

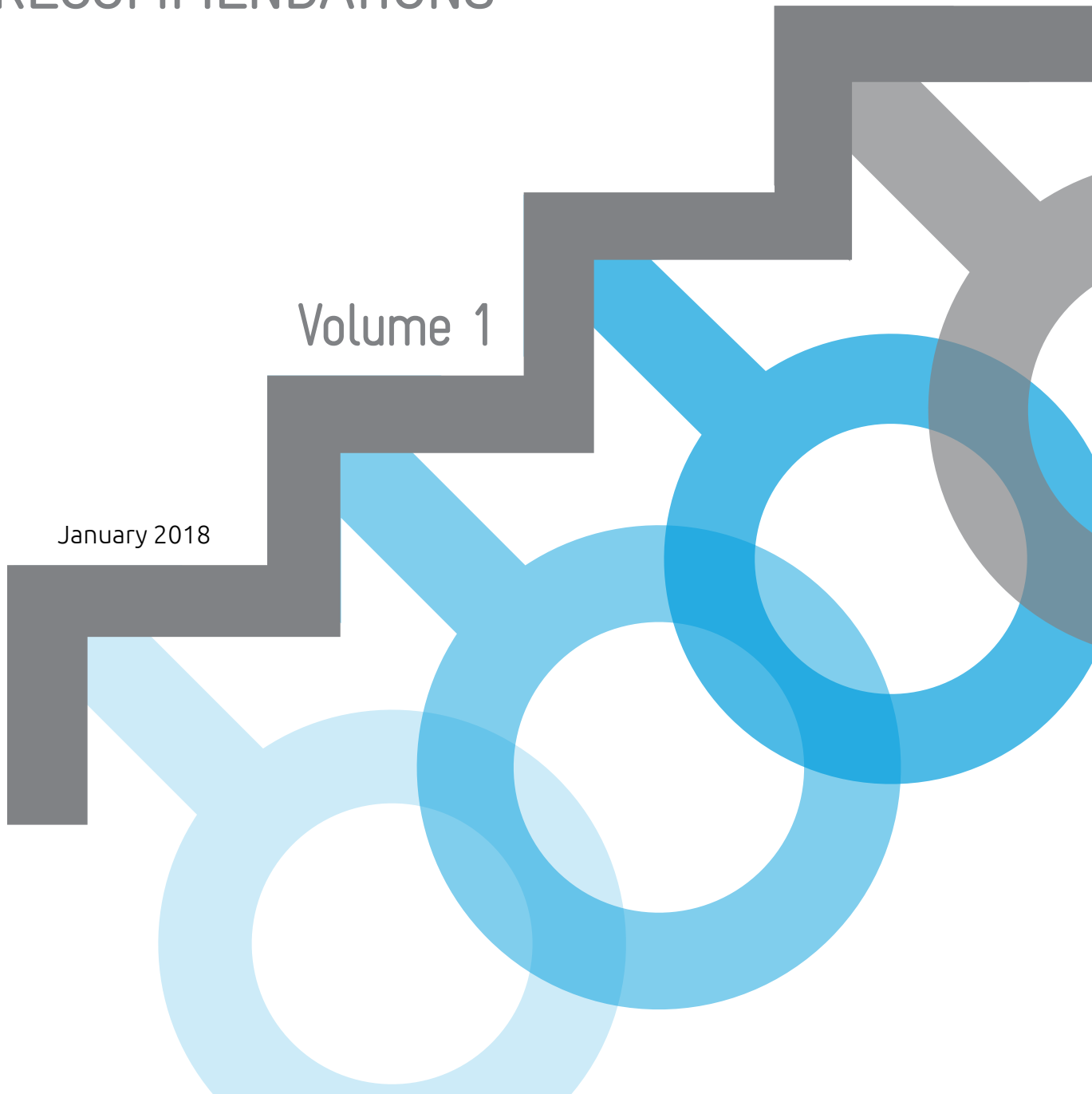


# GENDER EQUALITY IN GEORGIA:

## BARRIERS AND RECOMMENDATIONS

Volume 1

January 2018



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# Preface

This publication “Gender Equality in Georgia: Barriers and Recommendations” in two volumes was developed with the initiative of Gender Equality Council of the Parliament of Georgia. In 2017, when the new composition of the Gender Equality Council (GEC) was approved, the GEC prioritized conducting the legislation and policy analysis to facilitate the evidence-based gender equality policy-making. The GEC, in cooperation with donor organizations, introduced the initiative to carry out this comprehensive qualitative research. The study was ongoing for more than six months and as a result, gaps in the legislative framework and barriers in policy implementation hindering achieving the gender equality have been identified.

The Volume 1 of the research covers the following topics: state mechanisms of gender equality, anti-discrimination, violence against women, women’s political participation, and women, peace and security. The Volume 2 includes topics such as: women’s economic empowerment, labor rights, sexual and reproductive health, and gender equality in education, culture and sports.

In addition to the gaps and barriers identified, the research provides recommendations on gender equality policy improvements in all spheres of social-political life. The future action plan of the Gender Equality Council of the Parliament of Georgia, as well as the state concept on gender equality is based on this research. The latter defines the general directions of the policy for the legislative and executive government.

Taking into consideration the multi-sectoral nature of this research, we have aimed at making its implementation process inclusive from the very beginning. To that end, consultations took place with representatives of civil society, international organizations and executive branch as well as the Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence and members of the Gender Equality Council of the Parliament.

Local experts along with the international expert developed this baseline research, which has ensured that both the local context and international standards have been taken into account respectively.

I would like to thank all the parties who participated in this research, donor organizations, experts, civil society and representatives of respective ministries. This study could not have been implemented without their active participation.

I hope the recommendations identified by this research will contribute to stronger state machinery of gender equality and assist the Parliament of Georgia and other policy makers in conducting the evidence-based policies on the road towards meaningful equality between women and men.

**Tamar Chugoshvili,**  
*First Vice-Speaker of the Parliament of Georgia*  
*The Chair of Gender Equality Council*

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Special thanks also go to the Chairperson of the Gender Equality Council of the Parliament of Georgia Tamar Chugoshvili for the initiative and demonstrated leadership, and coordinators of the GEC Tinatin Avaliani and Ana Tsurtsunia-Zurabashvili for their support and active engagement during all stages of the research process.

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## I. Executive summary

In line with its international commitments, Georgia has made significant strides in adopting legislative and policy reforms to foster gender equality and to combat violence against women. After a comprehensive review of Georgian law and policy, this study, *Gender Equality in Georgia: Barriers and Recommendations volume 1*, identifies remaining legislative and policy gaps related to gender equality across a range of fields: violence against women, political participation, peace and security, as well as the cross-thematic Gender Equality and Anti-Discrimination Laws. Women's economic empowerment, healthcare, harmful practices, education, and gender equality in culture and sports are exhaustively covered in Volume 2 of this study *Gender Equality in Georgia: Barriers and Recommendations*.

Drawing information from reports and studies issued from inter-governmental bodies and international and national NGOs, as well as from interviews and data provided by national authorities, this study offers recommendations on specific amendments to be considered by legislators and policymakers in the above-listed fields in an effort to facilitate the revision process, underscoring international standards and the recommendations issued by UN treaty bodies and special mandate holders.<sup>1</sup> Recommendations also target the bodies of Georgia's national machinery for gender equality, in particular the Parliamentary Gender Equality Council, especially in light of the newly-established Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence within the Executive branch.

This document was drafted with the intent to highlight those specific provisions still in need of change in order to facilitate the work of those tasked with formulating gender equality policies and priorities. Georgia's commitment to this work is commendable and constitutes a core element of its economic, political and social progress in the years to come.

### **Gender Equality Law**

One of the clearest places to improve gender equality legislation is the Gender Equality Law, which currently sets forth largely declarative, formal rights and remains limited in both its scope and content. The study proposes a comprehensive redrafting of the Gender Equality Law to expand the content of the rights included within each sector (political participation, education, etc.), and to provide for the necessary, integral components of each right, in order to enable, as a practical matter, their progressive implementation. It also recommends the inclusion of clear reference to the procedures and mechanisms for enforcement for each right contained therein.

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<sup>1</sup> The report does not cover developments and the materials produced after November 2017

In keeping with international practice, in which Gender Equality Laws constitutes a core legal instrument for fostering gender equality, the Law should require the relevant institutional duty bearers to apply the main tools for advancing gender equality – gender mainstreaming, gender responsive budgeting, and gender impact assessment reports – in determining budgetary, policy and legislative priorities and agendas. It should also provide for the application of temporary special measures in the political and cultural spheres, among others, cover all forms of discrimination and require the disaggregation of statistics across fields by gender, age and other categories.

In light of the recent creation of the Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence, the articles detailing the national machinery on gender equality should be revised to reflect any *de facto* changes in mandate, as well as to amplify the competence of the Gender Equality Council, which should be mandated to review and evaluate gender impact assessments on all proposed legislation.

With respect to the employment sector, the Gender Equality Law should apply to private sector and cover pre-contractual labour relations, including vacancy advertisements. It should also establish frameworks for the creation of internal policy and complaint mechanisms for employers of a certain size. These include gender equality plans, and procedures for handling harassment and sexual harassment complaints, the ineffectiveness of which result in employer liability. *Gender Equality in Georgia: Barriers and Recommendations (Volume 1)* makes a number of additional specific recommendations for revising the Gender Equality Law in order to foster gender equality across a range of fields.

### **Law on the Elimination of All Forms of Discrimination**

The importance of an Anti-Discrimination Law for addressing gender and intersectional forms of discrimination cannot be overstated. Georgia's Law on the Elimination of all Forms of Discrimination marked an important milestone in bringing its legislative framework into conformance with international human rights standards. However, the current Anti-Discrimination Law contains several significant substantive gaps, which preclude protection from the full range of forms of discrimination as set forth in the EU Directives, and limit remedies to victims experiencing discrimination in the private sector.

The Anti-Discrimination Law does not prohibit harassment, sexual harassment, segregation, victimisation against non-complainants and the right to a reasonable accommodation for persons with disabilities. Critically, the Public Defender's Office, which functions as the national equality body in Georgia, has no effective competence to investigate discrimination by legal entities in the private sector, from which it receives 45% of its complaints. Furthermore, its recommendations regarding discrimination in the public sector are non-binding. Both the Anti-Discrimination Law and the Law on Public Defender should be amended to extend the latter's competence to the private sector and to render its recommendations binding.

### **Violence against women**

Having recently ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), important progress has been made in addressing domestic violence and violence against women. However, the recent amendments to bring Georgian legislation in line with the standards set forth in the Istanbul Convention did not address several critical legal gaps, and important legislative changes must still be made in this field. These include: the prohibition of sexual harassment, ensuring that domestic violence and



violence against women constitute *ex officio* crimes and improving data collection and analysis on violence against women and domestic violence at all stages of the criminal justice process, including the filing of initial complaints.

The protection and restraining order scheme must be amended to provide for long-term or final protection orders, to criminalize all breaches of protection and restraining orders, to ensure that victims are provided sufficient information about their rights to and the procedures for both types of orders, and to create protocols to protect the rights and needs of minors who are direct or indirect victims of domestic violence.

The definitions of rape and sexual assault must be amended to bring them in line with the Istanbul Convention definitions, and a separate criminal provision should be created for femicide. Evidentiary rules must also be revised to limit the use of character and past sexual conduct evidence in sexual violence cases, improve protocols on forensic examination and procedures on the use of forensic evidence at trial. The use of plea bargains and diversion should be precluded in cases involving sexual or gender-based crimes. With respect to criminal investigations and prosecutions, the aforementioned criminal justice challenges should be addressed in the forthcoming Action Plan on Violence against Women.

At the same time, Georgian policy should foresee an expansion of the number of shelters and crisis centers for victims of gender-based violence, as well as their accessibility to vulnerable victims, such as women with disabilities, LBT women and those who don't speak Georgian. Standardized protocols should establish risk and needs assessments, in order to secure the needed protection, and robust multi-sectoral services, including access to legal aid.

Also, while the Criminal Code prohibits female genital mutilation on any grounds, its practical application to date has been scarce. Sensitization and culturally appropriate alternative practices should be explored as a means of prevention, in addition to the application of penal sanctions.

### **Women's equal political participation**

In Georgia, women's participation in decision-making processes remains very low: they comprise 15% of Parliament and 13.4% of local councils (Sakrebulo). The average number of women MPs in the national parliaments in Europe and OSCE member countries is 27.5%. The experience accumulated worldwide demonstrates that there is a strong correlation between the percentage of female legislators and the passage of legislation beneficial to women as a group, and communities as a whole. Furthermore, in executive branches of government in Georgia, there are no women among the nine governors, no female mayor in any of the five self-governing cities, and only one woman Mayor among 59 local self-governing communities. Given the evident ineffectiveness of the financial incentives offered to political parties to include women on party lists, Georgia should adopt mandatory quotas, as a temporary measure, to ensure *de facto* equality in political participation, and undergo significant reform in its electoral systems towards proportional representation (PR). Since the recently adopted Constitution transitions Georgia to proportional representation system at the earliest in 2024, it is of increased importance to adopt mandatory gender quotas aimed at narrowing the gender gap in political decision making.

Other aspects of electoral system design affecting women's representation include: electoral thresholds (the minimum percent of the vote required to obtain a seat in parliament), district magnitude (number of seats divided by the number of districts), and open versus closed lists in PR systems (the ability of voters to influence the election of candidates within a party list).

## **Women, peace and security**

Georgia has been faced with issues involving armed conflicts for a large part of the last 20 years, experiencing destruction and an influx of IDPs unable to return home even after the ceasefire agreements were reached. There are over 273,411 IDPs in Georgia (over 88,704 families) as a result of the conflicts in the 1990s and in 2008. Major efforts must be taken to ensure access to basic and necessary protection and multi-sectoral services, including psycho-social and social-welfare assistance, for both rural and conflict-affected women, especially those facing diverse forms of violence. The establishment of a shelter in Zugdidi to serve residents of Abkhazia, as well as for the Tskhinvali region, could also be considered.

Women's participation is also low within the two official negotiation processes concerning the conflict, the Geneva International Discussions (GID) and the Incident Prevention and Response Mechanism (IPRM). Temporary special measures, via the National Action Plan or the Gender Equality Law, are needed to foster women's participation in reconciliation processes and confidence building measures between Georgian-Abkhaz-South Ossetian communities.

## **Gender equality in civil registration**

Civil registration is a necessary prerequisite for accessing basic human rights. Given that rural population in Georgia abstains from requesting identity documents primarily based on financial concerns, the Law on Service Rates of the Civil Registry should be amended to expand the scope of discounts or provide for the free provision of identity documents for persons residing in rural areas. Additionally, the Law on Civil Status Acts requires sex change surgery prior to recognizing a change in a person's gender identity. Given the high cost of sex change surgery, the Law should be amended to provide for an accessible and simple procedure for changing the name, surname and gender of transgender persons.

## **Recommendations:**

*Gender Equality in Georgia: Barriers and Recommendations (Volume 1)* contains numerous additional recommendations on issues not highlighted above that signal the need for changes/amendments to legislation (laws, bylaws, orders, etc.), policies (State-level strategy documents and action plans, concepts), practices (case-law analysis, statistic data, etc.) and gender mainstreaming instruments (gender budgeting, gender impact assessment, etc.). The full list of concrete recommendations is provided in a separate table.

## II. List of recommendations

Law or policy	Recommendation	Target group
<b>Gender Equality Law</b>		
Gender Equality Law	The Gender Equality Law should be comprehensively reformulated to expand its content and to detail the integral components of the rights provided therein.	Parliament
Gender Equality Law	The Gender Equality Law must be revised to make reference to specific procedures, and enforcement mechanism, in order to allow for the effective implementation of its provisions.	Parliament
Gender Equality Law	Include definitions of victimisation, harassment, sexual harassment and instruction to discriminate among the definitions set forth in Article 3 of the Gender Equality Law, and revise the definition of discrimination in Article 3(c) to make reference to these prohibited acts.	Parliament
Gender Equality Law	The definitions set forth in Article 3 of the Gender Equality Law should separately define temporary special measures as an exception to discrimination and in accordance with international standards.	Parliament
Gender Equality Law	Provisions should be drafted to set forth the application of temporary special measures in the Georgian legal context.	Parliament
Gender Equality Law	The definitions set forth in Article 3 of the Gender Equality Law should separately define special measures for protection of maternity according to international standards.	Parliament
Gender Equality Law	The term “genuine occupational requirement” should be included among the definitions set forth in Article 3 of the Gender Equality Law.	Parliament
Gender Equality Law	The terms “gender mainstreaming,” “gender impact assessment,” “gender-responsive budgeting,” and “gender audit” should be included among the definitions set forth in Article 3 of the Gender Equality Law.	Parliament
Law on Budget	Include the term “gender responsive budgeting” in the Law on Budget and require its application.	Parliament
Gender Equality Law	The Gender Equality Law should contain a specific provision prohibiting gender discrimination in all its forms.	Parliament
Gender Equality Law	Amend the Gender Equality Law to include a provision requiring a reversal in the burden of proof for cases alleging gender/sex discrimination in line with the Equality Directive.	Parliament
Gender Equality Law	The Gender Equality Law should include an article establishing the temporary application of positive measures to address situations of de facto gender inequality.	Parliament

Gender Equality Law	Article 5 of the Gender Equality Law should be revised to require public authorities to gather data disaggregated by sex in all statistics, surveys or other data collection endeavors, establish and to include new statistical indicators pertaining to gender and other intersecting factors, such as age, ethnicity and disability in line with international standards.	Parliament
Gender Equality Law	The scope of Article 6 should be expanded to include labour relations in the public and private sector.	Parliament
Gender Equality Law	Article 6 should be expanded to preclude discrimination in the full scope of labour relations: vacancy advertisements, access to employment, working conditions, remuneration, dismissal, vocational training, promotion and affiliation with trade unions or professional associations.	Parliament
Gender Equality Law	Article 6 should make reference to “genuine occupational requirements” as exceptions to discrimination in employment.	Parliament
Gender Equality Law	A specific measure should be added to the Gender Equality Law requiring employers employing over a specified minimum number of employees, including in the private sector, to develop internal gender equality plans, and to be required to periodically report on their implementation.	Parliament
Gender Equality Law	Article 6(1) of the Gender Equality Law should be amended to refer specifically to “sexual harassment”.	Parliament
Gender Equality Law	Include in the Gender Equality Law a specific provision requiring the establishment of a protocol for filing complaints of harassment and sexual harassment in public sector employment.	Parliament
Gender Equality Law	The Gender Equality Law should be amended to sanction sexual harassment, foreseeing liability for employers who fail to reasonably respond to complaints, including through the imposition of disciplinary measures.	Parliament
Gender Equality Law	A specific measure should be added to the Gender Equality Law requiring employers, including in the private sector, to develop internal mechanisms for handling complaints of harassment and sexual harassment.	Parliament
Gender Equality Law	A specific measure should be added to the Gender Equality Law requiring employers, in the public and private sectors, to provide gender-disaggregated data on employees to the appropriate national body.	Parliament
Gender Equality Law	The gender equality award should be established to incentivize private sector efforts to combat gender discrimination in the workplace.	Parliament
Gender Equality Law	Article 6 of the Gender Equality Law should be expanded to establish a series of rights integral to one’s ability to exercise the broader right to the “free choice of profession or career, promotion, vocational training/retraining” without discrimination.	Parliament
Gender Equality Law	A specific provision should be added to the Gender Equality Law to establish the right to equal remuneration irrespective of sex for the same work or work of equal value.	Parliament
Gender Equality Law	Include in the Gender Equality Law a specific provision requiring employers to establish a protocol for filing complaints of harassment and sexual harassment.	Parliament

Gender Equality Law	The State should establish temporary special measures, or an affirmative action policy, to foster balanced representation at the ministerial level, in management bodies and for Government representatives at the international and national levels.	Parliament
Gender Equality Law	Article 6 should include a provision qualifying that any less favourable treatment of women relating to pregnancy or maternity constitutes direct discrimination on the grounds of sex.	Parliament
Gender Equality Law	Article 13 should require local self-government bodies to conduct gender impact assessments on proposed policies and programs.	Parliament
Gender Equality Law	Article 13 should be amended to require local self-government bodies to employ temporary special measures or affirmative action policies to foster a gender balance in staff and management positions, as well as in all advisory bodies, committees and councils.	Parliament
Gender Equality Law	Article 13 of the Gender Equality Law should require local self-government bodies and regional governments to undertake gender responsive budgeting to ensure gender equality is reflected in policies, programs and priorities at the sub-national level.	Parliament
Gender Equality Law	To strengthen the effectiveness of gender equality mechanisms at the sub-national level, a separate article should be added to the Gender Equality Law, regulating the municipal-level gender equality councils, and gender focal points, including: a) formalizing the gender focal point positions; b) ensuring their presence in all 64 municipalities; c) standardizing job descriptions for gender focal points and ensuring their continuous training; and, d) regulating the relationship between municipal gender equality councils and gender focal points with the national-level gender equality machinery, such as reporting before one or more national bodies.	Parliament
Gender Equality Law	The Gender Equality Law should require the submission of gender impact reports by the proposing entity, to be submitted with the proposed legislation in the explanatory notes section.	Parliament
Gender Equality Law	Article 7 of the Gender Equality Law should be significantly expanded to include rights establishing a claim to more comprehensive aspects of gender equality in all stages of education.	Parliament
Gender Equality Law	The Gender Equality Law should be revised to include a more comprehensive provision on intellectual, artistic and cultural creation and production, including specific measures for positive action.	Parliament
Gender Equality Law	Expand the provisions in the Gender Equality Law related to gender equality and access to and participation in information technology to, inter alia, preclude sexism in State-funded content, the development of programs fostering women's access to and training in communications technologies and effective gender equality in public programs related to the information age.	Parliament

Gender Equality Law	Expand the provisions in the Gender Equality Law related to health care to encompass, inter alia, the health-related aspects of sexual harassment, the elimination of discrimination in healthcare access and outcomes based on biological differences and social stereotypes, gender balance in service provider and management staff, the collection and analysis of gender disaggregated statistics, and the continued adoption of special initiatives to promote women's equal access to health.	Parliament
Gender Equality Law	An article should be added to the Gender Equality Law to address the current lack of gender equality in sports, requiring the collection of gender-disaggregated statistics in both professional, recreational and educational sports activities, and foresee the establishment of temporary special measures to foster the increased involvement of women and girls in sports.	Parliament
Gender Equality Law	A provision should be added to the Gender Equality Law prohibiting sex as an actuarial factor resulting in discrimination.	Parliament
Gender Equality Law, Election Code of Georgia	Add a provision to Article 11 of the Gender Equality and Electoral Laws requiring a minimum percentage of women candidates on party lists for parliamentary elections. The similar amendment should be made to the Election Code of Georgia.	Parliament
Gender Equality Law	A provision should be added to Article 11 of the Gender Equality Law to require gender-sensitive internal parliamentary procedures and structures.	Parliament
Gender Equality Law	The mandate of the Gender Equality Council, as established in Article 12(3)(a)-(i) should be revised and updated to reflect its current mandate in relation to the newly-established Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence, with language obliging it to perform these functions.	Parliament, GEC
Gender Equality Law	Specific reference should be made within Article 12 of the Gender Equality Law to the full funding of the Gender Equality Council out of the State budget.	Parliament, GEC
Gender Equality Law	A separate article should be added to the Gender Equality Law referring to the Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence and its mandate.	Parliament, IAC
Gender Equality Law	Revise Article 14 of the Gender Equality Law to refer specifically to the Gender Equality Department of the Public Defender's Office, and include full description of its mandate.	Parliament, Public Defender's Office
<b>Anti-Discrimination Law</b>		
Anti-Discrimination Law, Law on Public Defender	As the designated Equality Body, the Public Defender's Office should have the power under Article 8(4) to compel response by both public and private legal entities to inquiries concerning claims of discrimination. The Law should also be amended to make the Public Defender's Office's recommendations in cases of discrimination binding.	Parliament, Public Defender's Office
Anti-Discrimination Law, Law on Public Defender	Article 24 of the Organic Law on Public Defender of Georgia should obligate private legal entities that receive recommendations and general proposals under the Anti-Discrimination Law, to respond to the Public Defender in writing within 20 days, and to implement the recommendations as binding.	Parliament, Public Defender's Office

Civil Procedure Code, Labour Code, Law on Civil Service	Article 363 <sup>2</sup> (2) of the Civil Procedure Code, Article 38 of the Labour Code and Article 137 of the Law on Civil Service should be amended in a harmonized manner in order to lengthen the statute of limitations for filing a discrimination complaint before the courts.	Parliament, Public Defender's Office
Anti-Discrimination Law	The Anti-Discrimination Law should be amended to regulate its application to diverse sectors, referring specifically to applicable international standards.	Parliament
Anti-Discrimination Law	Legislation should be revised to ensure harmonized protection for discrimination across sectors, with the Anti-Discrimination Law functioning as <i>lex specialis</i> on issues of discrimination.	Parliament
Anti-Discrimination Law, Gender Equality Law, Law on Education, Labour Law, Law on Civil Service	Harassment should be defined pursuant to international standards and included in the Anti-discrimination, Gender Equality, Education and Labour Laws in a harmonized manner. Internal complaint mechanisms should be established for harassment in the education sector.	Parliament
Anti-Discrimination Law, Gender Equality Law, Law on Education, Labour Law, Law on Civil Service	Sexual harassment should be defined as a form of discrimination and incorporated in a harmonized manner into the Anti-discrimination, Gender Equality, Education and Labour Laws, as well as into the Law on Civil Service.	Parliament
Anti-Discrimination Law, Gender Equality Law, Law on Education, Labour Law, Law on Civil Service	Legislation should require that internal complaint mechanisms be established by employers and educational institutions, clearly delineating procedures for filing complaints and liability for individuals, and for supervisors for any failure to investigate or act, in addition to employers and educational institutions in the public and private sector. Such internal complaint mechanisms should be the subject of labour inspections.	Parliament
Anti-Discrimination Law, Gender Equality Law, Law on Education, Labour Law,	The right to a reasonable accommodation should be clearly defined and provided for the in the Anti-discrimination, Labour and Education Laws.	Parliament
Anti-Discrimination Law	Incorporate the definition and prohibition of segregation in the Anti-discrimination and Education Laws.	Parliament
Anti-Discrimination Law	The definition and prohibition of victimisation should be amended in the Anti-Discrimination Law to bring it into conformance with international standards to constitute a form of discrimination and encompass <i>anyone</i> cooperating with an investigation, complaint or proceeding.	Parliament
<b>Violence against Women</b>		
National Action Plan on Violence against Women	Subsequent versions of the National Action Plan on Violence against Women should include increased objectives targeting the effectiveness of the criminal justice system in addressing violence against women.	Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence (IAC)
Anti-Discrimination Law, Gender Equality Law, Criminal Code	The term gender-based violence should be defined in the Anti-discrimination and Gender Equality Laws and the Criminal Code.	Parliament
Domestic Violence Law	Amend the Domestic Violence Law to explicitly cover non-cohabitating partners and same-sex couples.	Parliament



