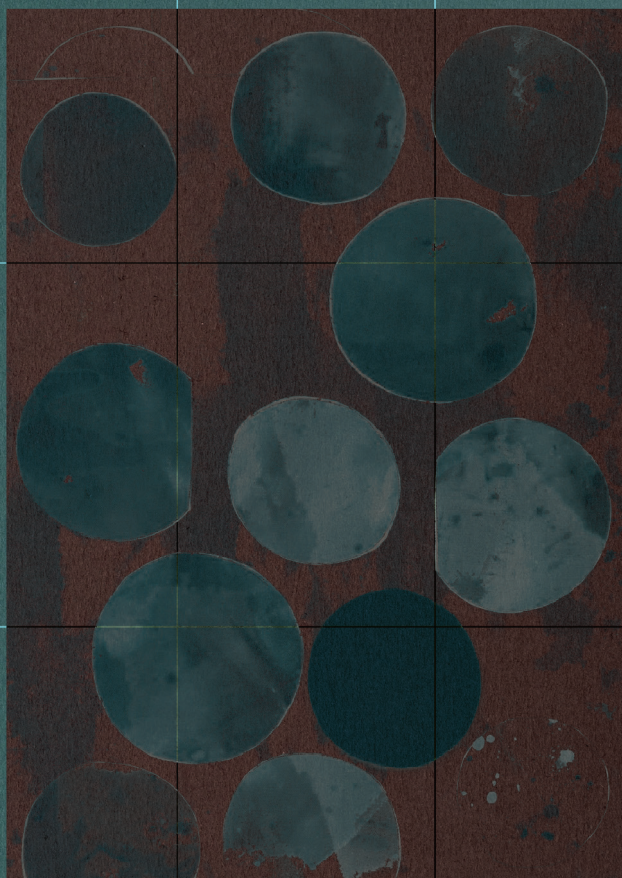


MENTAL HEALTH AND HUMAN RIGHTS

Problematic Issues and Potential for Changes



SOCIAL
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CENTER

**Mental Health and Human Rights -
Problematic Issues and Potential for Changes**

2021



The document was prepared in the framework of the Project – “Promoting and Enabling Legal Capacity in Georgia”. The Project is funded by the Open Society Foundations (OSF) and is implemented by the following organizations – “Social Justice Center”, “Partnership for Human Rights” (PHR), Georgian Association of Social Workers” (GASW) and “Global Initiative on Psychiatry – Tbilisi” (GIP – Tbilisi).

The opinions expressed in the document are the sole responsibility of the author and may not express the position of the Open Society Foundations (OSF).

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Introduction

The introduction and application of a human rights-based paradigm¹ in the field of mental health have been a significant challenge for years. To date, this sphere has not even formally complied with international standards, leaving thousands of people connected with this system under the state of gross human rights violations and neglect.

The UN Convention on the Rights of Persons with Disabilities (Hereinafter – Convention) became legally binding for Georgia in 2014. The Convention turned out to be the revolutionary tool, which fundamentally changed the disability policy previously based on the medical model and called on states to start the application of social and human rights-based models in the shortest period of time. The above-mentioned pathos is fully applicable for every right enshrined by the Convention, which, among other important issues, explicitly emphasized the prohibition of the institutionalization of persons with disabilities, application of coercive measures, or limitation/deprivation of the legal capacity. Despite the above-mentioned standards, the situation in this area has not been improved significantly in Georgia.

The COVID-19 Pandemics has posed a number of new challenges to the mental health system. On the one hand, the burden of the Pandemics on the mental health of the general population has increased significantly, while, on the other hand, the users of mental health services have become increasingly

¹ See. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/44/48, 2020, Paras. 58 – 67.

vulnerable.² The mentioned systemic challenges required state intervention; however, this sphere has not become a priority for the Government even during this period. On the contrary, the seemingly non-dynamic policy of mental health even went into regression with regard to the provision of inpatient psychiatric services, when another mental health unit was closed in multi-profile clinic functioning in Tbilisi.

The following paper aims to summarize the key challenges in the field of mental health, which also have a significant impact on persons with psychosocial needs and their family members. The Social Justice Center has identified these barriers during the implementation of the Project – “Promoting and Enabling the Legal Capacity in Georgia” – from October 2018 to date.

