

ლგბ ქალები საქართველოში

LBT WOMEN IN GEORGIA

CEDAW

SHADOW
RECOMMENDATIONS

2012

REPORT
შედეგები



ჩრდილოვანი ანგარიში მომზადებულია „ქალთა ინიციატივების მხარდამჭერი ჯგუფის“ (WISG) მიერ „ღია საზოგადოება – საქართველოს“ და „ქალთა გლობალური ფონდის“ ფინანსური მხარდაჭერით.

ანგარიშზე მუშაობდნენ ანა ნაცვლიშვილი და ეკა აღდგომელაშვილი.

„ქალთა ინიციატივების მხარდამჭერი ჯგუფი“ მადლობას უხდის ყველა იმ ადამიანს, ვინც წვლილი შეიტანა ამ ანგარიშის მომზადებაში.

This shadow report was prepared by “Women’s’ Initiative Supporting Group” (WISG) with the financial support of the “Open Society – Georgia Foundation” and “Global Fund for Women”.

This report was written by Ana Natsvlishvili and Eka Aghdgomelashvili.

WISG would like to thank everyone who contributed to the preparation of this report.

დიზაინი /Design: ე. წერეთელი / E. Tsereteli
დაკაბადონება/Layout: მ. გვეტაძე / M. Gvetadze



TO BE SUBMITTED TO THE COMMITTEE ON THE ELIMINATION OF ALL FORMS OF
DISCRIMINATION AGAINST WOMEN (CEDAW)

RIGHTS OF LBT WOMEN IN GEORGIA

SHADOW REPORT

“WOMEN’S’ INITIATIVES SUPPORTING GROUP”
TBILISI 2012

TABLE OF CONTENTS

51 – GLOSSARY OF TERMS

53 – INTRODUCTION

55 – BRIEF OVERVIEW

Analysis of Legislation

Socio-Cultural Environment

61 – VIOLENCE AGAINST WOMEN

a. Sexual violence

b. Psychological violence

c. Law enforcement authorities and LBT rights

- Physical and verbal violence by law enforcement authorities
- Rights of LBT people in the penitentiary system
- Measures taken by state agents to address third – party violence against LBT people
- Reasons for low reporting rate of third – party violence against LBT people
- Juveniles

71 – PROBLEMS RELATED TO THE RECOGNITION OF LEGAL IDENTITY

72 – DISCRIMINATION AND VIOLENCE AGAINST LBT HUMAN RIGHTS DEFENDERS

76 – RIGHT TO EDUCATION

78 – RIGHT TO HEALTH

- LBT children and their parents
- Transgender people
- Discrimination and the right to health
- Discrimination and HIV/AIDS
- Pressuring LBT people to undergo treatment

83 – DISCRIMINATION AT WORK AND THE RIGHT TO HOUSING

85 – FORCED MARRIAGE AND DISCRIMINATION BASED ON MARITAL STATUS

- Issues related to adoption and surrogate motherhood

88 – KEY RECOMMENDATIONS

Bisexual refers to a person who is attracted to both sexes.

Gender Expression refers to the external manifestation of one's gender, usually expressed through "masculine," "feminine" or gender variant dress, appearance, mannerisms, speech patterns, and behavior. Gender expression is not necessarily an indication of sexual orientation or gender identity.

Gender Identity refers to a person's deeply felt sense of identification with a specific gender, in relation to the social construction of masculinity and femininity. A person's gender identity may be male, female, or something other than or in between male and female. A person's gender identity may or may not correspond with the sex assigned at birth. Since gender identity is internal, one's gender is not necessarily visible to others. Gender identity is different from sexual orientation.

Gender Non-conforming or Gender Variant describes individuals who do not conform to prescribed social "norms" regarding "gender appropriate" conduct and presentation, whether or not they identify with the gender associated with their sex assigned at birth.

Homophobia refers to an irrational fear or hatred of homosexuality and people who are (or are perceived to be) homosexual. Similarly, biphobia refers to an irrational fear or hatred of bisexuality and transphobia refers to an irrational fear or hatred of transgender people. All of these phobias manifest themselves in harassment, prejudicial and negative treatment, violence and other forms of discrimination.

Homosexual refers to a person whose primary emotional and physical attraction is to people of the same sex.

Intersex refers to when a person's biological anatomy varies from the standards usually used to classify bodies as male or female. Intersex variations describe a large variety of conditions where a body varies from the male or female standard in areas such as chromosomes, hormonal makeup and genitalia. Intersex variations may be noticeable at birth or develop later in life.

Lesbian refers to a female whose primary emotional and physical attraction is to other females.

LBT is an abbreviation for Lesbian, Bisexual and Transgender. This umbrella term is meant to include lesbians, bisexual women, transwomen (male-to-female transgender persons) and transmen (female-to-male transgender persons). LBT women are sexually marginalized in their societies on the basis of their sexual orientation, gender identity and/or gender expression.

Sexual Orientation describes an individual's physical, romantic, emotional and/or spiritual attraction to another person, including lesbian, gay, bisexual and heterosexual orientations.

Transgender is an umbrella term for people, whose gender identity, expression or behavior is different from that typically associated with their assigned sex at birth, including but not limited to transsexuals, travestis, transvestites, transgenderists, cross-dressers, and gender non-conforming people. Transgender people may be heterosexual, lesbian, gay or bisexual.

Transsexual refers to a person whose gender identity is different from their assigned sex at birth. Often transsexual people alter or wish to alter their bodies through hormones or surgery in order to make it match their gender identity.

INTRODUCTION

Violence against women is closely linked to socially constructed views on *masculinity* and *femininity*. Patriarcal opinions on gender and gender norms draw a strong distinction between the two and facilitate unequal distribution of power based sex/gender-related considerations.

In a society where gender asymmetry is sharp, even a slight deviation from established gender norms can turn into a reason of violence and discrimination. In such societies LBT (Lesbian, Bisexual and Transgender) women usually constitute one of the most vulnerable groups; They are discriminated based on both - their sex and their sexual orientation/ gender identity.

Discrimination based sexual orientation/gender identity is prohibited by numerous international human rights instruments and recommendations. Of particular importance is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) ratified by Georgia in 1994. By 2001 the Committee on the Elimination of Discrimination against Women had delivered a number of important decisions regarding discrimination of women based on sexual orientation/gender identity.¹ Starting from 2001 the Committee has addressed several countries with a recommendation to pay attention to the issue of discrimination against LBT women (Ukraine, Uzbekistan, Ecuador, Kyrgyzstan, Holland, Panama and Guatemala). Since 2008 the Committee has begun giving an increasing attention to LBT issues. E.g., in its recommendations addressed to Russia in 2010 the Committee devoted a separate section to LBT women and to the issue of discrimination based on sexual orientation.²

Despite some recent LGBT- related groundbreaking developments in the field of human rights, in Georgia LGBT still remains as one of the most “invisible” groups. As a result, violence against them also remains “invisible” and goes unreported to human rights organizations, state institutions, as well as the wider public.

In Georgia LBT rights are not seen as a part of women’s rights

in general; LBT issues are practically eliminated from the agenda of women's rights organizations. This, in addition to the high level of homophobia, makes it particularly difficult to identify individual instances of discrimination and to measure the overall scope of the problem.

For this reason we consider it to be very important that the discussion and monitoring of LBT rights in Georgia starts in the context of women's rights in general.

The structure of the report is based on the methodology which has been devised by IGLHRC (International Gay and Lesbian Human Rights Commission).³ Each chapter starts with a provision from the Convention on the Elimination of All Forms of Discrimination against Women or a CEDAW recommendation and a relevant provision from the Yogyakarta Principles.

The report is based on materials collected and documented by WISG: cases of human rights violations of LBT women in Georgia, interviews and focus groups, results of media monitoring conducted by WISG in 2003, 2006, 2007-10, 2011 on coverage of LBT issues in Georgian media and a Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in Georgia carried out by the Danish Institute for Human Rights and COWI in 2010.

1 Committee on the Elimination of Discrimination against Women (CEDAW Committee), Concluding: Observations: Netherlands, para. 253, UN Doc. A/49/38, April 12, 1994; CEDAW Committee, Concluding Observations: New Zealand, para. 612, UN Doc. A/49/38 (1994); CEDAW Committee, Concluding Observations: Canada, para. 310, UN Doc. A/52/38/Rev.1 (1997); CEDAW Committee, Concluding Observations: Mexico, para. 420, UN Doc. A/53/38 (1998); CEDAW Committee, Concluding Observations: Kyrgyzstan, para. 127-28, UN Doc. A/54/38 (1999); CEDAW Committee, Concluding Observations: Sweden, para. 334, UN Doc. A/56/38 (2001).