Domestic Violence Law, Criminal Code, Criminal Procedure Code	The Domestic Violence Law and criminal legislation should be amended to ensure that domestic violence and other forms of violence against women are investigated <i>ex officio</i> , so that investigation and prosecution are not dependent upon the complaint of the victim.	Parliament
Domestic Violence Law, Administrative Law, Criminal Code, Criminal Procedure Code	The Domestic Violence Law, Administrative Law and criminal legislation should be amended to provide for the establishment of long-term or final protection orders after a full hearing on the allegations of violence.	Parliament
National Action Plan on Violence against Women	Forthcoming national actions plans should foresee updating of protocols or standard operating procedures for law enforcement and other first responders to ensure that key information about restraining and protection orders is provided to victims.	IAC, Ministry of the Health, Labor and Social Affairs (MoHLSA), Ministry of Internal Affairs (MIA)
National Referral Mechanism, Domestic Violence Law, Administrative Law, Criminal Code, Criminal Procedure Code	The Domestic Violence Law, Administrative Law, criminal legislation, as well as the National Referral Mechanism standard operating procedures of the Ministry of Internal Affairs, Ministry of the Health, Labor and Social Affairs and the Ministry of Education and Science, should mandate specific protocols for addressing minors who are direct or indirect victims of violence.	Parliament, IAC, MIA, MoHLSA, the Ministry of Education and Science (MoES)
Domestic Violence Law, Code on Administrative Offences, Criminal Procedure Code	Legislation should criminalize all violations of restraining and protection orders. Such violations should be recorded in the single criminal file of the perpetrator so that law enforcement authorities can track his history/previous behavior and for reference during the proceedings.	Parliament, MIA
Domestic Violence Law, Code on Administrative Offences	Legislation should preclude the imposition of fines in cases of domestic violence.	Parliament
Code on Administrative Offences	Article 175 <sup>2</sup> of the Code on Administrative Offences should be amended to delete provisions foreseeing correctional labour as an alternative to detention or separating the perpetrator from the victim(s).	Parliament
Domestic Violence Law, Standard Operating Procedure	Legislation and/or official standard operating procedures should mandate the completion of all fields on the forms for restraining and protection orders, including a risk analysis by law enforcement.	Parliament, Ministry of Internal Affairs
Domestic Violence Law, Criminal Code of Georgia, Standard Operating Procedure	Data should be collected cumulatively on each individual's request for a restraining and/or protection order. Multiple complaints by the victim and the issuance of prior protection and restraining orders should be considered: a) in the issuance of additional protection/restraining orders; b) as evidence at trial; and, c) as an aggravated circumstance for the purposes of sentencing. Victims of repeat offenders should have heightened and/or lengthened protection. Repeat offenders should be subject to mandatory arrest.	Parliament, Ministry of Internal Affairs
Domestic Violence Law, Standard Operating Procedure	The Law on Domestic Violence and the Criminal Code and/or standard operating procedures for law enforcement, prosecution and the judiciary should require that statistical data be gathered at regular intervals on all forms of violence against women, including on the forms and frequency of violence, on the effectiveness of measures to prevent and punish such violence, and on the protection and support provided to victims and survivors. Data collection on domestic violence and violence against women should include the registration of complaints, as well as the issuance of protection and restraining orders. Data collection methodology should be harmonized across justice sector institutions (police, prosecution and judiciary).	Parliament, MIA, Office of the Chief Prosecutor and the High Council of Justice (Judiciary)



Domestic Violence Law	The legislation should require that data be disaggregated by gender, age, ethnicity, disability and other relevant characteristics, in line with international standards.	Parliament
National Action Plan on Violence against Women National Action Plan on Human Rights	The forthcoming National Action Plan on violence against women should contain as a central objective a system for data collection and analysis, as well as monitoring and evaluation, of the criminal justice response to violence against women, including domestic violence, with specific attention to the 2017 amendments.	IAC
National Action Plan on Violence against Women, National Action Plan on Human Rights	The forthcoming National Action Plans on the measures to be implemented for combating violence against women and domestic violence and protection of victims/survivors, and on human rights Protection should foresee capacity building within law enforcement agencies and the judiciary to develop expertise on analyzing collected data on domestic violence and other forms of violence against women.	IAC, Parliament, MIA, Office of the Chief Prosecutor and the High Council of Justice (Judiciary)
National Action Plan on Violence against Women	Forthcoming national action plans should foresee an increase the number of shelters and crisis centers, especially in rural areas, with sustainable support from the State budget. Budget allocations must be increased in order to ensure the same level of services at all crisis centers.	IAC, Ministry of Finance (for budget) and MoHLSA
National Referral Mechanism, Internal Regulations of Shelters and Crisis Centers	The Fund for Victims of Trafficking should develop internal instructions related to persons with disabilities, as well as unified guidelines on the same for multi-disciplinary actors operating within the referral network.	Fund for Victims of Trafficking Ministry of Labor, Health and Social Affairs
National Action Plan on Violence against Women,	Forthcoming national action plans should ensure that shelters and crisis centers for victims of violence against women are accessible to women with disabilities. The range of services should be able to accommodate women with additional needs: minority women, women with mental health or substance abuse issues, and specialized protection on issues such as child marriage. A budget item should be established for interpretation services for regions with large ethnic minority populations and for victims who are foreign nationals.	IAC, Fund for Victims of Trafficking, MoHLSA
Domestic Violence Law, National Action Plan on Violence against Women, Standard Operating Procedures	Legislation and official standard operating procedures should foresee individualized safety and risk assessments and needs assessments that cover the full range of issues, health, the needs of children, housing, legal issues, financial assistance, job training and employment and education in line with international standards.	Parliament, IAC
Law on Social Assistance	Legislative gaps and current institutional practices should be revised to enable the receipt of social welfare assistance after relocation to a shelter or another location with the minimum interruption.	Parliament, Ministry of Labor, Health and Social Assistance
National Action Plan on Violence Against Women	The forthcoming National Action Plan should foresee adoption of the policy related to safeguarding right to adequate housing for women victims of violence. Government should consider budgetary allocations for pilot housing project.	IAC, MoHLSA, Ministry of Finances
Law on Free Legal Legal Aid	Free legal aid should be provided to victims of gender-based violence with respect to the issuance of protective orders, the filing of criminal charges, to address child custody, to seek compensation for damages and spousal maintenance without reference to financial need.	Parliament

Criminal Code	The provision on rape within Criminal Code should be amended again to remove any reference to the requirement of force or the threat of violence. It should refer to the consent of the victim or a broad range of coercive circumstances.	Parliament
Criminal Code	The Criminal Code should be amended to establish aggravating circumstances for rape and sexual assault committed through the use of force.	Parliament
Criminal Code	The Criminal Code should be revised to define sexual violence in terms of its non-consensual nature, rather than through the use of force, threats or violence.	Parliament
Domestic Violence Law, Criminal Code, Criminal Procedure Code	The Domestic Violence Law, Criminal Code and/or Criminal Procedure Code should specifically allow the issuance of a protection order to be introduced as a material fact in subsequent legal proceedings.	Parliament
Criminal Procedure Code	A specific evidentiary rule should be introduced into the Criminal Procedure Code, limiting character and past conduct evidence from being introduced by defendants in sexual violence cases.	Parliament
Forensic Guidelines	A national protocol for sexual assault medical forensic examination that entails a victim-oriented approach, based on informed consent, clinical requirements, facilities, equipment and supplies, including evidence collection kits, operational issues such as timing of collection of evidence, integrity of the evidence as well as examination processes (documentation, photography, risks, etc.) should be adopted, in line with the WHO recommendations.	National Forensic Bureau
Standard Operating Procedures	Standard operating procedures to be adopted by the Ministry of Labour, Health and Social Affairs should ensure victims' accessibility to rape kits as well as contraception, free of charge.	MoHLSA
Criminal Code	Aggravating circumstances for the crime of torture should include additional discriminatory motives, including: disability, sexual orientation and gender-identity.	Parliament
Criminal Code	A separate crime of femicide should be established within the Criminal Code with proportionate sanctions, with increased monitoring due to ongoing obstacles in correctly qualifying the crime.	Parliament
Criminal Code	Incitement to suicide should be investigated as an <i>ex officio</i> crime, like other forms of violence against women.	Parliament
National Action Plan on Violence against Women and Domestic Violence	Include within the next National Action Plan on Violence against Women and Domestic Violence the development of guidelines for law enforcement officers to use in addressing child marriage and the development of region-specific approaches on detection, investigation and prosecution of child marriages, including a coordinated response by law enforcement officials and service providers involved in child referral mechanisms.	IAC, Ministry of Internal Affairs
National Action Plan on Violence against Women	The Inter-Agency Commission should ensure tailored awareness raising interventions within local communities on the health consequences, as well as on the recently adopted criminal sanctions for FGM.	IAC
Criminal Code, Criminal Procedure Code, Law on Domestic Violence, Criminal Justice Policy Guiding Principles	The Criminal Code, Criminal Procedure Code, the Law on Domestic Violence, the Criminal Justice Policy Guiding Principles adopted by the Minister of Justice and/or the internal guidelines of the Office of the Prosecutor should be amended to preclude the use of plea bargains and diversion in cases involving violence against women.	Parliament, Ministry of Justice, Office of the Prosecutor

Government Order/State Run Program	A Decree should be issued to institutionalize and develop programs for perpetrators, including those subject to protection orders.	Government of Georgia
Criminal Code	Article 111 of the Criminal Code should be amended to preclude its application to cases involving violence against women.	Parliament
Legislative initiative	Begin development of a legislative proposal to create a State compensation fund for victims of gender-based violence.	Ministry of Justice
Law on Free Legal Aid	Ensuring meaningful access to remedies requires sustained free legal assistance as part of a package of services available to victims of gender-based violence.	Parliament
Administrative Procedure Code	Amend the Administrative Procedural Code in order to allow effective implementation of the decisions of the UN Human Rights treaty bodies.	Parliament
Civil Procedure Code	Amend the Georgian Civil Procedure Code to exempt women victims of violence from court fees for any civil proceedings pertaining to separation or divorce, including <i>inter alia</i> : divorce, property disputes and custody issues. Provide information pertaining to legal rights, procedures and remedies to vulnerable groups of women in a language that they can understand.	Parliament
<b>Women's Political Participation</b>		
Electoral Code, Gender Equality Law	Amend the Electoral Code and the Law on Political Associations to adopt temporary special measures to accelerate women's political participation on an equal footing with men at the national and local levels. The measures should provide for at least 30% participation by women, and encompass the participation of disadvantaged and marginalized women, including ethnic minorities.	Parliament
Electoral Code	Consider transitioning to a proportional representation system, integrating temporary quotas to ensure women's <i>de facto</i> participation.	Parliament
<b>Women, Peace and Security</b>		
National Action Plan for the Implementation of UN Security Council Resolutions on Women, Peace and Security	Forthcoming versions of the National Action Plan for the Implementation of UN Security Council Resolutions on Women, Peace and Security should establish temporary quotas to ensure women's participation in conflict negotiation processes.	IAC
Gender Equality Law	The Gender Equality Law should be amended to provide for temporary special measures, including numerical quotas, to promote the number of women appointed to ministerial and diplomatic positions.	Parliament
Gender Equality Law	The Gender Equality Law should be amended to require temporary special measures, including numerical quotas, to ensure a minimum of 30% of women in conflict negotiation processes in the Executive branch.	Parliament
National Action Plans on Women, Peace and Security	The forthcoming National Action Plans on Women, Peace and Security and on Combating Violence against Women and Domestic Violence should foresee support for practical measures to provide protection and psycho-social services to conflict affected women, including victims of domestic violence. Increase the accessibility of the shelters and crisis centers in Zugdidi and Gori to women residing in occupied territories.	IAC

National Action Plans on Women, Peace and Security  National Action Plan on Violence against Women	The forthcoming National Action Plan on Women, Peace and Security should foresee commissioning a study to analyze projects undertaken by the Government, donors and international organizations in Abkhazia and the Tskhinvali Region in order to identify gender-related issues in order to develop targeted policies. The Government should work closely with international organizations undertaking projects for populations residing in occupied territories to ensure that gender is mainstreamed with respect to target groups, data collection, the identification of specific needs, among other aspects.	IAC
National Action Plans on Women, Peace and Security	The National Action Plan on Women, Peace and Security should foresee needs-based training for IDP women based on market demand, as provided in part in Output 4.2.	IAC, Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia
<b>Gender Equality in Civil Registration</b>		
Law on Civil Status Acts	Amend the Law on Civil Status Acts to provide for an accessible and simple procedure for changing the name, surname and gender of transgender persons.	Parliament, Ministry of Justice of Georgia
Law on Service Rates of the Civil Registry	The Law on Service Rates of the Civil Registry should be amended to expand the scope of discounts or provide for the free provision of identity documents for persons residing in rural areas.	Parliament, Ministry of Justice of Georgia





### III. Introduction

As a signatory to many international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Georgia is required to ensure *de facto* equality between men and women. Article 2 of CEDAW directly prohibits discrimination against women and obligates States to agree to pursue a policy of eliminating discrimination against women by all appropriate means and to undertake concrete steps to eliminate discriminatory laws, policies and practices in the national legal framework. The 2014 Association Agreement between Georgia and the EU also requires Georgia to bring national legislation into conformance with international standards.

In 2015, the UN adopted a set of goals to **end poverty, protect the planet, and ensure prosperity for all** as part of a new sustainable development agenda. Each of the 17 Sustainable Development Goals (SDGs) has specific targets to be achieved over the next 15 years, with a series of indicators for measuring progress. Although gender equality has been mainstreamed across the SDGs, standalone Goal 5 aims to “achieve gender equality and empower all women and girls” and contain nine targets, including: ending all forms of discrimination against women and girls; ending all forms of violence against women and girls; eliminating harmful practices, such as early, forced and child marriage; achieving women’s full and effective participation and equal opportunities for leadership at all levels of decision making in political, economic and public life; and, adopting and strengthening sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels, among others. The SDGs and their targets will be referenced, where relevant, throughout this report.

With these commitments in mind, this document attempts to identify remaining legislative and policy gaps, notwithstanding the important strides Georgia has made in harmonizing the national legal framework with international standards, including most recently the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) and enacting a series of accompanying amendments in national legislation. At the same time, it is important to recall that the legislative framework alone does not secure the right to equality and non-discrimination without its effective implementation. Although not the focus of this research, Georgia faces significant hurdles in implementing existing rights and protections throughout its territory.

In an effort to meet its international commitments, Georgia has strengthened its national institutional framework to monitor and advance women’s equality. Currently, the gender equality national machinery encompasses the Gender Equality Council within the Parliament, the recently created Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence within the Executive branch, and the Gender Equality Department of the Public Defender’s

Office. Charged with inter-agency coordination, monitoring the implementation of laws within the Executive branch and the development of national action plans on gender equality, violence against women and domestic violence and women, peace and security, the new Inter-Agency Commission complements the work of the parliamentary Gender Equality Council. The Public Defender's Office plays the crucial role of independent monitoring on the full range of gender issues.

This document is organized by subject matter and addresses: the Gender Equality Law, discrimination, violence against women, women's political participation, women, peace and security and civil registration. It highlights where specific issues have been raised by United Nations (UN) treaty bodies and mandate holders. It also takes an intersectional approach to gender equality, in order to ensure that *all* women benefit from an equal protection of the law, one that considers diverse identities, stages of life and experiences, such as women belonging to ethnic minorities, women with disabilities, and female children and adolescents, among others.

The report recommends the use of essential tools for ensuring gender equality, including gender mainstreaming, gender-responsive budgeting and the use of temporary special measures. So far, Georgia has not yet completed a concept note, nor a specific policy mandating gender mainstreaming and gender-responsive budgeting in the policymaking process. Further to this, training modules have not yet been created for public officials on these tools. Achieving gender equality requires an active use of these tools. Even a cursory read of several national action plans across sectors reveals a lack of gender mainstreaming. While quotas constitute one form of temporary special measures, affirmative action and tailored programs fostering the participation of under-represented communities are others.

In addition to addressing specific legislative gaps, such as the current absence of a legal framework for addressing sexual harassment, the report attempts to identify other, less conspicuous gaps across law and policy documents. Key issues to be considered for broader reform efforts that would have a significant impact on gender equality include, *inter alia*, broad changes to the electoral system towards proportional representation, equalizing the rights and protections provided to women employed in the private sector with those of women in the public sector regarding pregnancy, childbirth, childcare, maternity leave and compensation, and ensuring gender sensitivity in envisaged agricultural reform efforts.



## IV. Glossary

**Affirmative action** refers to policies designed to eliminate unlawful discrimination between applicants, remedy the results of prior discrimination, and prevent discrimination in the future. They are frequently applied to the selection process in admissions to educational program and professional employment.

**Gender impact assessments** are *ex ante* evaluations, analyses or assessments of a law, policy or program in order to identify, in a preventative way, the likelihood of a given decision having negative consequences for the situation of equality between women and men.

**Gender mainstreaming** refers to efforts to examine and change processes of policy formulation and implementation from a gender perspective as well as to address and rectify persistent and emerging disparities between men and women. This is the process of policy design, implementation and evaluation by taking into consideration gender-specific and often diverse interests and values of differently situated men and women. Every policy need to be evaluated from the perspective of whether or not it reduces or increases gender inequalities. It is assumed that unfair and unequal gender outcomes can be redressed by gender-sensitive policy process.

**Gender responsive budgeting** involves a full process from the analysis of budgetary programs from a gender perspective to integration of gender perspectives throughout the budget process. It is a mechanism for incorporating gender equality principles into all stages of the budget process.

**Genuine occupational requirement** constitutes an exception to direct and indirect discrimination where discriminatory treatment is required by the nature of the particular occupational activities concerned or of the context in which they are carried out, provided that the objective is legitimate and the requirement is proportionate.

**Glass ceiling** - an invisible barrier, which prevents women and minorities from rising to high-level positions despite their achievements and qualifications.

**Reasonable accommodation** - any modification or adjustment to a work or educational environment that will enable a person with a disability to perform essential job functions or equally access educational opportunities.





## V. Gender Equality Law

Achieving gender equality is a standalone goal of the SDGs. It contains nine targets, including “end all forms of discrimination against all women and girls everywhere” and “adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels”.

Adopted in 2010, the Law on Gender Equality is declarative in nature. It largely contains formal rights, which are not framed in terms that enable their practical implementation, and it has yet to be invoked in a court of law.<sup>2</sup> Many of the rights enumerated remain unrealized because of systemic barriers that cannot be challenged by means of asserting an individual complaint. For example, Article 11 states in full:

1. Everyone shall have the right to participate in elections on equal terms without discrimination.
2. Both men and women shall have equal rights to be elected to a representative body.
3. Men and women may be elected on equal terms without discrimination.

As detailed in the section on women’s political participation, below, while women may have the formal right to participate in politics, the structure of the electoral system impedes their equal participation. Yet, because of the declarative nature of the rights enumerated, Article 11 cannot effectively be invoked in a court of law to challenge the electoral system in order to render the provision meaningful. The same is true for the rights set forth in, *inter alia*, Article 10, covering gender equality in family relations, as well as Article 7, covering gender equality in education and science. As a general matter, the Gender Equality Law should be redrafted to establish rights enabling individual claimants to seek judicial protection to ensure their meaningful implementation. While the Gender Equality Law covers diverse sectors, the content of the rights covered within each sector, could be significantly expanded and detailed. The inclusion of an expanded scope of rights and protection as well as increased reference to the necessary and integral components of each right, will enable as a practical matter the assertion of such rights by those to whom they are currently denied. Notably, there seems to be an uneven relation between the issues declared in Article 4 and the elaboration of rights in subsequent articles.

The content of the Gender Equality Law overlaps with numerous other detailed pieces of legislation. The rights enumerated can thus make reference to their existence within other legislative schemes, to which they should be harmonized. Specific attention in this regard should be paid to mechanisms and procedures for its implementation. Revision of the Gender Equality

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<sup>2</sup> USAID, Article 42, *Gender Discrimination in Labour Relations*, 2014 p. 37, available at: [http://article42.ge/wp-content/uploads/2016/03/Gender\\_Discrimination\\_in\\_Labor\\_Relations.pdf](http://article42.ge/wp-content/uploads/2016/03/Gender_Discrimination_in_Labor_Relations.pdf).



Law constitutes an important opportunity to address existing legislative gaps. While this section details recommended potential revisions to the Gender Equality Law, in the sections below, additional recommendations are made with respect to the other thematic pieces of legislation with which it overlaps.

**Recommendation:** The Gender Equality Law should be comprehensively reformulated to expand its content and to detail the integral components of the rights provided therein.

## A. Enforcement mechanisms

Article 1 of the Gender Equality Law reads: “This Law defines fundamental guarantees for equal rights, freedoms and opportunities provided for in the Constitution of Georgia, and also determines legal mechanisms and conditions for their realisation in relevant aspects of public life.” However, the Law lacks references to specific “legal mechanisms and conditions for their realisation.” For example, it makes no reference to relevant provisions within the Civil Procedure Code or other law that can be invoked in order to seek judicial protection from violations of the rights accorded therein.

In this regard, victims of discrimination can file complaints before the court pursuant to Article 363<sup>1-6</sup>. With respect to mechanisms for enforcement, reference should also be made to existing, related legislation, including the Labour Law, the Law on Education, the Law on Public Service, etc. Notably, Article 14 of the Law empowers the Public Defender’s Office to monitor gender equality pursuant to the Law, and can investigate incidents of discrimination pursuant to Article 3(1<sup>1</sup>) of the Law on Public Defender.<sup>3</sup> However, the Public Defender’s Office has no power to enforce its recommendations, nor any power to require a response to its inquiries in the private sector.

**Recommendation:** The Gender Equality Law must be revised to make reference to specific procedures, and enforcement mechanism, in order to allow for the effective implementation of its provisions.

## B. Definitions

### 1. Forms of discrimination

Article 3 contains definitions of the terms relevant for implementing the law. Subsection (c) defines discrimination by reference to subsections (d) and (e), which define direct and indirect discrimination, respectively. However, the definition of discrimination entails additional forms, which should also be referenced and defined within the section on definitions. These include: harassment and sexual harassment,<sup>4</sup> victimisation and instruction to discriminate. The definitions of these terms pursuant to international standards are provided in the section on discrimination, below.

Although harassment and sexual harassment are included within Article 6, pertaining to labour relations, harassment and sexual harassment are forms of discrimination that occur in various

<sup>3</sup> Article 3<sup>1</sup>(4) of the Law on the Public Defender also provides that the Public Defender “shall ensure effective protection of persons from discrimination”.

<sup>4</sup> According to Article 2 of the Directive on equal treatment in employment and occupation, sexual harassment is a form of discrimination. See, Council Directive 2000/78/EC, 27 November 2000.

sectors, including in education and public accommodations, among others. These forms of discrimination should be included among the definitions set forth in the Law, and prohibited in a separate article.

**Recommendation:** Include definitions of victimisation, harassment, sexual harassment and instruction to discriminate among the definitions set forth in Article 3 of the Gender Equality Law, and revise the definition of discrimination in Article 3(c) to make reference to these prohibited acts.

## 2. Temporary special measures

Article 3(1)(f) defines the term “special measures” as “measures which are intended to remedy the consequences of discrimination and is intended for a circle of persons requiring special protection due to their gender”. Its phrasing, through the conjunction “and,” conflates two distinct concepts: temporary special measures (or positive action) and protection measures related to maternity. While both are set forth in Article 4 of CEDAW, they are divided into two distinct paragraphs. Similarly, they should be separated and each defined according to the recognized international definition.

CEDAW defines temporary special measures as:

Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.<sup>5</sup>

The definition of temporary special measures should make reference to their temporary nature, as well as the fact that they are excepted from the definition of discrimination, in line with international standards.

**Recommendation:** The definitions set forth in Article 3 of the Gender Equality Law should separately define temporary special measures as an exception to discrimination and in accordance with international standards.

**Recommendation:** Provisions should be drafted to set forth the application of temporary special measures in the Georgian legal context.

## 3. Special measures

Departing from the definition of special measures for protection established by CEDAW, which excepts protection measures for maternity from the definition of discrimination, the Gender Equality Law expands it to include an overbroad “circle of persons” who require protection due to their gender, not during maternity and breast-feeding. This definition should be revised to cover issues related to maternity, and to clearly except such measures from discrimination, consistent with international standards.

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<sup>5</sup> Article 4(1), CEDAW.

**Recommendation:** The definitions set forth in Article 3 of the Gender Equality Law should separately define special measures for protection of maternity according to international standards.

In addition to including the definitions of temporary special measures and special measures for protection of maternity, their legal application should be set forth in separate articles.

#### 4. Genuine occupational requirements

Given that gender equality in labour relations is a subject of this Law, “genuine occupational requirement” should also be included among the definitions set forth in Article 3. Genuine occupational requirements constitute an exception to the prohibition on discrimination. Article 4(1) of Council Directive 2000/78/EC states:

Notwithstanding Article 2(1) and (2) [prohibiting direct and indirect discrimination], Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic **constitutes a genuine and determining occupational requirement**, provided that the objective is legitimate and the requirement is proportionate. (Emphasis added).

**Recommendation:** The term “genuine occupational requirement” should be included among the definitions set forth in Article 3 of the Gender Equality Law.

#### 5. Gender equality tools defined

Gender mainstreaming, gender impact assessments and gender-responsive budgeting constitute internationally recognized tools for fostering gender equality in a range of fields. None of these tools are defined in the Gender Equality Law. To date, the Government has not developed either a Concept Note on gender mainstreaming and gender responsive budgeting, nor a training module for public officials to introduce common approach throughout the state institutions. As requisite processes for ensuring gender equality, the definitions of gender mainstreaming, gender responsive budgeting, gender impact assessments and gender audits should be included in the Gender Equality Law as a key first step.

**Recommendation:** The terms “gender mainstreaming,” “gender impact assessment,” “gender-responsive budgeting,” and “gender audit” should be included among the definitions set forth in Article 3 of the Gender Equality Law. The term “gender responsive budgeting” should be included in the Law on Budget, and its application required.

### C. Discrimination

#### 1. Prohibition on discrimination

As noted above, the first target of SDG 5 is “end all forms of discrimination against women and girls everywhere”. Although the Gender Equality Law defines discrimination in Article 3, no article makes explicit reference to the prohibition of discrimination. Despite the existence of the Anti-

Discrimination Law, the Gender Equality Law should also prohibit all forms of discrimination, to be defined in Article 3.

**Recommendation:** The Gender Equality Law should contain a specific provision prohibiting gender discrimination in all its forms.

## 2. Shifting burden of proof

Article 4(1) of Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex requires States to:

ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

At the same time, Article 10 of the Council of Europe Directive on equal treatment in employment and occupation,<sup>6</sup> stipulates that the burden of proof rests with the defendant in cases of discrimination. Although the *raison d'être* of the Gender Equality Law is to combat discrimination based on sex, it fails to establish the shifting burden of proof for cases alleging sex discrimination in line with international standards and the Anti-Discrimination Law. Although the shifting burden of proof is provided in the Code of Civil Procedure, including it within the Gender Equality Law would clarify its application.

