

Contribution of the Georgian Civil
Society Organisations to
EU-Georgia Human Rights Dialogue
2021

Prepared with the initiative of the Open Society Georgia Foundation, this document brings together assessments by leading civil society organisations on the key human rights challenges in Georgia in 2020. There are nine sections: 1) Anti-Discrimination Legislation; 2) Human Rights Situation in the Occupied Regions of Georgia; 3) Freedom of Religion or Belief in Georgia; 4) Violence against Women and Domestic Violence; 5) Women’s Empowerment; 6) Rights of the Child; 7) Labour Rights; 8) Torture and Ill-treatment and 9) The State Inspector’s Service.

We hope this independent assessment will further facilitate the EU-Georgia Human Rights Dialogue process and highlight the input and recommendations of civil society to ensure better protection of human rights and fundamental freedoms in Georgia.

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Anti-Discrimination Legislation

Progress

The Law on Elimination of All Forms of Discrimination was enacted in Georgia in 2014, which was followed by relevant amendments to dozens of legislative acts. Several changes to improve the law's effectiveness were adopted in 2019. These changes partially strengthened enforcement mechanisms and resulted in both procedural and substantive modifications, including: the deadline for appealing to the court was extended for individuals, the mandate of the Public Defender of Georgia was strengthened, and sexual harassment was regulated.¹ In 2020, changes were also made to anti-discrimination legislation. The Law on the Rights of Persons with Disabilities was adopted and legal protections for persons with disabilities were increased.² Substantial changes were made to the Labour Code. In this regard, the Labour Code separates and regulates in detail the issues of prohibition of labour discrimination and directly obligates employers to ensure equal pay for equal work for male and female employees.³ Despite legislative changes, enforcement of equality policies and effective implementation in practice is still problematic. This is most acute for the LGBT+ community, which represents one of the most vulnerable groups in Georgia. Despite several legislative acts and national action plans, which provided the basis for the protection of the rights of LGBT+ people, those changes were not reflected in real life due to the lack of effective implementation.⁴

Current Situation

Newly introduced mechanisms and legal amendments, while improving the legal framework, still proved ineffective in addressing practical deficiencies and improving the conditions of vulnerable groups. LGBT+ people are particularly vulnerable to stigma and violence. Representatives of this group are not free to exercise their right to assembly and expression and face serious cases of discrimination.⁵ LGBT+ people face obstacles in terms of access to labour rights, access to health and social services, as well as the full enjoyment of the right to education.⁶ In addition, it is alarming that due to the growing number and influence of homophobic and anti-gender groups,

¹ Paragraphs 31 and 31 of Article 2 of the Law on the Elimination of All Forms of Discrimination. Available: <https://bit.ly/3c5SHCI>

² Law of Georgia on the Rights of Persons with Disabilities 14/07/2020. Available: <https://bit.ly/3flaa6D>

³ Organic Law of Georgia Labour Code of Georgia 17/12/2010. Available: <https://bit.ly/3uFTVLr>

⁴ Report of the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity, 2019. Available: <https://bit.ly/3gUFYmO>

⁵ Submission of the Public Defender (Ombudsman) of Georgia to the Universal Periodic Review (UPR) 37th Session (January-February 2021) para .29 Available: <https://bit.ly/3c3RR9C>

⁶ Ibid para 37

LGBT+ individuals are still subject to oppression, violence and discrimination. Cases of attacks on LGBT+ members by radical groups are systemic.⁷ One example is the attack on the office of Tbilisi Pride, which was vandalised with paint and eggs. Attackers stole the flag and made verbal threats.⁸

Amongst the LGBT+ community, transgender people are most vulnerable. Violence against transgender people is amongst the most frequent.⁹ Furthermore, the state response to prevent, investigate and punish such incidents is both limited and ineffective.¹⁰ The state still views homophobia and transphobia not as a systemic and structural problem but as an individual issue, which is why the main strategy set by the state to combat homophobia remains a selective punitive response to its individual manifestations.¹¹ The inability to change records of gender in civil acts without undergoing surgery remains problematic. The requirement of a sex reassignment surgical intervention and a relevant medical certificate for changing records of gender violates the right to privacy, the prohibition of inhumane treatment, free personal development, and independent decisions without medical interference. Precisely on this issue, GYLA and a partner organisation, the European Human Rights Advocacy Centre (EHRAC), have applied to the ECHR.¹²

In addition to having lacklustre investigative mechanisms,¹³ the state has almost no effective policy of resocialisation and transformation of persons accused of hate crimes. Unfortunately the circumstances have not changed as of May 2021.¹⁴ Georgia was advised by UPR in 2015¹⁵ and ECRI in 2016¹⁶ regarding the strengthening of the fight against hate crimes and the creation of a

⁷ See. For example, the latest cases: Main Channel, "Another attack on a lesbian couple," 24.04.2021. Available at: <https://bit.ly/3p8Ec6n>

⁸ See also: Meeting on Growing Number of Attacks on Tbilisi Pride Office, 6 October, 2020. Available: <https://bit.ly/2SIJ4Dd>

⁹ See for example: Violence against transgender people - a woman jumped out of a building October 19, 2020. Article available in Georgian: <https://bit.ly/3fCTFZq>

¹⁰ "Alternative views Identity and others v. Georgia", GYLA, May 2021. Article available in Georgian: <https://bit.ly/3yU2k1i>

¹¹Radio Liberty, "NGOs: Homophobic Violence Is a Significant Challenge", 27.04.2021, available: <https://bit.ly/3vEAWCv>

¹² "Georgia refuses to recognize transgender male gender GYLA appeals to European Court of Human Rights", 2019-10-24. Article available: <https://bit.ly/3g1imO5>

¹³ 2020 Country Reports on Human Rights Practices: Georgia. U.S. Department of State March 30, 2021. Available: <https://bit.ly/3ibg5m5>

¹⁴ See GYLA RESPONDS TO INTERNATIONAL DAY AGAINST HOMOPHOBIA, TRANSPHOBIA AND BIPHOBIA, 2021-05-17 article available: <https://bit.ly/3vE6pER>

¹⁵ Report of the Working Group on the Universal Periodic Review – Georgia, 2015, Recommendation 118.10.

