



## **SHADOW REPORT**

**to the Pre-sessional Working Group for the 81st session of the Committee on the Elimination of Discrimination Against Women (CEDAW)**

**Upcoming Pre-Sessional Working Group (05 Jul 2021 - 09 Jul 2021)**

**State party: Georgia**

## **Discrimination and Violence Against Lesbian, Bisexual, Trans and Intersex Women in Georgia**

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The aim of this *shadow report* is to draw the attention of the Committee to the violations of human rights of LGBTI women in Georgia for developing list of issues prior to reporting by the pre-sessional working group. The report is based on materials produces, collected and documented by WISG: cases of human rights violations of LGBTI persons in Georgia, interviews and focus groups conducted with community members and health care specialists; WISG’s discrimination studies (2018-20), researches on attitudes (2018), resources of NGOs working on LGBTQI rights, reports of the Public Defender’s and other reports by international stakeholders.

*\*submission can be posted on the CEDAW website for public information purposes.*



Women’s Initiatives Supporting Group (WISG)

## Executive Summary

Despite relatively enhanced anti-discrimination standards in law since the last review, Georgia still faces the gaps to be filled in order to guarantee equality and non-discrimination of women based on sexual orientation, gender identity and expression (SOGIE). Lesbian, Bisexual, Trans and Intersex (LBTI) women are subjects of a double discrimination, based on their sex, as well as their SOGIE, which are due to the stigma and prevailing stereotypes rooted against them in the society. Such a background is nurtured by the state's neglect of the specific needs of the group, also illustrated at the sixth periodic report submitted by Georgia before the Committee in 2020 that neglects the number of crucial challenges in regards to SOGIE. Hence, Georgian government fails to recognize homo/bi/transphobia as a social problem, manifested in gender based violence and discrimination on the grounds of SOGIE, in need of emergency intervention.

Under the international obligations and the standards Georgia is required to provide effective protection against discrimination of LBTI persons; proper investigation and prevention of hate crimes that shall cover SOGIE among the protected grounds; act on ongoing practices sustaining discrimination in gender recognition and self-determination; eliminate abusive requirements as prerequisites for gender marker change; guarantee protection against discrimination of LB and especially Trans and Intersex persons in healthcare; implement proper education curricula to combat discrimination and guarantee policies to protect LBTI persons from violence and ill-treatment, *inter alia* at educational institutions and labor marker.

This report offers scrutinized analyses of those shortcomings together with the clear recommendation to address the Georgian government.

## I. Introduction

1. Since the last review held in 2014, Georgia has undergone multiple significant legal and institutional reforms tackling gender, violence and discrimination. More precisely, sexual orientation, gender identity and gender expression (SOGIE) were incorporated as protected grounds in the Law on the Elimination of All Forms of Discrimination (2014); The Criminal Code amended to include violation of human equality on the basis, among other things, of SOGIE (2014); Hate crime cases based on SOGIE had shown up in the official data; Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence was ratified (2017) together with emending 30 normative acts to align domestic law respectively; etc.
2. However, despite strengthened anti-discrimination standards in legislation, gaps and challenges still remain in practice, major issues in terms of implementation and holes in policies that impede to guarantee equality and non-discrimination of women based on SOGIE. As a result LBTI women are subjects of double discrimination, based on their sex, as well as their SOGIE, which are due to the stigma and prevailing stereotypes rooted against them in the society. Such a background is nurtured by the state's neglect of



the specific needs of the group, which makes members of the LGBTI group vulnerable to violence and discrimination.

3. Such an environmental context is alarming for the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IE), the report stating “beatings are commonplace, harassment and bullying constant, and exclusion from education, work and health settings appear to be the norm”.<sup>1</sup> The same report analyzes the obstacles that trans people face in the absence of a mechanism for legal gender recognition (LGR).<sup>2</sup>
4. Correspondingly, under the **concluding observations** on the combined fourth and fifth periodic reports of Georgia, the Committee was concerned about the physical violence and harassment faced by lesbian, bisexual and transsexual women and restrictions on obtaining identity documents for transgender persons.<sup>3</sup> Requesting for the measures to eradicate those challenges the Committee was responded only in terms of hate crimes: **Under the sixth periodic report submitted by Georgia** in 2020 the number of issues advocated by the CSOs on the rights of LGBTI women has been omitted, together with the Committee’s recommendation regarding trans persons. Hence, the only issue in terms of SOGIE reflected in the national report are the hate crimes. In general, the report duplicates the state policy that is set on heteronormative bases and fails to acknowledge the needs of LGBTI and Trans persons (analyzed below).
5. The illustration of state policies is National Human Rights Action Plan. The plan for 2018-2020 had no chapter on Gender Identity and Equality till February 2020. It's worth noting that a number of issues advocated by civil society, *inter alia* LGR, were still not covered. Given the unstable political situation and the pandemic, the chapter had no progress in terms of implementation.
6. Thus, the state policy still fails to recognize homo/transphobia as a systematic and structural problem, hence presented such incidents as isolated cases and state strategy continues to be a selective punitive response to homo/transphobic manifestations. Whereas gender equality, LGR, proactive initiatives to reduce homo/transphobia such as comprehensive educational and awareness raising campaigns, remain beyond the state strategies.
7. All these systematic barriers have once again surfaced in 2020 during the **Covid-19 pandemic**, - social and economic oppression heightened the risks of losing homes, being victimized by homo/bi/transphobic violence and discrimination, while the complex needs of the community have been overlooked by the anti-crisis plans. The support provided by the government with the participation of the international organizations was an act of one-off humanitarian assistance and cannot be perceived as an adequate response to either the general or the currently critical needs of the LGBTQI community.