**Recommendation:** Amend the Gender Equality Law to include a provision requiring a reversal in the burden of proof for cases alleging gender/sex discrimination in line with the Equality Directive.

## D. Positive action

In addition to the inclusion of a definition of positive action or temporary special measures, a separate provision should establish its application within the Georgian legal framework, in order to ensure the effectiveness of the constitutional right to equality and to correct situations of obvious *de facto* inequality. It should establish that public authorities will adopt specific, temporary measures favouring women with respect to men, which must be reasonable and proportional to the objective pursued in each case. It should further provide that private natural and corporate persons may also adopt such measures.

**Recommendation:** The Gender Equality Law should include an article establishing the temporary application of positive measures to address situations of *de facto* gender inequality.

## E. Gender-disaggregated statistics

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<sup>6</sup> Council Directive 2000/78/EC, 27 November 2000.

Article 5 of the Gender Equality Law states: “Official statistical reports on gender issues shall contain sex-disaggregated data”. The Law thus limits the collection of gender-disaggregated data to “reports on gender issues”. However, without disaggregating statistics by gender and other categories, it is impossible to determine issues of concern related to gender equality and develop evidence-based policies to address them. Rather, the disaggregation of data should be integrated into all data collection efforts.

**Recommendation:** Article 5 of the Gender Equality Law should be revised to require public authorities to gather data disaggregated by sex in all statistics, surveys or other data collection endeavors, establish and to include new statistical indicators pertaining to gender and other intersecting factors, such as age, ethnicity and disability in line with international standards.

## F. Gender equality in labour relations

Gender equality in employment is addressed in two articles of the Gender Equality Law. Article 4(2)(g) ensures without discrimination “free choice of profession or career, promotion, vocational training/retraining”. Subsection (2)(i) further ensures “equal treatment in evaluation of the quality of work of men and women”. Article 6 covers three issues. It prohibits harassment and sexual harassment, ensures gender equality in public sector employment, and provides for special working conditions for pregnant women and nursing mothers. The scope of this Article could be significantly expanded to ensure in practice gender equality in employment. This section details possible avenues for expansion.

### 1. Private sector

Article 6(2) ensures equal opportunities only in the public sector. The Law should be expanded to ensure equal opportunities for women in the private sector as well.

**Recommendation:** The scope of Article 6 should be expanded to include labour relations in the public and private sector.

### 2. Scope of labour relations

The Council of Europe Directive on equal treatment in employment and occupation, adopted on 27 November, 2000, establishes obligations for equal treatment in pre-contractual and contractual relations: access to employment, development of selection criteria, promotion, professional training, definition of working conditions, dismissal and compensation issues.<sup>7</sup>

Article 6(3) temporally limits the application of the law to the recruitment and employment period. Rather, the Law should ensure equal treatment and opportunities for men and women in access to employment (including self-employment), vocational training and promotion, working conditions, including remuneration and dismissal, affiliation and participation in trade unions and employers’ or professional associations.

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<sup>7</sup> Council Directive 2000/78/EC, 27 November 2000.

Given that discriminatory job vacancy announcements are common in Georgia, Article 6 of the Gender Equality Law should specifically prohibit gender discrimination in vacancy announcements, unless the listed qualifications constitute a “genuine occupational requirement”. In this regard, reference could also be made to genuine occupational requirements constituting an exception to employment discrimination.

**Recommendation:** Article 6 should be expanded to preclude discrimination in the full scope of labour relations: vacancy advertisements, access to employment, working conditions, remuneration, dismissal, vocational training, promotion and affiliation with trade unions or professional associations.

**Recommendation:** Article 6 should make reference to “genuine occupational requirements” as exceptions to discrimination in employment.

### 3. Employers’ gender equality plans

Countries employ diverse tools for measuring and promoting gender equality in the private sector. One common mechanism is to require private sector employers over a certain size (i.e., over 50 employees) to establish gender equality plans/policies that stipulate the specific equality objectives to be reached, the strategies and practices to be adopted to attain them and the establishment of effective monitoring and assessment systems.<sup>8</sup> Equality plans may cover diverse issues to achieve their respective objectives, including *inter alia* access to employment, occupational classification, promotion and training, remuneration, organization of working hours to favour reconciliation of working, personal and family life on equal terms for women and men, and the prevention of sexual harassment and harassment on the grounds of sex. Some countries require employers to annually report on implementation of the plan. Gender equality plans should be transparent and, where applicable, the subject of negotiations with workers representatives. A provision could be included inviting the voluntary creation of a gender equality plan and harassment policy for enterprises smaller than the minimum threshold.

**Recommendation:** A specific measure should be added to the Gender Equality Law requiring employers employing over a specified minimum number of employees, including in the private sector, to develop internal gender equality plans, and to be required to periodically report on their implementation.

### 4. Sexual harassment

Article 40 of the Istanbul Convention states:

Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.<sup>9</sup>

<sup>8</sup> See, Council of Europe, Handbook on National Machinery to Promote Gender Equality and National Action Plans, 2001, p. 25; Spain, Sweden and Finland are a few of the countries whose gender equality legislation requires employers to establish a plan.

<sup>9</sup> Notably, Article 40 does not limit the prohibition of sexual harassment to the employment sphere.

As a form of violence against women, sexual harassment falls under Target 2 of SDG 5, which calls for eliminating “all forms of violence against all women and girls in the public and private spheres”. The 2017 legislative amendments enacted to bring Georgia into compliance with the Istanbul Convention did not address the need to prohibit and sanction sexual harassment in diverse sectors.

Although Article 6(1) of the Gender Equality Law prohibits sexual harassment in the context of employment, it should specifically refer to the prohibited behaviour using the terminology “sexual harassment”.

**Recommendation:** Article 6(1) of the Gender Equality Law should be amended to refer specifically to “sexual harassment”.

With respect to harassment and sexual harassment, the State should develop a protocol for handling such cases in public sector employment. The Protocol should entail a zero tolerance policy, ensure the confidential treatment of reports, and the establishment of a clear process for filing complaints.

**Recommendation:** Include in the Gender Equality Law a specific provision requiring the establishment of a protocol for filing complaints of harassment and sexual harassment in public sector employment.

**Recommendation:** The Gender Equality Law should be amended to sanction sexual harassment, foreseeing liability for employers in both the public and private sector who fail to reasonably respond to complaints, including through the imposition of disciplinary measures.

At a minimum, public and private sector employers above a specified size (i.e., above 50 employees) should be required to establish internal procedures for handling complaints of harassment and sexual harassment. The internal policies and procedures should declare zero tolerance to workplace harassment and establish a confidential complaint process for employees, contracted workers and interns. The Public Defender’s Office’s *Defining Policy Document on Preventing Sexual Harassment* constitutes an important model for replication.<sup>10</sup>

In line with the standards in many countries, the Gender Equality Law should establish liability for employers, including legal entities, for the failure to take reasonable steps to respond to complaints of harassment and sexual harassment of which they were aware, including appropriate disciplinary measures.

**Recommendation:** A specific measure should be added to the Gender Equality Law requiring employers, including in the private sector, to develop internal mechanisms for handling complaints of harassment and sexual harassment.

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<sup>10</sup> Public Defender’s Office, *Defining Policy Document on Preventing Sexual Harassment*, (2014), available at: <http://www.ombudsman.ge/en/specializirebuli-centrebi/genderuli-tanasworoba/genderuli-meinstrimingi-saxalxo-damcvelis-aparatshi>.

## 5. Gender-disaggregated employment statistics

Employers, both in the public and private sector, should be required to provide gender-disaggregated data on the number of its employees, and provide such data, in accordance with the laws on the protection of personal data, to the appropriate body, such as labour inspection or the Gender Equality Council.

**Recommendation:** A specific measure should be added to the Gender Equality Law requiring employers, in the public and private sectors, to provide gender-disaggregated data on employees to the appropriate national body.

## 6. Gender equality mark

Additionally, the Gender Equality Law could establish a Gender Equality Mark or Award, to be administered by a ministry or by an entity of the national machinery for gender equality to distinguish employers for outstanding achievement in the implementation of equal treatment and opportunities policies for their employees, which may be used for the company's commercial and advertising purposes. The criteria for determining the award could include, *inter alia*, balanced representation of men and women in management bodies and occupational groups and categories, the adoption of equality plans, non-sexist advertising and other innovative measures.

**Recommendation:** The gender equality award should be established to incentivize private sector efforts to combat gender discrimination in the workplace.

## 7. Public sector employment

Many of the rights and protections to enable gender equality in labour relations are provided for in the Labour Law and the Law on Civil Service, which are discussed in greater detail below. However, specific measures pertaining to public sector employment should be detailed within the Gender Equality Law as well, and harmonized across the relevant legislative framework.

In Article 6, the Law should reference the requirement of central, regional and local government bodies to:

- remove any obstacles resulting in discrimination;
- to ensure effective equal access by women and men to public employment and career development, including in civil service;
- facilitate the reconciliation of personal, family and working life, without jeopardizing career promotion;
- offer training on an equal footing both for accessing public employment and throughout employees' careers;
- ensure the balanced presence of women and men in selection and evaluation bodies;
- establish effective protection measures against sexual harassment and harassment on the grounds of sex;
- establish effective measures to eliminate any manner of direct or indirect gender wage discrimination; and,
- establish a gender equality at the workplace plan.



Each of these issues should be detailed in a way that fosters an actionable claim to ensure implementation. The current Article 4(2)(i), providing for “equal treatment in evaluation of the quality of work of men and women”, could be incorporated into this proposed section of the Law.

**Recommendation:** Article 6 of the Gender Equality Law should be expanded to establish a series of rights integral to one’s ability to exercise the broader right to the “free choice of profession or career, promotion, vocational training/retraining” without discrimination.

**Recommendation:** A specific provision should be added to the Gender Equality Law to establish the right to equal remuneration irrespective of sex for the same work or work of equal value.

#### **a) Temporary special measures**

Furthermore, the Gender Equality Law could establish temporary special measures to ensure balanced representation at higher levels of government, in management bodies, and national and international advisory boards and other Government representatives.

**Recommendation:** The State could establish temporary special measures, or an affirmative action policy, to foster balanced representation at the ministerial level, in management bodies and for Government representatives at the international and national levels.

#### **b) Special measures for pregnant women and breast-feeding mothers**

Article 6(4) refers exclusively to special protection for pregnant women and breast-feeding mothers, but does not clarify that their less favourable treatment constitutes sex discrimination.

**Recommendation:** Article 6 should include a provision qualifying that any less favourable treatment of women relating to pregnancy or maternity, including breast-feeding mothers, constitutes direct discrimination on the grounds of sex.

### **G. Local self-government bodies**

Ensuring gender equality in practice requires concerted collaboration and coordination between State and sub-national levels of government, including local self-government bodies. Article 13 addresses the role of local government in combating gender discrimination through: “activities to ensure detection and elimination of discrimination locally;” and, the non-discriminatory development of budgets and priorities for social and economic development plans and programs at the municipal level. It also provides for State-level technical assistance in this area. Article 13(1) seems to misplace the role of local authorities in ensuring gender equality. Rather than, or in addition to, detecting gender discrimination, local self-government bodies should be required to conduct gender impact assessments for local policies and programs.

**Recommendation:** Article 13 should require local self-government bodies to conduct gender impact assessments on proposed policies and programs.

Target 5 of SDG 5 calls for ensuring “women’s full and effective participation and equal opportunities for leadership at all levels of decision making in political, economic and public life”. Similar to the provisions applicable at the State level, the Gender Equality Law should require local self-governing bodies to employ temporary special measures, or affirmative action policies, to ensure gender balance among staff, management and in advisory bodies and councils, not just those pertaining to gender issues.<sup>11</sup>

**Recommendation:** Article 13 should be amended to require local self-government bodies to employ temporary special measures or affirmative action policies to foster a gender balance in staff and management positions, as well as in all advisory bodies, committees and councils. The Gender Equality Law could also require local self-government bodies to undertake gender-responsive budgeting as applied to municipal budgets, programs and projects. Analysis of whether budgets are gender responsive can provide important feedback to government on whether a program is meeting the needs of different groups of women, men, and other social groups. It is an important public financial management tool that helps determine how and to what extent State policy affects different groups of men and women, as well as other social categories, such as age, socio-economic background, location, educational level and others, if relevant. rea

**Recommendation:** Article 13 of the Gender Equality Law should require local self-government bodies and regional governments to undertake gender responsive budgeting to ensure gender equality is reflected in policies, programs and priorities at the sub-national level.

As of 30 November 2017, Gender Equality Councils exist in 38 local self-governing bodies to support the advancement gender equality at sub-national levels. The links between this sub-national mechanism and the State-level national machinery has not yet been defined. In addition, the Law should prescribe the appointment of gender focal points to local executive offices as dedicated staff on gender equality issues only.

**Recommendation:** To strengthen the effectiveness of gender equality mechanisms at the sub-national level, a separate article should be added to the Gender Equality Law, regulating the municipal-level gender equality councils, and gender focal points, including: a) formalizing the gender focal point positions; b) ensuring their presence in all 64 municipalities; c) standardizing job descriptions for gender focal points and ensuring their continuous training; and, d) regulating the relationship between municipal gender equality councils and gender focal points with the national-level gender equality machinery, such as reporting before one or more national bodies.

## H. Gender impact assessment reports

The Gender Equality Law should require that proposed legislation include a report on its gender impact within the explanatory notes section by the entity proposing the legislation. A tool for gender mainstreaming, gender impact assessments are *ex ante* evaluations, analyses or assessments of a law, policy or program in order to identify, in a preventative way, the likelihood of a given decision having negative consequences for the situation of equality between women and

<sup>11</sup> See, Council of Europe, Handbook on National Machinery to Promote Gender Equality and National Action Plans, 2001, p. 21.

men. They evaluate whether the proposed law, policy or program reduces, maintains or increases gender inequality. They are to be undertaken by civil servants at State, regional and local levels of government within the office, department or ministry proposing the policy or program.<sup>12</sup>

**Recommendation:** The Gender Equality Law should require the submission of gender impact reports by the proposing entity, to be submitted with the proposed legislation in the explanatory notes section.

The Gender Equality Council could be mandated to review and evaluate such gender impact reports, and to issue specific recommendations, as proposed in the section on national machinery on gender equality, below.

## I. Gender equality in education

SDG 4 on quality education, contains several targets to ensure gender equality in education. These include calling for by 2030:

- “equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university,”
- eliminating “gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities . . . and children in vulnerable situations,”
- upgrading “education facilities that are child, disability and gender sensitive”.

Article 4(2)(b) of the Gender Equality Law guarantees without discrimination “equal access to education for men and women and free choice of education at any stage of learning”. Focusing on vocational and higher education, Article 7 further declares rights pertaining to vocational and higher education, including the sciences:

1. Everyone shall have the right to freely choose a profession and speciality according to their abilities. Such equality shall be ensured through equal access, without discrimination, to general, vocational and higher education.
2. The State shall ensure that equal conditions are created for men and women to acquire general, vocational and higher education in all kinds of educational establishments, and to participate in educational and scientific processes.

Specific measures could be undertaken to foster the realization of these declarative rights. To provide some examples, Article 7 could be expanded to include the following integral rights to equal access to education:

- Ensure that gender equality is incorporated into syllabi at all stages of education;
- Eliminate content that perpetuates stereotypes and discrimination between women and men, particularly in textbooks and other teaching materials;
- Include the principle of equality in courses and programs in teacher trainings
- Ensure a balance between women and men in school management and supervisory bodies;

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<sup>12</sup> The European Institute for Gender Equality (EIGE) offers a guide on conducting gender impact assessments, available at: <http://eige.europa.eu/gender-mainstreaming/toolkits/gender-impact-assessment/guide-gender-impact-assessment>.

- Prohibit sexual harassment and bullying in all educational contexts and environments;
- Incorporate materials acknowledging and teaching women’s role in history, science, art, literature and math, etc.

**Recommendation:** Article 7 of the Gender Equality Law should be significantly expanded to include rights establishing a claim to more comprehensive aspects of gender equality in all stages of education.

The expanded scope of rights pertaining to gender equality in education should be harmonized through similar amendments to the Law on Education.

## J. Gender equality in artistic and intellectual creation and production

The Law on Culture does not contain any provision ensuring gender equality. Article 4(1) of the Gender Equality Law declares: “The State shall support and ensure equal rights for men and women in political, economic, social and cultural life.” Within the context of gender equality in the family, Article 10(6) states: “Spouses shall have equal rights to participate in recreational activities and in all aspects of cultural life.” Yet, the Law does not contain any specific, enforceable provisions to practically ensure the implementation of women’s equal rights to artistic and intellectual creation and production. The Gender Equality Law should thus contain a provision ensuring that all relevant public authorities and agencies, in the scope of their respective areas of competence, endeavour to ensure the principle of equal treatment and opportunities for women and men in artistic and intellectual creation, production and dissemination through specific, identifiable measures. These could include:

- Ensuring a balance between women and men in government-sponsored artistic and cultural offerings;
- Implementing active policies to aid female artistic and intellectual creation and production, in the form of financial incentives in order to generate the conditions required to ensure effective equal opportunities;
- Guaranteeing balanced representation of men and women on advisory, scientific and decision-making bodies for artistic and cultural organizations;
- Adopting positive measures to support women’s artistic and intellectual creation and production, including through national and international exchange.

**Recommendation:** The Gender Equality Law should be revised to include a more comprehensive provision on intellectual, artistic and cultural creation and production, including specific measures for positive action.

## K. Gender equality in information resources and technology

SDG 5’s Target 8 calls for enhancing “the use of enabling technology, in particular information and communications technology, to promote the empowerment of women”. Article 8 of the Gender Equality Law precludes gender discrimination in access to public information provided by the State. Given the increasing importance of information technology to modern societies, Article 8 could be expanded to address other forms of discrimination as well as to foster women’s equal participation in the information age. For example, it could contain provisions:

- ensuring that the design and implementation of all public programs for development of information technology include the principle of effective equal opportunities for women and men;
- fostering gender mainstreaming in the field of information technology through programs, particularly regarding access to and training in information and communications technologies, taking account of the needs of women members of communities at risk of exclusion and women living in rural settings;
- promoting content created by women;
- ensuring the absence of any sexist language or content in information and communication technologies projects wholly or partially financed with public funds.

**Recommendation:** Expand the provisions in the Gender Equality Law related to gender equality and access to and participation in information technology to, *inter alia*, preclude sexism in State-funded content, the development of programs fostering women’s access to and training in communications technologies and effective gender equality in public programs related to the information age.

## L. Gender equality and healthcare

Article 9 of the Gender Equality Law, covering healthcare and social security, states in full:

1. General and equal access to medical care shall be provided to the population without discrimination.
2. Special measures taken for promoting the health care of mothers and children, family planning and protecting women’s reproductive rights, also, state policy protecting pregnant women and maternity and other measures taken on the basis of gender peculiarities shall not be considered discriminatory.

The content of this provision could be expanded to include various specific measures to address existing discriminatory barriers to women’s health, including inequalities between women and men due to biological differences or their associated social stereotypes. Notably, Target 6 of SDG 5 calls for “universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Program of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences”. Additional provisions could thus include:

- The systematic adoption of initiatives to promote women’s health and prevent discrimination within health education programs;
- The inclusion of sexual harassment and harassment on the grounds of sex in occupational health and protection schemes;
- The integration of the principle of equality into staff training in health institutions, especially to ensure their ability to detect and handle gender-based violence;
- Ensuring the balanced presence of women and men in management and positions of professional responsibility in the national health system as a whole;
- Ensuring access to sexual and reproductive care and rights throughout the country;
- Collecting and processing data in records, surveys, statistics and other systems of medical and health information, disaggregated by sex wherever possible.

**Recommendation:** Expand the provisions in the Gender Equality Law related to health care to encompass, *inter alia*, the health-related aspects of sexual harassment, the elimination of discrimination in healthcare access and outcomes based on biological differences and social stereotypes, gender balance in service provider and management staff, the collection and analysis of gender disaggregated statistics, and the continued adoption of special initiatives to promote women’s equal access to health.

## M. Gender equality in sport

At present, Georgian law and policy lacks any provisions related to gender equality in sports. An article should thus be added to the Gender Equality Law to address this legislative gap. The new provision should guarantee that the design and implementation of all public sports programs include the principle of the real and effective equality between women and men. It should further foresee temporary special measures to further female sport and foster the effective access by women to athletic disciplines by implementing specific programs for all ages and levels. In light of the current absence of data on women in sports, the provision should provide for sex disaggregated data collection in this field.

**Recommendation:** An article should be added to the Gender Equality Law to address the current lack of gender equality in sports, requiring the collection of gender-disaggregated statistics in both professional, recreational and educational sports activities, and foresee the establishment of temporary special measures to foster the increased involvement of women and girls in sports.

## N. Gender equality in actuarial factors

The Gender Equality Law does not address discriminatory use of sex as a factor in the calculation of insurance and related financial services premiums and benefits. It should prohibit the use of sex as a discriminatory factor where actuarial calculations generate differences in individuals’ premiums and benefits. Similarly, pregnancy- and maternity-related costs should be precluded from resulting in differences in individuals’ premiums and benefits, nor may differences be authorized in this regard.

**Recommendation:** A provision should be added to the Gender Equality Law prohibiting sex as an actuarial factor resulting in discrimination.

## O. Gender equality in political participation

As noted above, SDG 5 on gender equality calls for ensuring “women’s full and effective participation and equal opportunities for leadership at all levels of decisionmaking in political, economic and public life”.

Article 11 of the Gender Equality Law addresses “guarantees for equal suffrage”. The use of the term “suffrage” in the English translation of the Law seems misplaced, as it relates only to the right to vote. Article 11 states in full:

1. Everyone shall have the right to participate in elections on equal terms without discrimination.

2. Both men and women shall have equal rights to be elected to a representative body.
3. Men and women may be elected on equal terms without discrimination.

As discussed in greater detail in the section on women's political participation, below, the electoral system contains several structural barriers inhibiting women's equal opportunity to participate in elections and to be elected without discrimination. Although the necessary changes to the electoral system (towards proportional representation) cannot appropriately be addressed through the Gender Equality Law, revising Article 11 to go beyond declaratory statements and include specific measures to address the concrete barriers to women's equal political participation could actually contribute to fostering gender equality in this field.

### 1. Legal quotas

As described in detail in the section on women's political participation, below, the financial incentives established by Article 30(7<sup>1</sup>) of the Law on Political Unions of Citizens have not produced the necessary results.<sup>13</sup> Although women account for 53,76% (men, 46,24%) of the electoral body, they comprise only 15% of the seats of Parliament.<sup>14</sup>

In order to address this *de facto* discrimination, often due to structural barriers, many countries, such as Slovenia, Mongolia, Kyrgyzstan, Serbia, Poland and Montenegro, among others, have established quotas to ensure the minimum participation of either sex on party lists for national parliamentary elections. The quotas for the above-listed countries range from 30-40%.<sup>15</sup> This legal reform process was initiated in 2017, and has, to date, passed three parliamentary committees.

**Recommendation:** Add a provision to Article 11 of the Gender Equality Law requiring a minimum percentage of women candidates on party lists for parliamentary elections, as well as a provision to the Electoral Code.

### 2. Parliamentary reform

Another potential option for fostering women's equal political participation involves reforming the rules and internal procedures within parliament, including the facilities and working conditions, hours of sitting, principles for leadership recruitment, and provision of childcare and maternal facilities.

**Recommendation:** A provision could be added to Article 11 of the Gender Equality Law to require gender-sensitive internal parliamentary procedures.

## P. National machinery for gender equality

National machineries for gender equality refer to the institutional arrangements and mechanisms for ensuring effective gender mainstreaming. Georgia's national machinery consists of three key bodies: the Gender Equality Council, the Inter-Agency Commission on Gender Equality, Violence

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<sup>13</sup> Article 30 (7<sup>1</sup>) provides: "The election subject receiving funding from the state budget in accordance with rules prescribed by this Article, will receive from the state budget 10% of supplement, if in the nominated party list (local self-government elections – all party list) it includes at least 20% of different gender in each 10 candidates".

<sup>14</sup> Data of Central Election Commission of Georgia. <http://cesko.ge/statistic/>.

<sup>15</sup> Mongolia requires a minimum of 20%; Serbia: 25%.



against Women and Domestic Violence and the Gender Equality Department of the Public Defender's Office.

## 1. Gender Equality Council

In 2004, Parliamentary Decree #105/3 established the Gender Equality Council. It became a standing body with the passage of the Gender Equality Law in 2010. Article 12(3)(a)-(i) set forth the Council's scope of activities. With the establishment of the Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence in the executive branch in June 2017, the institutional framework for gender equality has changed, and should be reflected accurately in the Gender Equality Law.

Article 12 of the Gender Equality Law should be revised to update the scope and content of duties assigned to the Gender Equality Council. Given the mandate of the Inter-Agency Commission, the Gender Equality Council's role in the formulation of national action plans, as set forth in Article 12(3)(a), may need to be revised. Similarly, its role in developing "a monitoring and assessment system for activities aimed at ensuring gender equality" may need to be revised or more clearly defined, in light of the new institutional arrangements.

Given its placement within Parliament, the Gender Equality Council remains uniquely poised to play an important role in monitoring legislative developments, especially in light of the lack of gender balance among parliamentarians. In line with its past accomplishments, the scope of its mandate could include:

- the authority to define strategies and measures to secure equal opportunities;
- initiation of draft legislation or amendments to address the perpetuation of inequalities through existing legislation;
- monitoring the actual implementation of legislation, and evaluating any follow-up;
- the provision of expertise and advice pertaining to draft laws; the adoption of resolutions;
- requesting information, data and particular documents relevant to policy and legislative developments from Government and other State institutions;
- holding parliamentary hearings on specific issues with government actors and ministries to develop report to send to parliament, such as on early marriages or FGM;
- commissioning researchers to carry out surveys and studies on specific issues;
- ensuring that gender impact assessments are performed for each proposed piece of legislation;
- developing internal regulations and disciplinary measures for Parliament, such as on sexual harassment, hate speech or discrimination (in cooperation with the ethics commission);
- providing for systematic formal and informal opportunities for engagement with civil society organizations;
- producing annual reports on legislative developments and issues of concern with respect to existing legislation.<sup>16</sup>

However, according to the Rules of Parliament, as a council, it is not entitled to staff and additional financial resources. Yet, it is incapable of fulfilling its current mandate with the existing resources

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<sup>16</sup> See, Council of Europe, Handbook on National Machinery to Promote Gender Equality, (2001), pp. 16-17.



or the lack of. Changing the formal nature of the council, such as to a committee, could enable the gender equality machinery within Parliament to successfully undertake the current, and a possibly expanded, mandate.

