA), General Prosecutor, or SSS Head. (See Appendix N2, pg: 59-103).⁷¹

⁶³ Committee for the Prevention of Torture (CPT) Report on the results of visit in Georgia in September, 2018. paras 13-15. available at: <http://bit.ly/38p44kK>; Human Rights Watch Report on Georgia, 2019, available at: <http://bit.ly/2Q4VOA7> Amnesty International 2017-2018 Report on Georgia, Available at: <http://bit.ly/2Ind9A0>

⁶⁴ See completely at: <https://bit.ly/3JlmdRj>,

⁶⁵ PDO Report on the Situation of Rights and Freedoms Protection in Georgia, 2019.

⁶⁶ Ill-treatment Prevention in Police Work, EMC, 2019, available at: <https://emc.org.ge/en/products/arasatanado-mopqrobis-preventsia-politsiis-sakmianobashi>

⁶⁷ Human Rights Watch, World Report 2020, Georgia, Lack of Accountability for Law Enforcement Abuses, available: <https://bit.ly/3hlUQob>

⁶⁸ Article 6(6) of the Law of Georgia on the State Inspector Service;

⁶⁹ The law on State Inspector Service, Article 6(6).

⁷⁰ Order N3 of General Prosecutor of August 23, 2019 "On Determining the Investigative and Territorial Investigative Subordination of Criminal Cases"

⁷¹ Ill-treatment Prevention in Police Work, 2019, pg: 18.

The Service does not have any authority to conduct a completely independent investigation, which is dependent on the Prosecutor's Office. The legislation does not differentiate competences between the prosecutor and investigator.⁷² (See Appendix N3, pg: 104-156)

State commenced working on the reform of the investigative system, however, this process is postponed and the government's position is unknown.⁷³

Crimes committed by law-enforcers

Objective and due investigation of crimes committed by law-enforcement officials are also problematic. As a rule, investigation commences on alleged beating or other violence by them, however, it does not finish with specific legal results.⁷⁴ 128 application was registered in 2019 concerning ill-treatment by officials. Alleged violators were employees of penitentiary system, in 54 applications and police employees in 50 cases.⁷⁵ The correct qualification of action is an important drawback of investigation. Usually, alleged physical violence is investigated under Article 333 of the Criminal Code, which prescribes a sentence for official authority abuse. This article is of general character and in most cases insufficient to define elements of alleged crime.⁷⁶

Effective identification of the victim in the investigation of torture and ill-treatment cases is also problematic. Out of 10 ill-treatment cases, proceeded by GYLA, the victim status was granted only in one.⁷⁷ Victim recognition problem was revealed in 2019, during the dispersal of 20-21 June rally. The majority of injured persons do not hold victim status until now, only 3 out of 27 (11 journalists) under the protection of GYLA, hold victim status.⁷⁸

Most frequently violence from officials occurs during detention, transportation, and interrogation at police units.⁷⁹ At that time, lack of video cameras at police units, in interrogation rooms, and in those places where alleged ill-treatment frequently occurs, is challenging.⁸⁰

Afgan Mukhtarli Case

Inhuman and degrading treatment prohibition, also the prohibition of illegal detention was violated on the 29th of May, 2017 during the detention of Azerbaijani journalist and activist Afgan Mukhtarli and his abduction from Tbilisi to Azerbaijani. One year earlier, Mukhtarli arrived in Tbilisi with his family as critical activists, and journalists were persecuted in Azerbaijani and continued his work from Georgia. For him, as well as for other political and civil activists and journalists, Georgia was a political shelter. However, it should be noted that a large part of Azerbaijanian dissidents was forced to move to Europe, after

⁷² Investigative System Analysis, EMC, Tbilisi 2018, available: <https://bit.ly/302hd23>,

⁷³ *ibid.*

⁷⁴ According to the joint statistics of PDO and NGO sector, they referred to Prosecutor's office on 50 cases from 2017 till April 2019, but criminal prosecution was started only in 1 case, in 1 case investigation was terminated and it still continues without any result in 48 cases. PDO on Situation of Human Rights and Freedoms in Georgia, 2018, available at: <http://www.ombudsman.ge/res/docs/2019101108583612469.pdf>

⁷⁵ PDO Parliamentary Report, 2019.

⁷⁶ GYLA report "Prevention of and Response to Incidents of Ill-Treatment", 2019, <https://gyla.ge/files/news/2006/Report.%20eng.pdf>

⁷⁷ GYLA report "Prevention and Forms of Torture and Ill-Treatment, 2020, Available at: <https://bit.ly/2Ecfl4M>

⁷⁸ GYLA statement The Events of June 20-21 are Uninvestigated, 2020, available at: <https://gyla.ge/en/post/20-21-ivnisis-movlenebi-gamoudziebelia#sthash.bC8Mkz6V.dpbs>

⁷⁹ GYLA report "Prevention and Forms of Torture and Ill-Treatment, 2020, Available at: <https://bit.ly/2Ecfl4M>

⁸⁰ GYLA report "Prevention of and Response to Incidents of Ill-Treatment", pg: 30, 31; PDO Report, 2018, pg: 25, 63.

Mukhtarli's abduction and security risks, also for the obstacles in receiving residence permits and refugee status.⁸¹

Mukhtarli disappeared on May 29 from Tbilisi central district and in less than 24 hours he appeared in Azerbaijani border police unit with allegations of illegal border-crossing, smuggling, and disobedience of state authorities. According to Mukhtarli, he was stopped by a Georgian police officer and several Georgian-speaking people near his house, put a bag on his head, forced into a car, beaten and abducted.⁸² On January 12, 2018, an Azerbaijani court sentenced him with 6 years in prison.⁸³

For three years General Prosecutor's office was investigating the case under article 143 of Criminal Code, (illegal deprivation of liberty) but no one's criminal responsibility was raised.

Mukhtarli was released on March 17, 2020, and he declared that his abduction was a result of a corrupt agreement between Georgia and Azerbaijani for which Azerbaijani government paid 3 Million Dollars.⁸⁴

Recommendations:

- Improve Independence of State Inspector Service and appointment rule, also extend its mandate as well as financial and human resources.
- Restore working on investigation system reform. Reform should provide improved independence and quality of competences.
- Provide prompt and effective justice in cases of torture and ill-treatment;
- Mandatorily record communications with citizens by shoulder video cameras. It should also be mandatory to make audio-video recordings of interrogations at the investigative agency;
- Torture/ill-treatment cases should be qualified under respective articles.
- Grant victim status to persons in reasonable timeframes and provide their effective involvement in the investigation process;
- Timely investigate Afgan Mukhtarli abduction case and raise legal and political responsibility of respective persons.

Questions:

- On what stage is investigative system reform and when does the government plan to initiate it in the parliament?
- Does the state consider an increase in the State Inspector Service mandate and what measures are taken for it?
- On what stage is the investigation of Afgan Mukhtarli abduction, particularly after his allegations on the corrupt agreement between Georgia and Azerbaijani?

⁸¹ Repression Beyond Borders: exiled Azerbaijanis in Georgia, EMC, 2017, available at: <https://emc.org.ge/en/products/represia-sazghvrebs-mighma-azerbaijanidan-devnili-mokalakeebi-sakartveloshi>; See also The Review of the Cases of Azerbaijani Journalists and Activists, EMC, 2017, Available at: <https://emc.org.ge/en/products/azerbaijaneli-zhurnalistebis-da-aktivistebis-sakmeebis-mimokhilva>

⁸² Human Rights Watch, 2018 World Report, pg. 56.

https://www.hrw.org/sites/default/files/world_report_download/201801world_report_web.pdf

⁸³ On the Sentencing of Afgan Mukhtarli: <https://www.state.gov/on-the-sentencing-of-afgan-mukhtarli/>

⁸⁴ The statements of released Afgan Mukhtarli require immediate measures from Parliament and Prosecution, EMC, 2020, available at: <https://emc.org.ge/en/products/emc-gatavisuflebuli-afgan-mukhtarlis-sajaro-gantskhadebebi-prokuraturis-daparlamentis-mkhridan-dauqovnebel-reagirebas-moitkhovs>

5. Article 8: Prohibition of Slavery

The supervisory body of labour exploitation cases is a Labor Conditions Inspecting Department.⁸⁵ The Department annually inspects the workplaces within the framework of planned and/or unscheduled inspections, based on reasonable suspicion, and complaints. According to the data of 2015-2019, overall 127 companies were inspected, out of which 111 were planned and 16 unplanned. In this period, forced labour and labour exploitation was revealed only in one company, on which investigative authorities were informed.⁸⁶ According to the 2020 report of the US Department, despite the criminalization of forced labour, government agencies are unable to combat this problem effectively. In particular, investigations are particularly low, containing risks of forced labour incentives. According to the Department, adequate work was mainly hindered by the lack of labour inspectors.⁸⁷

It is noteworthy that, forced labor is a narrowly defined concept under Georgian legislation, and labor exploitation is not completely defined. Unregulated work, rest and break time, inadequate pay (legislation defines minimum salary 20 Gel -5.5. Euro), and regular practices of overtime work,⁸⁸ represent complex signs of forced labour/labour exploitation which needs to be properly revealed by the labor inspection and relevant responsibility mechanism should exist.