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<sup>1</sup> Report available online at:

<https://undocs.org/en/A/HRC/41/45/ADD.1?fbclid=IwAR1uGxuJ6IMh0KqfYO9D1vUNMQv4SWO0LSiwgZcH7UQCesdyIM71tmToyZo> §31.

<sup>2</sup> Ibid. §90.

<sup>3</sup> Concluding observations on the combined fourth and fifth periodic reports of Georgia\*\*, CEDAW/C/GEO/CO/4-5\*, §34(e).



8. The following paragraphs introduces listed problems against LGBTI women in line with relevant articles of the Convention (1-16), its General Recommendations (GR) and Concluding Observations, providing Georgian government with the clear recommendations to solve highlighted issues.

## II. Violence against women on the grounds of SOGIE

*CEDAW: art. 1-3,6. General Recommendations: N19, 35. Concluding observations 34(e).*

9. Under the recommendation N12 the Committee asked for states to include information on violence and on measures introduced in their national reports. Georgia has partially acknowledged the importance of GR and in its sixth periodic report (paras 235-238) provided the data on homo/bi/transphobic hate crimes highlighting the importance of combating it. It doesn't however, address the causes for refraining from reporting to law-enforcement agencies, challenges in terms of domestic violence (DV), Intimate Partner Violence (IPV) or the services for the victims of hate crimes.

### 2.1. Homo/bi/transphobic hate crimes

10. Despite the institutional measures taken by the state, the frequency and brutality of hate crimes experienced by the L(G)BTQI community is alarming. According to the study conducted in 2020, 56% of respondents (N=320) had experienced some form of violence during the previous two years. Like the past years the recent data also revealed the low rate of reporting - 70% refrained from reporting violence they had experienced to the law enforcement agencies.<sup>4</sup>
11. According to the study of LBT women conducted in 2018, out of the 66 victims of hate crimes only 4 (6%) addressed the law enforcement/ombudsperson. The victims usually refrain from reporting crimes to law enforcements because they consider it ineffective (44.3%), they fear forcible outing (24.6%) and re-victimization (16.4%) that results in a gap between the official and NGO statistics.<sup>5</sup>
12. As noted by the State report §238, combating hate crimes, the Ministry of Internal Affairs has created special department, which *inter alia* monitors investigation of hate crimes. On that ECRI noted: "such a department is not a substitute for a specialized investigative unit within the police, as recommended by ECRI. The new department was created to review hate crime investigations, not to carry them out. It therefore does not constitute a dedicated reinforcement of hate crime investigation capacity at law enforcement level". This recommendation has been also addressed by the IE.<sup>6</sup>

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<sup>4</sup> Jalagania, L. Social Exclusion of LGBTQ Group in Georgia, Social Justice Center, 2020.

<sup>5</sup> Aghdgomelashvili E., From Prejudice to Equality: LGBT persons in Georgia (part II): LGBTI persons in Georgia, WISG, 2018.

<sup>6</sup> Supra Note2, §99.



## 2.2. Domestic Violence

13. The 2018 study showed that 67.2% (N=172) of respondents have experienced some form of abuse by family members since 2015 on the bases of SOGIE;<sup>7</sup> However, hate motive has not been documented in any domestic violence cases against L(G)BTQI individuals since official statistics with regards to domestic violence based on SOGIE is not collected. Additionally, the government does not address the specific forms of violence against LGBTI individuals (minors are at particular risk), such as different forms of coercive therapies, psychological pressure and violence, attempts of forced marriages of lesbian women and trans men.