Article 12(3) states that the Council “is entitled to” engage in the activities set forth, rather than obliging it to perform these functions. The language “is authorized to” should be replaced with language requiring the performance of these functions.

**Recommendations:** The mandate of the Gender Equality Council, as established in Article 12(3)(a)-(i) should be revised and updated to reflect its current mandate in relation to the newly-established body, with language obliging it to perform these functions.

**Recommendation:** The Gender Equality Council should be mandated with requiring that gender impact assessments are performed on all proposed legislation.

Ensuring sufficient financial and human resources for the Gender Equality Council, independent of donor contributions, remains a critical component of its effectiveness.

**Recommendation:** Specific reference should be made within Article 12 of the Gender Equality Law to the full funding of the Gender Equality Council out of the State budget.

Any revisions to Article 12 must take into consideration any structural reforms of Parliament, in parallel with structural reforms of other parliamentary councils.

## **2. Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence**

In June 2017, the Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence was established pursuant to Decree #286. An inter-ministerial body located in the Executive branch, the Commission was created in order to meet the requirements of Article 10 of the Istanbul Convention. Given its recent creation, the Inter-Agency Commission’s existence and mandate is not reflected in the existing Law on Gender Equality, thus requiring the latter’s revision.

The Commission involves, inter alia, representatives of Ministries, the Public Defender’s Office, the Legal Aid Service, the Public Broadcaster, the Gender Equality Council of Parliament, the State Fund for the Protection and Assistance of Victims of Human Trafficking and the Supreme Court. Thus, under its auspices, Gender Focal Points have been identified at all government institutions as major partners responsible for implementation of the gender mainstreaming within State institutions. With regard to civil involvement, Articles 1(3) and 2(3) foresee the participation of civil society groups only “upon the invitation of the Chairman”. Article 3 provides for the creation of a consultative group,<sup>17</sup> but provides no detail as to the modalities of the consultative group’s engagement. Decree #286 thus establishes a limited scope of participation of a limited number of civil society organizations to be determined at the discretion of the Chairman.

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<sup>17</sup> Article 3(2) states: “The competition commission established by the Interagency Commission shall select members of the Consultative Group based on the criteria established by the Interagency Commission.”

Its mandate covers gender equality, violence against women and domestic violence, as well as implementation of the UN Security Council resolutions on Women, Peace and Security. It will be responsible for the adoption, implementation and monitoring of the National Action Plans on Gender Equality, Violence against Women/Domestic Violence and UN Security Council Resolutions on Women, Peace and Security.

In addition to its work on substantive issues, the Commission is mandated to support the effective functioning of, and coordination between, the activities of respective state bodies in the field of gender equality, violence against women, domestic violence and women's empowerment.<sup>18</sup> Its mandate includes developing proposals on these issues and submitting them to the Government of Georgia for their review and further action. The Commission will also serve as a platform for a close cooperation with international organizations and active engagement of civil society.

**Recommendation:** A separate article should be added to the Gender Equality Law referring to the Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence and its mandate.

### 3. Gender Equality Department, Public Defender's Office

The Department of Gender Equality of the Public Defender's Office was established on May 15, 2013. Its mandate includes, *inter alia*, monitoring protection of the right to gender equality, as well as examining individual complaints concerning related rights violations and issuing recommendations. It also engages in research, promotes gender equality issues in the activities of the Public Defender, raises public awareness of gender equality issues in Georgia, and issues annual and issue-specific reports on women's rights issues.

The current draft of the Gender Equality Law preceded the creation of the Gender Equality Department of the Public Defender's Office, and should be revised and updated accordingly.

Article 14 of the Gender Equality Law recognizes the two key functions performed by the Public Defender's Office: monitoring gender equality issues and addressing individual complaints concerning rights violations. However, it does not refer to the existence of the Gender Equality Department, nor other specific aspects of the Department's mandate (albeit they fall into the catch-all provision, Article 14(2)), such as conducting research, and issuing annual and special reports on gender equality issues.

**Recommendation:** Revise Article 14 of the Gender Equality Law to refer specifically to the Gender Equality Department of the Public Defender's Office, and include an expanded description of its mandate.

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<sup>18</sup> In this regard, and with respect to violence against women and domestic violence, the Commission functions as a domestic monitoring mechanism required by Article 10 of the Istanbul Convention.



## VI. Law on the Elimination of All Forms of Discrimination

The importance of an Anti-Discrimination Law for addressing gender and intersectional forms of discrimination cannot be overstated. SDG 5 on gender equality calls for ending discrimination against women and girls. An effective Anti-Discrimination Law provides not only substantive protection, but also available complaint mechanisms and procedural paths to obtain remedies.

Anti-discrimination provisions are ubiquitous in all human rights treaties, ensuring that the rights provided for are guaranteed without discrimination. The Universal Declaration of Human Rights (UDHR),<sup>19</sup> the International Covenant on Civil and Political Rights (ICCPR)<sup>20</sup>, the International Covenant on Economic Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC),<sup>21</sup> the European Convention on Human Rights (ECHR) and the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), etc., all contain anti-discrimination provisions that apply specifically to the substantive protections enumerated within each treaty. It is thus important to recall that with respect to the rights described throughout this report, women must enjoy them without discrimination on any ground.

Several international human rights treaties are directed toward the protection of a specific category of persons from discrimination. For example, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is an instrument dedicated to ensuring women's equality. Likewise, the Convention on the Elimination of All Forms of Racial Discrimination (CERD) focuses on racial equality. The Convention on the Rights of Persons with Disabilities (CRPD) prohibits discrimination based on disability. Others treaties prohibit discrimination, focusing on specific fields. For example, the ILO Convention No. 111<sup>22</sup> addresses discrimination in the field of labour.

At the regional level, it is important to note that Article 1 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) creates the positive obligation for States to ensure the rights enumerated in the Convention within their territories.<sup>23</sup> European standards in Anti-Discrimination Law are also set forth in a series of Directives, which specify the key principles to be incorporated into domestic law:

<sup>19</sup> GA RES 217A (III), 10 December 1948.

<sup>20</sup> GA RES 2200A (XXI), 16 December 1966, entry into force 23 March 1976. Armenia acceded to ICCPR on 23 June 1993.

<sup>21</sup> CRC, GA Res. No. 44/25, 20 November 1989.

<sup>22</sup> 362 U.N.T.S. 31, 15 June 1960.

<sup>23</sup> See, *Iliascu and Others v. Moldova and Russia*, Application No. 48787/99, 8 July 2004 (finding both Moldova and Russia in violation of Article 1 of the ECHR for failing to assume their positive obligations to protect the human rights of persons within their territories).

- Council Directive Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin (Race Directive);<sup>24</sup>
- Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation, (Framework Directive);<sup>25</sup>
- Council Directive on the Implementation of the Principle of Equal Treatment for Men and Women as Regards Access to Employment, Vocational Training and Promotion, and Working Conditions (Revised Equal Treatment Directive);<sup>26</sup>
- Council Directive 75/117/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (Equal Pay Directive);<sup>27</sup>
- Council Directive on the Burden of Proof in Cases of Discrimination Based on Sex (Directive on the Burden of Proof);<sup>28</sup>
- Council Directive on the progressive implementation of the principle of equal treatment for men and women in matters of social security (Social Security Directive).<sup>29</sup>

As international and European standards constitute only minimum standards, States are free to establish higher standards to advance the principle of equality.

The current Law of Georgia on the Elimination of all Forms of Discrimination (hereinafter “Anti-Discrimination Law”) contains both substantive and procedural gaps that impede its material application in a range of fields.

## A. Competence of the Public Defender’s Office as equality body

Pursuant to the Anti-Discrimination Law<sup>30</sup> and the Civil Code (Articles 363<sup>1-6</sup>) complaints concerning discrimination can be filed with the Public Defender and the courts. Article 8(4) of the Anti-Discrimination Law requires:

Any administrative, local self-government and state body (including the Prosecutor’s Office, investigation and court bodies) shall be obliged to transfer materials, documents, other information and explanations related to the case hearing to the Public Defender within 10 calendar days after request as provided for by law.

However, no provisions similarly require legal entities in the private sector to respond to inquiries by the Public Defender’s Office, impeding its ability to address discrimination in the private sphere. In this regard, it is important to note that 45% of the complaints it receives involving discrimination occur in the private sector.<sup>31</sup>

The Office of the Public Defender functions as Georgia’s Equality Body.<sup>32</sup> As a general matter, the Committee on the Rights of the Child (CRC) recommended that the State:

<sup>24</sup> Council Directive 2000/43/EC, 29 June 2000.

<sup>25</sup> Council Directive 2000/78/EC, 27 November 2000.

<sup>26</sup> Council Directive 2002/73/EC, 23 September 2002.

<sup>27</sup> Council Directive 75/117/EEC, 10 February 1975.

<sup>28</sup> Council Directive 97/80/EC, 15 December 1997.

<sup>29</sup> Council Directive 79/7/EEC, 19 December 1978.

<sup>30</sup> Article 8, Anti-Discrimination Law.

<sup>31</sup> Public Defender (Ombudsman) of Georgia, *Special Report on Combating and Preventing Discrimination and the Situation of Equality*, 2016, p. 8.

<sup>32</sup> Public Defender, Ordinance N140, 22 August 2014, (establishing the Equality Department).

Allocate the necessary human, technical and financial resources to institutions in charge of monitoring the implementation of the law on the elimination of all forms of discrimination and especially to the Office of the Public Defender.<sup>33</sup>

In its Concluding Observations, the Committee on the Elimination of Racial Discrimination (CERD) also recommended that the State:

Continue to engage with the Public Defender of Georgia to improve the implementation of the anti-discrimination legislation in practice by introducing relevant amendments, including making the provision of information by private entities and individuals mandatory.<sup>34</sup>

**Recommendation:** As the designated Equality Body, the Public Defender's Office should have the power under Article 8(4) to compel response by both public and private legal entities to inquiries concerning claims of discrimination. The Law should also be amended to make the Public Defender's Office's recommendations in cases of discrimination binding.

The mechanism for compelling response could be through the power of subpoena, the imposition of fines or other sanctions, or as suggested by the Public Defender's Office, by automatically issuing a finding on behalf of the complainant in cases where the respondent fails to respond.

Both public and private legal entities should be required to implement recommendations issued by the Public Defender's Office. Enforcement in the private sector is necessary for ensuring meaningful access to justice for victims of discrimination. The Public Defender's recommendations should be binding.

**Recommendation:** Article 24 of the Organic Law on Public Defender of Georgia should obligate private legal entities that receive recommendations and general proposals under the Anti-Discrimination Law, to respond to the Public Defender in writing within 20 days, and to implement the recommendations as binding.

## **B. Limitations in the implementation of the Anti-Discrimination Law**

### **1. Statute of limitations**

The Race and Framework Directives leave it to the national authorities to determine the appropriate time limits for filing cases.<sup>35</sup> Short time periods have become a serious obstacle in effective implementation of Anti-Discrimination Laws. Short limitations periods can impede access to justice, particularly for vulnerable segments of the population, especially people with literacy difficulties, people with inadequate command of the state's official language and disabled people. Article 363<sup>2</sup> (2) of the Civil Procedure Code of Georgia establishes a statute of limitations of three months for filing a discrimination complaint before the courts. This is longer than the 30-day statute of limitations provided for filing a complaint under Article 38 of the Labour Code.

Given the existing complaint mechanisms (court and Public Defender) and the available remedial scheme (only the courts can award damages), many complainants file simultaneously with both

<sup>33</sup> CRC, Concluding Observations on the fourth periodic report of Georgia, CRC/C/GEO/CO/49 March 2017, para 15(a).

<sup>34</sup> CERD, Concluding observations of the 6th to 8th period report, CERD/C/GEO/CO/6-8, 13 May 2016, para 7(c).

<sup>35</sup> Article 7(3), Race Directive; Article 9(3), Framework Directive.

bodies. The Public Defender cannot be used in lieu of the courts given the short statute of limitations, as it is often unable to complete an investigation within the three-month period. The current legislative framework fosters a duplication of efforts, undermining both the efficiency and the effectiveness of both institutions. Extending the statute of limitations for court cases would enable the Office of the Public Defender to engage as a first instance mechanism. Indeed, the Public Defender's fact-finding into a case facilitates the work of a court subsequently hearing the same case. Conversely, its recommendations and/or mediation (under Article 6(e)) of a case may result in a settlement of the dispute, precluding resource intensive litigation and judicial overload.<sup>36</sup>

The Public Defender's Office recommends that the statute of limitations for filing a discrimination complaint before the courts be extended to one year in order to provide time for the victim to recognize the discrimination, seek legal counsel, find the resources to pay for legal counsel, prepare psychologically and to prepare the case.<sup>37</sup> Attention should be paid to the existence of any distinct limitations for filing claims under the Labour Law or other related legislation, and should be harmonized.

The importance of ensuring an effective legislative framework for filing discrimination complaints was highlighted by the CEDAW Committee in its Concluding Observations, which called upon the State:

To ensure the effective implementation of its laws on the elimination of all forms of discrimination and gender equality and to take measures to enhance implementation through effective enforcement mechanisms.<sup>38</sup>

**Recommendation:** Article 363<sup>2</sup>(2) of the Civil Procedure Code, Article 38 of the Labour Code and Article 137 of the Law on Civil Service should be amended in a harmonized manner in order to lengthen the statute of limitations for filing a discrimination complaint before the courts.

## 2. Regulation of specific sectors

Significantly, the Anti-Discrimination Law fails to detail its application to specific sectors, including: housing, health, employment, education, access to services and public accommodations, each of which involve specialized legal protections. This consequently impedes the application of relevant standards, within each specific context.

For example, "reasonable accommodations"<sup>39</sup> are a critical element in combating disability discrimination. A reasonable accommodation is defined in the CRPD as:

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<sup>36</sup> Public Defender (Ombudsman) of Georgia, *Special Report on Combating and Preventing Discrimination and the Situation of Equality*, 2016, p. 11.

<sup>37</sup> Public Defender (Ombudsman) of Georgia, *Special Report on Combating and Preventing Discrimination and the Situation of Equality*, 2016, pp. 11-12.

<sup>38</sup> CEDAW, Concluding observations on the combined fourth and fifth periodic reports of Georgia, CEDAW/C/GEO/CO/4-5, 24 July 2014, para 11(a).

<sup>39</sup> Reasonable accommodation is sometimes considered a form of positive measures, as it aims to ensure substantive equality in light of the fact that the identical treatment of individuals does not necessarily eliminate discrimination. However, they differ as reasonable accommodations are provided to individuals, while positive measures are policies adopted for the benefit of groups.

necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.<sup>40</sup>

Historically applicable to the field of employment discrimination, the passage of the CRPD expanded the scope of reasonable accommodation to all spheres, such as, for example, education.<sup>41</sup>

Another example concerns the employment sector, where employers, in addition to individual perpetrators, must bear responsibility for any acts of discrimination occurring within the workplace. This shall include harassment caused by other workers, agents of the employer or customers. For example, an individual person who harasses a co-worker can be found liable as well as the employment institution. Clearly worded provisions should exempt employers from liability for harassment if they can demonstrate that they took reasonable, practical steps to prevent or correct the harassing behaviour.

The Anti-Discrimination Law should also explicitly prohibit discrimination in all aspects of education: admissions and recruitment, including pregnant students; student treatment and services; disciplinary measures; environmental and physical conditions of the premises; classroom assignment and ability grouping; grading; vocational education; counseling and guidance; recreation; physical education and athletics; academic programs; financial aid and scholarships; and, housing.

The Anti-Discrimination Law should further prohibit discrimination in access to all goods and services available to the public. The Law should enumerate an inexhaustive list of the types of goods and services available to the public, the denial of access to which the Law renders unlawful, whether the owner or operator is public or private, including, but not limited to:

- Public administration and services provided by national authorities;
- Health services, including the choice of a family doctor, medical assistance, health insurance, emergency services or other health services;
- Banks and other financial institutions;
- Transportation, by plane, boat, train, bus, trolleybus, taxi or by any other means;
- Theatres, cinemas, libraries, museums and exhibitions, shops, hotels, restaurants, bars, discos, etc.

The Anti-Discrimination Law should make unlawful the following forms of housing discrimination, *inter alia*:

- To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling or other real estate to any person on the basis of a protected category;
- To discriminate against, or to harass any person in the terms, conditions or privileges of the sale or rental of a dwelling or other real estate, or in the provision of services or facilities in connection therewith, on the basis of a protected category;

<sup>40</sup> Article 2, CRPD.

<sup>41</sup> Article 24(2)(c), CRPD.



- To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling or other real estate that indicates any preference, limitation or discrimination based on a protected category;
- To represent to any person on the basis of a protected category that any dwelling or other real estate is not available for inspection, sale or rental when the dwelling or real estate is in fact so available;
- To coerce, intimidate, threaten, interfere with or otherwise victimise any person in the exercise or enjoyment of any right granted or protected by this law for having filed a complaint, testified or cooperated in any investigation or enforcement action pursuant to the law;
- To discriminate against any person in the making or purchasing of loans or providing other financial assistance for real estate related transactions on the basis of a protected category;
- To forcibly evict or demolish dwellings on the basis of the residents' or owners' membership in a protected category;
- To deny access to public services, infrastructure and utilities related to the enjoyment of the right to housing, including, *inter alia*, sewage, drainage, electric, water and heating facilities, emergency and rescue services, access roads and transportation, repair services on the basis of a protected category.

At the same time, several exceptions should be carved out of the general prohibition on housing discrimination. These might include disparate treatment in sales and rentals of dwellings on the basis of age as applied to:

- a dwelling or housing complex intended for, and solely occupied by, persons at the age of retirement/pensioners;
- the refusal to rent to a person who is under the age of majority; and,
- disparate treatment in sales and rentals of dwellings on the basis of religion or belief as applied to a religious organization, association or society, or any non-governmental institution or organization operated by, or in conjunction with, a religious organization, association or society, which limits the sale, rental or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons.

This latter exception ceases to apply if membership in that religion is restricted on the basis of a protected category. The religious restriction or preference must be stated in written policies and procedures of the religious organization, association or society.

**Recommendation:** The Anti-Discrimination Law should be amended to regulate its application to diverse sectors, referring specifically to applicable international standards.

### 3. *Lex specialis*

Several pieces of legislation prohibit discrimination. These include the Anti-discrimination, Gender Equality and Labour Laws, among others. The Anti-Discrimination Law is the most comprehensive, establishing the forms of discrimination and the necessary procedures specific to the field of discrimination law, including the shifting burden of proof.

Article 3 renders the Law inapplicable in the face of the application of other laws. It states: "The requirements laid down in this Law shall apply to the actions of public institutions, organisations,



and to the actions of natural and legal persons in all spheres, only if the actions are not regulated by other legal acts, which are in conformity with the provisions of Article 2(2)(3).” Article 3 thus creates potentially significant gaps in protection. Legislation should be harmonized to provide for the same protection against discrimination, with the Anti-Discrimination Law constituting *lex specialis*.

**Recommendation:** Legislation should be revised to ensure harmonized protection for discrimination across sectors, with the Anti-Discrimination Law functioning as *lex specialis* on issues of discrimination.

## C. Forms of discrimination in the Anti-Discrimination Law

The Anti-Discrimination Law contains several substantive gaps, which preclude protection from the full range of forms of discrimination as set forth in international standards. These include: harassment, sexual harassment, segregation and the right to a reasonable accommodation for persons with disabilities.

### 1. Harassment

Harassment constitutes “unwanted conduct” that can take the form of physical, verbal or non-verbal behavior, which “takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment”.<sup>42</sup>

There are three elements to legally proving harassment:

- the victim must be a member of a protected class;
- the victim was subjected to unwelcome verbal or physical conduct based upon his or her membership in that protected class;
- the conduct in question created an intimidating, hostile, degrading, humiliating or offensive environment.<sup>43</sup>

In order to qualify as harassment or hostile work environment, the conduct must be sufficiently severe or pervasive, and interfere with an employee’s work performance or create an intimidating, offensive work environment. In determining whether the person’s dignity was actually violated, the victim’s subjective perception should be considered in addition to an objective, “reasonable person” standard. The complainant does not have to prove that they were treated less favourably than a person in a similar situation.

Examples of actions that may result in hostile environment harassment, but are non-sexual in nature (see section on sexual harassment, below), include:

- Use of racially derogatory or homophobic words, phrases, epithets;
- Demonstrations of a racial or ethnic nature such as the use of gestures, pictures or drawings which would offend a particular racial or ethnic group;
- Comments about an individual’s skin color or other racial/ethnic characteristics;

<sup>42</sup> Article 2(3), Framework Directive; Article 2(3), Race Directive; Article 2(2),(3), Revised Equal Treatment Directive.

<sup>43</sup> It is important to note the importance of the conjunction “or” in the last element. The requirement to prove an intimidating, hostile, degrading *and* offensive environment would be too onerous of a burden for the victim.

- Making disparaging remarks about an individual's gender, age or sexual orientation that are not sexual in nature;
- Negative comments about an employee's religious beliefs (or lack of religious beliefs);
- Expressing negative stereotypes regarding an employee's birthplace or ancestry;
- Derogatory or intimidating references to an employee's mental or physical impairment.

Anyone in the workplace might commit this type of harassment – a management official, co-worker, or non-employee, such as a contractor, vendor or guest. Employers shall be held responsible for harassing conduct committed by their employees or agents. The employer is responsible for the creation of a hostile work environment if it did not take any steps to prevent said harassment. The victim can be anyone affected by the conduct,<sup>44</sup> not just the individual at whom the offensive conduct is directed.

Another form of harassment consists of employment actions taken by employers, which result in some significant change in the employee's status, such as hiring, firing, promotion, failure to promote, demotion, formal discipline, undesirable reassignment, significant change in benefits or a work assignment. This kind of harassment is unique to supervisors or managers.

Harassment is not defined or prohibited in the Anti-Discrimination Law, constituting a major legislative gap. It is defined in the Labour Code as a form of discrimination. Article 2(4) of the Labour Code states:

Discrimination shall be direct or indirect harassment of a person aimed at or resulting in creating an intimidating, hostile, humiliating, degrading, or abusive environment for that person, or creating the circumstances for a person directly or indirectly causing their condition to deteriorate as compared to other persons in similar circumstances.

Unlike direct and indirect discrimination, harassment involves behaviour, and does not legally require a comparator to be established. Consequently, the definition of harassment in the Labour Code is erroneous and should be revised.

Educational institutions should be held responsible for the harassment of students by employees of the institution, other students, and third parties legitimately on the school's premises.

**Recommendation:** Harassment should be defined pursuant to international standards and included in the Anti-discrimination, Gender Equality, Education and Labour Laws in a harmonized manner. Internal complaint mechanisms should be established for harassment in the education sector.

## 2. Sexual harassment

Sexual harassment is defined as "where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment".<sup>45</sup> Examples of actions that could

<sup>44</sup> See, e.g., *Hagan v. Australia*, ICERD, (recognizing the claims of an indigenous Australian claiming that the name of a stadium, the "E.S. 'Nigger' Brown Stand" was offensive).

<sup>45</sup> Article 2(2),(3), Revised Equal Treatment Directive; see also, Article 40, Istanbul Convention.

constitute sexual harassment, which may be based on a person's sex and/or sexual orientation, and could create a hostile environment include:

- Leering, or staring in a sexually suggestive manner;
- Making offensive remarks about looks, clothing, body parts;
- Touching in a way that may make an employee feel uncomfortable, such as patting, pinching or intentional brushing against another's body;
- Telling sexual or lewd jokes, hanging sexual posters, making sexual gestures;
- Sending, forwarding or soliciting sexually suggestive letters, notes, emails, or images.

Sexual harassment can also take the form of a *quid pro quo*, in which the conditions of one's employment are conditioned on the victim's consent to offers of a sexual nature.

Sexual harassment occurs in a range of sectors, such as in employment, educational institutions, in the receipt of goods or services, in housing, such as through renting or attempting to rent accommodation, buying or selling land and in sporting activities.

Numerous international legal documents prohibit sexual harassment, including CEDAW General Recommendation No. 19 and EU Directives. CEDAW General Recommendation No. 19 defines sexual harassment as a form of violence against women and as form of discrimination. It states:

Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.

Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.<sup>46</sup>

Article 2(3) of Council Directive 2002/73/EC provides that: "harassment and sexual harassment within the meaning of this Directive shall be deemed to be discrimination on the grounds of sex and therefore prohibited".<sup>47</sup>

Sexual harassment in Georgia has been described as an "acute" problem, with a significantly high incidence and very low awareness of the concept of sexual harassment, including harassment in the workplace.<sup>48</sup>

While the Gender Equality Law refers to actions that constitute sexual harassment in Article 6(1), it is not defined by name. It precludes solely in the context of "labour relations: any unwanted verbal, non-verbal or physical behaviour of sexual nature with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, or offensive environment". However,

<sup>46</sup> CEDAW, General Recommendation No. 19, paras 17, 18.

<sup>47</sup> See also, Article 2(a) of the Recast Directive 2006/54/EC.

<sup>48</sup> USAID, Article 42, Gender Discrimination in Labour Relations", 2014, available at: [http://article42.ge/wp-content/uploads/2016/03/Gender\\_Discrimination\\_in\\_Labor\\_Relations.pdf](http://article42.ge/wp-content/uploads/2016/03/Gender_Discrimination_in_Labor_Relations.pdf), (citing US Department of State, Country report on Human Rights, 2011, Georgia, p. 42).

the provision lacks any practical enforcement mechanism. Sexual harassment is not prohibited along with harassment in Article 2(4) of the Labour Law. Furthermore, sexual harassment is not included in either the Anti-discrimination or Education Laws.

Article 15 of Decree #200 on Ethical Norms and Rules of Behavior in Public Institutions requires civil servants to treat colleagues with due respect for their gender identity and sexual orientation, and prohibits sexual harassment. Decree #200 is a declaratory statement on ethical standards, and does not establish disciplinary liability and leaves it to the discretion of the institutions themselves to regulate the issue through internal mechanisms, such as General Inspection.

Article 77(3) of the Law on Civil Service also obliges civil servants to respect ethical norms, the violation of which can be the basis for disciplinary action. Articles 88 and 85(1)(c) lay out the basis for disciplinary proceedings, which must be filed within three years of the facts giving rise to the complaint. The disciplinary proceedings fall within the competence of the General Inspectorate, and must to be undertaken within one month.<sup>49</sup> The decision issued by the General Inspection can be challenged in court as an administrative decision.<sup>50</sup> While providing a viable administrative avenue for filing a sexual harassment complaint, the Law on Civil Service and the Administrative Law contain no definition on sexual harassment, containing its constituent elements.