2 <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-USR-CO-7.pdf>

3 Equal and Indivisible: Crafting Inclusive Shadow Reports for CEDAW. IGLHRC. 2009

ANALYSIS OF LEGISLATION

Georgia does not have an anti-discrimination legislation. Equality clause of the Constitution provides a list of prohibited grounds of discrimination which does not include sexual orientation or gender identity. The Constitutional Court's interpretation of the equality clause suggests however, that discrimination is also prohibited on other grounds not expressly mentioned therein⁴.

Until very recently discrimination on the basis of race, religion, national or ethnic origin and language intolerance were considered as aggravating factors for all crimes in the Criminal Code of Georgia. Very recently, in March 2012 Georgian Parliament amended this provision and added victim's sexual orientation or gender identity to this list of grounds.

This amendment is undoubtedly a positive step forward; however the real value of any legislative amendment should be measured according to its effectiveness in practice and its ability to protect LGBT rights in reality. Ensuring such effectiveness requires further measures to be taken by the government. WISG will welcome adoption of such further measures and encourages relevant authorities to engage in broad consultations with civil society groups working on LGBT rights in Georgia regarding those measures.

Unlike this positive development, another recent legislative amendment regarding data protection law is disquieting. It introduces a post of a Data Inspector; every organization (public or private) is obliged to send personal data of its employees, including information about their sexual orientation, to the Inspector. Furthermore, if the public interest mandates so, the Inspector has the right to process, analyze, store or release such data without the consent of the individual concerned. As a member of the Parliament from the ruling party, Lasha Tordia stated in his interview with online newspaper "Netgazeti", "public interest" includes e.g., the interest to ensure that an LGBT person does not work in a kindergarten.

Other officials or state bodies have not commented on this statement⁵. This new Law on Data Protection is inconsistent with the Constitution and international human rights obligations of Georgia and creates a serious danger for the protection and realization of the right to private life in Georgia⁶.

Hate speech against L(G)BT people remains a serious problem. It is not prohibited by law, however media self-regulatory mechanisms – such as the Broadcaster’s Code of Conduct and the Charter of Journalistic Ethics - prohibit hate speech and promote the principle of covering diversity (which includes sex and sexual orientation); Under the Charter journalists may face ethical responsibility for violating the prohibition of hate speech.

As media analysis conducted in 1999-2003, 2005-2006, 2007-2010 demonstrates, media attention to LGBT issues lacks consistency. The pick of the use of hate speech usually coincides with the periods of struggle for distribution of political power in the country. Content analysis shows that at such times “non-traditional” sexuality is turned into an object of political speculations.

On a positive note it has to be mentioned that starting from 2008, criticism of homophobic hate speech has increased in media. In 2010 the Council of Media Ethics heard the first complaint concerning homophobic hate speech and established that the journalist violated the Charter. Since 2011 LGBT issues are increasingly discussed in the media in the broader context of human rights.

Sex reassignment surgery is not prohibited in Georgia; however its rules and procedure are not regulated by law and the issue is left solely to the discretion of medical establishments. Changing one’s official documents after changing sex remains problematic. A new ID document can be issued only after the surgery is carried out, not before; a university diploma cannot be issued for the second time for any reason whatsoever.

An Order of the Minister of Health which imposes a blanket ban on blood donation by homosexuals – as one of the HIV/AIDs risk groups - is unacceptable.⁷ Such a blanket ban is disproportionate and incompatible with fundamental principles of human rights law.

Homosexuality was decriminalized in Georgia in 2000. However the Criminal Code still contains pejorative language regarding homosexuality which stigmatizes and marginalized the community. The Code proscribes sexual contact by force, threat, abuse of an official capacity or a defenseless position of the victim, also with a person below 16. Such prohibitions are by all means justified in order to protect the rights of others, what is problematic however is that Georgian Criminal Code proscribes such acts committed by heterosexuals in one provision, whereas the same acts committed by homosexuals are proscribed separately in another provision; legal justification

for such a separation is unclear. The penalty under both provisions is identical however. Also the mentioned provision refers to homosexual sexual conduct as “deviant” (abnormal) sexual behavior. Such language contravenes fundamental principles enshrined in the Constitution and the criminal legislation of the country: freedom and equality before the law and inviolability of person’s honor and dignity.

Labour Code expressly proscribes discrimination based on sexual orientation at the workplace,⁸ however it leaves the door wide open for discrimination both - at the stage of hiring and dismissal.

Although there is a law in Georgia against domestic violence, it does not apply to unmarried couples; therefore since same-sex marriage is not authorized in Georgia, the law does not apply to domestic conflicts between LGBT couples; thus the law fails to take into consideration specific needs of LBT community and is ineffective to protect their rights in a relationship.

In sum, remaining gaps and limitations in the legislation put LGBT persons in an unequal position when compared to heterosexuals; in some instances the law is not facially discriminatory, however in practice it leads to discriminatory results and severely affects LGBT community.⁹

4 The Constitutional Court’s decision on the case of Shota Beridze and others v. Georgia. 31.03.2008

5 Nothing personal - Draft Law Which Protects and Makes It Public. Newspaper Netgazeti. 10.01.2010.

6 It should be noted that before the adoption of this law gathering, processing, storage and release of such data was forbidden for public institutions as it is required by the Constitution of Georgia.

7 The Order #241 of the Minister of Labour, Healthcare and Social Protection, December 5, 2000

8 Labor Code of Georgia. *Article 2(3)*

9 Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity. Legal Report: Georgia by independent researcher Ana Natsvlshvili. COWI. 2010

SOCIO-CULTURAL ENVIRONMENT

No comprehensive research has been carried out in Georgia to measure the level of homophobia in Georgia. However there are several surveys which among other issues/values have touched upon the issue of public attitude towards homosexuality. A survey conducted by CRRC in 2009 showed that “the number of people who consider homosexuality to be unacceptable remains unchanged and amounts to 90% of the population.”¹⁰

In addition, gender inequality and asymmetry— at social, political, cultural and economic spheres - is very noticeable in Georgia. Homophobic and sexist environment makes LBT group one of the most vulnerable groups in Georgia. These people are usually victims of double discrimination, both due to their sex and their sexual orientation/gender identity.

As the head of the “Women’s Fund in Georgia” has stated in an interview with WISG, “Georgian culture by its very nature is discriminatory at all levels. This is particularly so as far as women’s rights, specifically their reproductive rights and decision making role in family planning are concerned.”¹¹

Sopho Benashvili, the representative of the Public Defender’s Office has also highlighted this problem in her interview. “In general traditional (conservative) moors dominate our society; stereotypes that it is the obligation of the woman to get married, have children, bring them up and that’s it. “The place for a woman is in the kitchen” and similar expressions are widespread in our society.”¹²

Consequently representatives of LBT group in most cases are victims of double discrimination. As the representative of “Identoba” has summed it up “women are not marginalized because they have a “different” identity, ... but simply because they are women...this is already an enough reason to marginalize them... we live in a sexist, violent culture, which is oriented on survival and those who will not meet their duty of reproducing, at least in a symbolic sense, are not considered to be human enough – this refers to both: women and men”¹³.

The low level of coming out and a social lifestyle (unlike the gay community who has a well developed social network) further makes it difficult to reveal the cases of discrimination and as a result - decreases the possibility to react to such cases.

In 2010 when the Parliamentary Assembly of the Council of Europe was discussing adoption of a resolution on LGBT issues, different religious groups disseminated a joint statement in Georgia: “It is intended to consider draft legislation about discrimination on the ground of sexual orientation and sexual identification, which will legalize homosexuality, bisexuality and other sexual deviations. At the same session they will discuss a document, which portrays abortion as a right of the woman and

a method for family planning...It is unconceivable that Europe, which is the ancient part of the Christian world and whose culture is so inherently linked to the religion, supports portrayal of sexual deviations as “normal” from the tribune of the Council of Europe. Homosexuality, bisexuality and similar activities are considered to be the greatest sins not only in the Christian religion, but in all traditional religions, because it causes degeneration of a human being, his physical and moral illness.”¹⁴

The members of Georgian delegation failed to protest such a statement, rather on the contrary – some members even joined the statement (members of the Christian-Democratic Party), and some others made further public statements which strengthened stereotypes against LBT people in Georgia: “like many other European Christian country, we do not want Georgia to receive a recommendation to encourage homosexuality, we support the idea that this is not based on the principles of Christianity and has nothing to do with democracy. No one bars these people (sexual minorities) from doing what they want to do, but if they want to be together, this unity should not be called “a family.” (Petre Tsiskarishvili, one of the leaders of the ruling party.)¹⁵

Representatives of religious organizations and politicians in Georgia often make homophobic statements. At the end of 90ies certain politicians were so frequently invoking the need “to fight against homosexuals” that some of the parties almost made this idea a part of their programs for their pre-election campaigning. “One should gather them all together on a ship and drown them in the sea”, “If we look at the issue from the perspective of democracy, you should leave those people alone, if we look at it from the perspective of dictatorship however – you should kill the sick right in the cradle” ...In addition to fascistic statements made publicly about homosexuals in the media, they have actively started creating a myth about the “conspiracy of gays”, who are “planning to come into power” (“non-traditional sex” is the beginning and a sine qua non of destroying everything traditional, if such “non-traditional” people come into power, this will put an end to national consciousness and identity.) Different newspapers started to publish articles entitled as “Georgia is ruled by homosexuals”, “Despite the fact that gays cannot procreate, they are getting multiplied however,” “from blue (gay) to black – political palette,” “enemies of the nation, KGB agents and Gays” ...