In light of abovementioned challenges, Parliament Members initiated legislative package. The package prescribes legal standards of labour rights, including realization of rest and break times, restriction of night work, standards of shift labor, overtime work remuneration, and labor inspection mandate, which allows monitoring and examination of every right under Labor Code, with respective sanctions authority.

Recommendations:

- Adopt initiated labour legislation package.
- To maximize the elimination of various forms of forced labour, empower the Labour Inspection to continuously monitor the rights established by the Labour Code.

Questions:

- In the absence of a legal definition of labour exploitation, how is this issue monitored?
- What measures does the state take to eliminate all forms of forced labour?

6. Article 9: Right to liberty and Security /Prohibition of Arbitrary Detention

Institutionalization practice of Persons with Disabilities

One of the clear demonstrations of violation of right to liberty and security is institutionalization practice—forced or formally voluntary, (but without alternative) placement of PWDS at psychiatric institutions and boarding houses. Absence/insufficiency of community-based services, including housing programs and services is reflected in the rights conditions of persons with psychosocial and intellectual disabilities. Given

⁸⁵ Resolution N112 of 7 March, 2016 of the Government of Georgia.

⁸⁶ 2019 report of Labor Conditions Inspecting Department, pg:20. available at: https://www.moh.gov.ge/uploads/files/2019/Failebi/LCID_Geo_a4_1.pdf

⁸⁷ US State Department Report on Trafficking In Persons , 20TH Ed. 2020, pg 217, Available at: - <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>

⁸⁸ CRRC, Research on Sociological and Political Issues, 2019, <https://osgf.ge/en/new-sociological-poll-unfolds-the-new-picture-of-citizens-perceptions/>; pg: 30

the state's inactivity, large institutions acquired a permanent housing function for its beneficiaries.⁸⁹ The number of patients delayed at psychiatric institutions for more than 6 months is large (in 2019 - 1067 persons), while number of patients discharged from institutions is small (68 cases).⁹⁰

In addition to the harsh physical and infrastructural environment in the institutions, there are challenges concerning the practice of physical and chemical restraint, labor exploitation of patients, and the scarcity of mechanisms to prevent violence by staff and/or between patients.⁹¹ It is problematic to effectively inform the beneficiaries in the process of consenting to psychiatric care and to identify the authenticity of their will.⁹² Many patients placed in the institution with formal consent cannot leave it willingly.

Despite the cases of serious human rights abuses and systemic challenges, the government has not yet adopted a deinstitutionalization strategy and action plan outlining state measures in this area. The obligation of deinstitutionalization was also not reflected in the Law of Georgia on the Rights of Persons with Disabilities adopted in July 2020.⁹³

Recommendations:

- Develop a deinstitutionalization strategy and action plan as soon as possible, effectively manage and complete this process;
- Ensure informed consent from all patients on psychiatric care;
- Take necessary measures to eradicate physical and chemical restraints and to establish alternative means of de-escalation also, to prevent violence, negligence, and exploitation against patients.

Question:

- What measures are taken by the state to effectively manage the deinstitutionalization process?

Arbitrary detention practice in the context of occupation

The human rights situation in and around the Russian-occupied territories remains alarming. Illegal and arbitrary detentions of people in Tskhinvali Region/South Ossetia and Abkhazia nearby the occupation line has a massive character.⁹⁴ Annually, hundreds of Georgian citizens are victims of such violations, including women and children.⁹⁵ In most cases, abducted people are detained under the administrative rule and released after fine. However, in recent years, detentions under criminal rule became also frequent.⁹⁶ In such cases, detainees are prosecuted and convicted under the Criminal Code of the Russian Federation without fair trial and access to the procedural guarantees.

⁸⁹ The Right to Adequate Housing - the Analysis of Basic Challenges, EMC, 2018, pg. 153.

⁹⁰ PDO report on human rights situation in Georgia, 2019, pg: 359.

⁹¹ PDO, Report of National Mechanism of Prevention, 2019, pg: 126 – 130.

⁹² PDO Report 2019, pg 360.

⁹³ PWDS and Organizations react on the adoption of the Law on PWDS Rights, EMC, 2020. <https://bit.ly/2PIYdWc>.

⁹⁴ GCICC, THE RUSSIAN FEDERATION CONTINUES COMMITTING GRAVE HUMAN RIGHTS VIOLATIONS OF CITIZENS OF GEORGIA 21.07.2020, <https://bit.ly/2BqHmV7>

⁹⁵ PDO report, 2019.

⁹⁶ 29 September, 2019 Maia Otinashvili, resident of village Khurvaleti was detained under criminal rule, 9 November, 2019 Doctor Vaja Gaprindashvili, 21 November, 2019 Genadi Bestavi, resident of village Zardiaantkari, 3 July, 2020 Khvicha Mgebrishvili, 11 July, Zaza Gakheladze.

The Russian Federation, as a state exercising effective control over the territories of the Tskhinvali region/South Ossetia and Abkhazia, is responsible for the difficult rights situation in the occupied and adjacent territories. However, Georgia is also positively obliged to provide protection. The state report assesses the restriction of freedom of movement in its report, but information on responsive measures is not indicated.⁹⁷

The wave of movement restriction for the Tskhinvali region and mostly for ethnic Georgians living in Akhgori began in September 2019, when Tskhinvali de-facto government closed the only checkpoint through which locals could cross into Georgian-controlled territory.⁹⁸ The de-facto government used checkpoint closure as political pressure over the Georgian government, to demand the abolition of the police checkpoint opened by the central government near the so-called border. The situation became extremely difficult as locals couldn't move to Tbilisi to receive vital services. Several cases ended fatally when patients could not get quick and quality healthcare.⁹⁹ Arbitrary closure of checkpoints is a common practice in the Tskhinvali region, as well as in Abkhazia, although the latter has been the longest, with particularly severe social and rights consequences.

The case of persecution, harassment, and movement restriction of a Georgian civil activist -Tamar Mearakishvili in the Tskhinvali region is one of the harsh examples of human rights violations. She is known for her criticism of the local unrecognized government, as well as against the Georgian government. Exactly for this, local de-facto authorities openly commenced her persecution and isolation. De-facto security services abducted Tamar on 8 June 2017 and for 15 hours were threatening and frightening to gain her confession that she was cooperating with Georgian law-enforcement and security officials.¹⁰⁰ Since 2017, criminal prosecution against her is ongoing until now on the charges of defamation, forgery of documents, and illegal receipt of official documents. Her documents are confiscated and freedom of movement is restricted.¹⁰¹

Against this difficult legal and social background restrictions imposed by the Georgian authorities are particularly problematic, preventing media representatives, political parties and non-governmental organizations from entering and moving to villages close to occupation line, on Tbilisi-Administered Territory. The imposition of blanket and arbitrary restrictions run counter to the protection of freedom of movement and expression.

Recommendations:

- Use all diplomatic and legal means at its disposal to stop the violation of the rights of the citizens of Georgia;
- Strengthen conflict resolution through reconciliation and dialogue, and develop clear policies aimed at conflict transformation, protection of human rights and well-being.
- Proactively apply international legal human rights instruments in cases of rights violation;

⁹⁷ See state report, para 205-206.

⁹⁸ EMC Responds to the Humanitarian Crisis in Akhgori, EMC, 2019 <https://emc.org.ge/en/products/emc-akhgorshi-shekmnil-humanitarul-kriziss-ekhmaneba>;

⁹⁹ The EU Monitoring Mission statement in connection with the case of Ms. Margo Martiashvili: https://eumm.eu/en/press_and_public_information/press_releases/36659/

¹⁰⁰ Georgian civic activist illegally detained in Russian-occupied region released - <https://agenda.ge/en/news/2017/1779>

¹⁰¹ Assessment of Akhgori activist Tamar Mearakishvili repression and persecution case, EMC, 2019, Available at: <https://emc.org.ge/ka/products/emc-akhgoreli-aktivistis-tamar-mearaqishvilis-tsinaaghmddeg-devnisa-da-shevitsroebis-sakmes-afasebs>

- Continue cooperation with international organizations and on diplomatic levels to ensure access to international human rights monitoring mechanisms and humanitarian organizations to the occupied territories.
- Develop special humanitarian support programs, which in cases of checkpoint arbitrary closures will minimize the harm to the population;
- Eradicate blanket restriction of movement nearby occupation line for media, civil society, and political parties and develop attitudes based on objective criteria, which will not go beyond legitimate intervention in freedom of expression and movement.

Questions:

- What measures are taken to resolve conflict with dialogue and reconciliation?
- What measures are taken to respond to the humanitarian crisis in Akhgori?
- What measures are taken to eradicate persecution and rights violation of civil activist Tamar Mearakishvili?
- What measures are taken to prevent and react to the arbitrary “border closure”?

7. Article 12: Freedom of Movement

See assessment under Article 9.

