

PARALLEL NATIONAL REPORT FOR BEIJING + 25

Rights of LB women and Trans persons living in Georgia



Women's Initiatives Supporting Group (WISG)

This report was submitted by Women's Initiatives Supporting Group (WISG) a non-governmental, non-profit-making organization working on LBT women's rights in Georgia.

Georgia

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Section I. Major achievements and challenges during the last 5 years

During the last decade, Georgia has undergone significant reforms ensuring the protection of human rights and liberties. At the international level, Georgia is a member state of the Council of Europe and a participating state in the Organization for Security and Cooperation in Europe (OSCE). In 2014 Association Agreement between the European Union and Georgia has been signed that put Georgia under obligation to harmonize its legislation with Union's directives and regulations.

Georgia is a high contracting party to the most major human rights instruments and its legislation is not expressly discriminatory or particularly oppressive towards LGBTI persons. Noteworthy legal and institutional reforms had been made over the last five years in regard gender equality, SOGIE based violence and discrimination. Namely, in 2013, the Labor code was amended to make discrimination on basis of sexual orientation (and other grounds) illegal not only during the employment, but also in pre-employment/recruitment relations.¹ In 2014, a Law on Elimination of all Forms of Discrimination was adopted, explicitly prohibiting discrimination on the grounds of sexual orientation and gender identity (among other bases).² The National HR Strategy (to be reviewed in 7 years) and Action Plans for 2014-15 and 2016-17, chapters on gender equality and women's empowerment also included issues regarding sexual orientation and gender identity.³ In order to elaborate and implement a united state policy in the field of human rights, in 2016 Interagency Human Rights Council was created at the office of Prime minister.

Most importantly, 2017 was a year when Georgia had ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. The process was followed by amending up to 30 normative acts to align domestic law in accordance with the Convention.

In 2019, Georgian Parliament had unanimously approved a bill on sexual harassment. The definition was introduced and the SH was established as a form of discrimination. The relevant legislative amendments had been introduced to the Labor Code, the law on Public Defender's, the Code of Civil Procedure and Administrative Code of Offences of Georgia.

In 2018 Ministry of Internal Affairs had launched the Human rights Department within its system, which would monitor investigation to strengthen response to violence against women (including sexual violence), crimes committed on the grounds of discrimination, hate crimes, trafficking and crimes committed by and/or towards minors.⁴

Despite the progress achieved on legislative level, discrimination, physical and psychological violence on the bases of sexual orientation and gender identity still remain critically widespread that impedes inter alia, LB women and trans persons to exercise their fundamental rights and freedoms. Indeed, there are still gaps on legislative level, which put LB women and especially trans and intersex persons in an unequal position compared to others.

¹ Amendment to Labor Code of Georgia, June 12, 2013.

² Law of Georgia on Elimination of all Forms of Discrimination, article 1.

³ Human Rights Action Plan for 2014-15, Chapter 14 available online at: <https://bit.ly/2J89M1v>; Human Rights Action Plan for 2016-17, Chapter 13,2. Available online at: <http://goo.gl/GB7hUn>

⁴ Order of Minister of Georgia, available online at: <https://bit.ly/2s7PEmE>

As for the setback, in 2018 Constitutional amendment entered into force, - by defining marriage as the union of the woman and the man that dramatically impedes implementation of the rights to private and family life of LGBTQI persons; in addition, Georgian legislation does not recognize any form of civil partnership. According to the opinion of the Venice Commission the new Constitutional provision should in no case be interpreted as prohibiting same-sex partnerships.⁵ Despite this recommendation, mentioned provision is now an integral part of the Constriction that excludes possibility of same-sex marriage.

Key problems existing in the legislation and practice in regard rights of LB women and trans persons in Georgia encloses aspects of harmonization of Georgian legislation with the Istanbul Convention. Changes conducted by the state in the frame of ratification of Istanbul Convention does not reflect equally to the LBT group. Measures taken by the government to eradicate violence against women and domestic violence as well as to assist victims, the supportive system is set on a heteronormative base, focusing mainly on heteronormative concept of family.

In Georgia LB women and trans persons are often victims of double discrimination - based on their sex, as well as sexual orientation/gender identity. Root causes of this discrimination and violence against LB women and trans persons lie in deep gender stereotypes and conservative morals of the society, gaps and shortcomings in the legislation and indifferent state policy towards women in general and LBT persons in particular. Given that the LBT community is a particularly marginalized in the society, the few issues that the National Human Rights Action Plan refers in regard SRHR cannot effectively tackle the systemic problems facing them. The fact that the state report of the implementation of the Beijing Declaration does not even cover LB women and trans persons as such is a clear indication that LB women and trans persons are one of the most marginal and invisible groups of the society.