## 2.3. Intimate Partner Violence

14. While the legislation doesn't consider an intimate partner as a family member, or recognize any form of civil partnership, it does not prohibit IPV, especially among same-sex partners. This situation significantly impedes access of LBT women to the mechanisms of protection on VaW. However, according to study, during the period of 2015-18, 81.2% of LB respondents (N=95) had experienced some form of violence by the intimate partner, psychological violence being the most widespread form.<sup>8</sup>

15. In terms of trans persons and their access to the protective mechanisms, the law defining "victim" as "a woman or other family member,"<sup>9</sup> without further anti-discrimination clause in light with unregulated LGR mechanism, precludes trans women from the access to the national mechanism on violence against women.<sup>10</sup>

## 2.4. Services for the hate crime survivals

16. The victims of hate crime can access the Offices of Protecting Witness and Victim within the Prosecutor's Office and the Ministry of Internal Affairs system, which have a limited number of coordinators throughout Georgia.<sup>11</sup> One of the responsibilities of the coordinator is to offer victims the services available at different state agencies and civil society organizations. Crucially, the state doesn't offer relevant services for the victims of hate crimes itself and the coordinators of the Prosecutor's and MIA's are seeking those services outside the system and mainly approaching civil society organizations that themselves have limited capacity. It's crucial that the State had such guarantees as part of the fight against hate crimes itself.

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<sup>7</sup> Supra Note6.

<sup>8</sup> Ibid.

<sup>9</sup> The law of Georgia on VaW and/or Elimination of DV, Protection and support of victims of violence, art.4.

<sup>10</sup> Tbilisi City Court does not considered the claim of trans woman who requested protective order Case of NGO SAPARI: №3/605-18. 5/02/2018.

<sup>11</sup> Correspondences from MIA(8 20 02084485) and PO(№13/48281): 17 and 15 coordinators for 2020.



□ Recommendations:

- a. Establish hate crime investigation units within the law enforcement system in order to strengthen the investigation/prosecution/prevention of hate crimes based on SOGIE.
- b. Guarantee the adequate identification and processing of Domestic Violence cases based on SOGIE, and the collection of the relevant statistics.
- c. Amend the Criminal Code and the Law on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence to ensure that the rights of victims are protected without discrimination on any ground, including SOGIE, as well as civil status (Intimate Partner).
- d. Introduce the state-funded range of services for the victims of hate crimes.

### III. Legal Gender Recognition

*CEDAW: art. 1-3,15. Concluding observations 34(e).*

17. Despite the Committee's recommendation (35e), as well as IE's condemn<sup>12</sup>, the state has no progress in abolishing restrictions for trans persons with regard to obtaining identity documents. Hence no response in the National Report. Such failure to recognize the gender identity of trans and intersex women is a breach of Articles 1, 2, 3 and 15 of CEDAW.
18. LGR remains unregulated in Georgia: According to the practice, without any legislative or administrative basis, trans people have been forced to undergo unwanted, medically unjustified, expensive and life-threatening procedures in order to change gender marker in their IDs. Namely, under the current practice, new ID and birth certificate can be issued only after a person undergoes multiple medical procedures, including hormonal therapy and gender reassignment surgery, i.e. irreversible sterilization, hormonal treatment and preliminary surgical procedures are mandatory to change gender marker.<sup>13</sup>

□ Recommendations:

- e. Regulate the process of LGR that is quick, accessible, transparent administrative procedure based on self-determination.
- f. Eliminate abusive requirements as prerequisites for gender marker change, including forced involuntary sterilization, medical procedures related to transition, surgery and hormonal therapies, and mandatory medical diagnosis, psychological appraisals or other medical or psychosocial procedures or treatment.

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<sup>12</sup> Supra Note2, §90.

<sup>13</sup> Established degrading practice has been illustrated in 2021, while the [gender of applicant has been changed](#).



#### IV. Combatting discrimination and stereotyping through education

*CEDAW: art. 2; 10. GR: N36.*

19. Even though schools are crucial spaces to learn social diversity and individual esteem, the Georgian educational system reproduces social inequalities. Discrimination of L(G)BTI youth in a forms of gender stereotyping, violence and bullying still persists in Georgia and has a devastating impact on their everyday life.
20. Bullying in general and especially towards LGBTI youth at school remains a problem. Additionally, no detailed analyses of the school textbooks has been conducted, which would determine whether the textbooks are free from homo/transphobic stereotyping. None of special awareness rising programmes or any psychological support exist in order to meet special needs of L(G)BTI pupils. Moreover, the research of the Public Defender about the human rights in educational institutions clearly outlines how intolerant the school educational system is in regard to SOGIE.<sup>14</sup> Thus, the formal education system in Georgia on the one hand, can't provide dissemination of knowledge on SOGIE issues free from stereotyping, and on the other hand, does almost nothing to promote a tolerant and inclusive environment for LGBTI people.
21. According to the WISG's research (2018) 14.2% of LBT participants became victims of discrimination in the field of education during the last 2 years and the classmates/groupmates were named as the most abusive group.<sup>15</sup> Among the forms of the violence experienced by the classmates were physical violence (7.9%), sexual harassment (34.2%), attempted rape (13,2%). 57.9% of the respondents recalled the experience of psychological pressure and threats on forcible outing (7.9%). In particular cases teaching personnel, instead of responding, are aggravating unhealthy environment at class.<sup>16</sup>
22. Trans persons are even more marginalized, - almost every trans respondent had the experience of discrimination at school, resulting in their decision to give up on studying.