The absence of protection from sexual harassment in Georgia's legislative framework has drawn the attention of U.N. bodies. The *Report of the Special Rapporteur on violence against women, its causes and consequences* stated:

The mandate holder was informed that sexual harassment at workplace is frequent, but underreported, which stigmatizes women. Already in 2006, the CEDAW Committee recommended to the State to make the existing provision on harassment at workplace (art. 2 (4)) of the Labour Code, which does neither refer explicitly to sexual harassment nor its forms, in compliance with the General recommendation n° 19 (GR 19). She regrets that there is no data available on the prevalence of sexual harassment and that other forms of harassment, such as offences in the public space which are not considered as violence.<sup>51</sup>

The Special Rapporteur also expressed concern "that the law does not cover the issue of sexual harassment in education establishments or sexual harassment at [the] workplace".<sup>52</sup>

In its most recent Concluding Observations, the Human Rights Committee stated:

The State party should step up its measures aimed at ensuring gender equality, including by prohibiting sexual harassment by law, providing for sanctions with a deterrent effect and for protection for victims, raising awareness of the population at large about the inadmissibility of harassment and encouraging reporting of such cases.<sup>53</sup>

<sup>49</sup> Article 90, Law on Civil Service. Article 95 foresees the exceptional extension of the proceedings to two months.

<sup>50</sup> Article 180, Administrative Code.

<sup>51</sup> A/HRC/32/42/Add.3, para 18, Mission to Georgia (15 to 19 February 2016), citing the Annual Report, Public Defender of Georgia, 2014, the Background note provided by the organization Article 42 of the Constitution and CEDAW/C/GEO/CO/3.

<sup>52</sup> A/HRC/32/42/Add.3, para 58, citing Annual Report of the Public Defender of Georgia, The Situation of Human Rights and Freedoms in Georgia, 2014, p. 419.

<sup>53</sup> Human Rights Committee, Concluding observations on the fourth periodic report of Georgia, CCPR/C/GEO/CO/4, para 7(d).

In its Concluding Observations on Georgia's 4th and 5th periodic report, the CEDAW Committee recommended that the State:

Strengthen measures to prevent and combat sexual harassment of women in the workplace by establishing labour inspectorates for effective labour law reporting and enforcement mechanisms.<sup>54</sup>

In 2013, the ILO called on the government of Georgia to: "provide information on how, and by which authority, section 6(1)(b) of the Law on Gender Equality is enforced, including information on sanctions and remedies provided. Please also provide information on any cases of sexual harassment dealt with by the courts or any other competent authorities."<sup>55</sup>

**Recommendation:** Sexual harassment should be defined as a form of discrimination and incorporated in a harmonized manner into the Anti-discrimination, Gender Equality, Education and Labour Laws, as well as into the Law on Civil Service.

**Recommendation:** Legislation should require that internal complaint mechanisms be established by employers<sup>56</sup> and educational institutions, clearly delineating procedures for filing complaints and liability for individuals, and for supervisors for any failure to investigate or act, in addition to employers and educational institutions in the public and private sector. Such internal complaint mechanisms should be the subject of labour inspections.

### 3. The right to a reasonable accommodation

The UN Convention on the Rights of Persons with Disabilities (CRPD) includes as a form of discrimination the denial of a reasonable accommodation. Historically applicable to the field of employment discrimination, the passage of the CRPD expanded the scope of reasonable accommodation to all spheres, such as, for example, education.<sup>57</sup> Further, it explicitly provides that the denial of reasonable accommodation constitutes a form of discrimination on the ground of disability.<sup>58</sup> In its General Comment No. 20, the UN Committee on Economic, Social and Cultural Rights also requires States to implement legislation that recognizes the denial of a reasonable accommodation as a form of discrimination.<sup>59</sup>

In the field of employment, a reasonable accommodation means any modification of, or adjustment to, a job, an employment practice, the work environment, or the manner or circumstances under which a position is held or customarily performed that makes it possible for a qualified individual to apply for, perform the essential functions of, and enjoy the equal benefits and privileges of, employment.<sup>60</sup> In other words, employers or others, are obliged to make reasonable adjustments to the physical or social environment in order to facilitate a particular disadvantaged person in performing the "essential tasks" of the job or accessing essential services.<sup>61</sup>

<sup>54</sup> CEDAW, Concluding observations on the combined fourth and fifth periodic reports of Georgia, CEDAW/C/GEO/CO/4-5, 24 July 2014, para 29(d).

<sup>55</sup> ILO, Direct Request (CEACR)-adopted 2013, published 103rd ILC session (2014), Georgia.

<sup>56</sup> Employers with an established minimum threshold number of employees should be required to develop an internal complaint mechanism.

<sup>57</sup> Article 24(2)(c), CRPD.

<sup>58</sup> Article 2, CRPD. *See also, Glor v. Switzerland*, Application No. 13444/04, 30 April 2009 (finding an Article 14 violation based on the State's failure to accommodate applicant's disability to allow him to fulfil his military service obligation).

<sup>59</sup> CESCR General Comment No. 20, para. 28.

<sup>60</sup> *See*, Article 5, Framework Directive; Article 27, CRPD.

<sup>61</sup> *See, Sonia Chacón v. Eures Colectividades SA*, Case C-13/05, ECJ, 11 July 2006.

The concept of reasonable accommodation most often applies to persons with disabilities, but can be applied to other protected groups, such as women, and linguistic or religious groups.<sup>62</sup>

A reasonable accommodation is only required if it does not suppose a “disproportionate or undue burden” on the employer or responsible party. Factors for determining an undue burden include, *inter alia*: the practicability and cost of the required changes; the nature, size and resources of the entity; and, the requirements of occupational health and safety regulations. It is to be determined on a case-by-case basis.<sup>63</sup>

Although Georgia ratified the CRPD, its legislation lacks any provision for a reasonable accommodation.

**Recommendation:** The right to a reasonable accommodation should be clearly defined and provided for in the Anti-discrimination, Labour and Education Laws.

#### 4. Segregation

Segregation refers to the maintenance of separate rights, facilities and services for different groups of people. Some forms of segregation are permitted, such as separate schools for girls and boys. Article 3 of the Convention on the Elimination of Racial Discrimination (CERD) condemns racial segregation and apartheid. Furthermore, several of the Committee’s General Comments address various aspects of segregation, including: the segregation of Roma in education and housing (General Comment No. 27); the segregation of persons based on their descent (General Comment No. 29); and, segregation that arises without the direct involvement of public authorities (General Comment No. 19). The ECtHR has explicitly addressed the segregation of Roma children in education.<sup>64</sup>

Georgian anti-discrimination legislation does not currently prohibit segregation in line with the Directives and other international standards.

**Recommendation:** Incorporate the definition and prohibition of segregation in the Anti-discrimination and Education Laws.

#### 5. Victimization

Anti-Discrimination Law must provide protection from any adverse treatment or consequence, including dismissal, disciplinary action or refusal to hire by employers or others, in response to complaints or legal proceedings aimed to enforce compliance with the law. Provisions on victimisation are essential for removing a significant barrier to access to justice.

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<sup>62</sup> See, e.g., *Bhinder Singh v. Canada*, ICCPR, No. 208/1986, (finding the Canadian requirement of wearing hard hats constituted indirect discrimination against a Sikh man, whose religion required him to wear a turban); see generally, CESCR General Comment No. 20.

<sup>63</sup> See, *From Exclusion to Equality*, UN Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol, p. 62, <http://www.ohchr.org/Documents/Publications/training14en.pdf>, last checked 2 December 2012.

<sup>64</sup> *D.H. and Others v. the Czech Republic*, Application No. 57325/00, Grand Chamber, 2007; *Oršuš and Others v. Croatia*, Application No. 15766/03, Grand Chamber, 6 March 2010.

Victimisation is defined in the EU Directives as “any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.”<sup>65</sup> The protection covers an individual’s participation in providing depositions or information pertaining to complaints *not their own*, such as information provided by other employees or students who witnessed the illegal acts. As underscored in the Framework Directive, “[t]he effective implementation of the principle of equality requires adequate judicial protection against victimisation.”<sup>66</sup>

The Anti-Discrimination Law contains a provision on victimisation. Article 12(1) currently reads: “No person may be subject to any negative treatment or influence for submitting an application or a complaint to relevant bodies or for cooperating with them in order to protect himself/herself from discrimination.” This provision does not conform to international standards in two respects. First, it is not included as a form of discrimination. Consequently, the burden of proof is not required to shift to the respondent. Secondly, it only covers the complainant, and not third parties providing information or testifying on his or her behalf.

**Recommendation:** The definition and prohibition of victimisation should be amended in the Anti-Discrimination Law to bring it into conformance with international standards to constitute a form of discrimination and encompass *anyone* cooperating with an investigation, complaint or proceeding.

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<sup>65</sup> Article 9, Race Directive; Article 11, Framework Directive; Article 7, Revised Equal Treatment Directive.

<sup>66</sup> Recital 30, Framework Directive.



## VII. Violence against women

Violence against women constitutes numerous human rights violations, including the right to life, the right to be free from torture, inhuman and degrading treatment, the right to the highest standard attainable to health, the right to physical integrity and the right to be free from discrimination, among others. Early marriages and female genital mutilation (FGM) as cross cutting issues for both violence against women and harmful practices are also covered in Volume 2 of this baseline study *Gender Equality in Georgia: Barriers and Recommendations*. SDG 5 calls for the elimination of “all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation”. The due diligence standard, derived from international human rights law, requires States to take positive actions to prevent, investigate, punish and provide remedies for human rights violations, those committed by both State and private actors. The European Court of Human Rights first applied the due diligence standard to cases involving violence against women in the *Aydin v. Turkey* case; CEDAW applied it in the *A.T. v. Hungary* case.

Article 5(2) of the Istanbul Convention, which Georgia recently ratified, reads:

Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.

Due diligence remains lacking in several aspects of Georgia’s efforts to combat violence against women. To date the laws criminalizing domestic violence and femicide have not been efficacious.<sup>67</sup> In its Concluding Observations, the Human Rights Committee stated:

While acknowledging the measures taken to combat domestic violence, including its criminalization in June 2012, the Committee is concerned that domestic violence remains underreported owing to gender stereotypes, lack of due diligence on the part of law enforcement officers in investigating such cases and insufficient protection measures for victims, including insufficient enforcement of restrictive and protective orders and a limited number of State-funded shelters and support services.<sup>68</sup>

In her report of 2016, the Special Rapporteur on violence against women, its causes and consequences further expressed concern:

<sup>67</sup> See, Public Defender’s Office, *Gender Equality and Women’s Rights*, 2015, p. 25, (noting 34 femicides in 2014); Public Defender’s Office, *Special Report: Evaluation of Protection Mechanism from Domestic Violence*, 2017, pp. 5.

<sup>68</sup> Human Rights Committee, Concluding observations on the fourth periodic report of Georgia, CCPR/C/GEO/CO/4, para 8.

about the inconsistent and fragmented legislative framework on violence against women that is not yet fully in line with the CEDAW Convention and the Istanbul Convention, as well as their poor implementation, due to, *inter alia* insufficient awareness about the content of the legal provisions, the lack of effective enforcement mechanisms, lack of sufficient human and financial resources, as well as the perpetuation of gender stereotypes and patriarchal attitudes.<sup>69</sup>

Georgia has since made significant advances in this regard, by adopting a series of amendments in 2017 to bring the legal framework into alignment with the international standards set forth in the Istanbul Convention. These amendments included, *inter alia*: adopting definitions of violence against women and stalking, criminalizing forced sterilization and female circumcision, providing for temporary residency for foreign women who are victims of violence, ensuring that victims of violence are notified prior to the release from custody of the perpetrator, and expanding the list of aggravating circumstances related to gender-based violence. However, the adopted amendments did not bring the legal framework fully into line with international standards. Existing legislative and policy gaps are detailed, below.

The Government also established the National Action Plan for 2016-2017 on the measures to be implemented for combating violence against women and domestic violence and protection of victims/survivors, which foresees activities related to: prevention, awareness raising, the establishment of a national referral mechanism, the establishment of a crisis center, the expansion of a hotline and the establishment of a system for data collection. This National Action Plan does not address the criminal justice sector in a detailed manner.

The National Action Plan on Human Rights provides for the creation of a handbook on investigating gender-based crimes.

**Recommendation:** Subsequent versions of the National Action Plan on Violence against Women should include increased objectives targeting the effectiveness of the criminal justice system in addressing violence against women.

## A. Definition of gender-based violence

Although the 2017 amendments added a definition of violence against women to the Criminal Code, the term “gender-based violence” should also be defined. According to the Istanbul Convention, gender based violence against women is defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately.”<sup>70</sup>

**Recommendation:** The term gender-based violence should be defined in the Anti-discrimination and Gender Equality Laws and the Criminal Code.

## B. Domestic violence

The Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence was first established in 2006 (Domestic Violence Law), and has undergone a

<sup>69</sup> A/HRC/32/42/Add.3, para 61.

<sup>70</sup> Article 3(d), Istanbul Convention.

series of amendments to strengthen its provisions, most recently in 2017 in an effort to harmonize it with the Istanbul Convention.

## 1. Scope of protection

Until the 2017 amendments, the Law defined family member as:

mother, father, grandmother, grandfather, spouse, child (stepchild), adopted child, adoptive parent, spouse of adoptive parent, foster family (foster mother, foster father), grandchild, sister, brother, parents of a spouse, son-in-law, daughter-in-law, former spouse, persons who are in a non-registered marriage and members of their families, guardians.<sup>71</sup>

Yet, the Law does not cover relationships involving non-cohabitating partners, and it remains questionable whether “persons who are in a non-registered marriage” would apply to same-sex couples. The absence of protection for same-sex couples would constitute a direct form of discrimination by the State according to the Anti-Discrimination Law. While recent amendments to the Law expanded the scope of protected persons to include women generally, it does not provide the same protection to men, also constituting direct discrimination.

**Recommendation:** Amend the Domestic Violence Law to explicitly cover non-cohabitating partners and same-sex couples.

## 2. *Ex officio* crime

The UN Handbook on Legislation on Violence against Women notes that “[t]here will be instances in which the complainant/survivor does not wish to provide testimony and/or a written statement, due to fear caused by threats from the perpetrator, shame, or other reasons”.<sup>72</sup> It thus recommends that national legislation provide for “the possibility of prosecution in the absence of the complainant/survivor in cases of violence against women, where the complainant/survivor is not able or does not wish to give evidence”.<sup>73</sup> Similarly, Recommendation Rec5(2002) of the Committee of Ministers of the Council of Europe to member States on the protection of women against violence requires States “to ensure that criminal proceedings can be initiated by the public prosecutor,” and thus not require a complaint by the victim as a prerequisite.<sup>74</sup>

In the *Case of Opuz v. Turkey*, the ECtHR found that the State had failed in its due diligence obligations to protect the complainants’ right to life in light of its failure to pursue the criminal prosecution of a perpetrator where the victim repeatedly withdrew her complaints.<sup>75</sup>

Making domestic violence and other forms of violence against women *ex officio* crimes indicates that they are taken seriously by the justice sector. It requires proactive policing and investigation, in accordance with due diligence standards, given that law enforcement cannot rely on the testimony of the victim. In such cases, law enforcement authorities must ensure that the victim/survivor remains informed of the case throughout all stages of the proceedings.

<sup>71</sup> Article 4(g), Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence

<sup>72</sup> UN Handbook Legislation on Violence against Women, p. 42.

<sup>73</sup> UN Handbook Legislation on Violence against Women, p. 41.

<sup>74</sup> Council of Europe’s Recommendation Rec(2002)5 of the Committee of Ministers to member States on the protection of women against violence, 30 April 2002, Appendix, Article 39.

<sup>75</sup> *Opuz v. Turkey*, Application no. 33401/02, 9 June 2009, paras 143, 145-149.

The Special Rapporteur on violence against women, its causes and consequences listed among her concerns reports that “investigations [into domestic violence] are halted when a victim withdraws her statement”.<sup>76</sup>

**Recommendation:** The Domestic Violence Law and criminal legislation should be amended to ensure that domestic violence and other forms of violence against women are investigated *ex officio*, so that investigation and prosecution are not dependent upon the complaint of the victim.

### 3. Restraining and protective orders

Article 10(2),(3) of the Law on Domestic Violence provides for the issuance of temporary restraining and protective orders, to be issued by judges and police, respectively. Article 12(1) establishes the temporal limit of protective orders as six months; Subsection (2) of that Article provides for their extension to a maximum of 3 months, thus providing for a total of 9 months protection, irrespective of the actual, long-term risk to the victim. As the Public Defender’s Office has identified, “it is difficult for victims to escape from their abusers for good [], which means that long-term protection measures are not being addressed”.<sup>77</sup>

Legislation should provide for the establishment of long-term, final or post-hearing orders to ensure long-term protection for victims who so require it. As noted in the UN Handbook on Legislation on Violence against Women, “[b]y reducing the number of times that a complainant/survivor must appear in court, such orders diminish the financial, emotional and psychological burdens carried by complainants/survivors, as well as the number of times they are forced to confront the perpetrator”.<sup>78</sup> Such legislation should grant the courts authority to issue a final order after notice and an opportunity for a full hearing based on allegations of violence.

**Recommendation:** The Domestic Violence Law, Administrative Law and criminal legislation should be amended to provide for the establishment of long-term or final protection orders after a full hearing on the allegations of violence.

As reported by the Public Defender’s Office, the striking difference between the number of short-term restraining orders (2536) issued by the police and longer-term protection orders (164) issued by a judge reveals the absence of sufficient information regarding the relevant procedures for obtaining the latter.<sup>79</sup>

Recommendation Rec5(2002) of the Committee of Ministers of the Council of Europe to member States on the protection of women against violence requires States to:

provide documentation particularly geared to victims, informing them in a clear and comprehensible manner of their rights, the service they have received and the actions they could envisage or take, regardless of whether they are lodging a complaint or not, as well as of their possibilities to continue to receive psychological, medical and social support and legal assistance.<sup>80</sup>

<sup>76</sup> Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia*, A/HRC/32/42/Add.3, 9 June 2016, para 93.

<sup>77</sup> Public Defender’s Office, *Special Report: Evaluation of Protection Mechanism from Domestic Violence*, 2017, p. 7.

<sup>78</sup> UN Handbook on Legislation on Violence against Women, p. 47.

<sup>79</sup> Public Defender’s Office, *Monitoring Results for Shelters of Human Trade (Trafficking) and Domestic Violence Victims*, p. 7, (indicating the data for 2015).

<sup>80</sup> Council of Europe’s Recommendation Rec(2002)5 of the Committee of Ministers to member States on the protection of women against violence, 30 April 2002, Appendix, Article 26.

While positively noting the significant increase in the number of restraining orders issued in 2014 and 2015, the Special Rapporteur on violence against women, its causes and consequences expressed concern:

about the data on law issuance of protective orders (92 in 2014 and 173 in 2015) which allows a long term protection to victims valid up to six months. This huge difference remains to be studied and properly addressed since underuse of longer-term protective orders indicates of their effectiveness and linkages between restraining and protective orders.<sup>81</sup>

In an assessment of shelters for domestic violence and trafficking victims, the Public Defender's Office found that victims:

repeatedly noted inadequate responses from police in situations where victims [], before entering shelters, have to constantly call patrol police and wait in order to get a proper response. According to the victims, the procedures for issuing a restraining order are also problematic as police often refrain from using the existing mechanism and as a result, victims experienced feelings of mistrust and insecurity and often refrain from addressing relevant authorities in cases of repeated violence.<sup>82</sup>

The lack of information on the procedures for protection and restraining orders is more acute in rural areas, and coupled with additional obstacles, such as language barriers. The *Report of the Special Rapporteur on violence against women, its causes and consequences* stated:

The mandate holder was informed that women living in rural areas do not have the same access to information about their rights, service provision for victims of violence, economic empowerment and access to employment that would allow them to leave abusive situations and to break the cycle of violence than women living in urban areas. While acknowledging the efforts of the Government, the Special Rapporteur is concerned that it was also reported that a problem is the language barrier among some minority ethnic groups and the difficulty in some cases for women to report cases of violence, in particular because of the lack of interpretation.<sup>83</sup>

In this regard, in its Concluding Observations, the Human Rights Committee recommended that:

The State party should strengthen its efforts to prevent and combat all forms of domestic violence by ensuring the effective implementation of the existing relevant legal and policy frameworks, including by: Encouraging reporting of domestic violence cases, inter alia by informing women of their rights and the existing legal avenues through which they can receive protection.<sup>84</sup>

Output 1.2 of the National Action Plan foresees awareness-raising efforts among the general public, including in educational institutions and with ethnic minority and IDP groups. It also foresees integrating trainings into trainings for public service agencies across sectors. A guidebook

<sup>81</sup> Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia*, A/HRC/32/42/Add.3, 9 June 2016, para 90.

<sup>82</sup> Public Defender's Office, *Monitoring Results for Shelters of Human Trade (Trafficking) and Domestic Violence Victims*, p. 7.

<sup>83</sup> A/HRC/32/42/Add.3, para 36, Mission to Georgia 15 to 19 February 2016

<sup>84</sup> Human Rights Committee, Concluding observations on the fourth periodic report of Georgia, CCPR/C/GEO/CO/4, para 9(a).

was developed in 2011 for law enforcement at the Ministry of Internal Affairs, which needs to be updated in light of the 2017 amendments.

**Recommendation:** Forthcoming national actions plans should foresee updating of protocols or standard operating procedures for law enforcement and other first responders to ensure that key information about restraining and protection orders is provided to victims.

Finally, as observed by the Public Defender's Office, the information provided on most of the orders fails to indicate whether the courts considered the protection needs of minors who are direct or indirect victims of the violence, nor whether a social worker was involved in addressing the best interests and needs of involved minors. The Public Defender's Office noted that only 87 of the 2536 restraining orders were issued on behalf of minors.<sup>85</sup> It concluded:

The low number of orders issued in relation to juveniles compared to the total number of orders indicates that children living with in families experiencing domestic violence are often left invisible to the system. Consequently, systemic analysis of violence against juveniles is not conducted and effective instruments for their protection and assistance are not developed.<sup>86</sup>

**Recommendation:** The Domestic Violence Law, Administrative Law, criminal legislation, as well as the National Referral Mechanism standard operating procedures of the Ministry of Internal Affairs, Ministry of the Health, Labor and Social Affairs and the Ministry of Education and Science, should mandate specific protocols for addressing minors who are direct or indirect victims of violence.

#### 4. Breaches of restraining and protection orders

The Handbook for Legislation on Violence against Women recommends that States "criminalize violations of protection orders".<sup>87</sup> Yet, the Domestic Violence Law establishes two alternative sanctions for breaches of a protective or restraining order. Article 9 of the Law provides that an initial breach of restraining and protective orders is to be governed by administrative law.<sup>88</sup> Subsection (4) of that Article reads:

Administrative law mechanisms shall be applied in the form of issuing restraining/protective orders, also when the nature of the offence, under the legislation of Georgia, does not attract criminal liability and it can be eliminated under the Administrative Code of Georgia.

Article 175<sup>2</sup> of the Code on Administrative Offences addresses the consequences of breaking of either restraining or protective order:

1. Non-compliance with the requirements and obligations contained in a restraining order – shall carry administrative detention for up to seven days or corrective labour for up to one month.

<sup>85</sup> Public Defender's Office, *Monitoring Results for Shelters of Human Trade (Trafficking) and Domestic Violence Victims*, pp. 8, 9.

<sup>86</sup> Public Defender's Office, *Monitoring Results for Shelters of Human Trade (Trafficking) and Domestic Violence Victims*, p. 9.

<sup>87</sup> UN Handbook on Legislation on violence against women, p. 50.

<sup>88</sup> The Administrative Code was adopted in 1984 and covers less severe offences (misdemeanors).

2. Non-compliance with the requirements and obligations contained in a protective order – shall carry administrative detention for up to 15 days or corrective labour for up to three months.

Note: for the offence defined in this article, the person shall be deprived of the right to carry arms for up to three years.

Significantly, one of the differences between administrative detention, pursuant to the Code on Administrative Proceedings, and deprivation of liberty, pursuant to the Criminal Code, is the fact that the administrative detention does not entail a criminal record. Furthermore, an offender is not necessarily detained as a consequence for the first breach of either order.

At the same time, Article 17(1)(b) of the Domestic Violence Law entitles the victim to “apply to relevant state authorities according to the severity of domestic violence or with a request to use criminal law mechanisms for the identification and elimination of domestic violence in case of breach of the issued restraining or protective order”.

Article 381<sup>1</sup> of the Criminal Code establishes criminal sanctions for a person who has not complied with a restraining or protective order, and has already been subjected to an administrative penalty under article 175<sup>2</sup> of the Administrative Code. Article 381<sup>1</sup> states:

Non-performance of the requirements and/or obligations provided for by a protective or restraining order . . . shall be punished by a fine or community service from one hundred and eighty to two hundred and forty hours or with imprisonment for up to a year.

It is thus only upon the second breach that a violation of a restraining or protection order is criminalized. In its recommendation to criminalize protection orders, the UN Handbook on Legislation on Domestic Violence stated: “where legislation does not criminalize the violation of a civil protection order, prosecutors and police have expressed frustration about their inability to arrest the perpetrator”.<sup>89</sup> The Handbook further recommends that national legislation provide for: “increasingly severe sanctions for repeated incidents of domestic violence, regardless of the level of injury; and, increased sanctions for multiple violations of protection orders”.<sup>90</sup> Referring to incidents of violence as well as convictions, the Handbook explains that:

Repeated incidents of domestic violence are common and, when the same penalty is applied for each assault, the deterrent effect is questionable. In the United States and some countries in Europe, more severe penalties for repeated incidents have proven to be effective. . . . New amendments to laws in the United States provide that judges can grant protection orders that last for 50 years when a survivor has had two previous protection orders against the abuser or when the abuser has violated a protection order on two occasions.<sup>91</sup>

Every breach of a restraining or protection order should thus be indicated on the perpetrator’s criminal record in order to establish a clear record of abuse for the purpose of risk assessment and for the purpose of penalty enhancement. (See section 6, below).

<sup>89</sup> UN Handbook on Legislation on Domestic Violence, p. 50.

<sup>90</sup> UN Handbook for Legislation on violence against women, p. 51.

<sup>91</sup> UN Handbook for Legislation on violence against women, p. 52.



**Recommendation:** Legislation should criminalize all violations of restraining and protection orders. Such violations should be recorded in the single criminal file of the perpetrator so that law enforcement authorities can track his history/previous behavior and for reference during the proceedings.

The imposition of fines, which are frequently paid from the family budget, can result in additional adverse consequences for the victim. As a potential additional burden on the survivor, fines constitute an inappropriate form of punishment for the perpetrator. Legislation should thus indicate that fines should not be imposed in cases of domestic violence if doing so would cause financial hardship to the survivor and/or her children.

**Recommendation:** Legislation should preclude the imposition of fines in cases of domestic violence.

**Recommendation:** Article 175<sup>2</sup> of the Code on Administrative Offences should be amended to delete provisions foreseeing correctional labour as an alternative to detention or separating the perpetrator from the victim(s).