After the Rose Revolution in 2003 the panic about “homosexual conspiracy” faded away. Articles on this issue moved from serious newspapers into the yellow ones. Direct calls against homosexuals in the media were replaced by discriminatory and ironic comments. The balance between negative, neutral and positive expression towards LGBT changed greatly after 2007 (negative 86%, positive – 21 % and neutral – 4 %). The proportion of negative as well as positive expression increased at the expense of the decrease in neutral expression. The reason on the one hand may be

the increased visibility of the LGBT group itself; on the other hand this change reflects the political and socio-cultural alterations which took place in Georgia.

The heavy soviet legacy and the attempt to go back to “traditional” values manifest themselves not only in the political crisis in the country. The new balance between negative and positive expression reflects the process of polarization between different values – which usually characterizes the time of a crisis. Despite the fact that the interest in the issue has grown, in parallel to the political and social crisis, the dynamics has almost stayed unchanged (positive is 6-8%; neutral is 16-22% and negative is 60-70%). Such allocation of proportions can be explained by the politization of the community: manipulating with the issues of homosexuality and using it to label political opponents is as relevant in Georgia nowadays as was in 1999-2003.

The media analysis further showed that particular individuals rarely become the subject of a discussion; (apart from those articles which are copied and translated from foreign journals about celebrities and those in the show-business.) As noted above, the discussion more focuses on homosexuality in general; the issue is discussed through the prism of politics and neo-moralism. GBT group often gets more media attention in general, as compared to LB group and the issue of female sexuality in general; (14% of the entire coverage of the issue). Majority of articles portray lesbians as an unstable group whose members have negative experiences with the opposite sex in the past or simply copy it from others (following the fashion of homosexuality); such a behavior – according to them - however is subject to change (if the lesbian meets a “real man.”)

Reaction of the authorities and of certain human rights institutions towards hate speech varies according to the minority group targeted by speech. Authorities often underline the importance of tolerance in respect of ethnic or religious minorities in their public speeches, however they keep silence when it comes to LGBT; such an attitude clearly does not facilitate development of the culture of tolerance towards LGBT.

10 Caucasus Research Resource Center, Programme of Eurasia Foundation: Knowledge and Attitudes toward the EU in Georgia. 2011

11 Interview with Nana Pantsulaia. Women’s Fund in Georgia. 21.10.2011

12 Interview with Sopho Benashvili. The Public Defender’s Office in Georgia. 22.10.2011

13 Interview with Irakli Vacharadze. LGBT organisation Identoba Executive Director. 22.10.2011

14 Joint written statement by the Patriarch of the Georgian Orthodox Church, the Ambassador Extraordinary and Plenipotentiary of the Holy See to Georgia, Head of the Georgian Eparchy of the Armenian Apostolic Church, Acting Chief Rabbi of Georgia and the Plenipotentiary Representative of the Caucasian Muslims’ Organisation in Georgia, 29.01.2010.

15 EU versus Religious dogmas .Dato Gamisonia. Newspaper 24 Saati. 25.01.10.

VIOLENCE AGAINST WOMEN

CEDAW Convention, Article 1-4, 6, General Recommendation #19

The Law on Domestic Violence only applies to married couples. Therefore, as same-sex marriage is not permitted in Georgia, it automatically excludes LGBT couples. This limitation regarding married couples severely and adversely affects LGBT people.

The survey conducted by WISG revealed that LBT people often experience physical violence, as well as blackmailing, threats and verbal abuse due to their sexual orientation. In the majority of such cases victims do not report such incidents to the police or human rights organization. The major reason for this is the fear of coming out to families and friends in a deeply homophobic society. Organizations and individual experts working on LBT rights unanimously observe that high level of homophobia in the society facilitates and encourages violence. Lack of financial and economic independence of women is an additional factor in that regard. According to the survey conducted by WISG in 2010, the level of unemployment among the members of LBT community is 1, 75 times higher than in the same age group across the country¹⁶. According to the survey, 62, 5% of the group members live with their parents, other members of the family, spouse or children. “In Georgia women practically never own the property, which makes them particularly vulnerable to abuse by family members” – stated the representative of “Identoba” – a group working on LGBT rights in Georgia.¹⁷

Psychologist of WISG also highlighted the problem of domestic violence in her interview: “almost five out of ten among the community members with who I am working is a victim of violence, domestic violence is particularly frequent... In the majority of cases this involves imposition of restrictions – they are banned

Everyone, regardless of sexual orientation or gender identity, has the right to security of the person and to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group.

[YOGIAKARTA PRINCIPLES, Principle 5]

from going out, they are locked, sometimes they are even beaten up... some victims flee their homes because of that.”¹⁸

The way my parents intervene in my personal life is so blatant, that sometimes I almost lose control over my actions... Imagine, my mother controls even my internet communication. This is how she learnt about my orientation...Currently she is putting on me such amount of pressure, that it drives me crazy...What can I do – I do not have a job and I am not self-sustainable...the only way I see out of this situation is getting married...I want to find a gay guy and get married to him so that he can live his life and I can live mine... but this also seems like a dream now – how I am going to meet him when I am under 24 hour-surveillance!” (Medo, 18 years old)¹⁹

Simply thinking about what might happen if I come out as a lesbian makes me scared...I have always been under a huge pressure from my family – my brother used to scold me that I am not feminine enough and this is my I cannot attract men...I feel that I am an extra burden in the family – my brother has his own family, when my parents will pass away, my situation will become even worse, I do not know what to do with my life.” (Marina, 36 years old)²⁰

16 Sexual and self-destructive behavior study among LBT group. WISG. 2010. Tbilisi

17 Interview with Irakli Vacharadze. LGBT organisation Identoba. 22.10.2011

18 Interview with Nana Mamulashvili. WISG, psychologist. 8.10.2011

19 Shorena Gabunia. Virtual society of Tbilisi Lesbian Women: social factor of closeness. Women's Fund in Georgia. 2010.

20 Ibid

A. SEXUAL VIOLENCE

Those respondents who had experienced physical violence (beating, pushing, sexual pressure and violence) during the last two years stated that usually it was their gender non-conformity which served as a reason for violence. Abusers, as a rule, were strangers or police officers and abused the victims in public places (street, shop, bar, public transport). Each of the victims had experienced violence not once but a number of times during the last two years. Out of multiple such instances, only two were reported to the police. The respondents explained that this was either because the abuser was a policeman himself or because previous experience of being treated in a homophobic way by the police discouraged them from reporting the crime.

Some of the participants stressed that the low level of violence against LBT group should not be seen as an indication of public tolerance towards them; the real reason is that LBT women try to restrict their behavior and self-expression in public as much as possible and avoid potential problems this way. A number of respondents pointed out that when they did not follow this strategy they were verbally abused and subjected to discriminatory treatment by the public who viewed them as acting in a “suspicious way.”

Organizations and experts working with transgender people pointed out that the latter are also often subjected to pressure, violence, and threats. According to the sexologist, transgender people are often victims of domestic violence. Family members often force them to undergo treatment and “become normal.”²¹

21 Interview with Maia Tchavtchanidze. WISG, sexologist. 6.10.2011

All respondents interviewed by WISG noted that they have experienced psychological violence at least three or more times in the last two years (verbal abuse, ridicule, spreading rumors, threat, blackmailing, letters/emails expressing hatred or threats.)

As in physical violence cases, the source of verbal abuse was either a policeman or a stranger. In one instance abusers were family members of an ex-partner, in another instance they were family members and friends of the victim. As the interviews revealed, such violence takes place in a wide range of locations – starting from home ending with public places and state institutions.