8. Article 13: Right to remain in a State

During the reporting period, extradition cases of North Caucasians from Georgia to the Russian Federation increased, which is inconsistent with the principle of *non-refoulement* provided for in the Covenant. As a rule, the mentioned persons are wanted by the Russian Federation on charges of joining a terrorist organization or committing other serious crimes, However, mostly allegations are irrational and there is a reasonable suspicion that they are persons critical of the Russian authorities, including the authoritarian regimes of the local republics. A similar case took place during the extradition of ethnic Chechen Ramzan Akhivadov to Russia / Chechnya.¹⁰² It should also be noted that the case-law of ECHR does not allow extradition or deportation, even in case of persons accused of terrorism, to countries where they may be subjected to torture or inhuman treatment.¹⁰³

Strangely, the recent extradition decisions indicate that human rights violations are less common in the Russian Federation. However, several rulings on the practice of violating Article 3 of the European Convention in Russian prisons have been handed down by the ECHR.¹⁰⁴ US State Department 2018 report also indicates to inhuman treatment in Russian prisons.¹⁰⁵

¹⁰² EMC reacts on the Ramzan Akhivadov extradition to Russian Federation, EMC, 2019, <https://emc.org.ge/ka/products/emc-ramzan-akhivadovis-rusetis-federatsiashi-ekstradirebis-fakts-ekhmaureba>

¹⁰³ Shamaev and 12 other persons against Georgia and Russia, ECHR, no: 36378/02; 12.04.2005; §335

¹⁰⁴ MAGNITSKIY AND OTHERS v. RUSSIA; Applications nos. 32631/09 and 53799/12, 27.08.2019.

¹⁰⁵ US State Department, RUSSIA 2018 HUMAN RIGHTS REPORT, <https://www.state.gov/wp-content/uploads/2019/03/RUSSIA-2018-HUMAN-RIGHTS-REPORT.pdf>. pg: 8-10, See also Human Rights Watch - Russia, Events of 2018: <https://www.hrw.org/world-report/2019/country-chapters/russia>

Recommendations:

- The Ministry of Justice should be guided by the principles of international and national law when deciding on extradition.

9. Article 14: Rights to a fair trial

The right to a fair trial implies the ability of a person to have his or her case heard by an impartial and independent court, and such a formation is impossible without a proper system of appointment and accountability of judges. High Council of Justice should ensure the independence and efficiency of the common courts, as well as to perform other tasks.¹⁰⁶ Problematic is the rule of council staffing, which does not provide sufficient guarantees for the appointment of independent members, which leads to the situation when government and an affiliated group of judges ("clan") control the court system.

In 2019, legislative reform in the selection of Supreme Court judges failed to identify the best candidates, that threatened the right to a fair trial. The civil sector,¹⁰⁷ international organizations¹⁰⁸, and Public defender¹⁰⁹ negatively assess the process. The qualification and good faith of judges were suspicious.

The process of appointment of judges in the first and second instance courts is also problematic. In particular, there is no appeal mechanism for candidates in the competition for the vacant position of judge, who are not admitted to the voting stage;¹¹⁰ Even for the perpetual appointment of judges with more than three years of experience, the information on the date of their applications' submission and about the stages of consideration was not made public.¹¹¹ The deadlines for the decision are not set.¹¹² This might be used by the Council as pressure leverage over a judge.¹¹³ In the courts of first and second instance, interviewed are held in closed format for vacant positions, which creates problems in terms of transparency;¹¹⁴ In these instances, judges are appointed for 3 years probationary period, that undermines their independence.¹¹⁵

Additionally, shortcomings exist in the system of responsibility of judges. The independent inspector is responsible for an objective, impartial, thorough investigation, and preliminary examination of the alleged disciplinary misconduct of a judge.¹¹⁶ It submits a report to the Council, which makes the final decision on disciplinary liability.¹¹⁷ Unfortunately, the normative acts have not yet created the proper guarantees of

¹⁰⁶ Constitution of Georgia, Article 64(1). The High Council of Justice of Georgia consists of 15 members. 8 members of the High Council of Justice of Georgia, of which at least one member represents the court of each instance, shall be elected by the self-governing body of judges of the common courts of Georgia in accordance with the rules established by this Law, 5 members shall be elected by the Parliament of Georgia, and one member is appointed by the President of Georgia. The Chairman of the Supreme Court is ex officio a member of the High Council of Justice of Georgia.

¹⁰⁷ Assessment of the Hearings of Supreme Court Judicial Candidates at the Parliament Legal Committee, Available at: <http://bit.ly/2Qu56po>,

¹⁰⁸ Office for Democratic Institutions and Human Rights, ODIHR Report, Second Report on the Nomination and Appointment of Supreme Court Judges in Georgia, June – December 2019, Available at: <http://bit.ly/33tmwYx>, See Also, European Commission, "Joint staff working document Implementation Report on Georgia", par.2.3 Justice, freedom and security, Available at: <http://bit.ly/2UeDzJC>,

¹⁰⁹ PDO Publishes Special Report on the Process of Selection of Supreme Court Judges, Available at: <https://bit.ly/2Y6UHmz>,

¹¹⁰ Monitoring Report of the High Council of Justice №8, GYLA, Available at: <https://bit.ly/2X6HFFI>;

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ The organic law on common courts, Article 51¹(1).

¹¹⁷ Ibid, Article 75¹³(1);

independence necessary for the activities of an inspector.¹¹⁸ It is also important to note that the rule for selecting an independent inspector does not address several important issues. Noteworthy, the rule for selecting an independent inspector does not address several important issues,¹¹⁹ not prescribed: the key principles of competition, (objectivity, publicity, the prohibition of discrimination, prevention of interest conflict) and procedures (selection criteria, aim and rule of interviewing, the issues to define at the interview, evaluation rule and its reasoning).¹²⁰ Furthermore, the absolute majority is enough for the selection of inspector,¹²¹ which allows judges to select a person per their corporate interests.

Recommendations:

- When electing judicial and non-judicial members of the council, define gender quotas under the law (every second should be of different sex – apart from ex-officio member), in case of judicial members define regional quotas, instance quotas should be more proportional.
- Prohibit the simultaneous holding of the position of Court Chairperson and Council Member to avoid a concentration of power.
- Maintain the requirement of a 2/3 majority at all stages of voting to elect a judicial member of the Conference of Judges.
- Change the Supreme Court judge's appointment rule. At the selection stage of the High Council of Justice, nominate the contestants who will get 2/3 of the votes of the judicial and non-judicial members of the council separately.¹²² At the parliamentary level, the ensure procedure for electing judges the consensus of the minority and the majority on the judge candidacy;
- According to the legislation, during the competition for the selection of first and second instance judges, allow the participating candidates to appeal against the refusal to go from the interview to the voting stage; Abolish probationary period and until that when reappointing probationary judges for permanent period, set specific deadlines and provide transparent selection. Appoint judges who will gain 2/3 of votes from the judiciary and non-judiciary members.
- Define Procedures for selecting an independent inspector, which will take into account principles such as objectivity, publicity, non-discrimination, avoidance of conflict of interest. For its selection 2/3 of council member votes should be required.

Questions:

- What effective measures were taken to rehabilitate the judiciary and free it from the interests of influential groups?
- Are there any plans to change the recruitment of the Council of Justice?
- Are there any plans to review the appointments of judges and procedures in a way that ensures a consensus-based model in the council and the participation of the opposition at the parliamentary level?
- Are there any plans to increase the number of votes required for the board to elect an inspector?

¹¹⁸ *ibid*

¹¹⁹ Monitoring Report of the High Council of Justice №8.

¹²⁰ *ibid*.

¹²¹ The organic law on common courts, Article 51¹ (2).

¹²² Monitoring Report of the High Council of Justice №8.

10. Article 16: Recognition as a Person before the Law

Legal capacity of PWDS

The concept of guardianship for persons with psychosocial and intellectual disabilities was abolished and the supported decision-making model was introduced in 2015.¹²³ Within the Legal Capacity reform, the amendments were made in several legislative norms. The reform introduced innovations, including regulations on the psychosocial assessment of a person by a multidisciplinary team and the appointment of supporter by a court.

Legal capacity reform is mostly in compliance with UNCRPD; However, important challenges still exist, which hinders the implementation of this concept. The legislation blanketly restricts the rights of a supported person in several fields -including, rights to labor and employment, healthcare, participation in elections, family, and private rights.¹²⁴ Also, inappropriate and vague regulations often cause appointment of “supporter in all fields” without an in-depth examination of individual needs.¹²⁵

Reform implementation is also challenging. The government had not allocated relevant human and financial resources to this end. A particular problem is a lack of informing of the relevant state agencies (including social workers, evaluation experts, judges), as well as PWDS, their supporters, and family members about the essence of the supported decision-making. Consequently, the reform so far remains only on paper and does not substantially change the legal status of persons with psychosocial and intellectual disabilities.

Recommendations:

- Immediately take measures to ensure full compliance of legal capacity legislation with the UNCRPD and ensure the unimpeded exercise of every right by the supported persons;
- Take appropriate efforts and allocate relevant financial and human resources for the implementation of the legal capacity reform. To this end, develop a concept and ensure its effective implementation.