¹⁶ ECRI REPORT ON GEORGIA (fifth monitoring cycle) Adopted on 8 December 2015 Published on 1 March 2016.

separate investigative unit, which would deal specifically with hate crimes. As a result, the Human Rights Protection and Quality Monitoring Department were established under the Ministry of Internal Affairs (MIA). However, as the department is not a substitute for a specialised investigative unit under the police system, it cannot be seen as part of a planned effort to strengthen investigation against hate crimes,¹⁷ neither can it ensure the development of a victim-based approach and systemic prevention policy.¹⁸

The spread of the virus and adopted regulations has contributed to increasing poverty and deepening inequality, especially affecting vulnerable groups. The government's anti-crisis plan did not cover certain categories of self-employed and those employed in the informal sector, as well as many other groups that were hardest hit by the crisis: individuals involved in informal labour - mostly women (including babysitters, cleaners, and caregivers), single mothers, people experiencing homelessness, women engaged in sex work, LGBT+ individuals, etc. Persons with disabilities encountered increased threats posed by the Covid-19 pandemic, which further aggravated their situation in terms of human rights as well. There were examples of discriminatory practices towards religious and ethnic minorities as well.¹⁹

Recommendations

- Strengthen institutional measures by creating a separate investigative unit within the law enforcement system to effectively fight, investigate and prevent hate crimes.
- Improve legislation to restrict hate crimes and define additional guarantees for vulnerable groups, create systemic preventive mechanisms against violence towards vulnerable groups.
- Create transparent and effective administrative mechanisms for legal recognition of gender, which will be separate from the medical sphere and will not foresee inappropriate and intrusive medical intervention as a precondition in the legal recognition process.
- Strengthen implementation and enforcement procedures of anti-discrimination legislation especially in labour relations and education.
- Carry out public awareness campaigns on non-discrimination and hate crimes.
- Government should take into account the interests and needs of vulnerable groups when developing regulations to combat the Covid-19 pandemic and its aftermath.

Prepared by Georgian Young Lawyers' Association (GYLA)

¹⁷ ECRI Interim Report on Georgia published on 5 March 2019 (CRI (2019) 4) on the implementation of the recommendations made in the report of 1 March 2016, available at: <https://women.ge/ka/news/newsfeed/226/>.

¹⁸ Alternative Report on Georgia's Compliance with the International Covenant on Civil and Political Rights, 2020, p. 12-13. Available at: <https://bit.ly/2S3rav0>

¹⁹ "GYLA's Assessment on the Human Rights Situation in Georgia in 2020." Available at: <https://bit.ly/3uF05LN>.

Human Rights Situation in the Occupied Regions of Georgia (Abkhazia and Tskhinvali Region/South Ossetia)

The pandemic has contributed to increased Russian influence in the occupied regions of Tskhinvali and Abkhazia. The social, economic and human rights situation of the locals living in the occupied territories has significantly deteriorated.

Current Situation

The right to receive **education in the native language** is restricted for ethnic Georgians living in Abkhazia and South Ossetia. This practice is systemic and manifested in express prohibition of receiving education in the Georgian language, persistent harassment of Georgian-language teachers at schools, banning Georgian handbooks from curricula and preventing Georgian university entrants from continuing their studies in higher education institutions of Georgia by imposing direct restrictions on their movement or exerting other direct or indirect pressure.

The de-facto authorities continue to create various barriers to **freedom of movement** of Gali and Akhagori inhabitants, who did not leave their homes. The barriers include the introduction of additional documents and unpredictable, long-term closure of crossing points. Permanent closure of the Mosabruni crossing point in Akhagori in September 2019, in the follow up of the Chorchana-Tselisi tensions, resulted in a humanitarian crisis. As a result of food shortage and lack of access to medical services, a significant portion of the population has been leaving Akhagori for a year and a half now. In addition to the numerous artificial barriers created by the de facto Abkhazian authorities, the obligatory quarantine introduced by the Georgian side prompted Gali inhabitants to seek alternative, including more dangerous ways to reach Georgia proper. In April 2021, the death of four people, who were trying to reach Zugdidi from the occupied region of Abkhazia through a bypass road through the Enguri River, forced the Georgian side to abolish the obligatory five-day quarantine.

Right to liberty and security - The most obvious examples of the violation of the right to liberty and security are the cases of Zaza Gakheladze and Irakli Bebu. Z. Gakheladze was sentenced to 12 years in prison for absolutely absurd charges in Tskhinvali, while Irakli Bebu was sentenced to 9 years for burning an Abkhazian flag. The illegal detention of Bebu is particularly alarming due to the political context and sensitivity of his case. At present, three citizens of Georgia are being illegally detained in Tskhinvali: Genadi Bestaev (sentenced to 2 years), Lasha Khetereli (1 year), Zaza Gakheladze (12 years). More than 3,000 people have been arrested and fined by the Russian military for crossing the Abkhazian administrative boundary line in January-March, 2021.

Creeping "ethnic" cleansing of Akhagori - The humanitarian situation in the occupied district of Akhagori has sharply deteriorated since the Chorchana-Tselisi crisis in August 2019, when the Georgian authorities opened a police post in the area under its control. Tskhinvali demanded that the post be dismantled, but no agreement has been reached. As a retaliatory measure, Akhagori

and its population have been completely cut off from the outside world. At the end of 2020, due to the sharply deteriorating migration processes, the de facto authorities began to issue special movement permits; however, not everyone was allowed to leave. The so-called black list includes almost one hundred people, who, for unknown reasons, will not be able to get permits. **Tamar Mearakishvili**, an Akhagori-based civil rights activist, has been the victim of retaliation by the de facto South Ossetian government. Because of an ongoing four-year long baseless investigation, Tamar's freedom of movement has been restricted for years.