“I was sitting with my girlfriend in a bar (“Success”), which is considered to be a gay-friendly bar. As it were only two of us sitting on the second floor, we relaxed a bit and allowed ourselves certain degree of freedom in our actions...but nothing amoral happened... Manager’s assistant approached us and asked us either to stop what we were doing or to leave because the manager did not like what we were doing. So we left.... Places should be not only called ‘gay-friendly’ but actually be such in reality.” (Nana, 26 years old)²²

22 Respondent #4, Interview with the representative of LBT group. 21.10.2011

C. LAW ENFORCEMENT OFFICIALS AND LBT RIGHTS

- **Physical and verbal violence by law enforcement authorities**

Interviews revealed a number of instances of police threatening, verbally abusing or treating LBT individuals and lesbian couples in a cynical way, or failing to act when they were under a duty to protect their rights. In this respect representatives of the Public Defender's Office and "Women's Fund in Georgia" stressed the need for awareness raising among law enforcement personnel. "This kind of work with them is necessary to make sure that police actions are guided by dictates of professionalism and not personal convictions about homosexuality which are often heavily influenced by public stereotype."²³

"My friend and I were sitting in a car. Soon we noticed another car which stopped behind us and turned on the lights. It was a plain civilian car so we thought they were drunk, we got scared and wanted to leave the area but they blocked our way...and came out of the car. We saw that one of them was wearing a police uniform, but I do not remember if others also were wearing it; They demanded us to get out of the car and abused us verbally, saying all sorts of abusive things, like "what is this...are there no longer men out there.." etc. One of them then said that if he were a different sort of a person he would both show us both on TV. They demanded our ID cards, we showed them, and then asked about our work, names, etc. This kind of strong reaction was due to the fact that we were women" (Maka, 28 years old)²⁴

"I was living together with my girlfriend in a flat; we were both drunk and we picked a serious fight. Neighbors called police and they came. One could tell according to the appearance of my girlfriend that she might be a lesbian. After seeing us a patrol officer turned to the neighbors and said in a very cynical way: "we have a family conflict here and better we do not intervene" and they laughed. We did not need intervention from the police at all, in fact when they came we met them well and let them in to show them that everything was fine, but they started making fun of us by asking questions such as: "which one of you is a man and which is a women? Who is the husband? Who can we talk to?" and questions like that."²⁵

According to Georgi Gotsiridze of Georgian Young Lawyers' Association, "sex workers, including LGBT sex workers, often become victims of police violence. However because prostitution is prohibited by law in Georgia and is subject to an administrative fine, they prefer to keep silence about such incidences of violence. Consequently such cases are not reported anywhere and the police officers who engage in such cases go unaccountable"²⁶ – stated Gotsiridze.

- **LBT People in the Penitentiary System**

Information about the conditions of LBT people and their rights in the penitentiary system is not available.²⁷ Annual human rights reports of the Public Defender of Georgia are silent on this issue; He has not so far published any special thematic report on this issue either. Public Defender is designated as the National Preventive Mechanism under UN OPCAT and has an exclusive mandate to carry out monitoring of the penitentiary system.

Representative of “Tanadgoma” noted that in previous years the situation in the penitentiary was “quite discriminatory” towards LGBT people. “This was considered to be a bad thing and such people were made fun of... even lesbians themselves were open about it that their orientation was not well-received in the prison, however those who could defend themselves still had same-sex partners. The representative of “Tanadgoma” presumes that the situation remains difficult nowadays too, however since prisons are closed for public monitoring, it is difficult to get accurate account of what is going on in there. “In general, situation in prisons is the same as it is outside, prison is just a reflection of the outside world, and the difference is however that it reflects the worst part of the outside reality.”²⁸

The representative of the Public Defender’s Office noted that she does not have information about cases of arbitrary detention of LBT people.²⁹

The New Imprisonment Code provides for the right to a visit, which also applies to unmarried couples, provided they can certify that they have been living together for at least two years. It is unclear, however, what can serve as a certificate of such a fact and who can issue it. Second, considering the high level of homophobia in the society, it is unlikely that LBT couples will make use of this right in actual practice.

- **Measures taken by state agents to address third – party violence against LBT people**

Ethics Code of Prosecutor’s Office (2006) expressly states that prosecutors are obliged to facilitate elimination of all types of discrimination and to respect the principle of equality before the law as the highest value. Those who violate the Code of Ethics may face disciplinary measures.

Respondents noted however that police and prosecutors rarely react to third-party violence towards LBT, and when they do so, the reaction is inadequate.

Georgi Gotsiridze from Georgian Young Lawyers’ Association noted that effective investigation of abuses against LGBT people requires certain political will, which is lacking. He cited cases of threats against LGBT sent through different social networks as an example. “Despite the fact that it is quite easy to identify an author of such a

threat via requesting information on computer IP from internet providers, investigators remain reluctant to do so and do not carry out effective investigations in these cases. This is the case when the problem is not in the law but in its implementation. Law enforcement officers should show due diligence in investigating such matters”³⁰ – stated he.

Excerpt from the interview with a representative of the Public Defender's Office: *“We had a case when a representative of LBT community was involved in a street fight; police was called; when they came and learned that the person belonged to LBT group, they acted in a discriminatory manner –did nothing [contrary to what it was obliged to do according to the law]. We reacted to this case, prepared a special letter, however the person concerned categorically demanded from us not to say anything about the issue of sexual orientation. Thus we sent an ordinary recommendation [to relevant authorities] regarding police action which was inadequate in that case. In response to our recommendation, one policeman was hired and another was reprimanded.”³¹*

Article 25 of the Constitution of Georgia protects the right to peaceful assembly and manifestation. This provision obliges the state to abstain from violating the right by its own action and also to protect citizens from third parties violating their freedom of assembly and manifestation. LBT people are however effectively deprived of this right in Georgia, as the state does not protect them from third-party violence.

Until now there have not been attempts to organize a gay pride in Georgia. Despite this anti-gay-pride manifestations have been a regular occurrence in Georgia in recent years. In 2007 a scandal evolved in media around the campaign – “All Different- All Equal”; The rumor was spread that a gay pride was going to be organized under this campaign. This caused a serious public outcry. Organizers of the “All Different- All Equal” made public statements clarifying that this was a Council of Europe campaign and had been running for the last 12 years to fight racism, antisemitism, xenophobia and discrimination. Despite this, some part of the public still believed that the campaign was just a disguise to carry out a gay pride. Georgian Patriarchy responded to this public hysteria by a media statement. The statement read: “We would like to say that perverted form of sexual relationships is a big sin, which requires repentance rather than a public display and propaganda.”³²

In the same statement the Patriarchy warned the organizers of the event and the authorities against possible physical confrontation. The organizers and representatives of the Council of Europe made media statements to clarify that the planned event had nothing to do with a gay-pride; later on they cancelled the event.

Similar demonstrations with “preventive purposes” against gay pride were conducted

in 2009 and 2010 as well. As a rule, such demonstrations were concluded by thanking the Orthodox Church and the Patriarch of Georgia. "If not our Patriarchy, gay pride would have taken place in Georgia many times already"³³. „It was the protest from the Church that stopped this from happening."³⁴

In summer 2010 another anti-gay- pride demonstration took place in Batumi in order to prevent a "planned gay

pride." The participants of the demonstration together with a church representatives were rallying in the streets, they were walking around from one place to another "to find gays and expell them from the city."

The organizers of the rally stated that they were against violence.³⁵

Excerpt from the interview with the representative of the Public Defender's Office: *"A group of religious believers gathered at a place where they thought a gay-pride was planned to take place and declared that they would not allow this to happen. Law enforcement officials have not taken any action in this regard . . . religious groups resorted to very strong hate speech. Probably their reaction would have been even stronger if LGBT community representatives were there. Our office also reacted to this case. This incident highlights the risk of discrimination that LGBT community members can be subjected to discrimination."*³⁶

- **Reasons for low reporting rate of third – party violence against LBT people**

The survey revealed that LBT women vary often do not report cases of violence to the police or rights organizations. This is so in case of phsycological violence as well, apart from instances when the source of violence is the policeman himself. In one instance a repondent noted that the incident ende soond, therefore she did not report it, in other instance respondents did not report either due to the lack of trust in the police or becuase the incident was "not serious enough."

The problem remains the same with respect to transgender people, they are afraid of revealing their identity, therefore they prefer to keep silent.