Question:

- What measures are taken to implement the legal capacity reform and to develop a supported decision-making model in line with international standards? Please provide information on financial, human, and other resources allocated for the implementation of the reform since 2015.

11. Article 17: Right to private life

Protection from forced eviction

One of the major challenges during the reporting period was ensuring the right to adequate housing and the introduction of eviction standards. Despite the abolition of so-called police evictions, the current

¹²³ Citizens of Georgia I. Kemoklidze and D. Kharadze against Parliament of Georgia, Constitutional Court, Judgment, 2014, N 2/4/532,533.

¹²⁴ Assessment of legal capacity reform and its implementation – legislation and practice analysis, EMC, 2016, available at: <https://emc.org.ge/ka/products/kvleva-kmedunarianobis-sistemis-reformisa-da-misi-implementatsiis-protseisis-shefaseba-kanonmdeblobisa-da-praktikis-analizi>.

¹²⁵ *ibid*, pg 45.

situation still does not meet international standards.¹²⁶ Despite systemic challenges, the state has not developed a homelessness policy - strategy and action plan - that would address eviction challenges as well.

State inaction puts hundreds of people at risk of homelessness. This is evidenced by the number of applications submitted to the National Bureau of Enforcement - the agency responsible for the execution of eviction cases - has doubled. In 2018-2019, the agency registered more than 1,300 applications for the commencement of eviction procedures, which is close to the data of the previous four years altogether.¹²⁷

One of the major challenges in this area is flawed legislation. Namely, there is no single definition of eviction, and the demolition of buildings, built without a permit, accompanied by the eviction of its residents, is not considered as a form of eviction at all. So, these people are left without minimal legal protection.¹²⁸

Unfortunately, significant challenges are encountered at all stages of the eviction procedure. On the one hand, the state does not have an eviction prevention policy that would minimize their number. On the other hand, the decision-making process on evictions is problematic, as it does not address issues such as the vulnerability of persons and the risks of leaving them homeless.¹²⁹ At the same time, an important problem is the regulation and implementation of the eviction process in accordance with human dignity and international standards.

One of the biggest challenges is the provision of adequate housing for evicted people. Housing services are mostly short-term, are not tailored to the individual needs of the beneficiaries, and are only available in certain municipalities. For instance, only 13 municipalities out of 69 have approved rules of homeless registration and provide them with housing. The absence and fragmentation of a unified housing policy put evicted persons at significant risk of homelessness.

Recommendations:

- Immediately harmonize the eviction legislation, as well as the institutional framework and practice with international standards, and establish effective preventive and reactive mechanisms in this area;
- Develop and adopt a national housing strategy and action plan based on research results on the scale and causes of homelessness, and the needs of vulnerable groups, and set prevention and reduction of evictions as one of its main strategic goals.

Questions:

- What measures are taken to improve the legislation, institutional framework, and practice concerning evictions, and to ensure compliance with international standards?
- How does the state provide housing for the evicted persons? Please provide information on the number of evicted persons, who have been provided and denied housing by the state.

Personal Data Protection

The amendments to the Law of Georgia on Personal Data Protection from 2014 to date were related to the extension of the mandate of the Personal Data Inspector (hereinafter the State Inspector); No

¹²⁶ Rights to adequate housing – Analysis of key challenges, EMC, 2018, pg: 82 – 101.

¹²⁷ Correspondence with National Bureau of Enforcement N 87316, 9.12.2019.

¹²⁸ Rights to adequate housing – Analysis of key challenges, pg: 90 – 91.

¹²⁹ *ibid*, pg 89.

significant legislative amendment was made related to the processing, storage or deletion of personal data during this period.

On May 22, 2019, a draft amendment was registered in the Parliament, that aims to bring data protection legislation in line with the new EU regulations (GPDR) and fulfil the obligations set out in the Association Agenda.¹³⁰ The draft law includes positive amendments such as clear definition of the grounds of data processing; rule of processing for special category and minor related data; realization of right to be forgotten; data processing for direct marketing purposes only in case of subject's consent; establishment of personal data officer at public agencies and large organizations; obligation to inform the incident to state inspector; Detailed regulation by the State Inspector on case proceedings procedure, review of administrative offenses and imposition of fines, etc.¹³¹

Despite the positive changes, some problematic issues in the draft law need to be improved, including the scope of audio monitoring; Terms of storage of electronic communications identification data, etc. Despite the need for the above-mentioned amendments, the discussion has been suspended for unknown reasons, which harms the state of personal data protection in Georgia.¹³²

A large number of public institutions and private companies still ignore the importance of personal data protection. The situation is confirmed by the 2019 report of the State Inspector, which states that electronic programs introduced in the public sector do not take appropriate measures to protect personal data, in particular, do not record facts of access and viewing of data, do not record the history of information retrieved by users. Problems exist in terms of minors' data processing or processing of special categories data in the field of healthcare.¹³³

Problematic amendments to the Law on Information Security

The Parliament of Georgia is considering the draft law on amendments to the Law of Georgia on Information Security. The draft law contains the risk of total control over information systems and personal or commercial information stored in them and is contrary to the Constitution of Georgia and international obligations.

In particular, Operational-Technical Agency (Agency) the State Security Service will have direct access to the information systems of the legislative, executive or judicial authorities, individual public agencies, including Central Election Commission, as well as the National Bank and the telecommunications sector, and therefore indirect access to protected personal and commercial information. The draft law creates the possibility of processing personal data without the Court's permission, while the ambiguity of the norms poses a real danger of illegal and disproportionate processing of personal data. Accordingly, the draft law carries the risk of unjustified interference and surveillance in private life.¹³⁴ It should also be noted that the Agency's authority to oversee secret investigative actions, which, as in the initiated draft law, allows

¹³⁰ Georgia in accordance with Annex I of the EU Association Agreement, Georgia is obliged to ensure compliance with its personal data protection legislation in accordance with EU Directive No. 95/46 / EC. Also with Council of Europe Convention 108 and its Additional Protocol, as well as with EU Framework Decision 27/2008/977 / JHA of 27 November 2008 and Recommendation No. R (87) 15 of the Committee of Ministers of the Council of Europe of 15 November 1987.

¹³¹ GYLA submitted opinions on the new law on "Personal Data Protection" to the Parliament. 2019, Available at: <https://bit.ly/3hGwTOX>.

¹³² IRC, GYLA, EMC, and RIVG: We address the Parliament of Georgia to adopt the law on Personal Data Protection, 2020, available at: <https://bit.ly/341LsIT>.

¹³³ State Inspector Report, 2019, Available at: <https://bit.ly/3g7vkbP>

¹³⁴ GYLA: Amendments to be introduced to law "On information Security" allow the state to control masses, 2020, available at: <https://bit.ly/341LsIT>.

for unjustified interference in private life, has been challenged in the Constitutional Court by hundreds of citizens.¹³⁵

The draft law does not comply with several principles of the European Directive on the Protection of High Standards of Network Security and Information Systems, undertaken under the Association Agreement. There is no public consensus on the proposed amendments and not all relevant committees were involved in the process of discussion.¹³⁶

Recommendations:

- Timely restore the review of the draft Law on Personal Data Protection and adopt progressive changes.
- Ensure the implementation of the provisions of the Law on Personal Data Protection in practice.
- Ensure amendment in information security legislation with the involvement of the general public and all stakeholders;
- Do not adopt legislation that does not comply with the Constitution of Georgia and international agreements.

12. Article 18: Freedom of Religion

The freedom of religion has not improved in the reporting period. Frequently, religious minorities are seen from security perspectives, which is visible in the controlling practices and interference in religious activities.¹³⁷

The legislative system and administrative practice are asymmetric, and it imposes a number of preferences only to the Orthodox Church. The state had not regulated relations with religious communities apart from the Orthodox Church,¹³⁸ nor tried to eliminate legal loopholes and discrimination, this created a sharply unequal environment for minorities.

In 2014, the State Agency in Religious Affairs (SARI) was established under the Office of the Prime Minister, which from the beginning raised doubts about the control of religious organizations and envisioning them from a security perspective. Such approaches are also reflected in the agency's draft strategy, where it openly discusses the need to strengthen the vision of religious freedom from a security perspective.¹³⁹ Although the agency operates under the direct authority of the Prime Minister and must have a high resource of influence, it has not contributed to the improvement of legislation and policies regarding freedom of religion. The Agency has not played a positive role in the process of transforming the religious conflicts in 2012-2016 (7 conflicts),¹⁴⁰ and the importance of special intervention in building trust and a multicultural environment is completely omitted from its activities. The main efforts of the Agency are related to the management and monitoring of the funding process of four religious' organizations,

¹³⁵ Avtandil Beridze, and others against Parliament of Georgia, Available at: <https://constcourt.ge/ka/judicial-acts?legal=1957> .

¹³⁶ OSGF: Draft Law on Information Security and Associated Risks. 2020, available at: <https://osgf.ge/en/draft-law-on-information-security-and-associated-risks/>;

¹³⁷ Freedom of Religion–Critique of Discriminatory and Non-secular state policy, Part 2, EMC, 2016, available at: <https://emc.org.ge/en/products/kvleva-religiis-tavisufleba-sakhelmtsifos-diskriminatsiuli-da-arasekularuli-politikis-kritika>

¹³⁸ *ibid*, Part 1.