Right to life - Four Georgian citizens have been brutally killed in the Russian-occupied territories since 2014: 18-year-old Davit Basharuli in 2014, 31-year-old Giga Otkhozoria in 2016, 35-year-old Archil Tatumashvili in 2018 and 29-year-old Irakli Kvaratskhelia in 2019. Until now, there has been no effective investigation into these cases and no one has been punished.

Ina Jabiev Case - In 2020, after several days of interrogation at the hands of police, 30-year-old Inal Jabiev died in the Tskhinvali pre-trial detention isolator under "unclear circumstances." Allegedly, the young man was a victim of torture. His family and their supporters have been under constant pressure. Inal's case allegedly presents a whole chain of human rights violations: the violation of the right to life; torture; the restriction of the right to have a lawyer; infringement of the freedom of assembly and association; the right to a fair trial, etc.

Medical service - The pandemic has significantly limited access to quality healthcare. Restrictions on the right to movement have deprived Georgian citizens living in Gali and Akhagori regions of access to more qualified medical care on the territories controlled by the central authorities. While there are hospitals, Gali and Akhagori do not have adequate infrastructure, storage of medications, or qualified staff, among other things.

Military bases of the Russian Federation in Abkhazia and the Tskhinvali Region/South Ossetia - Russia strengthened its bases in the occupied territories and began building new ones. The so-called "borderisation" by the Russian forces is ongoing and intensified. The deployment of Russian FSB units along the dividing line serves to control the possibility of direct contact between Georgians and Abkhazians/Georgians and Ossetians.

Recommendations

- International organisations should intensify their work to monitor the human rights situation in South Ossetia/Tskhinvali Region and Abkhazia.
- The Government of Georgia should make the protection and advocacy of the rights of all ethnic groups living in the occupied territories a priority of the country's domestic and foreign policy. It should actively develop an effective plan for protection of the people living in the occupied territories and along the dividing line.

Freedom of Religion and Belief in Georgia

Progress

2020 and 2021 have been particularly problematic in Georgia in terms of human rights protection and equality. The Covid-19 pandemic and its consequences severely impacted vulnerable groups. The state failed to ensure freedom of religion or belief for all, neglected equality between religious communities, and did not enforce the separation of religion and the state. The ongoing pandemic intensified hate speech, which was especially virulent towards ethnic Azerbaijani and Muslim citizens. In addition, high-ranking Orthodox Church clergymen made anti-Semitic statements.

In April 2021 the court ruled in favour of Muslims who were not granted a permit by the city hall to build a new mosque in Batumi. The Ministry of Education and Science continued to include human rights experts in the review process of the new school textbooks. The books are assessed to ascertain to what extent they meet human rights and non-discrimination criteria.

Current Situation

- In 2020-2021 the State revealed its discriminatory approach towards religious communities in multiple circumstances. Under COVID-19 related restrictions imposed on all and the state of emergency announced in spring 2020, the Georgian Orthodox Church was the only institution that continued to hold mass religious services, while other religious organisations stopped. Then-Prime Minister Giorgi Gakharia stated that the churches would not be closed for Easter as Georgia is “an Orthodox country.”²⁰ Later on, under the new restrictions, only the night of 6 January 2021 (when the Georgian Orthodox Church celebrates Christmas) was announced as an exception to the ban on movement in the public space, while other Christians were not allowed to gather on the night of 24th of December to celebrate Christmas due to the curfew. Then-Vice Prime Minister Maya Tskitishvili explained that this was because the majority of the Georgian population is Orthodox.²¹ The State Agency for Religious Issues under the auspices of the Prime Minister has not issued any statement or recommendation during the state of emergency or since, although its mandate is to develop recommendations on religious issues. It was reaffirmed that the goal of the agency is the differentiation of religious organisations, rather than the protection of religious freedom and equality.
- Georgian legislation still contains discriminatory norms granting privileges to the Georgian Orthodox Church and creating a discriminatory environment for other religious communities. In 2019-2021, minority religious organisations, represented by TDI, submitted three new constitutional claims in the Constitutional Court, challenging the norms of the Tax Code and the State Property Law, which grants exclusive property and tax rights only to the Georgian Orthodox Church. The cases are still pending in Court.
- Despite being a longstanding problem for minority religious communities, the Parliament and Government of Georgia have not taken any measures to eliminate the discrimination in

²⁰ Georgian Government will not close churches — ‘especially on Easter’, OC Media, <https://oc-media.org/georgian-government-will-not-close-churches-especially-on-easter/>

²¹ 'No To Phobia's' statement on the exception of Christmas Eve, HumanRights.ge, <http://www.humanrights.ge/index.php?a=main&pid=20288&lang=eng>

legislation. Instead, Parliament granted yet another privilege to the Georgian Orthodox Church in 2020. In March and May 2020, during the state of emergency, the Parliament introduced changes to the legislation, giving the Georgian Orthodox Church the exclusive right to be granted ownership rights of state forests.²²

- On 13 April 2021, the Kutaisi Court of Appeals announced the decision on the construction of a new mosque in Batumi. The Court ruled that the refusal of Batumi City Hall on the building permit for a new mosque in Batumi is illegal and discriminatory against the Muslim community on the grounds of religion. This is a very important decision by the national courts, which have recognised the discriminatory practice of violating the freedom of religion of the Muslim community for years.²³
- On 20 December 2020, the Metropolitan of Kutaisi-Gaenati Eparchy of the Georgian Orthodox Church and the head of the Education Centre of the Georgian Patriarchate, Ioane Gamrekeli made antisemitic statements during his sermon. He promoted a dangerous religious stereotype that attributes collective guilt for the crucifixion of Jesus to the entire Jewish people and portrays Jews as persecutors of Christians - a widespread stereotype that represents the most solid basis of institutional antisemitism. Antisemitic statements were made furthermore by other Orthodox clergymen. Neither the Church, nor the State criticised this antisemitism.²⁴ In May 2021, Orthodox clergymen physically assaulted journalists from the Mtavari TV channel.²⁵

Recommendations

The State should:

- Ensure the separation of Church and State enshrined in the Constitution of Georgia, treat all religious communities equally, and stop discriminatory religious policy and practice;
- Critically assess and condemn antisemitism and hate speech of the Georgian Orthodox Church representatives and respond accordingly to the violence of the particular clergymen;
- Eradicate discrimination and inequality towards religious communities in the legislation of Georgia;
- Abolish the State Agency for Religious Issues (SARI), which instead of protection freedom of religion or belief for all, reaffirms discrimination of minority religious communities and interferes into their autonomy.