Lasha Chincharauli of "Article 42 of the Constitution" stated that this problem is not related to any gaps in the law or its quality; according to him this problem exists purely becasuse victims are not willing to reveal such facts.³⁷

Organizations working on LBT rights unanimously note that the fear of coming out is an important barrier for these people to demand their rights. They know very well that if they reveal their orientation this may result in loss of families, place to live, they may become victims of physical abuse, etc.³⁸ The survey conducted by WISG

revealed that the fear of coming out is caused by the widespread homophobia in the society; LBT are afraid to be rejected, socially isolated and marginalized.³⁹

“I am quite brave in general; however I feel that if I reveal my sexual orientation, I will be socially rejected and isolated, I will be left all alone to myself. As anyone else, I also need social interaction and social environment, not only pure lesbian contacts...The society gives me a choice between the two – either reveal my identity and be regarded as no one but a “sexual minority”, or not to reveal it and sacrifice my private life to other peoples’ puritan ideas about morality.” (Maka, 19 years old)⁴⁰

Physiologist Lela Kurdgelashvili thinks that internalized homophobia also plays a role in generating the fear of coming out.

“I am deeply convinced that my attraction to the people of my own sex is a punishment from God...and a test for me...I will go to the monastery soon and I will start a clean, sinless life there and I will get rid of this terrible thing...I believe everything will be fine then, I will devote my life to God and will be happy!” (Ana, 19 years old)⁴¹

“Society has no role to play here, it is all about my own views and perceptions – I have encountered all the problems in life because I understand that I am attracted to women. Why should I shout out loud that I get pleasure from having sex with women? I think this will be imprudent thing to do and will express disrespect not only towards the society, but towards my own self also! I do not think I am a victim, as the cause of the problem lies in me” (Nato 36 years old)⁴²

The representative of “Womens’ Fund in Georgia” also pointed out in her interview the problem of internalized homophobia. “They have to know that they are not little in numbers, that what is happening with them is normal, that this has nothing to do with a sin or illness, or a crime.”⁴³ She thinks overcoming this problem requires expanding the group and working on its empowerment.

According to Giorgi Gotsiridze, community members themselves rarely talk about the cases of violence against them, mostly this is done by human rights defenders. He also noted that LBT community is less open in comparison to the gay community, they rarely talk about domestic violence or forced marriages.

The representative of the Public Defender’s Office noted that there is a need to raise awareness on these issues not only inside the community, but among the general public as well. She states that “the state must appropriately protect the rights to equality and non-discrimination.” She also noted that community activism “is crucial.”⁴⁴

The representative of the Public Defender's Office noted obstacles involved in juveniles reporting violations of their rights to human rights organizations or directly to the police. Involvement of law enforcement authorities in the investigation of an incident against a juvenile requires involvement of the juvenile's parents or legal representatives to legally represent her during every action taken by law enforcement authorities (i.e. taking a witness statement or other actions). Therefore if the juvenile does not want her parents to learn about her sexual orientation, she will obviously abstain from reporting the case to anyone.

23 Interview with Sopho Benashvili. The Public Defender's Office in Georgia. 22.10.2011

24 Respondent #3, Interview with the representative of LBT group. 21.10.2011

25 Women's Initiatives Supporting Group - #1 The results of focus group. 26.10.2011

26 Interview with Giorgi Gotsiridze. Georgian Young Lawyer's Association 21.10.2011

27 Interview with Giorgi Gotsiridze. Georgian Young Lawyer's Association 21.10.2011; Interview with Sopho Benashvili. The Public Defender's Office in Georgia. 22.10.2011; Interview with Lasha Tchintcharauli. Article 42 of the Constitution. 24.10.2011

28 Interview with Lela Kurdghelashvili. Informational Medical-Psychological Centre "Tanadgoma", psychologist 24.10.2011

29 Interview with Sopho Benashvili. The Public Defender's Office in Georgia. 22.10.2011

30 Interview with Giorgi Gotsiridze. Georgian Young Lawyer's Association 21.10.2011

31 Interview with Sopho Benashvili. The Public Defender's Office in Georgia. 22.10.2011

32 Statement of Catholicos-Patriarch of All Georgia, His Holiness and Beatitude Ilia II, about the gay pride planned by newspaper "Alia" in 2007

33 Newspaper Kviris Qronika, №37, September 24-30. "If not Ilia II, a lot of people would be walking around today with a lipstick put on their asses". Author: Gela Zedelashvili

34 The orthodox congregation is searching for homosexuals. Netgazeti, 2010.08.26.

35 Comment of Miqael Botkoveli on Gay Pride. Netgazeti. August 25, 2010.

36 Interview with Sopho Benashvili. The Public Defender's Office in Georgia. 22.10.2011

37 Interview with Lasha Tchintcharauli. Article 42 of the Constitution. 24.10.2011

38 Interview with Irakli Vacharadze. LGBT organisation Identoba. 22.10.2011

39 Sexual and self-destructive behavior study among LBT group. WISG. 2010. Tbilisi

40 Shorena Gabunia. Virtual society of Tbilisi Lesbian Women: social factor of closeness. Women's Fund in Georgia. 2010.

41 Ibid

42 Ibid

43 Interview with Nana Pantsulaia. Women's Fund in Georgia. 21.10.2011

44 Interview with Sopho Benashvili. The Public Defender's Office in Georgia. 22.10.2011

PROBLEMS RELATED TO THE RECOGNITION OF LEGAL IDENTITY

CEDAW Convention Article 1, 2, 3, 15

Sex reassignment surgery is not prohibited in Georgia; changing official documents after changing sex remains problematic however. New ID and birth certificate can be issued if the person has changed sex only after undergoing the surgery, Name and surname can be changed any time - before as well as after the surgery. The key problem remains the university diploma which cannot be issued the second time for any reason whatsoever.

Georgi Gotsiridze stated that rules and procedure for conducting sex reassignment surgery remains unregulated by law and is left solely to the discretion of medical establishments. "Such operations are carried out according to established practice rather than any normative basis provided by law."⁴⁵

Representative of "Identoba" stated that the new ID document already has an entry for person's sex which complicates the situation for transgender people, particularly for those who are in the process of changing their sex (which requires undergoing a minimum two-years-long procedure).

Juveniles are required to have consent from their parents to undergo a sex reassignment surgery.

Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.

[YOGIAKARTA PRINCIPLES, Principle 3]

45 Interview with Giorgi Gotsiridze. Georgian Young Lawyer's Association 21.10.2011

DISCRIMINATION AND VIOLENCE AGAINST LBT HUMAN RIGHTS DEFENDERS

CEDAW Convention, Article 8

States shall Ensure the protection of human rights defenders, working on issues of sexual orientation and gender identity, against any violence, threat, retaliation, de facto or de jure discrimination, pressure, or any other arbitrary action perpetrated by the State, or by non-State actors, in response to their human rights activities. The same protection should be ensured, to human rights defenders working on any issue, against any such treatment based on their sexual orientation or gender identity;

**[YOGIAKARTA PRINCIPLES,
Principle 27, d]**

Several respondents noted that LBT rights defenders in Georgia operate in an unfriendly working environment. Sopho Benashvili noted that “[LBT] group is under a high risk of discrimination...therefore the public sentiment and stereotypes about them also extend to those who defend their rights. I do not know how law enforcement officials will act if LBT rights defenders call them for assistance and protection...”⁴⁶

Georgi Gotsiridze noted that most often activists receive threats (including death threats and verbal abuse) via social networks, e.g., facebook. According to Gotsiridze, there is no evidence to suggest that state agents are directly involved in such activities. On the other hand however no single incident of a similar nature has been effectively investigated up to date. According to him, this is not because there is some legislative lacuna or barrier, but because law enforcement officers are not dealing with such cases with due diligence.

Case 1. Agdgomelashvili and Japaridze v. Georgia – the first ever case versus Georgia concerning homophobic actions and violence by the police. (Application no. 7224/11)

On December 15, 2009, a search was conducted in the office of “Inclusive Foundation” (IF); at the time of the search around 20 members of the LBT community were present in the office. In 2006-2009 IF was the only LGBT NGO in Georgia. The first applicant in the case – Ekaterine Agdgomelashvili - was a co-founder of IF. Since 2000 she is the Executive Director of WISG. The second applicant – Tinatin Japaridze - worked in IF as a program manager (full-time staff) in 2006-2009, currently she works as a program manager at WISG. The application alleges that police officers exceeded their authority during the search and violated procedures established by law, as they treated the applicants in an abusive way.

As soon as the police officers realized that the IF was an LGBT organization, they manifested homophobic attitudes towards those present in the office, including the applicants. Police treated them rudely and insulted them because of their real or perceived sexual orientation. The staff of IF was almost stripped of their clothes during the search. They were not told the reasons for searches and were not given an explanation about their rights.

Reactions which followed this incident in the media and the civil society attest to its seriousness. State institutions as well as NGOs made public statements in which they condemned violations which took place during the search and demanded the state to take action. Despite this, the incident has not been effectively investigated and none of the police officers has been held accountable.