## 5. Data collection on incidents of domestic violence and violence against women

Data collection and analysis, monitoring and evaluation all constitute a critical component to evidence-based policy making. As set forth in the Council of Europe's Recommendation Rec(2002)5 of the Committee of Ministers to member States on the protection of women against violence:

it will be necessary to set up, wherever possible, at national level, and in co-operation with, where necessary, regional and/or local authorities, a governmental co-ordination institution or body in charge of the implementation of measures to combat violence against women as well as of regular monitoring and evaluation of any legal reform or new form of intervention in the field of action against violence, in consultation with NGOs and academic and other institutions.<sup>92</sup>

As further described in the UN Handbook on Legislation on Violence against Women:

The collection of data, including statistical data, is fundamental for monitoring the efficacy of legislation. This research should include compiling data on whether and when an abuser re-offends and whether such offences involve the same or a different victim. Despite progress in recent years, there remains an urgent need to strengthen the knowledge base on all forms of violence against women to inform legal development. Where possible, it is important to engage the national statistical office in the collection of statistical data.<sup>93</sup>

Article 6(3)(a) and (c) of the Domestic Violence Law oblige the State to maintain "relevant statistics" and to analyze, study and assess "the factors that provoke domestic violence". The generalized duty to maintain statistics in the Domestic Violence Law has not been effective in ensuring the collection of relevant statistics in Georgia, and several gaps exist, including the data gathered

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<sup>92</sup> Council of Europe's Recommendation Rec(2002)5 of the Committee of Ministers to member States on the protection of women against violence, 30 April 2002, Appendix, Article 4.

<sup>93</sup> UN Handbook on Legislation on Violence against Women, p. 23

for the purpose of issuing restraining and protection orders, as well as for the purpose of court proceedings.

In a report on the implementation of protective measures, the Public Defender's Office noted that judges and law enforcement officers did not fill out all of the information in the requisite forms. It stated, "As a rule, orders contain very little data about the facts of violence, and its motive, form and nature".<sup>94</sup> In particular, it noted the absence of information indicating the "systematic nature and continuity of the violence".<sup>95</sup> Indeed, domestic violence can be characterized by its cyclical nature, requiring that repeated acts of violence be documented to respond appropriately to the risks of escalation. The Public Defender's Office further stated:

Repeated violence is not reflected in the court's decisions and each case of violence is considered separately. Indication of the repeated nature of violence is especially important for planning preventive measures and protecting the victim, as repetition of an abusive act by the same person is related to increased risks and needs to be considered.<sup>96</sup>

The Special Rapporteur on violence against women, its causes and consequences observed that:

The quality of the documentation of cases of domestic violence by the police is reportedly not adequate, and there are weaknesses in the collection of evidence and drafting of the police reports, which can hinder the prosecution of perpetrators of violence.<sup>97</sup>

An analysis of the appeals of protection orders revealed that they principally pertain to reductions of the terms and reconciliation. As the Public Defender's Office observed, this is often the period in which the threat of violence is heightened, as reflected by the number of murders of victims that occur after such appeals. In line with international best practice, the Public Defender's Office recommends that a risk assessment be undertaken as part of the appeal process, "especially, given that the monitoring of victims after instances of violence does not constitute an established practice of the Ministry of Internal Affairs".<sup>98</sup>

**Recommendation:** Legislation and/or official standard operating procedures should mandate the completion of all fields on the forms for restraining and protection orders, including a risk analysis by law enforcement.

**Recommendation:** Data should be collected cumulatively on each individual's request for a restraining and/or protection order. Multiple complaints by the victim and the issuance of prior protection and restraining orders should be considered: a) in the issuance of additional protection/restraining orders; b) as evidence at trial; and, c) as an aggravated circumstance for the purposes of sentencing. Victims of repeat offenders should have heightened and/or lengthened protection. Repeat offenders should be subject to mandatory arrest.<sup>99</sup>

<sup>94</sup> Public Defender's Office, *Special Report: Evaluation of Protection Mechanism from Domestic Violence*, 2017, p. 5.

<sup>95</sup> Public Defender's Office, *Special Report: Evaluation of Protection Mechanism from Domestic Violence*, 2017, p. 5.

<sup>96</sup> Public Defender's Office, *Special Report: Evaluation of Protection Mechanism from Domestic Violence*, 2017, pp. 5, 10, (also stating: "there are cases when restraining orders are issued several times against the same person over a year, but court decisions often do not consider these circumstances").

<sup>97</sup> Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia*, A/HRC/32/42/Add.3, 9 June 2016, para 93.

<sup>98</sup> Public Defender's Office, *Special Report: Evaluation of Protection Mechanism from Domestic Violence*, 2017, p. 5.

<sup>99</sup> See also, Public Defender's Office, *Special Report: Evaluation of Protection Mechanism from Domestic Violence*, 2017,

Recommendation Rec(2002)5 lays out the following issues for research and data collection, to be considered in elaborating policy in this field:

Research, data collection and networking at national and international level should be developed, in particular in the following fields:

- a. the preparation of statistics sorted by gender, integrated statistics and common indicators in order to better evaluate the scale of violence against women;
- b. the medium- and long-term consequences of assaults on victims;
- c. the consequence of violence on those who are witness to it, inter alia, within the family;
- d. the health, social and economic costs of violence against women;
- e. the assessment of the efficiency of the judiciary and legal systems in combating violence against women;
- f. the causes of violence against women, i.e. the reasons which cause men to be violent and the reasons why society condones such violence;
- g. the elaboration of criteria for benchmarking in the field of violence.<sup>100</sup>

The Public Defender's Office observed that court decisions "typically do not include a description of the facts; therefore, the nature of the violence cannot be established and future risks for the victim cannot be determined".<sup>101</sup> It underscored the need for court decisions to contain "information on what the act of violence was and the location/environment where the violence took place" as well as "on the social status of families and individual family members, especially those who abuse alcohol or other substances". The absence of detailed and specific information may render the ordered measures ineffective.<sup>102</sup> Specifically, the Public Defender's Office suggested that the concrete information as to whether physical violence involved severe injuries or was committed in a cruel manner could indicate a high risk of the escalation of violence or femicide.<sup>103</sup>

It remains questionable as to whether the judiciary collects disaggregated statistics on the issuance of protective orders, including by gender.<sup>104</sup> The Public Defender has recommended that the courts "collect information on the sex, date of birth, relationship status of a victim and their abuser, forms of violence and other significant data".<sup>105</sup>

In this regard, the Special Rapporteur on violence against women, its causes and consequences expressed concern "about the absence of unified statistical data on domestic violence and in general on gender-based violence".<sup>106</sup> She further expressed concern about the lack of effective data collection on the issuance of protective orders. Her report stated:

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p. 18, (stating: "consider the indicator of repetitive violence while responding to cases of domestic violence, and given the above, use appropriate protective measures".)

<sup>100</sup> Council of Europe's Recommendation Rec(2002)5 of the Committee of Ministers to member States on the protection of women against violence, 30 April 2002, Appendix, Article 5.

<sup>101</sup> Public Defender's Office, *Special Report: Evaluation of Protection Mechanism from Domestic Violence*, 2017, p. 15.

<sup>102</sup> Public Defender's Office, *Special Report: Evaluation of Protection Mechanism from Domestic Violence*, 2017, p. 13.

<sup>103</sup> Public Defender's Office, *Special Report: Evaluation of Protection Mechanism from Domestic Violence*, 2017, p. 14.

<sup>104</sup> *Gender and Law*, p. 11.

<sup>105</sup> See also, Public Defender's Office, *Special Report: Evaluation of Protection Mechanism from Domestic Violence*, 2017, p. 18.

<sup>106</sup> Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia*, A/HRC/32/42/Add.3, 9 June 2016, para 78.

The Special Rapporteur regrets that the estimation of cases of domestic violence is based on the number of restraining orders issued, leaving invisible an undefined number of cases, not reflecting the real amplitude of this scourge. She is concerned that some cases are registered by the police under 'family conflict', which also may leave cases of domestic violence invisible.<sup>107</sup>

**Recommendations:** The Law on Domestic Violence and the Criminal Code and/or standard operating procedures for law enforcement, prosecution and the judiciary should require that statistical data be gathered at regular intervals on all forms of violence against women, including on the forms and frequency of violence, on the effectiveness of measures to prevent and punish such violence, and on the protection and support provided to victims and survivors. Data collection on domestic violence and violence against women should include the registration of complaints, as well as the issuance of protection and restraining orders. Data collection methodology should be harmonized across justice sector institutions (police, prosecution and judiciary).

**Recommendation:** The legislation should require that data be disaggregated by gender, age, ethnicity, disability and other relevant characteristics, in line with international standards.

**Recommendation:** The forthcoming National Action Plan on violence against women should contain as a central objective a system for data collection and analysis, as well as monitoring and evaluation, of the criminal justice response to violence against women, including domestic violence, with specific attention to the 2017 amendments.

It should be noted that these recommendations are in line with Output 2.5 of the National Action Plan for 2016-2017 on the measures to be implemented for combating violence against women and domestic violence and protection of victims/survivors foresees that "[a] unified statistics standard developed by the Government of Georgia and public access to is ensured". In order to capitalize on the data for the purpose of developing evidence-based policies, the forthcoming national action plan should foresee data analysis training for law enforcement and the judiciary on violence against women issues.

**Recommendation:** The forthcoming National Action Plans on the measures to be implemented for combating violence against women and domestic violence and protection of victims/survivors, on Gender Equality and/or Human Rights Protection should foresee capacity building within law enforcement agencies and the judiciary to develop expertise on analyzing collected data on domestic violence and other forms of violence against women.

## **6. Access to shelters, crisis centers and assistance, including for particularly vulnerable victims**

Articles 20-26 of the Istanbul Convention require, *inter alia*, "that victims have access to services facilitating their recovery from violence. These measures should include when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment".

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<sup>107</sup> A/HRC/32/42/Add.3, para 12, Mission to Georgia 15 to 19 February 2016.

The National Action Plan (2016-2017) on the measures to be implemented for combating violence against women and domestic violence and protection of victims/survivors foresees the creation of a crisis center in Tbilisi and strengthening the existing National Referral Mechanism, as well as the establishment of a mechanism for regulating and monitoring the services provided at existing shelters. These efforts will likely extend beyond the time frame of the current National Action Plan (NAP). Standard operating procedures are also being drafted for responding medical personnel.

The Government is in the final review stages of an updated Order #153/N, which will regulate the services provided to victims by both State-run shelters as well as those operated by NGOs in light of the recent legislative amendments. It envisages two types of services: (i) day services for victims/potential victims; and, (ii) 24-hour services for potential victims. The Order should be aligned with international standards, such as those produced by the Council of Europe on minimum standards for support services for combating violence against women.<sup>108</sup>

### **a) Adequate number of shelters**

Article 23 of the Istanbul Convention requires that States “provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children.” Article 22(1) requires that “Parties shall take the necessary legislative or other measures to provide or arrange for, in an adequate geographical distribution, immediate, short- and long-term specialist support services to any victim subjected to any of the acts of violence covered by the scope of this Convention”.

At present, all of the State shelters in Georgia are located in cities, and the only existing crisis center is in Tbilisi, impeding their accessibility to women residing in rural areas.<sup>109</sup> Output 3.1 of the National Action Plan (2016-2017) on the measures to be implemented for combating violence against women and domestic violence and protection of victims/survivors foresees the creation of a crisis center and the designation of funds from the State budget to ensure the sustainability of existing shelters. Consultations are currently underway with local authorities to open three crises centers in: Batumi, Kutaisi and Gori.

The situation in has drawn the attention of UN treaty bodies special mandate holders, who have made specific recommendations in this regard. In its Concluding Observations on Georgia’s 4th and 5th periodic report, the CEDAW Committee urged the Government to ensure “that all women who are victims of violence have access to effective protection and assistance, including State-funded shelters and to improve cooperation with relevant non-governmental organizations in this respect”.<sup>110</sup> Similarly, in its Concluding Observations, the Human Rights Committee recommended that the State ensure “an adequate number of shelters and support services available in all parts of the country”.<sup>111</sup> The Special Rapporteur on violence against women, its causes and consequences also recommended that the Government:

<sup>108</sup> Available at: <http://www.endvawnow.org/en/articles/1391-standards-and-regulations.html?next=1392>.

<sup>109</sup> Public Defender’s Office, *Monitoring Results for Shelters of Human Trade (Trafficking) and Domestic Violence Victims*, p. 24.

<sup>110</sup> CEDAW, Concluding observations on the combined fourth and fifth periodic reports of Georgia, CEDAW/C/GEO/CO/4-5, 24 July 2014, para 21(c).

<sup>111</sup> Human Rights Committee, Concluding observations on the fourth periodic report of Georgia, CCPR/C/GEO/CO/4, para 9(b).

Increase the number of State-run shelters and crisis centers, their availability and the services they provide, in particular in rural areas, as well as the number of social workers in them and the level of financial support the shelters or centers receive.<sup>112</sup>

Similarly, in its Concluding Observations, the Human Rights Committee recommended that the State ensure “effective implementation of legislation to combat domestic violence and access of victims to effective remedies and means of protection, including an adequate number of shelters and support services available in all parts of the country”.<sup>113</sup>

**Recommendations:** Forthcoming national action plans should foresee an increase the number of shelters and crisis centers, especially in rural areas, with sustainable support from the State budget. Budget allocations must be increased in order to ensure the same level of services at all crisis centers.

### **b) Accessibility to persons with disabilities**

As described in the Public Defender’s report, *Monitoring Results for Shelters of Human Trade (Trafficking) and Domestic Violence Victims*, “the general lack of [rehabilitation measures] and, in some shelters, their complete absence was striking”.<sup>114</sup> Shelters do not admit victims suffering from infectious diseases or drug addiction. However, no routine medical examinations are conducted for new arrivals. According to staff of the Fund for Victims of Trafficking, there is a separate room for persons with disability in the shelters in Signagi, Gori and Kutaisi, not in Tbilisi; the crisis center in Tbilisi is accessible to persons with disabilities. According to the Public Defender’s Office, the shelters do not provide accommodations for the women with disabilities, rendering them inaccessible, such that not a single disabled woman has been placed in a shelter.<sup>115</sup>

**Recommendation:** The Fund for Victims of Trafficking should develop internal instructions related to persons with disabilities, as well as unified guidelines on the same for multi-disciplinary actors operating within the referral network.

### **c) Ethnic minorities and others who do not speak Georgia**

There is no system in place for accommodating non-Georgian speaking victims, including for the provision of psychological and medical assistance, and interpreters are contacted only in urgent situations, and there is no protocol for working with translators.<sup>116</sup> The absence of translation assistance was also noted for shelters for victims of trafficking.<sup>117</sup>

<sup>112</sup> A/HRC/32/42/Add.3, para 100(d), Mission to Georgia 15 to 19 February 2016.

<sup>113</sup> Human Rights Committee, Concluding observations on the fourth periodic report of Georgia, CCPR/C/GEO/CO/4, para 9(b).

<sup>114</sup> Public Defender’s Office, *Monitoring Results for Shelters of Human Trade (Trafficking) and Domestic Violence Victims*, p. 8, available at: <http://www.ombudsman.ge/uploads/other/4/4619.pdf>.

<sup>115</sup> Public Defender’s Office, *Monitoring Results for Shelters of Human Trade (Trafficking) and Domestic Violence Victims*, p. 9, 23, 25, (stating “The fact that not a single shelter is adapted for persons with disabilities constitutes a challenge” . . . Furthermore, “they have less access to information and there are not special programs that work particularly with beneficiaries with disabilities”).

<sup>116</sup> Public Defender’s Office, *Monitoring Results for Shelters of Human Trade (Trafficking) and Domestic Violence Victims*, pp. 14, 15.

<sup>117</sup> Public Defender’s Office, *Monitoring Results for Shelters of Human Trade (Trafficking) and Domestic Violence Victims*, p. 40.



The scope of assistance provided to victims of domestic violence and other forms of violence against women has been the subject of recommendations by UN treaty bodies and special mandate holders. As underscored by the Special Rapporteur on violence against women, its causes and consequences, the existing hotline, providing crisis aid, legal advice, psychological aid, information and referrals to shelters or crisis centers, are available in Georgian and Russian only. She expressed concern “that the hotline is not yet available in all the languages spoken by ethnic minorities, thus preventing them from reporting cases of violence and seeking adequate protection.”

**Recommendations:** Forthcoming national action plans should ensure that shelters and crisis centers for victims of violence against women are accessible to women with disabilities. The range of services should be able to accommodate women with additional needs: minority women, women with mental health or substance abuse issues, and specialized protection on issues such as child marriage. A budget item should be established for interpretation services for regions with large ethnic minority populations and for victims who are foreign nationals.

**Recommendations:** Legislation and official standard operating procedures should foresee individualized safety and risk assessments and needs assessments that cover the full range of issues, health, the needs of children, housing, legal issues, financial assistance, job training and employment and education in line with international standards.

#### **d) Livelihood, social welfare assistance and right to adequate housing**

Economic factors have enormous bearing on victims’ ability to leave an abusive situation, and on their options in leaving a shelter. Given that victims can stay in State-run shelters for up to three months, with extensions being offered in necessary cases,<sup>118</sup> victims’ ability to identify safe accommodation for victims of violence upon leaving the shelter constitutes one of their biggest challenges. The Public Defender’s Office stated, “despite placement in a shelter, it is difficult for victims to find a job or housing where they will be able to live safely in a short period of time. Consequently, shelters should do more to ensure the employment and empowerment of victims”.<sup>119</sup>

Currently, the amount of social welfare assistance is linked to several indicators, including the recipient’s place of residence. This can result in a loss of assistance in the event that the recipient relocates to a shelter, due to her change in residence.

This concern was reiterated by the Special Rapporteur on violence against women, its causes and consequences, who reported:

Despite the introduction of an amendment to the Administrative Procedure Code of Georgia providing for the removal of the perpetrator from the place of residence of the victim, the mandate holder notes that this provision is not always applied, and that women have few opportunities to find a new place to live. This problem was also confirmed by the women

<sup>118</sup> But see, A/HRC/32/42/Add.3, para 87, Mission to Georgia 15 to 19 February 2016, (noting that “the maximum duration of a woman’s stay in a shelter is three months, subject to extension after an assessment of the personal situation of the beneficiary. Despite the Government’s indications that the contract can be extended multiple times, it was reported to the Special Rapporteur that it was done only in rare cases”).

<sup>119</sup> Public Defender’s Office, *Monitoring Results for Shelters of Human Trade (Trafficking) and Domestic Violence Victims*, p. 8.



interviewed, who stated that their chances of finding a new place to live on leaving a women's shelter were poor, due to reasons such as a lack of job opportunities and the low wages paid for low-skilled jobs.<sup>120</sup>

Georgia has no general policy on the issue of housing as it relates to an adequate standard of living, despite the fact that the 2014 – 2020 National Strategy for the Protection of Human Rights includes provisions related to secure housing without discrimination as well as to undertake effective measures to ensure access to housing for vulnerable groups.<sup>121</sup> The Public Defender's Office has recommended the Government (particularly, MoHLSA and the Ministry of Economy and Sustainable Development), Parliament and local self-government authorities to adopt specific measures in line with the international standards.<sup>122</sup> Women victims of domestic violence have been identified as a vulnerable group in this regard, as they are often forced to reside with the perpetrator due to the lack of alternative housing options beyond short-term stays in shelters.<sup>123</sup>

**Recommendation:** Legislative gaps and current institutional practices should be revised to enable the receipt of social welfare assistance after relocation to a shelter or another location with the minimum interruption.

**Recommendation:** The forthcoming National Action Plan should foresee adoption of the policy related to safeguarding right to adequate housing for women victims of violence. Government should consider budgetary allocations for pilot housing project.

#### **e) Access to legal aid**

Access to legal assistance and representation is essential for victims of domestic and other forms of violence to ensure their ability to seek protection, file criminal complaints, ensure custody and protection for their children and to receive compensation for damages. In Georgia, this requires asserting rights provided under criminal, civil and administrative law.

Articles 21, 29 and 30 of the Istanbul Convention lay out the legislative requirements for ensuring victims have access to civil remedies and other complaint mechanisms. Article 21 requires that "victims have information on and access to applicable regional and international individual/collective complaints mechanisms. Parties shall promote the provision of sensitive and knowledgeable assistance to victims in presenting any such complaints". Article 29 States must establish a legislative framework that provides "victims with adequate civil remedies against the perpetrator" as well as "adequate civil remedies against State authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers". Finally, under Article 30, victims must have the right "to claim compensation from perpetrators for any of the offences established in accordance with this Convention," as well as possible compensation provided from the State.

<sup>120</sup> A/HRC/32/42/Add.3, para 38, Mission to Georgia 15 to 19 February 2016

<sup>121</sup> Parliament Resolution #2315-IIS – 2014 – 2020 National Strategy for Protection of Human Rights (Strategic Direction 21);

<sup>122</sup> Public Defender's Office, Special Report on Right to Adequate Housing, 2015.

<sup>123</sup> Human Rights Monitoring and Education Center (EMC), Analysis of the State Policy on Homelessness, 2016, pp. 62-63;

Currently, legal assistance is provided to the victim through the Crises Center and shelters. Although these lawyers provide free legal consultation and representation before the courts, they cannot provide the needed assistance to all victims of domestic violence and violence against women. The Free Legal Aid System in Georgia provides for cases in which representation is mandatory, or a person qualifies based on his/her financial status in criminal cases. As for the representation in civil and administrative cases, the law provides for additional criteria: court representation is deemed relevant due to the importance of the case. Victims of domestic violence should fall within aforementioned categories in order to receive free legal aid for court representation.

**Recommendation:** Free legal aid should be provided to victims of gender-based violence with respect to the issuance of protective orders, the filing of criminal charges, to address child custody,<sup>124</sup> to seek compensation for damages and spousal maintenance without reference to financial need.

## C. Sexual violence

### 1. Definition of rape

Although the definition of rape in the Criminal code was recently amended in 2017, the changes did not bring the provision fully into conformance with international standards. Specifically, the new definition continues to require “the use of force, the threat of violence or the helplessness of the victim”.<sup>125</sup> International standards dictate that rape be defined as any type of *non-consensual* penetration, without reference to the use of force. For example, the Istanbul Convention defines rape as: “engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object”.<sup>126</sup> It further qualifies that consent “must be given voluntarily as the result of the person’s free will assessed in the context of the surrounding circumstances.”<sup>127</sup>

The focus on the consent of the victim has developed out of a series of international human rights and international criminal law cases. For example, this approach established by the European Court of Human Rights (ECtHR) in the case of *M.C. v. Bulgaria*, in which the Court found that the positive obligations under Articles 3 (prohibiting torture, inhuman and degrading treatment) and 8 (the right to respect for private life) of the ECHR required “the penalisation and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim”.<sup>128</sup> This position was reiterated by CEDAW in the *Vertido v. Philippines* case, in which the Committee stressed that: “there should be no assumption in law or in practice that a woman gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence”.<sup>129</sup>

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<sup>124</sup> Article 31 requires that States take “necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account” and “to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children”.

<sup>125</sup> Article XX, Criminal Code of Georgia.

<sup>126</sup> Article 36(1)(a), Istanbul Convention.

<sup>127</sup> Article 36(2), Istanbul Convention.

<sup>128</sup> *M.C. v. Bulgaria*, Appl. No. 39272/98, 2003, para. 166.

<sup>129</sup> *Vertido v. The Philippines*, Communication No. 18/2008, CEDAW, 1 September 2010, paras 8.5, 8.9, (finding violations of Article 2 (c) and (f), and Article 5 (a) read in conjunction with Article 1 of the CEDAW and General Recommendation No. 19 of the Committee).

With regard to the relevant legislative provision, the UN Handbook on Legislation on Violence against Women recommends that national legislation:

Remove any requirement that sexual assault be committed by force or violence, and any requirement of proof of penetration, and minimize secondary victimization of the complainant/survivor in proceedings by enacting a definition of sexual assault that either:

Requires the existence of “unequivocal and voluntary agreement” and requiring proof by the accused of steps taken to ascertain whether the complainant/survivor was consenting; or Requires that the act take place in “coercive circumstances” and includes a broad range of coercive circumstances.<sup>130</sup>

The UN Handbook further complains that

experience has shown that definitions of sexual assault based on a lack of consent may, in practice, result in the secondary victimisation of the complainant/survivor by forcing the prosecution to prove beyond reasonable doubt that the complainant/survivor did not consent. In an attempt to avoid such secondary victimisation, some countries have developed definitions of rape which rely on the existence of certain circumstances, rather than demonstrating a lack of consent. . . . In instances where a definition based on “coercive circumstances” is adopted, it is important to ensure that the circumstances listed are expansive, and do not revert to an emphasis on use of force or violence.<sup>131</sup>

Despite the amendments, the legislative provision on rape makes no reference to the victim’s consent, continues to require the use of force, threat of violence or helplessness of the victim, and fails to provide for a range of coercive circumstances.

**Recommendation:** The provision on rape within Criminal Code should be amended again to remove any reference to the requirement of force or the threat of violence. It should refer to the consent of the victim or a broad range of coercive circumstances.

Rape committed by use of force should constitute an aggravating circumstance. The current Criminal Code establishes an aggravating circumstance for rape causing physical or mental harm. Emphasis should be placed on the use of violence, rather than on the harm actually sustained by the victim.

**Recommendation:** The Criminal Code should be amended to establish aggravating circumstances for rape and sexual assault committed through the use of force.

## 2. Other forms of sexual assault

Recommendation Rec5(2002) requires States to “penalise any sexual act committed against non-consenting persons, even if they do not show signs of resistance”.<sup>132</sup> Thus, similar to rape, the

<sup>130</sup> UN Handbook on Legislation on Violence against Women, p. 26.

<sup>131</sup> UN Handbook on Legislation on Violence against Women, p. 27.

<sup>132</sup> Council of Europe’s Recommendation Rec(2002)5 of the Committee of Ministers to member States on the protection of women against violence, 30 April 2002, Appendix, Article 35.

criminalization of sexual assault, such as Article 138 of the Criminal Code, should not require the use of force or any threat to violence or coercion, but rather define a broad category of acts in terms of their non-consensual nature. The Istanbul Convention defines sexual violence as “engaging in other non-consensual acts of a sexual nature with a person” and to “to force someone to engage in non-consensual sexual act with third person (party)”.<sup>133</sup>

**Recommendation:** The Criminal Code should be revised to define sexual violence in terms of its non-consensual nature, rather than through the use of force, threats or violence.

## D. Evidence

### 1. Restraining and protective orders

One of the purposes of effective data collection on domestic violence, as recommended above, is to better ascertain the risk of violence in individual cases. Accurate records of the number of complaints and the issuance of restraining and protective orders are critical in effectively assessing the risk faced by victims of domestic violence for the purpose of their ongoing protection. The UN Handbook for Legislation on violence against women recommends that national legislation provide for: “increasingly severe sanctions for repeated incidents of domestic violence, regardless of the level of injury; and, increased sanctions for multiple violations of protection orders”.<sup>134</sup> Referring to incidents of violence as well as convictions, the Handbook explains that:

Repeated incidents of domestic violence are common and, when the same penalty is applied for each assault, the deterrent effect is questionable. In the United States and some countries in Europe, more severe penalties for repeated incidents have proven to be effective. . . . New amendments to laws in the United States provide that judges can grant protection orders that last for 50 years when a survivor has had two previous protection orders against the abuser or when the abuser has violated a protection order on two occasions.