¹³⁹ The assessment of the Strategy for the Development of Religious Policy of the State of Georgia, available at: <https://emc.org.ge/en/products/sakartvelos-sakhelmtsifos-religiuri-politikis-ganvitarebis-strategiis-shefaseba>

¹⁴⁰ Freedom of Religion – Critique of Discriminatory and Non-secular state policy, Part 4.

which in turn is a practice of discriminatory and non-secular funding and carries high risks of control over religious organizations.¹⁴¹

Despite the Committee's final recommendations (paragraph 18) within the fourth cycle, the Georgian authorities still failed to develop restitution policies and legislation. The restitution process is discriminatory towards religious groups,¹⁴² while the state, under a special agreement with the Orthodox Church recognized their right to the churches and monasteries confiscated during USSR. Separate historical religious monuments occupied by the Orthodox Church are still disputed with a number of denominations (5 Catholic Churches and several Armenian Churches). It should be noted that in 2014, a religious conflict was revealed on this ground over the dismantling of a historic mosque in the village of Mokhe, which was followed by heavy police beatings and arrests of local Muslims during a spontaneous rally. The case is being heard at the ECHR.

The practice of funding religious organizations is also discriminatory. Since 2002, the state has been financing the Georgian Orthodox Church in accordance with the constitutional agreement. The funding obligation had to function as compensation for damage, but in reality, it took subsidiary nature.¹⁴³ Since 2014, state is funding four additional religious organizations. This itself contradicts secularism and equality principles as state does not give compensation to all organizations who were damaged during USSR.¹⁴⁴

In May 2020, the practice of unequal transfer of material resources to the state continued with the state allowing the Orthodox Church to take ownership of a 20-hectare forest around the churches. The transfer of natural resources of strategic importance to a religious organization carries a distinctly discriminatory approach,¹⁴⁵ except that there is no expediency in the privatization of such public resources in general.

The issue of construction of religious buildings is also problematic for religious organizations. The discriminatory refusal of state agencies to build a new mosque in Batumi is a clear example of it. The Batumi court found discrimination in this case, however, due to the appeal by the Batumi City Hall, the dispute over this case continues and the democratically organized mosque construction fund still does not have the opportunity to obtain a construction permit.¹⁴⁶

The practices of religious indoctrination and proselytism in the public education system should be named as a separate problem.¹⁴⁷

¹⁴¹ *ibid*, Part 2.

¹⁴² Study of Religious Discrimination and Constitutional Secularism in Georgia, Part 3, TDI, 2014, available at: https://tdi.ge/sites/default/files/study_of_religious_discrimination_and_constitutional_secularism_tdi.pdf

¹⁴³ Freedom of Religion – Critique of Discriminatory and Non-secular state policy, Part 2.

¹⁴⁴ *ibid*.

¹⁴⁵ EMC: According to the Forest Code, it will be unconstitutional to transfer forest resources to the church only, <https://emc.org.ge/ka/products/emc-tqis-kodeksit-mkholod-eklesiistvis-tqis-resursebis-gadatsema-arakonstitutsiuri-ikneba>

¹⁴⁶ Assessment of the Needs of Religious Organizations in Georgia, TDI, 2014, available at: https://tdi.ge/sites/default/files/assessment_of_the_needs_of_religious_organizations_in_georgia_tdi.pdf , See above, See Also US State Department 2019 Report on International Freedom of Religion, pg. 8.

¹⁴⁷ Religion in public schools , EMC, 2015, available at: <https://emc.org.ge/en/products/religia-sajaro-skolebshi> also, Religious and Ethnic Diversity in School Textbooks of Georgian Literature, History and Civic Education(9th -12th Grades), TDI, 2016, available at: https://tdi.ge/sites/default/files/analysis_of_textbooks_tdi_eng.pdf; EMC reacts on the case of religious indoctrination in public schools in the Highlands of Adjara, 2019, available at: <https://emc.org.ge/en/products/emc-maghamltian-acharashi-sajaro-skolebis-religiuri-indoktrinatsiis-fakts-ekhmianeba>

Recommendations:

- Considering the problematic role of the SARI, abolish it. Instead, scale up the cooperation with Council of Religions operating under the Public Defender of Georgia, utilize its expertise and recommendations.
- Adopt policy and legislation on restitution of religious organization's property confiscated during USSR in close cooperation with affected religious organizations, Council of Religions under the PDO, and human rights organizations. Before elaboration of restitution policy/legislation protect authenticity and inevitability of historical religious heritage.
- Eradicate discriminatory practices on the authorization of religious constructions, including refrain from hampering full enjoyment of Muslims' rights and grant the building permit for the mosque in Batumi.
- Eradicate discriminatory practices in financing religious organizations that contain risks of their control and violate secularism principles.
- Adopt policies oriented on peace and confidence-building and integration in the communities with experience of religious conflicts that occurred against Georgia Muslim communities in 2012-2016.
- Strengthen measures to respond ethnocentric, racist, xenophobic and indoctrination/proselytism/discrimination incidents in schools;
- Establish state policy oriented on the creation of a multicultural and equal environment and practice in schools.

13. Article 19: Freedom of Expression

Freedom of Media

Although Georgian legislation fully protects freedom of expression, there are some problematic issues in practice. Developments in 2017-2019 showed that the government wants to regulate the media. The President and some deputies have come out with an initiative to criminalize defamation. The National Communications Commission has submitted a draft law to the Parliament, and in case of its adoption, the violation of the behaviour norms of the broadcasters will move from self-regulation to the field of state regulation.

In 2019, the cases of illegal interference in the professional activities of media representatives increased. In particular, during the dispersal of the protest rally on June 20-21, media representatives were prevented from performing their professional duties. 32 representatives of the media received various bodily injuries and liberty was unlawfully restricted for 1 journalist.¹⁴⁸ According to the available information, the General Prosecutor's Office is investigating the alleged crime committed against the journalists, but as of today, the cases are not yet investigated.¹⁴⁹

There is no timely and effective investigation of the crimes committed against journalists and media outlets, including on the case of TV Rustavi 2 founder's property,¹⁵⁰ the abduction of Azerbaijani journalist Afgan Mukhtarli on 29 May, 2017,¹⁵¹ also on the cases of illegal interference in journalist work during the elections.

¹⁴⁸ GYLA Report on the events of 20-21 One, Beyond the Lost Eye. 2019, pg 51. available at: <https://bit.ly/2DMQn CZ>

¹⁴⁹ *ibid*, pg: 61-69.

¹⁵⁰ Media Advocacy Coalition Calls on the Prosecutor's Office to investigate Rustavi 2 case to its logical end, 2019, Available at: <https://bit.ly/2E4ZCho>

¹⁵¹ Two years from forced disappearance of Afgan Mukhtarli and unfinished investigation, 2019, available at: <https://gyla.ge/en/post/ori-tseli-afgan-mukhtarlis-savaraudo-gatacebidan-da-dausrulebeli-gamodzieba#sthash.gQvj9gQu.dpbs>

Independence of Public Broadcaster remains problematic. Following the amendments to the Law on Broadcasting in February 2018, the Law on Public Procurement no longer applies to the procurement of the Public Broadcaster, which increases the risks of corruption. Furthermore, the same legislative amendment increases the maximum advertising time of the broadcaster, thus significantly expands commercial impact on the public broadcaster.

Despite the sharp media polarization, in 2018 Adjara Public Broadcaster was evaluated as an objective and impartial television.¹⁵² In April 2019, the Advisory Board fired the TV director in violation of the law.¹⁵³ After appointment of new director, which occurred with important violations,¹⁵⁴ the series of dismissal of critical journalists commenced. These developments caused change of editorial policy and represented evident restriction of freedom of expression.¹⁵⁵ Reporters Without Borders also criticized the current state of the Adjara Public Broadcaster and linked it to growing political pressure on state-owned media.¹⁵⁶ In March 2020, 38 non-governmental organizations operating in Georgia collectively appealed to international organizations on the restriction of the freedom of expression on the Adjara Broadcasting.¹⁵⁷

Recommendations:

- Refuse adoption of a law that would transfer issues covered by the broadcaster's self-regulatory mechanisms to state regulation;
- Ensure the real independence of the Public Broadcaster and bring the legislative acts regulating its activities in line with the principles of the Public Broadcaster;
- Timely and effectively investigate the facts of illegal interference in professional activities of media representatives and the cases of abuse (especially the cases of June 20-21, 2019)

14. Article 20: Propaganda for War and Advocacy of National, Racial and Religious Hatred

Although Georgian legislation explicitly prohibits incitement to violence and stirring up between ethnic, religious, racial or other groups through oral, written or other means of expression, such acts from far-right violent groups in Georgia have recently intensified, and in some cases have taken a serious form of tension. This process was particularly noticeable during and after the COVID 19 pandemic in the Kvemo Kartli region, which is densely populated by ethnic Azerbaijanis. Identification of the first infected person in one of the Kvemo Kartli municipalities was followed by the government's decision on quarantine.¹⁵⁸ This was followed by a heavy wave of hate speech and calls for violence on ethnic grounds. Unfortunately, hate speech and chauvinism remained beyond the proper response of the authorities, including the extremely

¹⁵² Presidential Election (28 October-28 November, 2018) OSCE/ODIHR, pg 35. Available at: https://www.osce.org/files/f/documents/9/4/412724_2.pdf

¹⁵³ What happened at Adjara Broadcaster, GYLA and Georgian Charter of Journalistic Ethics, 2020, pg:9-12. available at: <https://bit.ly/32V5rZc>.