The application before ECHR alleges that applicants were subjected to inhuman and degrading treatment (article 3 of the European Convention) and/or infringement of their right to private life (article 8 of the European Convention); also they were discriminated against because of their real or perceived sexual orientation (article 14 of the European Convention; Protocol 12 to the European Convention, article 1). In addition the application alleges that search of the people present in the office, (when they were nearly stripped of their clothes), was not conducted in line with the law, neither did it comply with any of the legitimate purposes enumerated in article 8 of the Convention.

Considering that the above-mentioned incident has not been investigated, no investigation has been carried out into whether or not the actions of the police officers were motivated by homophobia; no one has been held accountable, it is clear that this case is about continuous violation of articles 3, 8 and 14 of the European Convention on Human Rights. The fact that the state failed to provide legal remedies further violates article 13 of the Convention.

This is the first case versus Georgia regarding police violence combined with

homophobia. Considering that there are no similar cases against any other Council of Europe member state, the Court has an opportunity to express its position on an important issue. In particular, this application creates an opportunity to discuss similar incidences in a broader context in Georgia, where LGBT people are regularly discriminated against. This incident is yet another case in the post-soviet region when officials are trying to repress LGBT activities; (see e.g., *Alekseev v. Russia*, #4916/07, 25924/08, 14599/09), (*GenderDoc v. Moldova*, #9106/06 and public statements against them (see *Alekseev v. Russia*, #39954/09) or prohibition of registration to LGBT organizations.⁴⁷

The representative of the Public Defender's Office noted that their office was involved in the case of IF (regarding violations and insults committed during the search of the office) and that letters were sent to the Ministry of Interior and General (Chief) Prosecutor's Office. "Unfortunately however the results were not quite successful" – noted she.

On the other hand the Ombudsman of Georgia in his public speeches (one given at the annual conference of ILGA-Europe on 28.10.2011 and another on the international day of tolerance on 11.24.2011) underlined that he has not received a single statement regarding discrimination of LGBT in the last two years. "Maybe it is appropriate to pay more attention to discrimination against LGBT, but I have been the public defender for already 2 years not and I cannot recall even a single case when they submitted to us a statement regarding their discrimination, they should be active as well. I protect the rights of everyone and I will try not to leave any group offended next year." – noted Tugushi.⁴⁸

Case 2: Women's Fund in Georgia

On November 29 of 2009 Women's Fund in Georgia opened a call for proposals about elimination of homophobia and discrimination against LBT women; because of this call the staff of the Fund themselves became victims of homophobia.

"Around 10 homophobic and sexist articles appeared in different newspapers – Alia, Asaval-Dasavali scolding us. Forum.ge dedicated several discussion groups to this issue, they copied and pasted on their site not only the text of the call for applications, but also the list of our employees, Board Members, members of the Advisory Council and all of us were scolded there... We were receiving horrible phone calls ... We wanted to report about the media campaign issue to police, however we were told by a lawyer that freedom of press and expression were awarded broad protection in Georgian legislation and we could not therefore hold authors of those writing accountable in any way or demand anything from them,

also [we were told] that hate speech is not regulated by law in Georgia.”⁴⁹

“When we made call for proposals aiming at overcoming homophobia and discrimination against LBT in Georgia, we ourselves became victims of homophobia coming from different parts of the society...some very “intellectual” people were also among those who at a certain point in time were members of our Advisory Board, worked with us, but after this case no longer wanted to be associated with us. Nasty media articles were released and comments made. One of the persons whose name was published in those articles asked me to prepare a special letter with organization’s a stamp and my signature on it to certify that the person was not involved in the process of selection of applications for that particular call.

We expected further attacks from “UOP” (“Union of Orthodox Parents”) and similar groups, but it was very sad and unexpected that we received a blow from those people from who we did not expect this at all.”⁵⁰

46 Interview with Sopho Benashvili. The Public Defender’s Office in Georgia. 22.10.2011

47 <http://www.interights.org/aghdgomelashvili/index.html>

48 “The day of tolerance”. Netgazeti. 13.12.12

49 Interview with Mariam Gagoshashvili. Women’s Fund in Georgia. 21.10.2011

50 Interview with Nana Pantsulaia. Women’s Fund in Georgia. 21.10.2011

CEDAW Convention, Article 10.

Everyone has the right to education, without discrimination on the basis of, and taking into account, their sexual orientation and gender identity.

**[YOGIAKARTA PRINCIPLES,
Principle 16]**

Relevant legislation expressly prohibits discrimination and introduces a model of an inclusive education system. However it is difficult to evaluate to what extent the requirements of the legislation are realized in practice since there has been no monitoring carried out in this regard. The content of school text-books also raises important questions, particularly to what extent – if at all – they promote principles of equality, tolerance and broad-mindedness.

Giorgi Gotsiridze noted that Ministry of Education is obliged to ensure that content of text books is not discriminatory; however there has not been a monitoring how it complies with this obligation. He further notes that in general sex-related topics are not discussed in text-books⁵¹; sex-education is not part of school curricula.

The representative of “Tanadgoma” noted that text books are full of homophobic and discriminatory statements.⁵² Sexual education is not part of the school curricula in Georgia.

Few of the respondents had experience of being discriminated or similar experiences at schools or universities. However they also stressed that they never identified themselves/expressed their identities [when they were within those systems]. One of the respondents noted that she was open about her [positive] attitudes towards homosexuality and about other sensitive issues, though never openly discussed her own orientation. However even expressing sympathies towards the LBT group was enough to trigger hostility towards her from certain homophobic people, e.g., ridiculing her, criticizing her, etc. All these were stressing factors in her life.

Excerpt from the interview with the representative of the Public Defender's Office: *"We had a case when we received a letter from a minor concerning discrimination at school [on the basis of gender identity]. However the problem was that she demanded categorically that her confidentiality be protected before she would give us the right to disclose it. "In such situations we cannot do anything. She demanded categorically not to visit her at home and not to send response to her letter at her home address, as she had not done coming out to her family. So she really warned us severely against these. During one week we were trying to get in touch with this person through home telephone number. We called several times as if we were her friends and left a message for her asking to call back. But the person never contacted them back. So the case was left without any further reaction [from our side]."*⁵³

Excerpt from the interview with the representative of the "Women's Fund in Georgia": *"I remember one incident which took place in Samegrelo region and was also reported by TV. Another case took place in one of the schools in Tbilisi but it was not made public, I learnt about it from one of the teachers who tried to protect the rights of those girls. The girls were terribly mistreated because they were suspected to have another orientation. Parents took those girls out of that school and transferred them in different schools. A lot depends on parents in similar situations. If they think the same way as teachers, then children will definitely fall victims of discrimination"*⁵⁴

51 Interview with Giorgi Gotsiridze. Georgian Young Lawyer's Association 21.10.2011

52 Interview with Lela Kurdghelashvili. Informational Medical-Psychological Centre "Tanadgoma", psychologist 24.10.2011

53 Interview with Sopho Benashvili. The Public Defender's Office in Georgia. 22.10.2011

54 Interview with Nana Pantsulaia. Women's Fund in Georgia. 21.10.2011

**CEDAW Convention, Article 12, 11[f],
General Recommendation #19, #24**

Everyone has the right to the highest attainable standard of physical and mental health, without discrimination on the basis of sexual orientation or gender identity. Sexual and reproductive health is a fundamental aspect of this right.

**[YOGIAKARTA PRINCIPLES,
Principle 17]**

Georgia's Law on the Rights of the Patient expressly outlaw discrimination based on sexual orientation.⁵⁵ If the patient is discriminated she can appeal to the Agency Regulating Medical Activities who will discuss the issue and establish whether the doctor has violated the law. The Agency has the authority to impose sanctions upon the doctor; this, inter alia, can result in the deprivation of the licence to carry out medical activities. Confidentiality as well as the dignity of the patient is protected under the law.

In practice however these norms do not work effectively. Respondents pointed out cases of unethical behavior from the side of medical personnel when dealing with LBT people. It is a commonplace in Georgia that if a patient does not have stable heterosexual relationships this is regarded as one of the key reasons of gynecological problems. Homosexuality is seen as illness, which needs treatment. This sort of perceptions in general is widespread among medical professionals in Georgia. Primary reason for this is lack of knowledge about how does contemporary medicine look at heterosexuality, what scientific approaches it takes, etc.

There exist no professional unions of doctors or unified code of ethics for all unions of medical professionals in Georgia. This facilitates perpetuation of such ill-practices as e.g., "treatment" of homosexuality, which has been struck out of the list of illnesses adopted by WHO.