Prepared by Tolerance and Diversity Institute (TDI)

²² TDI's statement on privileges granted to the Georgian Orthodox Church, <http://tdi.ge/en/news/775-during-state-emergency-parliament-reviewing-legislation-transferring-state-forests>

²³ City Hall's Refusal to Build the Mosque is Illegal and Discriminatory, <http://tdi.ge/en/news/932-city-halls-refusal-build-new-mosque-was-illegal-and-discriminatory-court-appeal>

²⁴ Antisemitism of the Church – Updated Summary, prepared by TDI, <http://tdi.ge/en/statement/antisemitism-church-updated-summary>

²⁵ Clergymen attack 'Cartographers Case' suspect, Journalist in David Gareji, Civil.ge, <https://civil.ge/archives/417878>

Violence against Women and Domestic Violence

Progress

Since 2020, the Government of Georgia has taken certain steps to address violence against women. This submission focuses specifically on domestic violence, sexual violence and child and forced marriage. The measures include: introducing an electronic monitoring mechanism for domestic abusers (1 September 2020); training of over 60 prosecutors and granting them specialisation in prosecuting sexual violence crimes (March 2021, supported by Council of Europe, UN Women and Equality Now); and launching a campaign to address child and forced marriage by the Ministry of Internal Affairs, involving intensive awareness raising activities (1 June 2021, supported by UNFPA).

Current Situation

The current situation in relation to violence against women, specifically on domestic violence, sexual violence and child and forced marriage, is largely unaltered as compared to 2020.

Domestic violence victims are still not provided with sufficient services and support to protect them from secondary victimisation in the criminal justice process and provide them with long-term assistance, including economic empowerment, to enable them to break the cycle of violence. Covid-19 aggravated the situation of victims of domestic violence, who found themselves locked up with their abusers with limited opportunities to seek support services. The rate of femicide remained high in 2020, amounting to 24 cases according to the data of the Public Defender's Office of Georgia.

Despite advocacy from civil society and recommendations received by international bodies, a consent-based definition of rape is still absent from the Criminal Code of Georgia. The current definition that requires force, threat of force or abusing helplessness violates the requirements of the Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence (Istanbul Convention) and other binding human rights instruments that Georgia is a party to. Moreover, burdensome evidentiary and corroboration requirements are still applied to prove sexual violence, which allows many perpetrators to go unpunished. Victims remain reluctant to report sexual violence and, when they do so, are often subjected to disbelief and outdated and discriminatory procedures, contributing to their secondary victimisation. As a result, impunity for sexual violence still prevails.

Harmful practices, such as child and forced marriage, remain a significant problem in Georgia, even though the age of marriage is fixed by law as 18. As reported by the Public Defender's Office, in 2020, 199 cases of child marriage, forced marriage and bride kidnapping were identified (47 cases constituted bride kidnapping). Child marriage often negatively impacts girls' access to

education, health care and social services and is sometimes associated with poverty and increased exposure to sexual and domestic violence. Child marriage is not perceived by the criminal justice system as a form of forced marriage, where a child is unable to express genuine and voluntary consent to such a union. The crime of bride kidnapping seldom reaches the criminal justice system and perpetrators very often get away without prison sentences.

Recommendations

- Amend the Criminal Code of Georgia to introduce a consent-based definition of rape;
- Implement gender-sensitive and victim-centred criminal justice procedures for sexual violence and do away with burdensome evidentiary standards, corroboration requirements and discriminatory practices;
- Target the root causes of child and forced marriage (including bride kidnapping) by strengthening educational, health care, social and other support services, improving coordination among governmental bodies and provide victim-centred criminal-justice procedures that ensure that perpetrators are brought to justice;
- Intensify programs of services for domestic violence victims to ensure support for them over the long-term, including economic empowerment.

Prepared by Equality Now

Women's Empowerment

Political Empowerment

2020 was an important year in terms of increasing women's political participation. The Parliament of Georgia endorsed changes to the Electoral Code and introduced mandatory gender quotas in response to demands by women's organisations and movements for the last six years. As a result, in their proportional party lists, political parties are required to include a person of a different gender as at least every fourth candidate on the list in the 2024 to 2028 elections. Starting from October 2028 polls through October 2032 elections, however, at least every third person in the party list must be a person of a different gender.