The document focuses on important issues such as the failure of the legal capacity reform implementation, problems in the provision of mental health inpatient services, state inaction towards the development and implementation of mental health and deinstitutionalization strategies, as well as the problems caused by the COVID-19 Pandemics and the problems of the timely response of the state.

Shortcomings in the Legislative and Policy Frameworks

One of the major challenges in the mental health field is flawed legislation and policy frameworks. A detailed analysis of this topic is beyond the scope of this paper, however, several issues relevant in this sphere are particularly noteworthy, which will be highlighted and discussed below.

- Weak Institutional Framework

Providing central and local authorities with adequate knowledge, human and financial resources is essential for the smooth and effective implementation of the mental health policy. The inter-agency platforms that coordinate the relevant policy are particularly important.

Unfortunately, as in many other areas, the country faces fundamental challenges in this sphere too. In particular, despite its commitment under the Convention,³ the Central Government of Georgia has not yet established the implementation and coordination body, which would facilitate the formation and implementation of a consistent, uniform and effective policy towards persons with disabilities. This body should become one of the main mechanisms for setting the vision of mental health reform, short-term and long-term goals and ways to achieve them.⁴

² See, Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2020, pp. 383 – 385.

³ Convention on the Rights of Persons with Disabilities, 2006, Art. 33.

⁴ Note: Later, on November 29, 2021, the Government of Georgia, approved the Interagency Coordinating [Committee](#) for the Implementation of the Convention on the Rights of Persons with Disabilities, which has also been criticized; See. Statement: “The Government Still Cannot Offer Guarantees for Functioning of the Mechanism for the Implementation of the CRPD”, <https://bit.ly/3DmhYmS>.

On the other hand, in August 2021, the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia established an Interagency Coordination Council⁵ within the Ministry, which aims to facilitate the implementation of measures under the Law on the Rights of Persons with Disabilities. The work of the Council involves the participation of representatives of governmental, non-governmental, donor and international organizations, the community of persons with disabilities and other stakeholders in line with identified working topics. The Council is divided into four committees: 1) Committee for facilitation the introduction of a disability status determination mechanism (bio-psycho-social model); 2) Committee for the Promotion of the Development of Deinstitutionalization and Alternative Care Services; 3) Committee for the Development of Social Services for Persons with Disabilities on an Equal Opportunity, Quality Monitoring and Improvement of the Evaluation Mechanism; 4) Committee for the Promotion of Equal Services for Persons with Disabilities at the Municipal Level.

The working topics identified by the Council are relevant, although the development and approval of its Statute were carried out without coordination, communication and involvement of the community of persons with disabilities, which presents the violation of the Conventional principle of participation.

The interagency platform has not yet selected members (from the community of persons with disabilities and relevant organizations) who will be involved in its work, and its actual launch date is unknown, which itself further delays the mental health reform process.

- Delaying the Introduction of the Social Model

Mandatory recognition of the Convention in Georgia, among many other areas, required the country to completely transform the existing medical model for persons with disabilities (which is based only on diagnoses) and to transform the entire system into a social model that recognizes “long-term physical, mental, intellectual or sensory impairments”, As well as their interaction with various obstacles, which “may hinder their full and effective participation in society on an equal basis with others.”⁶

In view of the above reasoning, the social model primarily seeks to identify the individual needs of a person, although its introduction is not limited to this and involves a radical change in existing policies towards persons with disabilities and the introduction or expansion of services tailored to their needs. Given its content, the importance of this model is clear in the mental health system as well - in the area where human needs are largely ignored and medical approaches are still formed as an unshakable paradigm.

⁵ Order N 01-332/O of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia of August 24, 2021 “On Approval of the Statute and Composition of the Inter-Agency Coordination Council for the Enforcement of the Law of Georgia on the Rights of Persons with Disabilities”.

⁶ Convention on the Rights of Persons with Disabilities, 2006, Art. 1.

Due to the comprehensive nature of the social model, its introduction should have been one of the first reforms to be implemented by the Government after the ratification of the Convention. Unfortunately, its exact content has not yet been developed and implemented in the country, and it is unknown when the current system will move to a social model.