#### □ Recommendations:

- g. Together with relevant governmental organizations and SCOs, the ministry of Education shall analyze the school textbooks to determine the level of tolerance on it;
- h. Ensure the policies for inclusion and overcoming bullying at schools;
- i. Adopt specific policies or programmes to promote tolerance towards diverse sexual orientations or gender identities in educational settings;
- j. Ensure that mechanisms to address bullying based on SOGIE are available and accessible in educational settings.

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<sup>14</sup> Available online at: <http://www.ombudsman.ge/uploads/other/5/5321.pdf>

<sup>15</sup> Supra Note6.

<sup>16</sup> Ibid.



## V. Equal access to healthcare

*CEDAW: art. 12. GR: 19, 24.*

23. Heteronormativity is the default assumption in Georgian healthcare policies, hence, infringing the needs of LGBTI women. Policies, strategies and action plans on the health-care system do not cover or address the needs on SOGIE. As reported in 2019, IE was shocked at the lack of awareness and the stigma attached to SOGI by health professionals.<sup>17</sup> A study among medical staff (N=352) showed that 13.8% of the respondents believed that bisexuals are persons with “double biological sex”. Only 73.8% of the interviewed were able to select the correct definition of “transgender”. According to 39.3% of respondents, homosexuality is a disease, which can be cured.<sup>18</sup>
24. Healthcare system is blind towards **Trans persons**: There are no clinical guidelines or protocols that underwrite procedural rules of gender affirming procedures. That gives absolute discretion to medical institutions to decide who is eligible for the procedures, without any mechanism for appealing the consequences. Such a gap may result in arbitrariness, lack of consistency and create obstacles for people willing to undergo the procedure. This also questions the validity of informed consent. In 2020 the Ombudsperson called on the Ministry of Health to draft trans healthcare protocols and guidelines, however there is no progress yet in this regards.<sup>19</sup>

### 5.2. Ill treatment of intersex children

*CEDAW: art. 1,5,12. GR:14,19,31.*

25. Georgian healthcare legislation does not prohibit genital-normalizing treatment, involving both surgery and hormone therapy that are often medically unnecessary, not always consistent with the person’s gender identity, posing severe risks for sexual and reproductive health and are often performed without informed consent. No study has been conducted in Georgia which would examine the medical needs of intersex children and would assess against the international standards of “sex normalization” the surgeries conducted on them in infancy or at later stages.

#### □ Recommendations:

- k. Amend the state policies, strategies and action plans on the health-care to include needs on SOGIE.
- l. Adopt clinical guidelines on trans-specific medical procedures in line with international standards and recommendations.

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<sup>17</sup> Supra Note2, §76.

<sup>18</sup> Serebriakova L., Study of Knowledge, Practice and Attitudes of Medical Staff towards LGBTI patients, 2015.

<sup>19</sup> Available online at: <https://wisg.org/ka/news/detail/287/sakhalkho-damtsvelma-transi-adamianebis-jandatsvis-sakitkhebze-zogadi-tsinadadeba-gamostsa>



- m. Implement effective legislative, administrative, judicial and other measures to ensure that no child or adult is subjected to unnecessary surgery or treatment without free and fully informed consent.
- n. Conduct special trainings for the relevant medical staff to understand the needs of L(G)BTI persons, avoid discrimination and provide them with necessary services.

## VI. Discrimination and exclusion in employment

*CEDAW: art. 2; 11, 15.*

- 26. Discrimination in employment is yet another challenge for LGBTI persons, even though Labour Code prohibits discrimination based on sexual orientation. Especially trans persons are vulnerable at the labor market, as unregulated LGR pushes them into unofficial employment i.e. poor working conditions and remuneration, also highlighted by the IE.<sup>20</sup>
- 27. Study of 2018 reveals that 28.2% of LB women were discriminated in employment based on SOGIE, mostly while seeking jobs: denial on employment hit 21.4%; unequal opportunities (11.2%); obstacles in promotion (6.5%). Entering the labour market is more problematic for the LB women who look gender nonconforming (48.4%). It revealed that difference also occurs in terms of employment sector: as the discrimination experienced by LB women operating in the private sector (32.6%) is double that of the employees of the public sector;<sup>21</sup> we can thus presume that the anti-discrimination mechanism is more effective in the public sector.

### □ Recommendations:

- o. Ensure awareness rising on anti-discrimination mechanisms, including in the Labour Code, in terms of SOGIE.

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<sup>20</sup> Supra Note2, §72-73.

<sup>21</sup> Supra Note6.