The above-mentioned amendments have not effectively accelerated the de facto equality between men and women. Notably, in order to circumvent and condemn compulsory gender quotas, the political party Girchi found a loophole in the current legislation. Namely, a female deputy who entered parliament on Girchi's list refused to be a member of parliament, while the party itself cancelled the party list registered with the CEC. As a result, a male member of the party entered the parliament to replace the female deputy who would have entered parliament on Girchi's list. Currently, out of the total 150, only 29 members of parliament are women.²⁶

As for local municipalities only one out of 64 mayors of Georgia is a woman. Representation of women in the judiciary exceeds that of men but only 10.7% of decision-making positions in the judiciary are held by women.²⁷

Economic Empowerment

The main challenge in 2020 was the Covid-19 pandemic, which severely affected the problem of domestic violence against women and significantly worsened the economic situation of women. As women are more likely to be employed in low-paying, part-time and/or informal jobs, the crisis caused by the pandemic hit them the hardest.²⁸ The Caucasus Research Resource Center Georgia (CRRG-Georgia) estimates that 20% of employed women surveyed in October lost their jobs due to the pandemic, while productive income fell for 39% of women surveyed.²⁹ The economic impact of the coronavirus has had a particularly negative effect on women

²⁶ See at: <https://parliament.ge/parliament-members>

²⁷ Women in Decision Making, UN Women, 2021, see at: [https://www2.unwomen.org/-/media/field%20office%20georgia/attachments/publications/2021/women%20in%20decision%20making-final%20\(1\).pdf?la=ka&vs=0](https://www2.unwomen.org/-/media/field%20office%20georgia/attachments/publications/2021/women%20in%20decision%20making-final%20(1).pdf?la=ka&vs=0)

²⁸ UN Women, COVID-19 and Ending Violence against Women and Girls', 2020, Page 5. Available at: <https://bit.ly/39Fdf3F>

²⁹ Rapid Gender Assessment of COVID-19 Situation in Georgia, 2021; available at: <https://bit.ly/3avXU5X>

entrepreneurs, the vast majority of whom have had their incomes reduced, and half of them - at least halved. The main obstacles were motherhood activities, lack of family support and unpaid child care. Consequently, in pandemic conditions, women, especially in families with children, are more likely to experience the impact of increased family labour.

The Gender Equality Council of the Parliament of Georgia has made recommendations³⁰ to the Government of Georgia, including on the economic needs of women. However, the Government of Georgia has not fully implemented the recommendations submitted by the Parliamentary Council.

According to the National Statistics Office of Georgia, during all four quarters of 2020,³¹ the male labour force participation as well as the average monthly nominal earnings of employed men were still significantly higher than that of women.³²

Recommendations

- In order for women to have a real impact on the decision-making process, it is essential that women's representation in Parliament and self-government bodies be increased, extended and maintained at minimum 30%.
- Legislative changes should be made to ensure that if a member of parliament who was elected through the party list refuses to or is unable to serve, that member should be replaced by the next candidate on the party list of the same sex. If there is no candidate of the same sex in the party list, this mandate should be revoked.
- Develop a state strategy and action plan for women's economic empowerment;
- Develop a methodology for calculating the wage gap and a strategy to overcome it.

Prepared by Sapari

³⁰ See at: <https://bit.ly/3hyEge9>

³¹ Men - 62.0%, Women - 40.4%. Employment and Unemployment Statistics, 2020, see at: <https://bit.ly/3sFUcgx>

³² 2020, IV Quarter - Men - 1581.5 GEL, Women - 1022.3 GEL. Statistical data on earnings available at: <https://bit.ly/3gqhh4m>

Rights of the Child

Progress

On 1 June 2020, the Code on the Rights of the Child entered into force fully. This is an important achievement, which will have a long-lasting impact on children in Georgia. The code creates higher standards for welfare and protection of children and imposes guarantees for children's participation in the decision making process, right to access to justice without any barriers, protection from corporal punishment, etc.

Current Situation

The main challenge of the Code on the Rights of the Child is effective implementation. If the state will not provide effective financial and political support to the implementation process, the code will fail to bring any changes.

Due to a malfunctioning child protection system and crisis in the childcare system, the State is failing to prevent child abandonment and instead places children in large, mostly unlicensed residential facilities. There are significant differences in the nutritional status of children from varying socio-economic groups. Child poverty also remains high - every fifth child lives in a household where their basic needs are unmet and there is a considerable increase in the share of children living below the subsistence minimum.

Despite the commencement of the deinstitutionalisation process and amendments to Georgian legislation, over 900 children remained in 38 unregulated institutions, mostly boarding houses run and financed by the Patriarchate of the Orthodox Church, or under Muslim Confession or local municipalities. On 15 April and 19 May 2021, representatives of the Public Defender of Georgia were not given the opportunity to study the rights situation of children in the Javakheti Ninotsminda St. Nino Boarding House for Orphans, Vulnerable Children and Children without a Caretaker functioning under the auspices of the Patriarchate. The State has so far failed to enforce the temporary measure of the UN Committee on the Rights of the Child instructing the Government to ensure monitoring of the Ninotsminda Boarding House leaving underage students without protection.

The COVID pandemic has further increased the risks of child abuse, poverty, violation of the rights to health care and education. The remote learning process is especially problematic for children with disabilities and children living in poverty or in rural areas. Violence against children remains a challenge. In 2020, investigations were launched into 254 cases of sexual abuse and sexual exploitation of minors.

Recommendations

- Immediately facilitate the uninterrupted visit of the Public Defender's representatives to the Ninotsminda Boarding House, providing the monitoring body the opportunity to have individual conversations with the children and conduct effective monitoring;
- Develop the plan of deinstitutionalisation of large institutions, which shall define the terms and forms of removing children from both licensed and unlicensed institutions;
- Begin individual assessment of the children for the purposes of their reintegration into biological families, and when this is not possible, move them in the forms of care approximated to the family environment;
- Review the existing policies against child poverty and the effectiveness of social and childcare programs.

Prepared by Partnership for Human Rights (PHR)

Labour Rights

Progress

In recent years, Georgia has made some progress towards improving workers' rights and government oversight on labour conditions. In the fall of 2020, Georgia adopted labour reforms to strengthen the Labour Inspectorate by granting it institutional independence and broadening its mandate to include oversight over all labour conditions. The 2020 labour reform, which came into force in 2021, also introduced fragmented standards into Georgia's weak labour rights legislation, including limited regulations on overtime work and night shifts, weekly rest, daily breaks, gender equality and other guarantees that Georgia undertook in adherence with the Association Agreement.