Herewith, regarding HR action plan 2018-2020, issues related to L(G)BT people should had been underwritten in the special chapter. However, for now due to approved AP none of its parts cover issues of SOGIE neither encloses related chapter.

⁵ European Commission for Democracy through Law —The Venice Commission of the Council of Europe, available online at: <https://bit.ly/2LSiKOy>

Section II.

Poverty eradication, social protection and social services

C. Women and Health

The sphere of healthcare still remains as one of the most difficult in regard inclusivity of LBT needs. Study conducted by WISG in 2015 has shown that healthcare workers have a quite vague knowledge about sexual orientation/gender identity, as well as, about the needs of LBT persons in health care.⁶ Such approach has an influence on the access of LBT people to high standards of health care. Herewith, it has to be noted that here is the number of major challenges that Georgian HR action plan (2016- 2017) has missed to cover, including legal recognition of gender, regulation of trans-specific healthcare procedures, etc.⁷

- Access to the trans specific healthcare

Georgian legislation neither prohibits nor regulates gender reassignment surgery. This gives absolute discretion to medical institutions to decide who is eligible for the gender reassignment surgery; also to make decisions on the existing procedures for the reassignment process. Such a gap may result arbitrariness, lack of consistency and create obstacles for people willing to undergo the procedure.

To address the issue, the Gender Equality Council of the Parliament of Georgia recommends the Ministry to incorporate the need and specificities of lesbian, bi-sexual and trans woman as a target/vulnerable group into the State Strategy in Healthcare. It should provide basic information and training to healthcare providers about the need and sensitivity in working with LGBTQI persons. Moreover, the ministry should develop clinical guidelines due regard gender reassignment/transmission procedure in line with international standards.⁸

It has to be noted that in 2017 WISG, translated WPATH guidelines for healthcare professionals to assist transgender, and gender nonconforming people with safe and effective pathways to achieve lasting personal comfort with their gender-selves. The aim of this translation was to introduce trans-specific healthcare standards in Georgia, which would be unified for all health care providers and acknowledged by the MoH. However, document did not get any feedback from the Ministry.

While gender reassignment services are available in Georgia, all the costs for the surgery have to be borne by the patient (whereas e.g., other medical procedures can be covered by the various private and state-

⁶ Survey has shown that the majority of randomly chosen healthcare workers (save one respondent) cannot make difference between sexual orientation and gender identity. Aghdgomelashvili E., Study of the Needs of LGB People in Health Care. In - depth interviews. Technical report. WISG, Tbilisi, 2014

⁷ Report on the Implementation of the Georgian Government's Human Rights Action Plan for 2016-2017, WISG.

⁸ Gender Equality in Georgia: Barriers and Recommendations, Gender Equality Council of the Parliament of Georgia, Volume 2

sponsored health insurance packages available in Georgia).⁹ However, despite its high social importance, gender reassignment surgery is not included in that category of medical services.¹⁰

- Legal Gender Recognition

The most fundamental issue due regard trans persons, legal gender recognition still remains unregulated in Georgia. So that, trans persons are deprived from the most important recognition. They cannot change the gender marker on their IDs since the LGR mechanism is not regulated by the law. As of today, trans people have been forced to undergo unwanted, medically unjustified, expensive and life-threatening procedures in order to change their gender marker. Namely, new ID and birth certificate can be issued only after a person undergoes multiple medical procedures, including hormonal therapy and gender reassignment surgery. According to the existing practice, irreversible sterilization, hormonal treatment and preliminary surgical procedures are mandatory to change gender marker in IDs.

In its evaluation Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity recommends government to ensure that the process of legal recognition of gender identity is based on self-determination by the applicant, is a simple administrative process, is exempt from abusive requirements, recognizes non-binary identities and is accessible to minors.¹¹

Freedom from violence, stigma and stereotypes

D. Violence against women

Heteronormativity, cis-normativity, traditional gender and sexual norms, gender asymmetry and stereotypes towards LGBTQI community have crucial impact on public attitudes that on the other hand reflect the homo/bi/transphobic crime. Existing norms have a systemic impact on forming and strengthening discriminatory and prejudicial environment and practices. In the most case LBT women become a victim of double discrimination based on their sex as well as their sexual orientation/gender identity or expression.