¹⁵⁴ *ibid*, pg: 13.

¹⁵⁵ The report of Adjara Broadcaster, Georgian Charter of Journalistic Ethics, 2020, pg 2. Available at: <https://bit.ly/30PsOAV>; PDO report, 2019, pg : 224.

¹⁵⁶ Georgian TV channel's deputy director resigns under pressure: <https://rsf.org/en/news/georgian-tv-channels-deputy-director-resigns-under-pressure?fbclid=IwAR2Sy1h9vdfhLjf7ww1Kyl8j2bQ7KCYycGBPK0SSnszTUVE9H7s9qtap3PA>

¹⁵⁷ Human Rights and other public organizations collectively address to the International organizations concerning the alarming processes in the Adjara Public Broadcaster, 2020, <https://emc.org.ge/en/products/sazogadoebrivi-organizatsiebi-acharis-mautsqebelshi-mimdinare-sagangasho-protsebeze-saertashoriso-organizatsiebs-kolektiurad-mimartaven>

¹⁵⁸ Marneuli and Bolnisi shut down – Quarantine: <https://netgazeti.ge/news/436606/>

problematic and chauvinistic statement of a public official - the director of the National Center for Manuscripts.¹⁵⁹

In the post-quarantine period, the second wave of ethnic tensions was followed by the restoration of a monument to ethnic Azerbaijani revolutionary, Bolshevik, and writer Nariman Narimanov in Kvemo Kartli, Marneuli Municipality.¹⁶⁰ Such an action by the ethnically Azerbaijani mayor of Marneuli has been the subject of sharp criticism from the local Orthodox diocese, whose statement had a sharply chauvinistic connotation. The local bishop was supported by ultra-right groups. SSS has launched an investigation under the article of racial discrimination. As part of the investigation, SSS summoned a number of Azerbaijani activists and human rights activists. The investigation contained signs of freedom of expression and activist control, as examination the public positions and criticism of activists as part of the investigation may have the effect of weakening freedom of expression and social activism. This investigation once again shows the problem of seeing minorities through security perspective. Although the discussion on the monument and the radicalization of the processes by ultra-conservative groups required a timely political solution, none of the political agencies, including the Office of the State Minister for Reconciliation and Civic Equality, even appeared in the process.¹⁶¹

Recommendations:

- Transfer jurisdiction over the investigation of equality-related crimes to the Ministry of Interior, instead of SSS.
- Strengthening human rights-based rhetoric against hate speech campaigns and organize relevant educational processes in the public service and society;

15. Article 21: Freedom of Assembly

Recently, the state has violated the right to peaceful assembly several times, used disproportionate and unnecessary force, which was critically assessed by the Public Defender,¹⁶² local¹⁶³ and international organizations.¹⁶⁴

As a result of dispersal large-scale protest on June 20-21, 2019, peaceful demonstrators (more than 200 persons, including journalists) were injured. Journalists were interfered to fulfil their professional activity. Police, without prior notice, with use of tear gas, water cannons and rubber bullets, dismantled the demonstration.¹⁶⁵ (See Appendix N4, pg: 157-178)

¹⁵⁹ Solidarity Platform asks for the resignation of Zaza Abashidze: <https://formulanews.ge/News/27853>

¹⁶⁰ EMC responds to the ongoing investigation at State Security Service and examination of Tamta Mikeladze, EMC, 2020: available at: <https://emc.org.ge/ka/products/emc-sus-shi-mimdinare-gamodziebasa-da-tamta-mikeladzis-gamokitkhvis-protsess-ekhmianebe>

¹⁶¹ Ibid.

¹⁶² PDO Responds to the Events Developed on Rustaveli Avenue on June 20-21, Available at: <https://bit.ly/341kdhz>;

¹⁶³ Statement of Non-governmental organizations on the 20 June events, 2019, <https://emc.org.ge/en/products/arasamtavrobo-organizatsiebis-gantskhadeba-20-ivniss-ganvitarebul-movlenebze>; Events of 20 June: Dispersal of the Rally and Related Practices of Human Rights Violation (Initial Legal Assessment), EMC, 2019, <https://emc.org.ge/en/products/20-ivnisis-movlenebi-aktsiis-dashla-da-damianis-uflebebis-darghvevis-dziritadi-praktika-pirveladi-samartlebrivi-shefaseba>; GYLA report "Beyond Lost Eye".

¹⁶⁴ Amnesty International: Georgia- Authorities Must Guarantee Freedom of Peaceful Assembly <https://bit.ly/30QaXcA> Human Rights Watch, Georgia-Events of 2019, Available at: <https://bit.ly/2t0tV3M>

¹⁶⁵ See PDO report 2019.

Police detained under administrative code, 342 protesters. The trials of the detainees were carried out with significant violations even access to the lawyer haven't sufficiently provided.¹⁶⁶

The quality of the ongoing investigation of these cases is problematic. Moreover, bias and loyalty of the state towards the police officers is obvious. The number of accused protesters is significantly higher than the number of accused police officers, relatively light procedural measures have been applied to the police.¹⁶⁷

Relatively light, though disproportionate and unnecessary force was used by the state against later organized demonstrations.¹⁶⁸

During these events, it was simultaneously problematic to determine the grounds for interfering with the right to peaceful assembly, as well as to protect the necessary preconditions for the dissolution of the rally, the issues of legality and proportionality of the force and means used.¹⁶⁹

In legislation there is no detailed regulation of holding various types of gatherings (including spontaneous and simultaneous), the pre-warning/negotiation with the organizers of the demonstration, separation of competencies between self-governing bodies and police, unified legal regulation of using special means.¹⁷⁰ The state has no political will to use alternative mechanisms for responding to protests, to discuss public demands peacefully, or to compromise. Relevant bodies/individuals do not know to manage a public protest.

The Constitution of Georgia protects both pre-planned and spontaneous assemblies and demonstrations, however, the Law on Assemblies and Demonstrations does not specifically regulate spontaneous assemblies and general procedural rules apply, including the prior notice. Regardless of the Venice Commission recommendation¹⁷¹ amendments concerning spontaneous assemblies have not yet been introduced to the Law on Manifestations. The Georgian legislation does not so far provide for the right to hold spontaneous gatherings without prior notice. People do not have the opportunity to demonstrate on the roadway, without the 5 days in advance notice, for an event that could not have been foreseen. ,

The need for these amendments became apparent on May 12, 2018, when a serious violation of the right to peaceful spontaneous assembly was reported in Tbilisi. The demonstration was a response to the large-scale police operation in the night clubs - "Basiani" and "Gallery". About 1,000 people joined the spontaneous assembly, protesting peacefully. Nevertheless, the police used physical force to clear the sidewalks from protesters without any prior notice, legal or factual reasons, and reasonable time to leave the area peacefully. Moreover, police detained 44 protesters under the administrative rule.¹⁷²

Recommendations:

- Regulate issues related to the exercise of the right to peaceful assembly at legislative level;
- Unwaveringly protect the right to peaceful assembly, and manage public protests peacefully, use the method of negotiating with the public, and minimize police response to rallies;

¹⁶⁶ One year after 20-21 June events, EMC, 2020, pg: 2-4, Available at: <https://bit.ly/3031UpL>

¹⁶⁷ Ibid, pg 4-8.

¹⁶⁸ Assessment of Events on 26 November, EMC, Available at: <https://bit.ly/2E9Ryfi> 0

¹⁶⁹ See note N166 and N168.

¹⁷⁰ PDO report on right to peaceful assembly, Available at: <https://bit.ly/3hG9mgM>.

¹⁷¹ Final Opinion On The Amendments To The Law On Assembly And Manifestations Of Georgia, Venice Commission, Opinion no.547/2009, 17 October 2011; Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)029-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)029-e)

¹⁷² May 12 Events (A large-scale police operation in Tbilisi night clubs, GYLA and EMC, 2018, Available at: <https://emc.org.ge/en/products/12-maisi-masshtaburi-sapolitsio-operatsia-tbilisis-klubebshi>

- Interfere with the right to peaceful assembly only in cases expressly provided for by law and in compliance with key international standards;
- Relevant police units, their supervisors must undergo special training courses related to assembly management;
- Amend national legislation in line with the recommendations of the Venice Commission and regulate issues related to spontaneous assembly; In particular, an exception should be made to the general rule of early warning of the local self-government body and participants in peaceful assembly and demonstration should be allowed to block the roadway when prior notice of the relevant authorities is not possible.

Questions:

- What steps have been taken to regulate various types, including spontaneous assembly, at the legislative level?
- What steps have been taken in the police system to manage the assembly to develop a special training course?
- At what stage is the investigation of the violent actions by law enforcers on June 20-21?