Despite these steps forward, Georgia's legislation and policies do not fully ensure fair labour conditions. Thousands of workers in Georgia earn less than a living wage, social guarantees are virtually non-existent, and weak enforcement mechanisms and a lack of legal protections for unions means workers have no power to effectively bargain for systemic changes.

Current Situation

The newly amended labour legislation still does not meet core standards nor fully address many of the most common exploitative labour practices. The lack of proper regulations on work time, overtime and night shift rate differentials, solidarity strikes and remuneration for parental leave makes the adopted reform disjointed and allows oppressive labour practices.

The Labour Inspectorate still lacks sufficient financial and human resources to effectively enforce its mandate over all sectors and regions, especially with the dramatic expansion of its mandate on 1 January 2021. Further, since the start of the pandemic, the Inspectorate has been tasked with overseeing compliance with COVID-19 related regulations, which has drastically increased their workload and shifted the focus from their primary mandate. This situation continues to this day, which has diminished the Inspectorate's vital role in ensuring fair labour conditions in Georgia. The Labour Inspectorate should be properly staffed and resourced to effectively execute its full mandate.

Georgia has also failed to address the low wages prevalent throughout various industries. Georgia's current minimum wage was set in 1999 at 20 GEL (approx. 5 EUR) per month and is 10 times lower than the current subsistence minimum for a working age man. The effective absence of a statutory minimum wage has contributed to an environment of economic exploitation of workers, where huge swathes of the workforce earn far below a living wage. It is also the crux of the gender wage gap, since the majority of low-wage jobs are taken by women. For instance, a recent study showed that nurses (who are predominantly women) are paid around 200-400 Gel (approximately 50-100 EUR) per month. Most are forced to work overtime and care for excessive numbers of patients – far above accepted patient-to-nurse ratio guidelines. This not only makes their working conditions difficult, but also impacts the quality of the healthcare system overall.

On top of this, many nurses are forced to take 2-3 jobs because of low wages. Despite the fact that almost 3/4 of Georgians support having a decent minimum wage law, Georgian authorities have failed to take any steps towards this goal. Low wages are also a leading cause of the continued surge in labour strikes in the country. In addition, low wages can be directly connected to labour migration from Georgia, pushing people to look for better-paid jobs abroad.

Georgia also lacks a proper social protection system, which further degrades living conditions for workers. The country does not provide unemployment benefits or unemployment insurance schemes to protect people against social and economic risks or to enhance their ability to cope with income loss. Social programs that help people find work - such as retraining, employment agencies, wage subsidies, and tax tools aimed at preserving jobs - are also unsystematic and weak. The lack of any social protection mechanisms puts thousands of workers at risk of economic vulnerability, which was further highlighted by the COVID-19 pandemic.

According to a 2018 IMF report, Georgia has the largest informal economy in the world judged by share of GDP, producing 64.9% of the country's GDP. As stated by the Georgian Statistics Office, almost half of Georgia's workforce is engaged in informal employment. Informal workers in Georgia are generally excluded even from the minimal social protection schemes and guarantees that Georgian legislation provides. Most informal workers were also left out of the Government's anti-crisis plan during the pandemic. A recent study by UN Women showed that after the pandemic, 72% of informal domestic workers were willing to formalise if it gave them access to anti-crisis services.

Recommendations

- Strengthen the efficiency of the Labour Inspectorate by equipping the body with necessary resources (financial, human and administrative) for the inspection of all working conditions and labour relations according to ILO standards.
- Further improve the legislative framework on core labour rights, and bring it fully in line with ILO standards and EU regulations, specifically in the areas of organisation of working time, overtime regulations, the right to strike, solidarity strikes, parental leave, contract termination conditions and other core labour standards.
- Ratify ILO Conventions, including the Weekly Rest (Industry) Convention, Safety and Health in Mines Convention, Minimal Wage Fixing Convention, Hours of Work (Industry) Convention and Night Work Convention. Also ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.
- Enact a minimum wage that is tied to a regularly-updated living wage index (and which includes sectoral living wage rates) in consultation with social partners and labour rights organisations, and ensure its effective application.
- Develop and enact effective social protection schemes for the involuntarily unemployed.
- Ensure fast and efficient grievance mechanisms for workers through alternative dispute resolution mechanisms and the Common Courts of Georgia.

- Develop a strategy and action plan for the formalisation of the informal sector, and ensure social protection of workers with informal employment.

Prepared by Georgia Fair Labor Platform

Torture and Ill-treatment

Progress

For the past few years and notably since early 2020, physical abuse of prisoners by prison staff has encompassed only a few reported cases. The prison population has been gradually decreasing with the total number falling around 9 000. Prison N12, an old prison with poor conditions, was closed and prisoners were moved to a new facility in Rustavi significantly improving their living conditions. Some infrastructural improvements were undertaken in some other establishments to upgrade conditions. The spread of Covid-19 in prisons was effectively contained and kept at bay through several measures for most of 2020.

Current Situation

Prison overcrowding

Despite the overall significant reduction in the number of prisoners since 2013, Georgia still ranks high on imprisonment rates in Europe. Some prisons are consistently overcrowded, which negatively impacts living conditions for prisoners and deprives them of some entitlements because of the impact of overcrowding on the ratio between number of prison staff to prisoners. As of April 2021, there were 9114 prisoners held in penitentiary institutions of Georgia³³ constituting a rate of imprisonment equalling to 244 prisoners per 100,000 people. By this indicator, Georgia ranked third among European countries in 2020.³⁴ In January through April 2021, there were two prisons that grossly exceeded their official capacity limits by a few hundred prisoners: Gldani prison N8 and Ksani prison N15.³⁵ According to the Ombudsman/National Preventive Mechanism, the number of prison staff “is not sufficient to ensure a protected, safe and orderly environment.”³⁶ This has implications in terms of prisoner allocation and the increase in the number of inter-prisoner conflict and violations rendering vulnerable prisoners susceptible to abuse, bullying and injury from more powerful and violent ones.