Even though significant legislative progress has been underwent during the last decade, the state doesn't take measures to combat deep-rooted homo/bi/transphobic attitudes that permit virtually all segments of society discriminatory practices and social exclusion of LBT persons from fully enjoying their rights and freedoms.

According to the research conducted by WISG in 2018, 88.3% (N=226) of the LBT respondents had become the victim of hate crime during the last three years on the base of SOGIE. Psycho-emotional, sexual and

⁹ Certain category of medical operations is funded or co-funded by the state based on the Decision of the Georgian Government No.7734 (which approves State Healthcare Programmes for 2011). The main criteria for selecting which services fall under this category is the importance of the disease and low or special social status of the beneficiaries.

¹⁰ Monitoring of implementation of CM/REC(2010)5 in Georgia, p.111. WISG, Tbilisi, 2018.

¹¹ Report available online at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/41/45/Add.1

physical violence has been experienced by 85.5%, 61.7% and 29.7%, respectively. Despite such destructing number only 16% of them had approached to law enforcement institutions.

In some cases, the motivation is not invoked by the law-enforcement bodies, however, in plenty of cases victims are unwilling to report such incidents. Discrimination study conducted by WISG in 2018 reveals that the reasons for not reporting hate crimes and incidents, among others, included: ineffectiveness of police, fear of forcible “coming out” and homo/bi/transphobic treatment by police officers, etc.¹²

The obstacle of reporting reflect to the official statistics that covers all members of LGBTI group and reads as follows: in 2018 criminal prosecution was commenced against 15 and 12 persons for committing crimes on the ground of sexual orientation and gender identity.¹³ As for the 2019, between the time period from January to June, 9 persons has been prosecuted in regard hate motivated crime on the ground of sexual orientation (6) and gender identity (2).¹⁴ The gap between NGOs’ statistics as well as discrimination studies’ results and official statistics affirm that the majority of such incidents remain undocumented and not addressed.

In response to hate crime, in 2018 Ministry of Internal Affairs had launched the Human rights Department within its system, which would monitor investigation to strengthen response to violence against women (including sexual violence), crimes committed on the grounds of discrimination, hate crimes, trafficking and crimes committed by and/or towards minors.¹⁵ The core functions of the Department are to monitor the process of investigation and administrative proceedings regarding the above-mentioned crimes, identify the gaps, prepare and enforce measures to enhance law enforcement’s role in eliminating them.

Establishment of the new department has to be welcomed, however, it has much wider remit than the unit proposed under UPR, - Human Rights Department was set to monitor not only all forms of hate crime, but also domestic violence, violence against women, human trafficking, and crimes committed by/against minors.¹⁶ Moreover, it’s centralized, coordinating body, giving rise to concerns that it may not be sufficient due regard problems at the local level, nor, for example, detailed issues arising in the investigatory process. It lacks a preventive approach which includes intergovernmental work to effectively prevent hate motivated violence in general.

- Intimate-partner violence among same sex couples

One of the challenges facing the needs of LB women is the intimate partner violence and the adequate reflection of the state to this issue. While the Istanbul Convention outlines that the measures protecting the rights of victims shall be secured without discrimination on any ground, *inter alia*, SOGIE,¹⁷ related Georgian mechanism, the law of Georgia on “Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence,” doesn’t guarantees such clause. In contrast with other women the situation significantly impedes access of LB women and trans persons to the mechanisms of protection.

¹²Aghdgomelashvili E., From Prejudice to Equality (part II): L(G)BT persons in Georgia, WISG, 2018.

¹³ Official statistics available online at: <http://pog.gov.ge/res/docs/angarishi2018/generaluriprokuraturis2018wliangarishi.pdf> (19.07.2019).

¹⁴ Response letter of 18.07.2019 from the Office of the Prosecutor General of Georgia.

¹⁵ Order of Minister of Georgia, available online at: <https://bit.ly/2s7PEmE> [accessed 21.05.2018]

¹⁶ Available online at: <https://bit.ly/2Kxuvck> [24.05.2018]

¹⁷ Convention on Preventing and Combating Violence against Women and Domestic Violence, Article 4(3).

The Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence does not prohibit intimate partner violence, especially among LGBT partners.¹⁸ Accordingly, transgender women are not allowed to use the national mechanism of violence against women,¹⁹ because they are unable to amend their gender marker from “male” to “female”. The Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence defines “victim” as “a woman or other family member.”

The preventive measures against intimate partner violence and domestic violence, including public campaigns performed by the state, do not cover LGBT persons and same-sex couples. Aside from the lack of legal regulation of same-sex partner relationships, the survivors’ choice of such strategy is influenced by the fact that the state has clearly defined policies and legal mechanisms to tackle domestic violence.

According to WISG’s study intimate partner violence is one of the most widespread form of violence among LB women and trans persons. Research conducted by WISG illustrates that during the last three years 81.2% of lesbian and bisexual respondents (N=95) had experienced some form of violence by the intimate partner, psychological violence being the most widespread form.²⁰ The frequency of sexual abuse and harassment is also high. 4% LB respondents had become the victim of rape by intimate partner, while 14% has an experience of attempted rape. As for the physical violence 13% of LB respondents had experienced such form of violence single time during the last three years, 8% - twice and 18% is a victim of permanent physical abuse by the intimate partner. It should be noted that in order to maintain control over the victim, the abuser frequently resorts to threats and blackmail related to forced coming-out (19.4%). Similar to heterosexual couples, intimate partner violence has a severe impact on the physical and psychological state of the victim, as well as their social environment. Despite such caustic number, only 3.6% applied to the law enforcements, - among the reasons of not reporting fair of forcible coming out and fair of revealing victim’s personal information was highlighted.

- Domestic Violence (excluding IPV)

Despite the fact that domestic violence against LB women and trans persons is most widespread and is an invisible crime against LBT community, the government does not recognize the need to address this issue, neither pays proper attention to it in its National Action Plans.²¹ Official statistics in regard domestic violence based on SOGIE has not been collected.

The government does not address the specific forms of violence against L(G)BT individuals (minors are at a major risk), such as different forms of coercive therapies and attempts of forced marriages of lesbian women. It is also worth to note that in most cases L(G)BT victims of domestic violence do not report to the police because of the fear of outing and secondary victimization, which is why they choose to leave their homes or are obliged to continue living in the cycle of violence.

¹⁸ Bakhtadze K., LGBTI persons and Intersectional Discrimination. WISG. 2018.

¹⁹ Tbilisi City Court does not take the claim of transgender woman who requested protective order Case of NGO SAPARI: №3/605-18. 5/02/2018.

²⁰ Aghdgomelashvili E., “From Prejudice to Equality (part II): L(G)BTQI persons in Georgia,” WISG, 2018.

²¹ UPR, Joint Stakeholders’ mid-term report, 30 May, WISG, 2018.

A 2018 study showed that LB women are most vulnerable due regard domestic violence. More than a half of the LB respondents are living with their families, not alone or with their partners. So that, those living with their parents and other members of the family more frequently became a victim of violence. Among the LB respondents, 82.9% (N=97) had experienced some form of abuse by their family members in their lifetime. The majority of the respondents are the victims of permanent psychological pressure by their family members, while 20.4% has become a subject to physical abuse at least at once since 2015 (the abusers are named to be mother, father, and sister/brother).²² According to the study, 14% of LB respondents have had a practice of coercive therapy mainly by their mother. Cases of forced marriage had been revealed towards 12% of LB responds since 2015.²³ When it comes to report the incidents, only 7.3% applied to police. Herewith, the number of application to the services for the victim of domestic violence is higher than in case of IPV. Moreover, the indicator of reporting cases of DV to the police is higher in case of DV as well. Such picture underlines the necessity that state addressed IPV in a way it responds DV.

- Services for the victims

The majority of the LBT respondents underlines the influence of the violence on their health and well-being. Due to IPV, 73.6% of the respondents noted that they needed an assistance of psychologists (23.6% applied to the service); 22.7% were in need of medical assistance (10.9% applied); 21.1% needed legal assistance (1.8% applied); 10.9% of the victims were in need of social assistance and shelter (4.5%), however, none of them has been applied.²⁴ It's worth to note that in contrast to the heterosexual persons, because of the strong homophobic environment and lack of "coming out", only a few number of LBT persons have a chance to get emotional or other kind of support from their family members, relatives or their social environment.