This approach was also implicitly adopted by the European Court of Human Rights in the *Opuz v. Turkey* case, in which the Court found violations of Articles 3 (ill treatment) and 14 (discrimination) of the European Convention on Human Rights and Fundamental Freedoms for the State’s failure to exercise due diligence in its failure to protect the complainant, a victim of domestic violence, noting the multiple instances of violence and complaints by the victim, later withdrawn, and only two of which resulted in convictions.<sup>135</sup> In finding a violation of Article 3, the Court concluded that “there has been a violation of Article 3 of the Convention as a result of the State authorities’ failure to take protective measures in the form of effective deterrence against serious breaches of the applicant’s personal integrity by her husband”<sup>136</sup>.

**Recommendation:** The Domestic Violence Law, Criminal Code and/or Criminal Procedure Code should specifically allow the issuance of a protection order to be introduced as a material fact in subsequent legal proceedings.

<sup>133</sup> Article 36(1)(b),(c), Istanbul Convention.

<sup>134</sup> UN Handbook for Legislation on violence against women, p. 51.

<sup>135</sup> *Opuz v. Turkey*, Application no. 33401/02, 9 June 2009, paras 169-174,

<sup>136</sup> *Opuz v. Turkey*, Application no. 33401/02, 9 June 2009, para 176.

## 2. Evidentiary limits on past /character of victim

Frequently, gender stereotypes involving women's past sexual experience are invoked during criminal trials involving sexual violence to in order to exonerate the perpetrators. This reportedly occurs in Georgia as well. According to *Gender and Law*, investigatory practices in cases involving violence against women focus on the victim's character and past, rather than on the perpetrator.<sup>137</sup>

Evidentiary rules can preclude the use of the victims' past or character evidence in cases involving violence against women. The UN Handbook on Legislation on Violence against Women recommends that legislation should "prevent introduction of the complainant's sexual history in both civil and criminal proceedings".<sup>138</sup>

However, there are no separate evidentiary rules within the Criminal Procedure Law limiting the introduction of evidence on the character or past sexual conduct of the victim in cases involving sexual violence.

**Recommendation:** A specific evidentiary rule should be introduced into the Criminal Procedure Code, limiting character and past conduct evidence from being introduced by defendants in sexual violence cases.

## 3. Forensic evidence

Forensic evidence is a critical means of overcoming the difficulties in proving rape and sexual violence beyond a reasonable doubt. Victims of rape should have access to forensic experts specializing in sexual violence. Article 25 of the Istanbul Convention requires "easily accessible rape crisis or sexual violence referral centers for victims in sufficient numbers to provide for medical and forensic examination, trauma support and counselling for victims". Recommendation Rec (2002)5 requires that States "take all the necessary measures in order to ensure that collection of forensic evidence and information is carried out according to standardized protocol and forms".<sup>139</sup> As recommended by the UN Handbook on Legislation on Violence against Women, legislation should:

- Mandate proper collection and submission to court of medical and forensic evidence, where possible;
- Mandate the timely testing of collected medical and forensic evidence;
- Allow a complainant to be treated and/or examined by a forensic doctor without requiring the consent of any other person or party, such as a male relative;
- Ensure that multiple collections of medical and forensic evidence are prevented so as to limit secondary victimisation of the complainant;
- State that medical and forensic evidence are not required in order to convict a perpetrator.<sup>140</sup>

<sup>137</sup> A. Abashidze, A. Arghanashvili, N. Gochiashvili, A. Natsvlishvili and T. Dekanosidze, *Gender and Law: Gender analysis of Georgian legislation*, p. 9.

<sup>138</sup> UN Handbook on Legislation on Violence against Women, p. 43.

<sup>139</sup> Council of Europe's Recommendation Rec(2002)5 of the Committee of Ministers to member States on the protection of women against violence, 30 April 2002, Appendix, Article 25.

<sup>140</sup> UN Handbook on Legislation on Violence against Women, p. 41.

There are currently no rules, regulation or guidelines on forensics evidence in sexual violence cases, including their accessibility for victims of sexual violence. Levan Samkharauli Forensics Bureau is responsible for such services in Georgia.<sup>141</sup> In 2013 – 2014, UNFPA prepared Forensic Guidelines in line with the WHO *Guidelines for Medico-Legal Care for Victims of Sexual Violence*.<sup>142</sup> However, it was never implemented.

**Recommendation:** A national protocol for sexual assault medical forensic examination that entails a victim-oriented approach, based on informed consent, clinical requirements, facilities, equipment and supplies, including evidence collection kits, operational issues such as timing of collection of evidence, integrity of the evidence as well as examination processes (documentation, photography, risks, etc.) should be adopted, in line with the WHO recommendations.

**Recommendations:** Standard operating procedures to be adopted by the Ministry of Labour, Health and Social Affairs should ensure victims' accessibility to rape kits as well as contraception, free of charge.

## E. Physical violence/torture

### 1. Aggravating circumstances for discriminatory motive in VAW

The Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia noted that aggravating circumstances for the crime of torture were limited to that "committed by an official or a person equated to an official" or carried out "on the grounds of racial, religious, national or ethnic intolerance".<sup>143</sup> Although the recent 2017 amendments established aggravating circumstances for crimes committed with gender-based motives, additional discriminatory motives should be added.

In particular, the proper qualification and adequate investigation of hate crimes against members of the LGBT community remain a challenge.<sup>144</sup> It is estimated that physical violence perpetrated against lesbian and bi-sexual women exceeds by three or more times violence against gay or bisexual men.<sup>145</sup> Women are thus more vulnerable to recurrent physical violence within LGBT community.<sup>146</sup> This is also evidenced from recent incidents involving violence against lesbian, gay and transgender women, with often fatal consequences<sup>147</sup>:

- An attack against 5 transgender women in November 2016;
- The murder of Zizi Shekhladze, transgender woman in a physical attack in October 2016;
- The murder of Sabi Beriani, a transgender woman in November 2014.

<sup>141</sup> Website available at: <http://expertiza.gov.ge/page.html?item=1059>.

<sup>142</sup> *Guidelines for Medico-Legal Care for Victims of Sexual Violence*, available at: <http://apps.who.int/iris/bitstream/10665/42788/1/924154628X.pdf>.

<sup>143</sup> A/HRC/31/57/Add.3, para 17, Mission to Georgia 12 to 19 March 2015.

<sup>144</sup> See, WISG – Tbilisi, *Discrimination and Hate Crimes against LGBT Persons*, 2015, pp. 16-17.

<sup>145</sup> E. Aghdgomelashvili, WISG – Tbilisi, *From Prejudice to Equality: Study of Societal Attitudes, Knowledge and Information regarding the LGBT Community and Their Rights*, 2016, p. 167.

<sup>146</sup> *Ibid*;

<sup>147</sup> Data retrieved from Women's Initiative Supporting Group, available at: <http://women.ge/ka/news/newsfeed/archive2016/>

In its Concluding Observations, the Human Rights Committee recommended that the:

State party should take effective measures to combat any form of social stigmatization of homosexuality, bisexuality or transsexuality, or hate speech, discrimination or violence against persons based on their sexual orientation or gender identity. It should provide effective protection to lesbian, gay, bisexual and transgender persons and ensure the investigation, prosecution and punishment of any act of violence motivated by the victim's sexual orientation or gender identity in accordance with article 53, para. 3<sup>1</sup>, of the Criminal Code.<sup>148</sup>

**Recommendation:** Aggravating circumstances for the crime of torture should include additional discriminatory motives, including: disability, sexual orientation and gender-identity.

## F. Femicides/Incitement to suicide

There were a total of 34 cases of femicide in 2014, 17 were perpetrated by family members; 17 outside of the context of the family.<sup>149</sup> The Public Defender's Office has noted the difficulty in making the evidentiary links between suicides to the perpetration of violence against women. While it tracked several cases in which there were clear indications that the suicide was related to violence, including severe beatings by in-laws and a forced marriage, no prosecution ensued in these cases due to a cited "lack of evidence".<sup>150</sup>

The incidence of femicides and the incitement to suicide generated by diverse forms of violence against women has drawn the attention of international bodies. On the issue of femicides, the *Report of the Special Rapporteur on violence against women, its causes and consequences* stated:

In 2014, the CEDAW Committee expressed concern about the growing number of women killed by their intimate-partner and recommended to take measures to prevent such killings. As a follow-up to these recommendations, in 2015, the Public Defender's Office published a special report on Violence against Women and Domestic Violence in Georgia, in which it provided data on 34 women killed because of their gender in 2014. The Rapporteur was informed that in 2015 the number of femicides/gender-related registered reportedly decreased.

She noted that in many cases of killings committed by (ex) intimate-partners, the victims reported the acts of violence to the police, but no adequate and effective protection was provided to them.<sup>151</sup>

The Special Rapporteur was also informed that an undefined number of suicides occurred among women victims of systematic violence, and cases of suicides among young women, were allegedly caused by girl child and forced marriage.<sup>152</sup>

<sup>148</sup> Human Rights Committee, Concluding observations on the fourth periodic report of Georgia, CCPR/C/GEO/CO/4, para 8.

<sup>149</sup> Public Defender's Office, Gender Equality and Women's Rights, 2015, p. 25.

<sup>150</sup> Public Defender's Office, Gender Equality and Women's Rights, 2015, pp. 26-27.

<sup>151</sup> A/HRC/32/42/Add.3, paras 19, 20, Mission to Georgia 15 to 19 February 2016, citing, CEDAW/C/GEO/CO/4-5, <http://www.ombudsman.ge/uploads/other/3/3389.pdf>, and data from the Chief's Prosecutor's Office.

<sup>152</sup> A/HRC/32/42/Add.3, paras 19, 20, Mission to Georgia 15 to 19 February 2016, noting that in 2014, it was estimated that 36 women committed suicide, and citing: [http://www.geostat.ge/cms/site\\_images/\\_files/english/health/](http://www.geostat.ge/cms/site_images/_files/english/health/)



In its Concluding Observations on Georgia's 4th and 5th periodic report, the CEDAW Committee stated:

Recalling its general recommendation No. 19 on violence against women, the Committee urges the State party: (a) To take measures to prevent the growing number of murders of women by their husbands and partners and other forms of domestic violence.<sup>153</sup>

**Recommendation:** A separate crime of femicide should be established within the Criminal Code with proportionate sanctions, with increased monitoring due to ongoing obstacles in correctly qualifying the crime.

On incitement to suicide, the *Report of the Special Rapporteur on violence against women, its causes and consequences* stated:

The Special Rapporteur was also informed that an undefined number of suicides occurred among women victims of systematic violence, and cases of suicides among young women, were allegedly caused by girl child and forced marriage.<sup>154</sup>

**Recommendation:** Incitement to suicide should be investigated as an *ex officio* crime, like other forms of violence against women.

## G. Forced, early and child marriage

Early marriage is related to control of women's sexuality, poverty and lack of opportunity. In Georgia, traditional norms are strong and sexual abstinence before marriage is a common practice. Reproductive health and rights education is not part of the school curriculum. As a result, adolescents lack appropriate information on this subject. Due to this lack of knowledge of reproductive health issues and the social expectations pressuring girls to become pregnant immediately after marriage, child marriages result in early motherhood in Georgia, with attendant health risks.

Early marriage is a nationwide social problem, but the reasons that trigger child marriage are not homogenous and vary according to religious, ethnic, and regional factors. Traditions and patriarchal values intersecting with poverty and lack of education are the main trigger behind child marriage in regions populated by ethnic and religious minorities. Child marriage occurs through kidnappings, is arranged by the parents, and by the children themselves as a socially sanctioned way to engage in romantic relations.

The legal framework to combat child marriage ranges from criminal sanctions, the prohibition of marriage under the age of 18, and a joint Ministerial Order requiring inter-agency notification for cases of violence against children. However, as noted by the Public Defender's Office, the referral system does not work, as the relevant agencies are simply failing to report and refer cases.<sup>155</sup>

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Women%20and%20Men\_2015.pdf, and a background note provided by Union Sapari, Violence against Women and Domestic Violence in Georgia, Special Report, Public Defender of Georgia, 2015, p.40 and Public Defender of Georgia, Parliamentary report, 2014.

<sup>153</sup> CEDAW, Concluding observations on the combined fourth and fifth periodic reports of Georgia, CEDAW/C/GEO/CO/4-5, 24 July 2014, para 21(a).

<sup>154</sup> A/HRC/32/42/Add.3, para 22, (noting that in 2014, it was estimated that 36 women committed suicide)

<sup>155</sup> Public Defender's Office, Special Report: Early Age Marriage: Challenges and Solutions, 2016, p. 17.

The *Report of the Special Rapporteur on violence against women, its causes and consequences* stated:

The Special Rapporteur is concerned about the high prevalence of cases of child and forced marriages throughout the country. She was informed that in 2015, 611 registered marriages took place between persons under 18 years old. Out of these, 578 cases involved a girl.

The mandate holder was informed that in 2015, 224 pupils aged between 14 to 16 years dropped out of school, and 351 at the age of 17-18 due to child marriage. She is concerned about the high number of girls who drop out of school as a consequence of their marriage and highlights that these girls are more vulnerable to violence, including marital rape, because of the lack of education, their reduced prospects to find a job and become economically independent, which would impede them escaping from situations of abuse. This practice also leads to early pregnancies and could be also linked with the rate of maternal mortality, estimated to 36 deaths per 100,000 live births in 2015. The Public Defender reported on a case of suicide of a 16 years old girl possibly related to forced marriage.

The Rapporteur was informed that on 17 October 2014, forced marriage was criminalized under article 150<sup>1</sup> of the Criminal Code (Forced marriage, including an unregistered marriage) and that on 26 November 2015, a regulation allowing marriage of a child between 16 and 18 upon the condition of obtaining her/his parents' consent was repealed and replaced by a law that authorize the court to approve such marriages.<sup>156</sup>

In its Concluding Observations, the Human Rights Committee recommended that Georgia should combat early marriage, "including by pursuing community awareness-raising strategies focusing on its negative consequences".<sup>157</sup>

In its Concluding Observations, the CEDAW Committee urged the State:

To prevent the practice of unregistered marriage and, if such marriages occur, to ensure that they are not used to sexually abuse girls below 16 years of age. Furthermore, the State party should take all legislative measures necessary to safeguard the economic rights of women in such marriages.<sup>158</sup>

Special Rapporteur on the sale of children, child prostitution and child pornography urged Georgia to "[h]armonize all legislation to ensure that the minimum age for marriage is established at 18 without exception".<sup>159</sup>

The Report of the Special Rapporteur on the sale of children, child prostitution and child pornography on her mission to Georgia stated:

Child marriage persists in Georgia among certain ethnic and religious minorities and in some rural areas. The Special Rapporteur noted that no comprehensive and up-to-date research

<sup>156</sup> A/HRC/32/42/Add.3, paras 23, 24, 27, Mission to Georgia, 15 to 19 February 2016, citing: data shared by the Public Defender's Office, <http://data.worldbank.org/indicator/SH.STA.MMRT>. In 2014, it was estimated that 1,500 girls became mother: <https://iwpr.net/global-voices/georgia-tightens-early-marriage>.

<sup>157</sup> Human Rights Committee, Concluding observations on the fourth periodic report of Georgia, CCPR/C/GEO/CO/4, 19 August 2014, para 7(f).

<sup>158</sup> CEDAW, Concluding observations on the combined fourth and fifth periodic reports of Georgia, CEDAW/C/GEO/CO/4-5, 24 July 2014, para 37(b).

<sup>159</sup> A/HRC/34/55/Add.1, paras 82(d).

has been conducted on the scope of child marriage, its practices and consequences. Data from 2010 shows that 14 per cent of Georgian women are married before the age of 18. Despite the criminalization of forced marriage in 2014, no prosecutions were conducted for the offence in 2015.

Child marriage in Georgia is linked to poverty and lack of education, traditions and social norms that justify this harmful practice, lack of information about sexual and reproductive health, and lack of integration of some ethnic and religious minorities. The Special Rapporteur reminds authorities that child marriage is a gendered crime that contravenes Georgia's legal obligations under international human rights law. It has devastating effects on the lives of children, in particular girls, and violates their basic rights, including the rights to education and health, and protection from all forms of sexual abuse and exploitation.<sup>160</sup>

In its Concluding Observations, the Committee on the Elimination of Racial Discrimination (CERD) recommended that Georgia:

Ensure that the prohibition of child and/or forced marriage is effectively implemented in practice, including through awareness-raising campaigns among the Roma community concerning the harmful impact of child and/or forced marriage, and provide victims with appropriate rehabilitation and counseling services.<sup>161</sup>

**Recommendation:** Include within the next National Action Plan on Violence against Women and Domestic Violence the development of guidelines for law enforcement officers to use in addressing child marriage and the development of region-specific approaches on detection, investigation and prosecution of child marriages, including a coordinated response by law enforcement officials and service providers involved in child referral mechanisms.

## H. Female genital mutilation

In 2016, incidents of female genital mutilation were identified in the Kvareli region among the Avari community. The practice represents part of a ritual practice performed at home.<sup>162</sup> As of May 2017, the new Article 133<sup>1</sup> of the Criminal Code prohibits female genital mutilation on any grounds. However, its practical application to date has been scarce. Sensitization and culturally appropriate alternative practices should be explored as a means of prevention, in addition to the application of penal sanctions.

**Recommendation:** The Inter-Agency Commission should ensure tailored awareness raising interventions within local communities on the health consequences, as well as on the recently adopted criminal sanctions for FGM.

## I. Sanctions and access to a remedy

### 1. Plea bargains and diversion

While there is no written law or protocol precluding the use of plea agreements and diversion in cases on domestic violence/violence against women, prosecutors have reportedly been verbally

<sup>160</sup> A/HRC/34/55/Add.1, paras 11-12.

<sup>161</sup> CERD, Concluding observations of the 6th to 8th period report, CERD/C/GEO/CO/6-8, 13 May 2016, para 15(d).

<sup>162</sup> Women's Rights and Gender Equality 2016, Public Defender of Georgia, pp. 33-34;

instructed by the Chief Prosecutor not to offer plea agreement in cases of femicide and diversion in cases of domestic violence or violence against women. There has thus been no single case of a plea agreement entered for last 2 years in cases of femicide.<sup>163</sup>

**Recommendation:** The Criminal Code, Criminal Procedure Code, the Law on Domestic Violence, the Criminal Justice Policy Guiding Principles adopted by the Minister of Justice and/or the internal guidelines of the Office of the Prosecutor should be amended to preclude the use of plea bargains and diversion in cases involving violence against women.

## 2. Support and treatment programs for perpetrators

Article 20 of the Domestic Violence Law foresees the passage of a Government decree requiring domestic violence perpetrators against whom a protection order has been issued must undergo a correctional treatment program. However, such programs have yet to be developed, nor has an institution been charged with the task. Rather, at present, the only program for perpetrators is provided by the Ministry of Corrections and Probation for those persons serving a custodial or conditional sentence, the latter being administered by the Probation Agency. The programs are provided only to those persons facing criminal sanctions, not those who are the subjects of protection orders, as foreseen by Article 20 of the Domestic Violence Law.

**Recommendation:** A Decree should be issued to institutionalize and develop programs for perpetrators, including those subject to protection orders.

## 3. Sanctions for violence against women reflect the gravity of the crimes

International due diligence standards require that sanctions reflect the gravity of the crimes, function as a deterrent to future offenders and serve as one form of a remedy for victims, ensuring their access to justice. Article 111 of the Criminal Code criminalizes intentional murder in a state of sudden, strong emotional excitement, which provides for a sentence of up to 3 years of deprivation or restriction of liberty. As of January 2018, the sanction will be reduced to 6 month to one year of home arrest, and up to 2 years of home arrest when the crime has been committed by two or more persons.

In its Concluding Observations on Georgia's 4th and 5th periodic report, the CEDAW Committee urged the Government "to ensure the effective investigation of cases of violence against women, to prosecute and punish perpetrators with sanctions commensurate with the gravity of the crime and to provide victims with adequate compensation for damages suffered".<sup>164</sup>

**Recommendation:** Article 111 of the Criminal Code should be amended to preclude its application to cases involving violence against women.

## 4. Issues related to the right to an effective remedy

Victims of gender-based violence face serious obstacles in accessing an effective remedy for the violations they suffered. In its Concluding Observations, the Human Rights Committee recommended that the State ensure "effective implementation of legislation to combat domestic

<sup>163</sup> Discussion with the Head of the Human Rights Unit of the Office of the Chief Prosecutor of Georgia;

<sup>164</sup> CEDAW, Concluding observations on the combined fourth and fifth periodic reports of Georgia, CEDAW/C/GEO/CO/4-5, 24 July 2014, para 21(b).

violence and access of victims to effective remedies and means of protection".<sup>165</sup> Yet, upon ratifying the Istanbul Convention, Georgia made one five-year reservation to Article 30(2), which provides:

Adequate State compensation shall be awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or State-funded health and social provisions. This does not preclude Parties from claiming regress for compensation awarded from the perpetrator, as long as due regard is paid to the victim's safety.

This reservation will expire in September 2022. Given the length of time required to develop effective legislation in this regard, the Ministry of Justice should initiate policy and legislative discussions on this issue.

**Recommendation:** Begin development of a legislative proposal to create a State compensation fund for victims of gender-based violence.

Referring to the case *X. and Y. v. Georgia*,<sup>166</sup> brought to the CEDAW Committee through the Optional Protocol, the *Report of the Special Rapporteur on violence against women, its causes and consequences* noted that "[a]t the time of the visit, no compensation had been provided to the victim." It further observed: "The mandate holder also noted that there is no national machinery to implement the treaty bodies' recommendations".<sup>167</sup>

In 2016, the Georgian Administrative Procedure Code was amended in order to allow the courts to consider claims for the allocation of compensation in a simplified procedure in accordance with the jurisprudence of UN Human Rights treaty bodies.<sup>168</sup> However, in addition to determining the amount of compensation to be awarded, the Code provides for the possibility for courts to, in the alternative, deny the request for compensation ordered by the treaty body in accordance with the requirements of the Code<sup>169</sup>; Thus, the decision of the UN Human Rights Treaty Body could remain unenforced.

Court fees represent yet another challenge for victims of violence when it comes to filing applications for divorce or claims related to marital property disputes.<sup>170</sup> Ethnic minority women are particularly vulnerable due to lack of proper knowledge of Georgian, as well as of their human rights and respective mechanisms/remedies.<sup>171</sup>

**Recommendation:** Ensuring meaningful access to remedies requires sustained free legal assistance as part of a package of services available to victims of gender-based violence. Amend Administrative Procedural Code in order to allow effective implementation of the decisions of the UN Human Rights treaty bodies.

**Recommendation:** Amend the Georgian Civil Procedure Code to exempt women victims of violence from court fees for any civil proceedings pertaining to separation or divorce, including *inter alia*: divorce, property disputes and custody issues. Provide information pertaining to legal rights, procedures and remedies to vulnerable groups of women in a language that they can understand.

<sup>165</sup> Human Rights Committee, Concluding observations on the fourth periodic report of Georgia, CCPR/C/GEO/CO/4, para 9(b).

<sup>166</sup> CEDAW, Communication No. 24/2009, Views adopted by the Committee at its sixty-first session (6-24 July 2015), CEDAW/C/61/D/24/2009;

<sup>167</sup> A/HRC/32/42/Add.3;

<sup>168</sup> See Chapter VII<sup>14</sup>, Administrative Procedure Code of Georgia.

<sup>169</sup> Article 2158, Administrative Procedure Code of Georgia.

<sup>170</sup> Rights of Women: Religious and Ethnic Minorities, Human Rights Center (HRIDC), 2017, pp. 7-8;

<sup>171</sup> *Ibid*;

## VIII. Women's political participation

Women's equal political participation and representation in decision-making bodies in Georgia requires their increased presence in political and governmental institutions. Women's political participation is central to ensuring women's representation in public life and that women's interests are reflected in public policy. As expressed by the Beijing Platform for Action:

women's equal participation in decision-making is not only a demand for justice or democracy, but can also be seen as a necessary condition for women's interests to be taken into account. Without the perspective of the women at all levels of decision-making, the goals of equality, development and peace cannot be achieved.<sup>172</sup>

SDG 5 also calls for ensuring "women's full and effective participation and equal opportunities for leadership at all levels of decisionmaking in political, economic and public life".

In Georgia, women's participation in decision-making processes remains very low in the legislative and executive branches of government, both at the central and sub-national levels. It ranks 124<sup>th</sup> among 193 countries in the worldwide classification of women in national parliaments - an indicator for women's political participation.<sup>173</sup> According to the World Economic Forum's, *Global Gender Gap Report* for 2017, Georgia ranked 114 on political empowerment among 144 countries.<sup>174</sup>

Women constitute the majority of the population in Georgia: 52.3%.<sup>175</sup> Women account for 53,76% (men, 46,24%) of the electoral body.<sup>176</sup> However, women comprise only 15% of the seats in Parliament; 85% of the seats are held by men. Since Georgia's independence, women's participation in Parliament has increased slightly.

Percentage of women in Parliament, 1992-2016<sup>177</sup>

<i>Parliamentarian Elections</i>	<i>% of women in the Parliament</i>
1992	6.22%
1995	6.64%
1999	7.17%

<sup>172</sup> Beijing Platform for Action, para. 181.

<sup>173</sup> See, Inter-Parliamentary Union, available at: <http://www.ipu.org/wmn-e/classif.htm>.

<sup>174</sup> World Economic Forum, *Global Gender Gap Report*, 2017, available at: <http://reports.weforum.org/global-gender-gap-report-2017/dataexplorer/#economy=GEO>.

<sup>175</sup> Geostat, Census 2015

<sup>176</sup> Data of Central Election Commission of Georgia. <http://cesko.ge/statistic/>.

<sup>177</sup> GYLA, *Women in Georgian Politics – analysis for women's engagement in political/electoral processes during the 2016-2018 election cycle in Georgia*, 2017, p. 13.

2004	9.33%
2008	6%
2012	12%
2016	15%

Despite the noted increase, the number of women in Parliament remains far below the critical mass necessary to have an impact on decision-making in Parliament: 30-40%. A significant future increase seems unlikely given the context of a constantly changing political landscape and fragile political parties.

Although the Election Code is gender-neutral and does not provide any mechanism for strengthening women's participation, women's political participation in the legislative branch can be attributed, in part, to the electoral system. The Election Code of Georgia establishes a mixed electoral system: 73 members of the 150-seats in Parliament are allocated from single-mandate constituencies, known as "majoritarian" electoral districts. The remaining 77 seats are allocated from party lists in a national proportional system. As noted by the OSCE:

Proportional-representation systems – in which parties present lists of candidates – provide greater incentives for parties to include more women among their candidates to attract a broader base of voter support. Proportional systems are also more conducive to implementation of affirmative-action measures than are majority systems.<sup>178</sup>

Women are also poorly represented in executive-level positions at national and sub-national levels. Out of 15 national Ministers (including the Prime Minister), only two are women. There are no women among nine Governors.