Right to Assembly for LGBTQ

In Georgia, the exercise of the right to freedom of assembly and expression by LGBTQ people is still a significant problem, which is related to the attempts of certain groups in the society to privatize public space. Negative experiences from 2012-2013 until now to protect freedom of assembly and expression have provoked violence in the public sphere, which has also revealed in the state's failure to ensure both fundamental human rights and to punish those who violate that right.¹⁷³ As a result, May 17 (IDAHOT), as the International Day Against Homophobia, Transphobia, and Biphobia, has become a day of manifestation of institutional and homophobic attitudes in society from year to year.

ECHR ruling, which deals with interference with LGBTQ community right to assembly at the IDAHOT meeting in 2012 noted that "Domestic authorities failed to properly deter homophobic and violent counter-demonstrators and to hold a peaceful march on May 17, 2012 [...] In view of this negligence, the authorities have failed to fulfil their positive obligation under Article 11 in conjunction with Article 14."¹⁷⁴ Although this decision is under the enhanced supervision of the CoE Committee of Ministers, and state is obliged to take specific individual and general measures to ensure the effective implementation freedom of assembly, since 2013 this community had not an opportunity to gather on IDAHOT day without restrictions, in secured and politically important space.¹⁷⁵ The reason for this is the lack of security guarantees from the state and the strengthening of violent groups, as the practical restriction of the realization of these rights is accompanied by the constant active mobilization of homophobic groups.¹⁷⁶

¹⁷³ Jalaghania. L. LGBTI rights in Georgia, EMC, 2015.

¹⁷⁴ Case of Identoba and Others v. Georgia (Application no. 73235/12) 12 may 2015, para. 100, see: <http://hudoc.echr.coe.int/eng?i=001-154400>

¹⁷⁵ Except for 2017, when LGBTQ community organizations met with the Chancellery of the Government of Georgia, within the framework of providing high quality protection by the law enforcement system, with limited time and space, which can not be considered as an example of protection of freedom of assembly.

¹⁷⁶ Coalition for Equality, The Right to Non-Discrimination in Practice for Various Groups in Georgia – 2019, see: <http://equalitycoalition.ge/article/51>

In 2019, MIA also refused to ensure safety of participants of a "March of Dignity" within the framework of "Tbilisi Pride Week" in June 2019.¹⁷⁷ At the same time, the Patriarchate of Georgia issued an official statement urging the government not to allow organization of "March of dignity".¹⁷⁸ In response, on June 14, supporters of Tbilisi Pride held a rally in front of the Government Chancellery to demand a guarantee from the state that they would have the right to assembly. Some of the rally organizers and activists were opposed by ultra-conservative political and clerical groups, whose leaders and members openly expressed violent actions and intentions.

It is noteworthy that the leader of the ultra-conservative and violent group made a number of public statements and called for incitement of violence,¹⁷⁹ in particular, the creation of "public legions" and patrolling in streets were announced, although MIA commenced investigation¹⁸⁰ society had not yet received information on the results.

Recommendations:

- Ensure the right of LGBTQ people to assemble and demonstrate, as well as the full enjoyment of freedom of expression and the effective fulfilment of the imposed positive obligations;
- Take appropriate measures to eliminate stigma and negative prejudices in the society, including through systematic education reform.

16. Article 22: Freedom of Association

Despite Georgian law guaranteeing freedom of association and the right to collective negotiations, problematic issues remain on the agenda.

Although discrimination against a person on the grounds of trade union membership is prohibited, the law does not explicitly address the need to reinstate such employees. The issue of exercising the right to strike also remains a challenge. In particular, a legislative list of activities where strikes are not allowed should be reviewed. The lack of a guarantee of compensation for the restriction of the right to strike is also problematic.

The problems of inefficient realization of the right of association of employees, which are caused by improper and unreliable activities of the mediation system, the limited mandate of labor inspection body, and lack of adequate sanctioning mechanisms are also noteworthy.¹⁸¹ The formats of the tripartite negotiations, the promotion, and development of which at the legislative level are envisaged under the AA agenda should also be underlined.¹⁸² Despite the stated commitment, the Tripartite Commission has failed to become an effective mechanism, which significantly hinders the possibility of establishing trade unions as effective actors.

¹⁷⁷ MIA offered to organized March of Dignity in the closed space – at night club or at football stadium for their security reasons, which was an unproportionable alternative. See: <https://netgazeti.ge/news/368709/> Also, See: Police Statement: <https://police.ge/en/shinagan-saqmeta-saministros-gantskhadeba/12775>

¹⁷⁸ See: Georgian Patriarchate: we demand not to allow organization of Gay-Pride. <http://tbl.ge/3rm1>

¹⁷⁹ See: <https://oc-media.org/tbilisi-pride-cancelled-after-location-leaks-online/>

¹⁸⁰ See: <https://imedinews.ge/ge/dzalovnebi/108905/shssm-lgbtqpraidis-tsinaagmdeglegionisshemqmnis-shesakheb-levan-vasadzis-gantskhadebisshemdeg-gamodzieba-daitsko>

¹⁸¹ Georgia 2019 Human Rights Report - <https://www.state.gov/wp-content/uploads/2020/03/GEORGIA-2019-HUMAN-RIGHTS-REPORT.pdf>

¹⁸² ASSOCIATION Agreement BETWEEN THE EUROPEAN UNION AND GEOGIA 2017-2020,

<http://www.parliament.ge/uploads/other/78/78447.pdf> - 83.22

Recommendations:

- Regulate the mandatory restoration of an employee from various trade unions in the same position in case of dismissal.
- Ensure the effective functioning of the tripartite commission
- Taking into account the practical problems of the mediation process, ensure the proper functioning of this process at the legislative level.

Questions:

- What measures does the state take to promote the establishment, strengthening, and development of trade unions, and does the country have a policy in this regard?

17. Article 25: Participation in elections and public affairs

Control of voters' expression of the will

Control of Voter's will "is mainly carried out at polling stations to record the number of declared supporters."¹⁸³ The forms of control also include mobilizing large numbers of people at polling stations,¹⁸⁴ marking voter data and political preferences¹⁸⁵, and informal tracking of voters.¹⁸⁶ This practice creates discomfort and a sense of control, which reduces the likelihood of making independent and free choices.¹⁸⁷

According to the latest amendments, the placement of agitation materials within 25 meters from the entrance of the polling station is prohibited, as well as physical obstruction of the movement of voters at the same distance.¹⁸⁸ These mechanisms will not effectively eliminate the problems of influencing the will of the voter, as it does not prohibit the creation of a surveillance environment.

Period of Silence

Pre-election agitation is prohibited in the polling station on the polling day.¹⁸⁹ However, this period is insufficient. Voters need time to unwind, which they will use for quiet voting, after a hot election campaign.¹⁹⁰

¹⁸³ Election Observation Mission of May 19, 2019, Monitorig Report of Pre-Election Environment, Election Day and Post-Election Period, GYLA, pg: 4;

¹⁸⁴ International Election Observation Mission, Georgia, Parliamentary Elections, Second Round, 30 October 2016 Statement of Preliminary Findings and Conclusions, pg 2

¹⁸⁵ Georgia Presidential Election, 28 October and 28 November 2018, ODIHR Election Observation Mission Final Report, pg 2.

¹⁸⁶ Ibid, pg 3.

¹⁸⁷ International Election Observation Mission, Georgia, Presidential Election, 28 October 2018 Statement of Preliminary Findings and Conclusions, pg.2

¹⁸⁸ Elections Code, Article 12.

¹⁸⁹ Elections Code, Article 45 (11).

¹⁹⁰ Campaign Silence, ACE, The Electoral Knowledge Network, November 15. 2006, Available at: <http://aceproject.org/electoral-advice/archive/questions/replies/699408090>

Recommendations:

- (1) to increase up to 100 meters the limitation of agitation materials; (2) To prohibit the existence of any unauthorized persons in the same radius.
- Declare elections day as “silence day”.

Questions:

- What mechanisms do exist to provide free will expression by a voter?
- Are the regulations enough to eradicate influences over voter’s will?

Participation of minorities in public life

The realization of the right to participate in elections and public life is only formalistic for various vulnerable and marginalized groups and it is not properly realized. Political representation and participation are particularly problematic for ethnic minorities. A formalistic approach to the exercise of the right to participation is revealed in the work of the Office of the State Minister for Reconciliation and Civic Integration (SMR). The observation on their activities demonstrates that this agency has only coordinative character and minority politics is processed only from security perspectives.