³³ National Statistics Office of Georgia, April 2021 criminal justice statistics, available at:

<https://www.geostat.ge/media/38564/Unified-Report-on-Criminal-Justice-Statistics-%28April%2C-2021%29.pdf>

³⁴ Incarceration rate in Europe 2020. Available at: <https://www.statista.com/statistics/957501/incarceration-rate-in-europe/>; Prison Populations, SPACE I 2020. Available at: https://wp.unil.ch/space/files/2021/04/210330_FinalReport_SPACE_I_2020.pdf

³⁵ Official capacity of Gldani prison is 2426 prisoners (there were 2613, 2710, 2706 and 2788 prisoners in January, February, March and April respectively) and Ksani prison capacity is 1388 (actual numbers in January, February, March and April were 1840, 1802, 1829 and 1769 respectively).

³⁶ Report of the Ombudsman/National Preventive Mechanism for 2020, p. 44. Available at: <https://ombudsman.ge/res/docs/2020110212394895954.pdf>

Use of lengthy solitary confinement

Even though cases of torture and abuse have dramatically decreased in the Georgian penitentiary system and overall the treatment of prisoners by prison staff has improved since 2013, the practice of placing prisoners in solitary confinement for lengthy periods of time (months and even years on end) in high-risk and closed type penitentiaries has persisted over the years and has been qualified as ill-treatment by the Public Defender.

The Ombudsman's Office has also been reporting about the use of de-escalation rooms and 'safe' cells to informally punish prisoners, including juveniles, rather than as a security measure, in cases equally to inhuman treatment. In the absence of psycho-social support services and other resources needed, prison administrations place prisoners with mental health problems and those at risk of self-harm in de-escalation rooms or safe cells/solitary confinement for lengthy periods and short intervals thus subjecting them to cruel, inhuman or degrading treatment³⁷ further exacerbating mental health problems.

Solitary confinement increases the risk of torture or ill-treatment going unnoticed and undetected, and it can in itself constitute torture and ill-treatment, in particular where it is prolonged or indefinite.³⁸

Criminal subculture problem in prisons

The last few years have seen the resurgence of informal prisoner hierarchies and 'prison leaders' in Georgia's penitentiaries, especially semi-open type ones, as reported by the European Committee for the Prevention of Torture, the Ombudsman and civil society organisations. This phenomenon exposes weaker inmates to the risk of violence and intimidation by more powerful prisoners who enjoy privilege and clout among prisoners and prison staff especially as regards semi-closed type prison facilities.³⁹ A similar problem was also reported in the closed type prison in Gldani⁴⁰ in 2020 where it was uncovered that some prisoners were oppressed and humiliated by others and other forms of psychological pressure was used.

The Public Defender has consistently highlighted the problem over the years and has emphasised that "informal governance poses a serious danger of ill-treatment of prisoners, often leading to violence and oppression among prisoners," calling for the timely resolution of the problem

³⁷ Annual report of the Public Defender/National Preventive Mechanism, 2020

³⁸ <https://www.penalreform.org/issues/prison-conditions/key-facts/solitary-confinement/>

³⁹ CPT report on the visit to Georgia in 2018, available at: <https://rm.coe.int/1680945eca>

⁴⁰ Report on Monitoring the Penitentiary Establishment N8, Human Rights Centre, 2020
http://hridc.org/admin/editor/uploads/files/pdf/report%202021/PENITENCIURI-ENG_F.pdf

especially in view of the management challenges experienced by penitentiary authorities.⁴¹ The existence of this criminal subculture is supported by prison administrations who resort to ‘prisoner leaders’ for assistance to maintain order and exert control over the prison population, especially in big penitentiaries.⁴²

It is noteworthy that the issue of inter-prisoner violence and ill-treatment merited attention from the CPT and they carried out an ad hoc visit to Georgia’s penitentiaries in May 2021.⁴³

Recommendations

- Reduce prison overpopulation through the activation of release mechanisms, such as parole and substitution of prison sentences with alternatives as back-end sanctions, increased use of alternative pre-trial measures and sanctions whilst sentencing;
- Review the practice of using solitary confinement, and reduce its use only in very exceptional circumstances, as a last resort, for as short a time as possible, and with appropriate procedural safeguards in place. Where solitary confinement is used, prison regimes must ensure that prisoners have meaningful social contact with others, for example by: raising the level of staff-prisoner contact; allowing access to social activities with other prisoners and more visits; arranging in-depth talks with psychologists or psychiatrists; maintaining and developing relationships with family and friends; and by providing meaningful in cell and out of cell activities;
- Ensure the use of de-escalation rooms and safe cells is in line with international standards and national legislation;
- Acknowledge the existence of criminal sub-culture and informal prisoner hierarchies in Georgia’s prisons and developing a strategy to tackle the phenomenon by addressing systemic problems of staff shortage, lack of staff training, strengthening dynamic security, improving prison risk/needs assessment and classification system.

Prepared by Penal Reform International

⁴¹ Ombudsman/NPM report 2020

⁴² Ombudsman’s reports 2019, 2020; available at: The effects of criminal sub-culture on the management of penitentiaries, Rehabilitation Initiative for Vulnerable Groups, 2020, available at: <https://www.rivg.ge/media/1001537/2020/09/08/852475fa2ef4b65cd0207afc1db4f1eb.pdf>

⁴³ <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-cpt-visits-georgia-and-holds-high-level-talks-with-the-minister-of-justice-on-the-situation-in-semi-open-peni>

The State Inspector's Service

Progress

For many years, local NGOs and international organisations as well as the Public Defender of Georgia have called for the establishment of an independent investigative mechanism to address the challenges related to the investigation of crimes committed by law enforcement officials. The establishment of an independent investigative mechanism was also envisaged in the EU-Georgia Association Agenda 2017-2020. In view of the above recommendations, on 21 July 2018, the Parliament of Georgia passed the Law on the State Inspector's Service (SIS), according to which the Personal Data Protection Inspector's Office (established in 2013) was transformed into the State Inspector's Service. In parallel with the existing functions (monitoring the lawfulness of personal data processing and covert investigative activities), the Service acquired a mandate to investigate certain crimes committed by representatives of law enforcement agencies, by an official or a person equal to an official. The State Inspector's Service was established on 10 May 2019 as the successor of the Office of the Personal Data Protection Inspector. It is an independent state authority accountable only to the Parliament of Georgia. The State Inspector's Service has been performing investigative functions since November 2019.