Furthermore, women are also under-represented in local self-government bodies. Following the 2017 municipal elections, women make up 13.4% of local legislative bodies (Sakrebulo)<sup>179</sup> and women's representation was only 11.3 percent in Sakrebulo elected in 2014. All five mayors of the self-governing cities (Tbilisi, Rustavi, Kutaisi, Poti, Batumi) are men and out of 59 mayors of self-governing communities, only one is woman. There are only two women at the Supreme Council of the Autonomous Republic of Adjara which is comprised of 21 members.<sup>180</sup> Women comprise 29%, and men 71% of government posts.<sup>181</sup>

In contrast, women make up 53.7% of the judiciary,<sup>182</sup> and constitute 4 out of the 9 judges on the Constitutional Court.<sup>183</sup> While women have achieved parity as judges in city courts and courts of appeals, women comprise 41.6% of the positions on the Supreme Court (5 out of 12). Notably, the Chairperson of the Supreme Court is a woman.<sup>184</sup>

<sup>178</sup> OSCE/ODIHR, *Handbook for monitoring women's participation in elections*, 2004, p. 21.

<sup>179</sup> The Central Election Commission of Georgia, *Gender Statistics of Elections*, available at: <http://cesko.ge/statistic/>

<sup>180</sup> The Supreme Council of Adjara at: <http://sca.ge/geo/static/107/umaghlesi-sabchos-tsevrebi>

<sup>181</sup> Civil Service Bureau, 2016, p. 21, available at: <http://csb.gov.ge/uploads/2017book.pdf>.

<sup>182</sup> GYLA, *Women in Georgian Politics – analysis for women's engagement in political/electoral processes during the 2016-2018 election cycle in Georgia*, 2017, p. 14.

<sup>183</sup> The Constitutional Court of Georgia, composition <http://constcourt.ge/en/court/judges/CurrentJudges>

<sup>184</sup> The Supreme Court of Georgia at: <http://www.supremecourt.ge/judges/judges/>



Article 7(b) of CEDAW requires States “to take all appropriate measures to eliminate discrimination against women in the political and public life of the country,” including the right to participate in the formulation and implementation of public policy and “hold public office and perform all public functions at all levels of government”. Article 4(1) provides for the adoption of “temporary special measures aimed at accelerating de facto equality between men and women.” In its General Recommendation No. 25, the Committee further stated:

Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors. Such discrimination may affect these groups of women primarily, or to a different degree or in different ways than men. States parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.<sup>185</sup>

## A. Temporary special measures

Electoral systems have a direct impact on women’s participation in decision-making bodies. Research consistently demonstrates that women’s representation is highest in countries using proportional representation (PR) systems.<sup>186</sup> Other aspects of electoral system design can also affect women’s representation, such as: electoral thresholds (the minimum percent of the vote required to obtain a seat in parliament), district magnitude (number of seats divided by the number of districts), and open versus closed lists in PR systems (the ability of voters to influence the election of candidates within a party list).

In all of the Parliamentary elections in Georgia, more women MPs have been elected via proportional party lists than in majoritarian districts. The difference between the two systems has been significant over the last three elections.

Comparison of Parliamentary election results between proportional and majoritarian systems<sup>187</sup>

Parliamentarian Elections	% of women elected via proportional list	% of women elected via majoritarian system
2008	10.67%	1.33%
2012	14.29%	9.59%
2016	23.38%	8.20%

In 2011, Article 30(7<sup>1</sup>) was added to the Organic Law on Political Associations of Citizens, which provided an additional 30% of funding for including three women out of every ten candidates listed.<sup>188</sup> However, the Law did not regulate the placement of female candidates on the list, which

<sup>185</sup> CEDAW, General Recommendation No. 25, para 12.

<sup>186</sup> ISFED, *Gender Monitoring of local self-government bodies and strengthening women’s involvement in political life*, p. 2-3, citing, IDEA, available at: <http://www.idea.int/sites/default/files/publications/designing-for-equality.pdf>

<sup>187</sup> GYLA, *Women in Georgian Politics – analysis for women’s engagement in political/electoral processes during the 2016-2018 election cycle in Georgia*, 2017, p. 25.

<sup>188</sup> Article 30(7<sup>1</sup>) of the Law on Political Associations of Citizens reads: “A party receiving funding under this article shall receive a bonus of 30% of the basic funding if, in the election list presented by this party or by the relevant

is one of the determinants for effectiveness.<sup>189</sup> In the 2014 local elections, two political parties received the additional State financing pursuant to Art. 30(7<sup>1</sup>).<sup>190</sup> In the 2016 Parliamentary elections, five political parties' listed reflected the quotas set forth in Article 30(7<sup>1</sup>), but only one party, the Alliance of Patriots, actually obtained seats in Parliament that were designated to women.<sup>191</sup>

In the 2017 local elections, only 36.85% women candidates were presented in the proportional lists of local legislative bodies (Sakrebulo) and 16.5% women as majoritarian candidates. Among the mayoral candidates of five self-governing cities, only 22.92% were women. Out of mayoral candidates of 59 local self-governing municipalities, only 12.15% were women. As for the candidates for the office of Tbilisi Mayor, 15.38% were women.<sup>192</sup>

In sum, the structure of the electoral system, women's poor position at the bottom party candidate lists, the financial incentives regulation does not require that women be positioned among the top ten candidates on the party lists, and their lack of financial resources impedes their political participation.

Five attempts have been made since 2002 to introduce diverse mandatory quotas for Parliament and on party lists. The third attempt was made in 2015, in which *the Task Force for Women's Political Participation*<sup>193</sup> submitted a legislative proposal introducing mandatory gender quotas for proportional lists for parliamentary elections, with a target of 50% gender balance. The initiative did not envisage any special measures for majoritarian representation system. The proposal was presented to two parliamentarian committees. The Human Rights Committee adopted the proposal and transmitted it to the Legal Committee, which rejected it without presenting it to the plenary session. Simultaneously, in 2015, an alternative legislative initiative was submitted to Parliament by two MPs, requiring that among every three candidates in the proportional lists, a candidate of the less-represented sex be included. For the first time in Georgian Parliament's history, the initiative on gender quotas was discussed on the plenary session of Parliament, however the voting never took place.

The most recent initiative, in June 2017, involved 37 000 citizens' signatures in support of 50% mandatory gender quotas for parties' proportional lists for parliamentarian and local elections. The proposal was registered by the Bureau of the Parliament of Georgia, and the parliamentary process was initiated in the 2017 session,<sup>194</sup> and is currently in process.

In light of the negligible impact of Article 30(7<sup>1</sup>) of the Law on Political Associations of Citizens, alternative measures should be adopted to ensure women's *de facto* equal political participation.

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electoral bloc (in the case of local self-government elections, in all party lists) at the elections based on the results of which they received funding, at least 30% of female candidates are included in the first, second and every subsequent 10 candidates."

<sup>189</sup> OSCE/ODIHR, *Handbook for monitoring women's participation in elections*, 2004, p. 23, (noting that "closed list systems are most advantageous for women candidates, provided they are placed sufficiently high on such lists").

<sup>190</sup> The United National Movement, and the bloc United Democratic Movement.

<sup>191</sup> Transparency International Georgia, *Political Campaign Finance in Georgia*, 2017, p. 52.

<sup>192</sup> The Central Election Commission of Georgia, *Gender Statistics of Elections available at: <http://cesko.ge/statistic/>*

<sup>193</sup> The Task Force for Women's Political Participation was set up in March 2014, bringing together more than 20 organizations working on women's political participation, both local and international, with the aim of ensuring that gender quota is introduced in the legislation. To this end, members of the group are actively lobbying the initiative before political parties and the State institutions.

<sup>194</sup> The Bureau of the Parliament of Georgia, available at: <https://info.parliament.ge/#law-drafting/14155>.

Temporary special measures, as recommended by UN treaty bodies, should be adopted, especially given the strong popular support for them.

In its Concluding Observations on Georgia's 4th and 5th periodic report, the CEDAW Committee recommended that the State:

adopt temporary special measures, including statutory quotas, in accordance with article 4 (1) of the Convention and in line with the Committee's general recommendation No. 25 on the subject, as part of a necessary strategy to accelerate the achievement of substantive equality of women and men. It also recommends that the State party establish temporary special measures targeting disadvantaged and marginalized groups of women, evaluate the impact of such measures and make its findings, including gender-relevant statistics, available to the public.<sup>195</sup>

It further recommended that the State:

ensure the full and equal participation of women in political and public life, especially at the senior and decision-making levels, including in local legislative bodies. In particular, it recommends that the State party introduce mandatory quotas for political parties in order to significantly increase the representation of women in national and local legislative bodies.<sup>196</sup>

In its Concluding Observations, the Human Rights Committee (HRC) recommended that Georgia strengthen "efforts to achieve equitable representation of women in decision-making positions in legislative and executive bodies, including in Parliament and at the highest levels of the Government, within specific time frames".<sup>197</sup> The HRC further recommended that the State strengthen:

its programs for teaching the Georgian language to minorities, promote their representation in political and public bodies at all levels and consider the possibility of allowing the use of minority languages in local government and administration.<sup>198</sup>

**Recommendation:** Amend the Electoral Code and the Law on Political Associations to adopt temporary special measures to accelerate women's political participation on an equal footing with men at the national and local levels. The measures should provide for at least 30% participation by women, and encompass the participation of disadvantaged and marginalized women, including ethnic minorities.

**Recommendation:** Consider transitioning to a proportional representation system, integrating temporary quotas to ensure women's *de facto* participation.

These recommendations are in line with the National Human Rights Action Plan, Activity 13.1.7.1, which calls for initiating "legislative amendments in order to increase [the] representation of women in elected bodies".

<sup>195</sup> CEDAW, Concluding observations on the combined fourth and fifth periodic reports of Georgia, CEDAW/C/GEO/CO/4-5, 24 July 2014, para 17.

<sup>196</sup> CEDAW, Concluding observations on the combined fourth and fifth periodic reports of Georgia, CEDAW/C/GEO/CO/4-5, 24 July 2014, para 25.

<sup>197</sup> HRC, CCPR/C/GEO/CO/4, August 19, 2014, para 7(a).

<sup>198</sup> HRC, CCPR/C/GEO/CO/4, August 19, 2014, para 19.

## IX. Women, peace and security

Georgia has been faced with issues involving conflict for a large part of the last 20 years, experiencing destruction and an influx of IDPs unable to return home even after the ceasefire agreements were reached.<sup>199</sup> Currently, the Tskhinvali Region/South Ossetia remain under Russian occupation. Since the August War 2008, Abkhazia, including Upper Abkhazia and the Kodori Gorge region, are also occupied by Russia.<sup>200</sup> The Russian Federation maintains military bases in these regions, where Russian troops are present.<sup>201</sup>

As a result of conflict in the early 1990s and in 2008, there are currently 265,109 IDPs in Georgia.<sup>202</sup> Up to 228,000 (70%) of IDPs receive an IDP allowance.<sup>203</sup> In addition to the IDP population, a conflict-affected population resides in the vicinity of the occupied regions, who do not benefit from the status of internally displaced persons. Therefore, Many IDP and conflict-affected women live below the poverty line, lacking access to livelihoods, and facing poor living conditions and poverty. As the Public Defender's Office has observed:

The conflicts have particularly affected women and children, resulting in a shifting socio-economic role for women which, in turn, exposed them to increased risk of violence. Trauma inflicted by the conflict and persistently poor social conditions are directly correlated with domestic violence, with women and children most often the victims. This problem is exacerbated by a lack of proper protection mechanisms, crisis centers, and psychological rehabilitation services.<sup>204</sup>

As is common in conflict-affected zones, no monitoring or oversight mechanism exists to ensure the rights of women and children, and there are no available statistics.<sup>205</sup>

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<sup>199</sup> OSCE, Country Visit to Georgia, Report of June Zeitlin, the Special Representative of the OSCE Chairperson-in-Office on Gender Issues, 2014, p. 6; "Women Connect Across Cultures: Building Accountability for Implementation of UNSCRs 1325, 1820, 1888, 1889: Mapping Study of Georgia, Armenia and Azerbaijan," at [www.unwomeneeca.org/module/project/img/511.pdf](http://www.unwomeneeca.org/module/project/img/511.pdf).

<sup>200</sup> See, United Nations Report of the Secretary-General on the situation in Abkhazia, Georgia, 3 October 2008, S/2008/631; Statement of Mr. Alasania of Georgia to the United Nations Security Council, 5953<sup>rd</sup> Meeting, 10 August 2008, S/PV.5953; Council of Europe Parliamentary Assembly, Monitoring Committee Report, 'The implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia', 17 December 2008, AS/Mon(2008)33rev.

<sup>201</sup> National Committee on American Foreign Policy and the Institute for the Study of Human Rights, *Implementation Review: Six Point Ceasefire Agreement between Russia and Georgia*, August 2011, p. 3.

<sup>202</sup> Official Statistics, Ministry of Internally Displaced Persons from Occupied Territories, available at <http://mra.gov.ge/main/GEO#section/50>.

<sup>203</sup> Available at [http://ssa.gov.ge/index.php?lang\\_id=GEO&sec\\_id=610](http://ssa.gov.ge/index.php?lang_id=GEO&sec_id=610).

<sup>204</sup> Public Defender's Office, Special Report on the Rights of Women and Children in Conflict-affected Regions (2014-2016), 2017, p. 36.

<sup>205</sup> Public Defender's Office, Special Report on the Rights of Women and Children in Conflict-affected Regions (2014-2016), 2017, p. 36.

The UN Security Council Resolution 1325 and its “Sister Resolutions” are built upon four core principles:

1. Participation in Decision Making:
  - Negotiations of international agreements and peace-talks
  - Increase number of women representatives in civil and military personnel (military observers, civil police, human rights and humanitarian law advisers, etc.);
2. Protection of women and girls from SGBV
  - Increase respect among parties to the conflict to the rights of women and girls and promote special measures to prevent and protect women from SGBV (rape, sexual abuse and harassment, forced prostitution or marriage and etc.);
  - Services for women and children: healthcare, psychosocial rehabilitation and reintegration programs;
3. Prevention of violence against women:
  - States’ obligation to investigate and prosecute persons responsible for violation related to women and girls;
  - Consider gender sensitivity (special needs) among refugee and IDP populations;
  - Prohibits SGBV as a method of warfare;
  - Prohibits amnesty in cases of SGBV;
4. Consideration of gender issues and gender sensitivity in decision making:
  - Increase financial and logistical support by States for enhancing gender sensitivity;
  - Promote use of gender experts during the planning of military operation (strategy and tactics).

The 2016-2017 National Action Plan on the implementation of UN Security Council Resolutions 1325, 1820, 1888, 1889 and

1960 on “Women, Peace and Security” includes the following priority areas:

- Increased participation of women in decision-making process;
- Increased participation of CSOs in conflict prevention and conflict resolution;
- Prevention of SGBV and other risks related to human security;
- Socially and economically empowered IDP and conflict-affected women and girls (including psycho-social rehabilitation);
- Strengthening the accountability and monitoring mechanism.

The newly established Interagency Commission on Gender Equality, Domestic Violence and Violence against Women is currently in charge of the implementation of the National Action Plan on UNSCR 1325. NGOs have raised concerns that insufficient funds have been allocated for its implementation.<sup>206</sup>

## **A. Women’s participation in decision-making positions in conflict prevention and management**

According to the Women’s Information Center, women’s participation in decision-making positions pertaining to conflict prevention and management remained low. For the years 2014 – 2015, it noted that the number of women parliamentarians (10%), the number of female Ministers (3

<sup>206</sup> OSCE, Country Visit to Georgia, Report of June Zeitlin, the Special Representative of the OSCE Chairperson-in-Office on Gender Issues, 2014, p. 7.

out of 19) and ambassadors (6 female high-level diplomats compared 26 male diplomats), clearly demonstrated that women are less involved in decision making processes on international level.<sup>207</sup> Within the two official negotiation processes concerning the conflict, the Geneva International Discussions (GID) and the Incident Prevention and Response Mechanism (IPRM), women's participation is also low. At the IPRM, one or two delegation members out of six are women, and "[m]edia reports and images show that even if there are female participants at IPRM, they are seated to the back, instead of [at the] negotiation table".<sup>208</sup> On a positive note, by 2015, 30% of the negotiators (3 or 4 out of 10) in the Georgian Delegation at Geneva International Discussions were women.<sup>209</sup>

While the National Action Plan for the Implementation of UN Security Council Resolutions on Women, Peace and Security supports increased participation of women in the security sector generally in Output 1.1, it provides no concrete mechanism to foster women's *de facto* participation in ongoing negotiation processes, namely GID and IPRM.

In its Concluding Observations on Georgia's 4th and 5th periodic report, the CEDAW Committee recommended that the State "involve women in the implementation of its action plan and policies aimed at settling conflicts and promote the active participation of women in high-level meetings in this regard".<sup>210</sup>

**Recommendation:** Forthcoming versions of the National Action Plan for the Implementation of UN Security Council Resolutions on Women, Peace and Security should establish temporary quotas to ensure women's participation in conflict negotiation processes.

**Recommendation:** The Gender Equality Law should be amended to provide for temporary special measures, including numerical quotas, to promote the number of women appointed to ministerial and diplomatic positions.

**Recommendation:** The Gender Equality Law should be amended to require temporary special measures, including numerical quotas, to ensure a minimum of 30% of women in conflict negotiation processes in the Executive branch.

## B. Psycho-social rehabilitation services for conflict-affected women and IDPs

The links between armed conflict and violence against women have been documented extensively. According to the Public Defender's Office, "domestic violence represents one of the most complex and latent problems in [the] Abkhazia and Tskhinvali region[s]".<sup>211</sup> The absence of any response by

<sup>207</sup> Women Information Center, *Strengthened Women for Peace and Security, Monitoring Report of 2012-2015 National Action Plan for Women, Peace and Security*, 2015, p. 16.

<sup>208</sup> Public Defender's Office, *Special Report on the Rights of Women and Children in Conflict-affected Regions (2014-2016)*, 2017, p. 44, (noting that "usually there is no female participant in the Abkhazian and Tskhinvali region delegations").

<sup>209</sup> Decree of Prime Minister #838 on Georgian Delegation participating in Geneva International Discussions. Unfortunately, the number of female Russian, Abkhaz or Ossetian participants remained zero, or only one out of five. See, Ekaterine Gamakharia, *Women's Participation in Geneva Talks: Problems, Achievement, Prospects*, 2015; and, Public Defender's Office, *Special Report on the Rights of Women and Children in Conflict-affected Regions (2014-2016)*, 2017, p. 44.

<sup>210</sup> CEDAW, *Concluding observations on the combined fourth and fifth periodic reports of Georgia*, CEDAW/C/GEO/CO/4-5, 24 July 2014, para 25.

<sup>211</sup> Public Defender's Office, *Special Report on the Rights of Women and Children in Conflict-affected Regions (2014-2016)*, 2017, p. 37.



law enforcement, fed by the belief that violence in the family is a family issue, coupled with the absence of any shelter significantly impedes women's ability to escape violence in the home in both Abkhazia and Tskhinvali. There is no law prohibiting domestic violence in Abkhazia. A mobile team operating out of Gali provides "psychological, medical, and legal counseling to women and raise awareness about women's issues in local communities," and is the only source of gynecological services.<sup>212</sup> The Public Defender noted incidents of child marriage, honor killings and a complete ban on abortion in Abkhazia as issues of critical concern.<sup>213</sup>

Goal 3 of the 2016-2017 National Action Plan for Implementation of the UN Security Council Resolutions on Women, Peace and Security concerns the prevention of SGBV. However, it does not directly address the issue of domestic violence in conflict-affected zones, and its activities are limited to awareness-raising consultations with IDP and conflict-affected women and training of security sector professionals. The National Action Plan recognizes the need for psycho-social assistance and rehabilitative programs for IDPs and conflict-affected women. However, the envisaged activities remain limited to developing "a concept" [sic] of their provision and mainstreaming gender into the Government's communication strategy to inform IDP and conflict-affected women of the existence of programs.

"One of the biggest challenges for the government, however, is providing services to women in rural and conflict-affected areas" given lack of access to the region.<sup>214</sup> Yet, important links can be made between the National Action Plan on Combating Violence against Women and Domestic Violence, especially Policy Area III on protection and assistance to victims, and the National Action Plan on Women, Peace and Security, namely the establishment and support of shelters and services on the Georgian-controlled side of the Administrative Boundary Line.<sup>215</sup>

**Recommendation:** The forthcoming National Action Plans on Women, Peace and Security and on Combating Violence against Women and Domestic Violence should foresee support for practical measures to provide protection and psycho-social services to conflict affected women, including victims of domestic violence. Increase the accessibility of the shelters and crisis centers in Zugdidi and Gori to women residing in occupied territories.

### C. Physical, economic and social security to IDPs and conflict-affected women

According to the Public Defender's Office, conflict-affected women in Abkhazia and Tskhinvali face increased security risks in their efforts to address the economic hardship caused by the conflict and, prior to that, the break up of the Soviet Union. Women and children often assume the risks of crossing the Administrative Boundary Line, and face possible detention and abuse to engage in cross-border trade to obtain some form of livelihood.<sup>216</sup>

<sup>212</sup> Public Defender's Office, Special Report on the Rights of Women and Children in Conflict-affected Regions (2014-2016), 2017, pp. 36, 37, 38, 60.

<sup>213</sup> Public Defender's Office, Special Report on the Rights of Women and Children in Conflict-affected Regions (2014-2016), 2017, pp. 36-40.

<sup>214</sup> OSCE, Country Visit to Georgia, Report of June Zeitlin, the Special Representative of the OSCE Chairperson-in-Office on Gender Issues, 2014, p. 6; Public Defender's Office, Special Report on the Rights of Women and Children in Conflict-affected Regions (2014-2016), 2017, p. 38.

<sup>215</sup> See, Public Defender's Office, Special Report on the Rights of Women and Children in Conflict-affected Regions (2014-2016), 2017, p. 60.

<sup>216</sup> See, Public Defender's Office, Special Report on the Rights of Women and Children in Conflict-affected Regions (2014-2016), 2017, p. 44.



Access to identification documents, Georgian and Abkhazian, constitutes a major barrier for conflict affected women and children to obtain necessary services, including healthcare and access to education, with the Abkhaz and Georgians facing distinct challenges. In Abkhazia, border-crossing and other problems are related to ethnic Georgians residing in Gali District. Furthermore, “[w]ithout ID documents, local community members cannot cross onto Georgian-controlled territory to obtain documents confirming their Georgian citizenship,” precluding their receipt of the social and healthcare services provided by Georgia to IDPs. The problem is especially acute for persons with disabilities.<sup>217</sup>

Output 4.3 of the current National Action Plan on Women, Peace and Security envisages that “IDP and conflict affected women have equal access to public services (health, social protection, education...)”. Activities include developing a “concept” on the provision of psycho-social assistance to IDP and conflict affected women, and addressing “the socio-economic needs of IDP women and girls in Samegrelo, Imereti, Shida Kartli and Kvemo Kartli regions in cooperation with local governments”. However, no specific program is detailed to provide support for women in Abkhazia and Tskhinvali, namely those who cross the Administrative Boundary Line.

**Recommendation:** The forthcoming National Action Plan on Women, Peace and Security should foresee commissioning a study to analyze projects undertaken by the Government, donors and international organizations in Abkhazia and the Tskhinvali Region in order to identify gender-related issues in order to develop targeted policies. The Government should work closely with international organizations undertaking projects for populations residing in occupied territories to ensure that gender is mainstreamed with respect to target groups, data collection, the identification of specific needs, among other aspects.

In its Concluding Observations, the Human Rights Committee recommended that the State should:

step up its efforts aimed at improving the situation of internally displaced persons and, in addition to durable housing solutions, focus on local integration and provision of sustainable income-generating opportunities and other livelihood measures at new resettlement sites. It should also ensure that all internally displaced persons can exercise their right to make a free and informed decision as to whether to return voluntarily to their homes in safety and dignity, to integrate locally or to resettle elsewhere in the country.<sup>218</sup>

**Recommendation:** The National Action Plan on Women, Peace and Security should foresee needs-based training for IDP women based on market demand, as provided in part in Output 4.2.

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<sup>217</sup> See, Public Defender’s Office, Special Report on the Rights of Women and Children in Conflict-affected Regions (2014-2016), 2017, p. 51. Services, especially public healthcare, segregates Abkhazia residents with Georgian ID documents against Abkhazia residents without Georgian ID. Those without citizenship, enjoy 100% expenses covered.

<sup>218</sup> HRC, CCPR/C/GEO/CO/4, August 19, 2014, para 17.

## X. Gender equality in civil registration

Civil registration is a necessary prerequisite for accessing basic human rights. SDG 16, on just, peaceful and inclusive societies, calls for providing “legal identity for all, including birth registration”. Conversely, the absence of identity documentation has been identified as a factor increasing individuals’ vulnerability to exploitation and violence.

### A. Civil registration for transgender persons

Article 78(g) of the Law of Georgia on Civil Status Acts provides the possibility of making changes to one’s civil registration documentation in the event of a “sex change, provided a person desires to change his/her first name and/or surname because of sex change,” thus imposing the requirement sex change surgery prior to recognizing a person’s gender identity. The Law does not specifically foresee changing the registered sex of an individual, except in the event of sex change surgery.

Given the high costs of sex change surgery, many transgender persons are unable to change their gender identity on their civil registration documents. This has significant consequences in the lives of transgender persons, including unemployment. There is thus a need for introducing into provisions ensuring quick, transparent and accessible legal procedures for change of gender in addition to names in official civil registration documentation.

The Council of Europe Committee of Ministers’ Recommendation 2010(5) requires the establishment of fast, transparent and accessible standards for the legal recognition of transgendered persons, whereas the changes of physical nature for legal recognition of gender reassignment should be reviewed to remove abusive requirements. Thus, the progressive approach suggests that the legal recognition could be somehow linked to diagnosis and medical procedures, rather than forced sterilization as mandatory precondition.<sup>219</sup>

**Recommendation:** Amend the Law on Civil Status Acts to provide for an accessible and simple procedure for changing the name, surname and gender of transgender persons.

### B. Free civil registration

Although special discounts and exemptions already exist in the Law of Georgia on Service Rates of the Civil Registry for socially vulnerable families, they apply to only the poorest and most

<sup>219</sup> E. Aghdgomelashvili, N. Gviniashvili, T. Todua and T. Ratiani, WISG – Tbilisi, *Healthcare Need of Transgender Persons in Georgia – Policy Paper*, 2015, p.120.

vulnerable segments of the population. Yet, statistics demonstrate that the rural population in Georgia abstains from requesting identity documents primarily based on financial concerns.

**Recommendation:** The Law on Service Rates of the Civil Registry should be amended to expand the scope of discounts or provide for the free provision of identity documents for persons residing in rural areas.