According to a sexologist, "in Georgia sexology is understood as treatment of sexual deceases. Very few specialists work on the issues of sexual orientation and identity and doctors do not receive any form of support in this respect. Probably it is needed to set up

a group among the professionals who are interested to work on these issues ... the solution lies only in join action.”⁵⁶

The representative of “Identoba” noted that professional associations are weak in Georgia, Professional conferences rarely organized where “experts in the field would have the opportunity to share with each other contemporary achievements in the science and research. Doctors rely on stereotypes, rather than clarifying things. We are practically dealing with shamans who have diplomas”⁵⁷

Respondents stressed the issue of access to healthcare services and problems related with getting quality health care services. Reforms carried out in the healthcare field in the recent years raised prices of services while deteriorated their quality. For socially vulnerable groups there is the program of medical insurance; however it does not cover thorough medical services.

Certain limited services are covered by different programs run by NGOs, however those one cannot change the general situation in the field of access to healthcare services.

For example, together with its partner organizations WISG ensures that LBT community members can receive consultations and be tested free of charge. The survey carried out by WISG in 2010 revealed that half of those community members who benefit from those services can afford them, however only one third stated that they can afford treatment of those illnesses which are revealed as a result of initial screening. Respondents whose income is lower than an average income in the country noted that they cannot afford such treatment.⁵⁸

- **LBT Children and their parents**

Sexologist of WISG noted that working with children and juveniles entails a number of significant problems. “We cannot work with children without their parents. It is not actually clear who should work with children. I am the doctor for adults and have the right to work only with patients who are 18 years old and above. However the problem is that the age below 18 is the most important. The issue who should deal with children and juveniles needs to be regulated.”⁵⁹

- **Transgender people**

Changing sex is not legally prohibited in Georgia, relevant medical services are also available, however these

services are often financially unaccessible. They are not covered by state-funded programs or any of the private insurance packages available in the country.

- **Discrimination and the Right to Health**

The representative of the Public Defender's Office stated that the state does not provide any specific health services or programs for LBT community. There is unified healthcare system and the services it provides are equally accessible to every citizen of Georgia.⁶⁰

According to George Gotiridze, HIV/AIDs patients are often subjected to discriminatory treatment.⁶¹

Lela Kurdgelashvili of "Tanadgoma" in her interview noted homophobic attitude of medical personnel towards patients. "I have often heard that medical personnel often show cynical attitude towards such patients. I have heard of a case when a doctor refused to treat a gay patient and instead scolded him. The patient died. He was suffering from other illnesses as well...however what I want to emphasize by this example is the wrong attitude of health professionals towards such patients... doctors have few information about such patient. Problems I have noted are more frequent with gays than women."⁶²

The representative of "Identoba" noted that need to conduct trainings with health professionals and other awareness raising programs.

"You know what kind of attitude gynecologists usually have, they start asking if you are married, if you are not – then why you need a visit to the gynecologist... I told her that I had visited a sexologist who told me that I am attracted to women. And she told me not to visit her anymore; she said she would send me to a normal sexologist who she knew. Just imagine me visiting that woman and saying I was a bi-sexual; I am sure she would not even agree to see me."⁶³

- **Pressuring LBT people to undergo treatment**

The psychologists and the sexologists talked about cases when family members force LBT person to see psychologist or sexologist due to "incorrect" orientation or to be "cured from". They further noted problems faced by family members in such situations.

Excerpts from the interview with a sexologist: *"People who come to us are usually those who already know about their identity and have decided to change their sex. Recently I had a case when the parent of the patient got in touch with me and asked me to "heal" her daughter/son, whereas the patient had completely different interests. Such situations are also very difficult."*

“I recall one case of forced treatment of a person who was FtM and was openly telling his mother that he was a male and she should leave him alone. Mother was taking him to doctors for endocrinological examinations. The person was already 25 years old, had a wife, and had a fully harmonious family life with her, however was still compelled to obey his mother’s wishes because he was not financially self-sustainable.”⁶⁴

Excerpt from an interview with a psychologist: *“Family members of X were suspicious of the latter’s sexual orientation and were forbidding her to leave the house, to have contact with the suspected partner, there were continuous scandals [about that in her family], she was subjected to permanent control, where are you, who are you with? Etc. If they were able to succeed, they were sometimes locking her up...in the end she ran away [from her home].*

N only had a mother and siblings in the family. After she did the coming out to her family her mother, who was already ill, could not take it and soon passed away. Siblings denied her and cut off contacts with her. She had gone through half of the operation by selling her flat, but could not finish the whole procedure for not having enough financial resources. She looked like a man, but her passport said she was a female. For these reasons she could not obtain employment.... Finally found some part time job somewhere in the village...but locals somehow discovered about her sex, there were attempts to abuse her physically, to rape her, she had her hands cut by an ax, etc. She ran away from the village, but had nowhere to stay, was spending nights in internet cafes, she even went to a Church asking for a shelter, but was kicked out...Now this person leaves all alone and is struggling with the life, she is homeless, jobless, rejected, ignored by her siblings, relatives, friends...”⁶⁵

Georgi Gotsiridze noted that when it comes to children and juveniles they are practically totally unprotected from their parents forcing them to undergo treatment.⁶⁶

- **Discrimination and HIV/AIDS**

Georgian legislation expressly prohibits discrimination based on one’s HIV/AIDS positive status. However “according to the information provided by NGOs, because of the social stigma attached to this status and fear of being discriminated, people usually avoid getting tested and applying for treatment. There is certain information that

some doctors, particularly dentists have in the past denied treatment to patients because of their HIV/AIDS positive status. People often hide their status from employers as they are afraid of losing their jobs.”⁶⁷

Georgi Gotsiridze noted that HIV/AIDS positive people are usually subjected to discrimination. “They are often even denied emergency treatment. HIV/AIDS positive people belong to different social groups and assumably they are all subject to discrimination.”⁶⁸

The Order #241 of the Minister of Labour, Healthcare and Social Protection dated by December 2000 imposes a blanket ban on blood donation by certain categories of individuals. Among those the Order lists homosexuals, alcohol-edicts, sex-workers, etc. Such a blanket ban is inconsistent with the principles of equality, honor and dignity of individuals. It constitutes not the only measure of achieving legitimate interest (protection of public health), but one of the measures to do so. In such cases international human rights law requires that the state finds alternative, least intrusive means of achieving the legitimate interest involved.

55 Georgia’s Law on the Rights of the Patient (2000), Article 6.

56 Interview with Maia Tchavtchanidze. WISG, sexologist 6.10.2011

57 Interview with Irakli Vacharadze. LGBT organisation Identoba. 22.10.2011

58 Sexual and self-destructive behavior study among LBT group. WISG. 2010. Tbilisi

59 Interview with Maia Tchavtchanidze. WISG, sexologist 6.10.2011

60 Interview with Sopho Benashvili. The Public Defender’s Office in Georgia. 22.10.2011

61 Interview with Giorgi Gotsiridze. Georgian Young Lawyer’s Association 21.10.2011

62 Interview with Lela Kurdghelashvili. Informational Medical-Psychological Centre “Tanadgoma”, psychologist 24.10.2011

63 Women’s Initiatives Supporting Group - #2 The results of focus group. 28.10.2011

64 Interview with Maia Tchavtchanidze. WISG, sexologist 6.10.2011

65 Interview with Nana Mamulashvili. WISG, psychologist 8.10.2011

66 Interview with Giorgi Gotsiridze. Georgian Young Lawyer’s Association 21.10.2011

67 Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity. Legal Report: Georgia. COWI. 2010

68 Interview with Giorgi Gotsiridze. Georgian Young Lawyer’s Association 21.10.2011

DISCRIMINATION AT WORK AND THE RIGHT TO HOUSING

CEDAW Convention, Article 11, 13, 16 [1], [h]

Labour Code of Georgia expressly prohibits discrimination based on sexual orientation. The main shortcoming of the Code however lies in the fact that this provision applies only to those who are already employed and not to the candidates at the selection stage. On the other hand the Code does not oblige the employer to provide explanation to the employee about the reasons and grounds for dismissal.

“Even if the person raises her voice against dismissal, nothing can change; she can neither get her job back, nor obtain compensation for the dismissal. To prove what served as the basis for dismissal is practically impossible in reality, since the employer is not obliged under the law to provide explanation for it.” – states Georgi Gotsiridze of Georgian Young Lawyers’ Association.

Majority of the respondents hide their status at the workplace as they are afraid to be discriminated or marginalized by their colleagues. Those who do not hide their status on the other hand talk about being not-welcomed and discriminated among their colleagues.