There are no positive participatory mechanisms, neither consultative ones which are an important format to influence over political decisions, and for deliberation and inter-ethnic dialogue. The only organ which functionates as consultative body is under PDO – National Minority Council, which is itself important format to voice minorities. However, it is not genuinely connected with executive or legislative branches as a compulsory, regular, and institutionalized consultative mechanism and performs rather self-organized autonomous forum. Other “attempts” to establish consultative mechanisms under SMR do not qualify international standards, as they are not sustainable, regular, open for minority organizations, or simply functionates as interagency coordinative council.¹⁹¹

Recent sociological research revealed that 46% of respondents do not see their group interests within political parties’ agendas.¹⁹² The same 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.¹⁹³ In such a context, in the minority regions, where language barriers exist,¹⁹⁴ local authorities do not create translation services and proactive platforms of information dissemination.¹⁹⁵ Although there are MPs in parliament who belong themselves to minority groups, their real political legitimacy is weak and usually serves a more imaginative representation of minorities. Their large majority do not hold state language and are passive in parliamentary life.

Information vacuum is also connected to language barriers. Georgian Public Broadcaster does not broadcast in minority languages and provides information only through internet platforms. While access to the internet is very deficient in most parts of regions, this approach is not relevant.

¹⁹¹ Ethnic Minority Consultation Mechanisms – Reality in Georgia and International Experience, EMC, 2020: <https://emc.org.ge/ka/products/etnikuri-umtsiresobebis-sakonsultatsio-mekanizmebi-realoba-sakartveloshi-da-saertashoriso-gamotsdileba>

¹⁹² Institute of Social Studies and Analysis (ISSA), Ethnic Minority Representation in Political lives, 2019, pg 77.

¹⁹³ Ibid

¹⁹⁴ Highest level of state language knowledge is among ethnic kists-22.11 point out of 25, Ossetians – 21.67, Armenians – 10.56 and Azerbaijanis 9.67.

¹⁹⁵ EMC Calls for Marneuli municipality to create translation services on minority languages, 2019, available at: <https://emc.org.ge/ka/products/emc-moutsodebs-marneulis-munitsipalitets-shekmnas-umtsiresobis-enaze-targmnis-resursebi>

Recommendations:

- Strengthen the mandate of SMR to implement effective integration policies;
- Measure certain state programs from minority perspectives and respond to asymmetries revealed during the exercise of rights, services, and resources with special measures.
- Establish long-term, sustainable minority consultative mechanisms in connection with the Parliament of Georgia and on governmental level, as well as within the municipalities, where minorities compactly live.
- Georgian Public Broadcaster should increase access to information in minority languages by translating major news programs and promote multicultural TV programs.

Questions:

- What positive measures exist for minority participation in public life?
- What consultative formats exist on legislative and executive levels?

18. Right 26: Equality before the law

Despite, Georgian legislation guarantees equality before the law, regardless of any sign, ethnic minorities still encounter a number of equality-related problems. Their access to quality education is problematic due to systemic failures in the education system. This is evidenced in the exam failure statistics, which is particularly high in minority regions (Azerbaijani and Armenian communities). More specifically, at non-Georgian school's exam failure statistics fluctuate between 8%-29%, while in Georgian-language schools this rate is 1.5%-4.5%.¹⁹⁶ According to the official data, in 2011-2018, Kvemo Kartli and Samtskhe-Javakheti, where minorities are densely populated, had the highest number of exam failures.

The supportive program of "1+4" established in high education system, positively affected minority high education, however it could not eradicate the systemic problems at school level. The number of certified teachers in non-Georgian schools is extremely low. Furthermore, according to the official data of 2014, 6830 teachers are functioning instead of needed 15375 teachers in non-Georgian schools.¹⁹⁷

The multi-lingual textbooks have a significant gap in terms of methodology. Native language textbooks (Armenian and Azerbaijani languages) are imported from neighbouring countries that do not undergo an examination under the national education system. School early drop-out is also highest in minority regions.¹⁹⁸

Socio-economic hardships also hinder the equality environment for minorities. This itself obstacle their participation in public life. The infrastructure in minority regions is weak,¹⁹⁹ the access to the water and lands is problematic.²⁰⁰

¹⁹⁶ Tabatadze and Gorgadze, Research on one-year language preparation program, 2016, available at: <https://www.cciir.ge/images/pdf/CCIIR%20research%20document.pdf>, see pg 28: the percentage of school exam fails in the regions: highest numbers in the regions where minorities live (the results of non-Georgian schools): Samtskhe Javakheti (38,6%) and Kvemo Kartli (47.4%), comparing to the lowest number in Tbilisi 9.6%.

¹⁹⁷ CCIR, Policy Paper on Equal opportunities of minority school teachers, 2015. pg. 8-9-available at: <https://cciir.ge/images/pdf/axali%20dokumenti.pdf?fbclid=IwAR2LclacChCYpTV3oYgQO6Xclj1MPkQtRSH7ySsUH96cv8djNq6sVLLXmr4>

¹⁹⁸ Public Defender's 2018 report, pg 137-138. The report indicates that number of early marriages in 2017 was 835, The number of registered minor mothers in 2018 was 715 and minor fathers 23.

¹⁹⁹ Citizenship and Secondary citizenship, Infrastructure, rights restriction, institutional and informal practices, EMC, 2020. <https://emc.org.ge/ka/products/mokalakeoba-da-meorekhariskhovani-mokalakeoba-uflebebis-shezhudva-infrastruktura-institutsiuri-da-araformaluri-praktikebi>

Inequality is manifested in law enforcement practices in minority regions. The hard experiences of security service and police control are visible in Pankisi Gorge, where ethnic Qists reside.²⁰¹ This approach was critically revealed in relation to the protests against HPP constructions when the Deputy Minister of Interior Affairs and local police were directly involved in the processes. Later, the government decided to settle the problem via mobilization of massive police forces in the Gorge, while locals were for waiting public discussions with public officials. This was followed by confrontation with police and the situation is currently stalemated as government had not created any dialogue and consultation formats.²⁰²

Harsh police practices were visible in the minority regions during pandemic quarantine, where police did not take into consideration local hard social contexts and prescribed fines for the violation of quarantine regimes.²⁰³ Noteworthy, locals expressed their dissatisfaction with social problems with car signals, but SSS launched an investigation under the sabotage article.

Recommendations:

- Examine the challenges in terms of minority education, including the shortcomings of state language teaching.
- Elaborate reform and state policy for multi-lingual and multi-cultural school education, which will be regularly monitored and revised based on research data.
- Increase employment of 1+4 program graduates in public schools.
- Create school bilingual textbooks with parallel translations, which will be based on the existing experience and needs.
- Eradicate tense and arbitrary police/security authorities control practices in minority regions and instead, elaborate democratic approaches based on community needs.

19. Article 27: Rights of Minorities

According to Article 27, the state must create a situation for minorities to freely use and develop their own culture, religion, and language. The minority culture policy is not based on equality approaches, and in the regions, it often takes the form of assimilation rather than integration. In conditions of low political participation, minority culture is less or misrepresented. The renaming and changes of minority holidays, as well as renaming of minority villages, are recent practices.²⁰⁴ A recent analysis of one culture center in Kvemo Kartli, where more than 80% ethnic minority reside, revealed that in 2018 out of 68 cultural events, only 4 were dedicated to minority culture; in 2017, 4 events out of 58 and in 2016 only 1 event, out of 47.²⁰⁵ Minority cultural heritage and touristic sites are also invisible on the general touristic maps, and the

²⁰⁰ EMC calls for the government to create water supplies for the villages left without water to prevent virus expansion. available at: <https://emc.org.ge/ka/products/emc-moutsodebs-khelisuflebas-virusis-preventsiistvis-uzrunvelqos-tsqliis-gareshe-darchenili-soflebis-momargeba>

²⁰¹ EMC research on the formation of the Pankisi Gorge as the political epicenter 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/usaftrkheobis-mzeris-kvesh-istoria-politika-da-religia-pankisis-kheobashi>

²⁰² Human Rights Organization's response to the use of police forces in Pankisi Gorge: <https://emc.org.ge/en/products/adamianis-uflebebze-momushave-organizatsiebi-ekhmianebian-pankisis-kheobashi-sapolitsio-dzalis-gamoqenebas;>

²⁰³ EMC asks from police to strengthen human rights oriented work in Bolnisi and Marneuli, 2020, <https://emc.org.ge/ka/products/emc-bolnissa-da-marneulshi-politsias-temze-da-adamianis-uflebebze-orientirenuli-mushaobis-gadzierebiken-moutsodebs>

²⁰⁴ Dmanisoba, the re-written celebration, EMC, 2019. <https://emc.org.ge/ka/products/dmanisoba-gadatserili-dghesastsauli-dakulturuli-dominatsiis-mekanizmi>

²⁰⁵ EMC, Assessment of Marneuli Culture Center activities, 2019, at: <https://emc.org.ge/ka/products/marneulis-kulturis-tsentrisk-politikis-shefaseba>

state does not grant them protection status, which endangers their existence and maintenance. Local municipalities are mostly producing touristic maps and videos, where minorities do not see themselves.

Recommendations:

- Create the list of ethnic minority cultural objects/heritage and in accordance with the needs and priorities, take specific measures for their protection and popularization.
- Municipal cultural centers should give specific attention to minority culture protection and development, and establish consultative mechanisms for their implementation and monitoring.

Questions:

- How many ethnic minority cultural heritage sites are protected under cultural heritage status?
- Is there an appropriate strategy/action plan for the preservation and development of minority culture in minority regions and an appropriate consultation mechanism?