In regard DV, 78.8% of the respondents noted that they needed an assistance of psychologists (20.7% applied to the service); 17.4% were in need of medical assistance (5.8% applied); 40.3% needed legal assistance (5.2% applied); 39.5% - social assistance (6.7% applied) 21.8% were in need of shelter (only 2.4% applied).²⁵

Thus, it is important to work towards the implementation of the legislation and to use measures to protect LGBT victims against DV and IPV and to ensure that victim support services are relevant, sensitive and responds to the specific needs of the victim. According to the PDO report: "In 2017, on a number of occasions, representatives of LGBTI community benefitted from the institution providing services to victims of domestic violence; however, given that they still encounter a number of barriers in receiving the service, the institution must ensure the availability of adequately qualified and sensitive personnel."²⁶

It has to be noted that in 2017 and 2018 WISG with the support of UNJP revised training modules on VAWG/DV for the employees of the State Fund for the Protection and Assistance of Human Trafficking, patrol and district police, Georgian Bar Association Lawyers, Prosecutors, Criminal Police Investigators,

²² Aghdgomelashvili E., "From Prejudice to Equality (part II): L(G)BTQI persons in Georgia," WISG, 2018.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Available online at: <https://bit.ly/2LUbViP> [17.07.2018]

Sitting Judges, employees of the National Probation Agency and conducted two-day ToT training as well as revised related legislation for the integration of LGBTI issues and drafted relevant legislative amendments. However, WISG is unaware about the status of the reflection its recommendations.

I. Human rights of women

- Discrimination on the grounds of SOGIE

It has to be noted that during the past two years more than 1/2 (56.4%) of the LBT respondents have experienced discrimination on the grounds of SOGIE.²⁷ The study shows that LB community members are mostly discriminated while receiving the service (42.7%), followed by the field of employment (28.2%). During the mentioned period, 14.2% of LB respondents were discriminated in the sphere of education; 6.8% speak about the ill treatment of law enforcements and 3.4% underlines the problem in regard services within the healthcare system.

LB respondents, whose gender expression are in line with the social expectations, are less likely discriminated (46.8%), while respondents who describe their gender expression as non-conforming or neutral tend to be more discriminated (75.0% and 56.4% respectively). The analyses of the interviews with transgender persons reveal that gender expression and non-conformity are the key causing factors of the violence and discrimination committed against them on every day bases.

As the discrimination in employment is the problematic sphere, LB women and especially trans persons are vulnerable at the labor market.²⁸ Obstacles regarding legal recognition of the gender reflect to employment, as well. As IDs do not correspond to their gender identity it seeks them to unofficial employment and often have no chance rather than to agree the poor working conditions and remuneration or to involve in the sex-work that increases the risks of violence.

- Unlawful detention of transgender women

Sex-worker tran women are often victims of unlawful detention; arrest in general takes place around so-called “Pleshka” (gathering point of sex-workers). As the homo/transphobic incident happens against the trans sex-worker women and they approach to the law enforcements in this regard, the police uses article 166 (Disorderly conduct) and article 173 (non-compliance with a lawful order or demand of a law-enforcement officer) of the Administrative Offences Code of Georgia and arrest women. Besides the fact that the police must be able to establish the necessity of the administrative arrest, it is important that they provide the evidence of the person’s offence to the court.

Besides the negative experience transgender women have with the police directly effects the level of their appealing and often influences the decisions of other members of the community whether to report violence against them. Accordingly, special attention must be payed to reducing homophobic and

²⁷ Aghdgomelashvili E., “From Prejudice to Equality (part II): L(G)BTQI persons in Georgia,” WISG, 2018.

²⁸ Ibid.

transphobic prejudices among the police officers, so that stereotypical approaches do not push them towards groundless arrest with discriminatory motives against transgender women.

Conclusion

In conjunction, it has to be highlighted that the state has no holistic vision how to address discrimination and violence against LB women and trans persons in Georgia. Government is mostly focused on an institutional reforms without combating homo/transphobic attitudes of society in a long run with an educational and awareness raising strategy; Elaborating of such strategy is crucial while taking into account the global trend of rising anti gender/LGBTI movement and strengthening of far right groups in the country.

Hence, social inclusion of LB women and trans persons and protection of their fundamental rights remains critical. Eliminating discrimination against LB women and trans persons constitutes a complex issue and overcoming it calls for the combined efforts and coordination work of various state actors in close partnership with professional groups, the media and the civil society. Only such cooperation and implementation of scrutinized action plans may guarantee the effectiveness of the policy to eliminate discrimination and violence against LB women and trans persons.