“I was not hired at a dentist’s because of how I dress up...despite the fact that I would not have direct contact with patients at all...they liked my performance, but still did not hire me because of my behavior and the style of dressing up.” (Tako, 32 years old)⁶⁹

Those working in the protection of LBT rights stated that they do not have information about the cases when one’s right to housing was restricted because of sexual orientation; however they noted that the reason might be the fact that LBT people usually do not disclose their status to the landlords or neighbors.

Everyone has the right to decent and productive work, to just and favorable conditions of work and to protection against unemployment, without discrimination on the basis of sexual orientation or gender identity.

[YOGIAKARTA PRINCIPLES, Principle 12]

Everyone has the right to adequate housing, including protection from eviction, without discrimination on the basis of sexual orientation or gender identity.

[YOGIAKARTA PRINCIPLES, Principle 15]

Excerpt from an interview with a representative of a “Women’s Fund in Georgia” : *“I have heard of cases when people do not want to live with their LBT family members. I am not saying that they do not love them, but because of the social stigma they prefer their LBT family member to live alone. I know about one case from a region when an openly lesbian person wanted to live on her own but the members of the family were refusing to give her the share from the joint house. In order to get her share from inheritance she had to resort to legal means, all this was happening because she was a lesbian. I know of a similar case from Gori, when the victim had to go to a shelter for domestic violence victims, as I know she could not solve the problem and left the country.”*⁷⁰

69 Respondent #2, Interview with the representative of LBT group. 24.10.2011

70 Interview with Nana Pantsulaia. Women’s Fund in Georgia. 21.10.2011

FORCED MARRIAGE AND DISCRIMINATION BASED ON MARITAL STATUS

CEDAW Convention, Article 1, 2[f], 5[a], 16

In Georgia forced marriages happen not because of the shortcomings in the legal system, but because of traditions. To explain this lawyer Georgi Gotsiridze referred to the practices of abduction; abduction is a criminal offence in Georgia. However because it is often accompanied by rape, the victims prefer to “rescue their reputation” and instead of reporting the case to the law enforcement authorities, stay and get married to the offender. The responsibility of the state in such cases is however very clear: “if it is on notice that there is a case of a forced marriage, because of abduction and rape e.g., they have the obligation to investigate and prosecute the perpetrators, regardless of whether or not the victim decides to lodge a complaint.”⁷¹

Gotsiridze also noted that there are no legal barriers for those who wish to divorce in such cases. If the person is not able to divorce for some reason, she can use the law on Domestic Violence which protects against violence coming from parents, e.g., etc.”⁷² However these mechanisms are rarely used in practice.

Experts also note that economic dependence on parents plays an important role in the problem of forced marriages; this dependence forces them to obey the will of the parents and behave as it is mandated by traditional mentality – get married. Psychologist also underlined that unmarried women, as well as men, are subjected to social stigma. “Such people are viewed as those who failed to achieve self-realization, people not of a full value at some point.” However she specified that unmarried women are more common whereas unmarried men are looked at with more suspicion.⁷³ The representative of “Tanadgoma” noted that she was aware of a number of cases of forced marriages. She further emphasized that unmarried women are marginalized in the society.⁷⁴

Everyone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members.

**[YOGIAKARTA PRINCIPLES,
Principle 24]**

“You are well-aware what kind of a society we are living in. Everyone – starting from your

neighbors ending with any other person who you know – thinks that it is their duty to intrude in your private sphere and give you recommendations and advices. You cannot imagine how many times they wanted me to get married...they were trying to hook me up with this or that guy...as if I was some commodity on sale. .. Maybe if I lived in another country I would have the courage to fight for my rights, but now... I am dreaming only about one thing – to escape this country. I will work as hard as possible to leave it and to live in a country where no one intrudes in my private life. Here everyone is just doing this.” (Marin, 36 years old)⁷⁵

“I was turning 25 years old when I got married...When my parents found out that I was having relationships with girls it triggered a huge scandal. They lost trust in me and started controlling me all the time. I was in a very difficult situation and was no longer able to withstand the pressure; all of a sudden a certain guy came along. I used certain ways and make him marry me...I simply wanted to get away from my parents. Unfortunately while trying to escape one bad situation, I entered into the other. I could not withstand this new situation either and divorced my husband 9 months after our marriage. This was a catastrophe for me, I loved one girl and had to live with this man, who did not love me, was beating me, was a drug addict, etc. However, it was through this marriage that I managed to convince my family that I was an absolutely healthy, heterosexual girl, able to have a relationship with a man.”⁷⁶

71 Interview with Giorgi Gotsiridze. Georgian Young Lawyer’s Association 21.10.2011

72 Interview with Sopho Benashvili. The Public Defender’s Office in Georgia. 22.10.2011

73 Interview with Nana Mamulashvili. WISG, psychologist 8.10.2011

74 Interview with Lela Kurdghelashvili. Informational Medical-Psychological Centre “Tanadgoma”, psychologist 24.10.2011

75 Shorena Gabunia. Virtual society of Tbilisi Lesbian Women: social factor of closeness. Women’s Fund in Georgia. 2010.

76 Respondent #5, Interview with the representative of LBT group. 23.10.2011

- **Issues related to adoption and surrogate motherhood**

Civil Code of Georgia authorizes adoption by a couple only if they are married. Since same-sex marriage is not recognized under Georgian legislation, same-sex partners can not adopt a child. Georgian legislation allows adoption by a single parent, except to those persons who due to illness, moral or other personal characteristics cannot exercise the rights of parents.” The law does not however specify criteria for “moral eligibility.” This vagueness in the law can lead in discriminatory application of the law in practice.

Single mothers are allowed to have children by means of assisted reproduction. According to the Law on the Protection of Health couples are allowed to use the service of a surrogate mother. An agreement about adoption of the child born as a result of such services has also to be signed with the couple. The couple means a married one, which automatically excludes LBT couples and single LBT individuals.

- Introduce changes to the recently adopted law on the protection of personal data in order to ensure that it is in line with the Constitution of Georgia and country's international human rights obligations; In particular, the meaning of "important public interest" should be specific in the law; this term should be narrowly interpreted so that the meaning attributed to it does not infringe upon fundamental rights of individuals: equality, inviolability of honor and dignity, inviolability of private life. The law should provide for effective mechanisms against abusing the right to process one's personal information. It should further specify grounds, rules and procedure for obtaining redress (including the right to receive compensation) for violation of rights resulting from incorrect application or abuse of this law.
- To declare null and void the order of the Minister of Healthcare imposing a blanket ban on donation of blood by homosexuals. The issue of blood donation should be regulated in line with human rights guaranteed by the Constitution of Georgia and taking into consideration best practices from other countries.
- To introduce changes to the Labour Code of Georgia, in particular the employer should be obliged to give a written explanation to the employee about the reasons and grounds for dismissing her; the law should also provide for adequate mechanisms to protect against discrimination at the hiring stage.
- To provide in the relevant legislation for the possibility of issuing a higher education diploma for the second time for those who have changed their sex.
- To adopt a law regulating rules and procedure for changing sex. The law must be in line with human rights guaranteed by the Constitution of Georgia and take into consideration best practices from other countries.
- Relevant state agencies to take effective measures to prevent third-party violence against LBT people; to conduct prompt and effective investigation and take measures provided by law against those who violate it.
- Public Defender of Georgia should monitor the situation of LBT people in the penitentiary system and should make the results of the monitoring public.
- Awareness raising courses to be conducted to law enforcement officials about rights and freedoms of LBT people.
- The state should provide support and assistance to medical-educational institutions and professional associations to ensure that they are updated about modern approaches to the issues sexual orientation and gender identity.

„ქალთა ინიციატივების მხარდამჭერი ჯგუფი“ (WISG) წარმოადგენს ქალთა უფლებებზე მომუშავე არასამთავრობო ორგანიზაციას, რომელმაც ჰომოფობიის საკითხებზე მუშაობა 2002 წელს დაიწყო. 2003 წლიდან ორგანიზაცია მუშაობს ჰომოფობიური სიძულვილის ენის კვლევაზე ქართულენოვან მედიაში. 2005 წლიდან WISG-ის ქალთა უფლებების პროგრამა ფოკუსირებულია ლბტ ქალების გაძლიერებაზე საქართველოში.

Women's Initiatives Supporting Group (WISG) is a non-governmental organization working on women's rights in Georgia. WISG started to work on the issue of homophobia in 2002. Since 2003 WISG has been working on research and analysis of homophobic hate speech in Georgian media. Since 2005 its women's rights program has been focusing on LBT women's empowerment in Georgia.

A 1 Apt. 12a Bakhtrioni str., Tbilisi 0194 Georgia

T (995 32) 238-01-03

E info@women.ge

W www.women.ge www.lesbi.org.ge www.minority.ge