Current Situation

There are certain challenges and gaps in terms of each direction of the State Inspector's Service, in particular:

- The State Inspector's Service lacks functional independence for conducting investigations and is not able to make decisions independently (without the intervention of the supervising prosecutor) regarding a number of investigative actions.⁴⁴ The annual report of the Service on investigative activities revealed how problematic it is to lack functional independence and to rely on other state agencies.⁴⁵
- The power of the State Inspector's Service to submit a substantiated proposal, different from other investigative bodies, is also ineffective as the proposals of the investigative body (on conducting investigative actions and initiating prosecution) is not binding on the Prosecutor's Office, its examination is delayed, and there is no possibility to appeal the rejection of the proposals in court.⁴⁶
- The limited mandate of the State Inspector's Service remains a problem, as it doesn't apply to possible crimes committed by the Minister of Internal Affairs of Georgia, the head of the

⁴⁴ IDFI and EMC on challenges Related to the Independent Investigative Mechanism, 2020, available at: <https://bit.ly/3uKMFhy> accessed on: 01.06.2021.

⁴⁵ Statement by IDFI and the Social Justice Center Concerning the Annual Report of the State Inspector's Service, 2021, available at: <https://bit.ly/2RkFDqU> accessed on: 01.06.2021.

⁴⁶ Ibid.

State Security Service of Georgia, and the Prosecutor General. At the same time, the investigative jurisdiction of the Service does not include a number of crimes committed by law enforcement officials.⁴⁷

- Under existing legislation, the State Inspector's Service is not empowered to provide special protection measures for the victim/witness.⁴⁸
- The insufficient number of investigators, as well as the lack of regional offices, are significant obstacles to the efficient functioning of the Service.⁴⁹
- The Law of Georgia on Personal Data Protection does not respond to the current challenges.⁵⁰ The State Inspector's Service is not equipped with legislative levers similar to those of developed countries' supervisory bodies.⁵¹ To approximate national personal data protection legislation with European standards in 2018-2019, the State Inspector's Service developed a new draft Law on Personal Data Protection and other associated legislative amendments, but for almost two years the draft is at the stage of initial consideration at the level of parliamentary committees.⁵²
- Georgia has not yet signed the modernised Convention 108, which ensures a higher standard of data protection, greater accountability of the controller, and effective oversight of data protection.⁵³ Notably, this Convention considers inadmissible a complete exception to data processing for national security and defence purposes and provides that processing activities for these purposes should be subject to an independent and effective review and supervision;
- Illegal surveillance with audio-video recordings being made of politicians and journalists for blackmail as well as the ineffectiveness of investigation of such crimes is a systemic problem for Georgia.⁵⁴ Besides, the legal and institutional framework of covert surveillance does not guarantee the proper protection of privacy.⁵⁵

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ IDFI, Brief Overview of Recent Developments in the Field of Personal Data Protection, 2021, p. 5, available at: <https://bit.ly/3yTuf1l>. Accessed on 2 June 2021.

⁵¹ Report on the Activities of the State Inspector's Service 2020, p. 86. available at: <https://bit.ly/3i76s8f>. Accessed on 1 June 2021

⁵² IDFI, Brief Overview of Recent Developments in the Field of Personal Data Protection, 2021, p. 5.

⁵³ IDFI, The Significance of the Modernized Convention 108 for Georgia, 2021, available at: <https://bit.ly/3iedfwX>

⁵⁴ IDFI, Brief Overview of Recent Developments in the Field of Personal Data Protection, 2021, p. 20.

IDFI's Statement on Personal Life Footage, 2021, available at: <https://bit.ly/3pivxyg>

⁵⁵ IDFI, Secret Surveillance in Georgia - Analysis of the Legislation and Practice, available at: <https://bit.ly/3pohl8P>. Accessed on 2 June 2021.

Recommendations

- Take prompt and efficient legislative steps to separate investigative and prosecutorial functions and increase the functional independence of the State Inspector's Service;
- Increase the mandate of the State Inspector's Service to cover all crimes committed by law enforcement officials;
- Extend the mandate of the investigative body to alleged crimes committed by the Minister of Internal Affairs, the head of the State Security Service, and the Prosecutor General;
- Grant the State Inspector's Service the power to use a special protection measure, which would provide solid guarantees for the safety of the victim and his or her close relative or family members;
- Provide adequate material and human resources to the Investigative Division;
- Sign and ratify Convention 108+ and adopt the GDPR compliant PDP Law, ensuring that derogatory regimes remain exceptional⁵⁶ in line with the requirements of Convention 108+ (in terms of data processing for national security and defence purposes) and the right to personal data protection is reconciled with other human rights and fundamental freedoms, in particular, freedom of expression and information.

Prepared by Institute for Development of Freedom of Information (IDFI)

⁵⁶ Parties to the Convention 108+ are no longer provided with the possibility to make declarations aimed at exempting from the Convention's application the specific types of data processing. The Convention 108+ considers inadmissible a complete exception to data processing for national security and defense purposes. Exceptions are allowed for a limited number of provisions on condition that such exceptions are provided for by law, that they respect the essence of the fundamental rights and freedoms, and are necessary in a democratic society. Despite the exceptions, the requirement that processing activities for national security and defense purposes be subject to an independent and effective review and supervision in terms of personal data protection is clearly laid down.