Pessimism in this area is based on action plans adopted at various times at the governmental level, which provided for activities to develop and implement a social model; however, they have not been carried out. For example, such plans included setting up a working group to prepare a thematic situational analysis and make recommendations for the steps needed to move to a new model for granting disability status (should have been implemented in 2014);⁷ Legislative changes relevant to the transition to the social model were also to be adopted (should have been implemented in 2014⁸-2015⁹). Additionally, an introduction of a new system for the assessment and status-granting towards persons with disabilities was planned (should have been implemented in 2019-2020¹⁰).

Following the unimplemented Government Action Plans, the introduction of the social model was reflected in the Law “on the Rights of Persons with Disabilities”. In particular, according to the law, by January 1, 2023, the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia must ensure the approval of the plan of measures to be taken in connection with the introduction of the status determination mechanism under the biopsychosocial model.¹¹ This wording and the deadline set even further (at the same time in the uncertain future) the date of paradigm shift and general policy change towards persons with disabilities.

- Weak Legislative Guarantees

A proper legal framework is one of the main preconditions for the transformation of the mental health system and the introduction of a human rights-based approach. Unfortunately, there are significant challenges in this direction as well.

Despite numerous applications¹² from the members of the community of persons with disabilities and organizations working on the issue, in order to prioritize the field of mental health and clearly define

⁷ See, Ordinance N 76 of the Government of Georgia of January 20, 2014 “On Approval of the 2014-2016 Government Action Plan for Ensuring Equal Opportunities for Persons with Disabilities”.

⁸ Ibid.

⁹ Resolution N 445 of the Government of Georgia of 9 July 2014 “on the Approval of the Government Action Plan for the Protection of Human Rights of Georgia (2014-2015) and the Establishment of the Interagency Coordinating Council for the Human Rights Action Plan of Georgia (2014-2015) and Approval of its Statute”.

¹⁰ Resolution N 182 of the Government of Georgia of April 17, 2018 “On Approval of the Government Action Plan for the Protection of Human Rights (2018-2020)”.

¹¹ The Law of Georgia “On the Rights of Persons with Disabilities”, Art. 37.

¹² For example, see, “Organizations and activists working on the rights of persons with disabilities respond to the Draft Law “on the Rights of Persons with Disabilities”, <https://bit.ly/3CsevUp>; “Persons with disabilities and organizations evaluate the

the state responsibilities, inter alia, with regard to the implementation of deinstitutionalization and legal capacity reforms, in the Law “on the Rights of Persons with Disabilities”, only minimal obligations (general right to mental integrity, issues regarding general accessibility to mental health services) have been reflected in the final version of the Law in that regard.¹³

On the other hand, a law “on Mental Health” is in force in the country, which aims to define the rights of people with psychosocial needs, the forms of access to psychiatric assistance for them, as well as the terms and conditions of work in the field of psychiatry.¹⁴ In 2020, significant changes were made to the law - the rule on the application of restraint measures towards patients was modified; moreover, a chapter was added to the law, which is dedicated to measures to protect the rights of the recipients of mental health services, as well as the measures regarding ensuring the quality of services.

Despite these changes, there are still numerous shortcomings in the law that need to be addressed as soon as possible. These include the nonexistence of legislative safeguards in the field of restriction of patients’ rights by doctors, as well as regarding examination of complaints from service users and employing various mechanisms for the prevention or de-escalation of violence among patients.¹⁵

- Gaps in the Development Process of Policy Documents

Despite their legally non-binding nature, strategies and action plans developed and implemented at the state level are the most important documents, as they contain the declared governmental policy in the relevant area, identified problems and short-term and long-term visions for their eradication, relevant responsibilities of government agencies and the major ways of cooperation between these agencies, plans for the implementation of major reforms and more.

The central policy document in the field of mental health was the Mental Health Development Strategy and Action Plan (for 2015-2020).¹⁶ The document covers many important topics, including the development of a deinstitutionalisation action plan, the development of suicide programs, and the development of community mental health services. Unfortunately, a significant portion of the strategy was delayed or not implemented at all.¹⁷ The report on the implementation of the document has not

review of the draft law “on the Rights of Persons with Disabilities” by the Parliament”, <https://bit.ly/3CsdP1p>; “Persons with disabilities and organizations respond to the adoption of the Law “on the Rights of Persons with Disabilities”, <https://bit.ly/3jQwUmC>.

¹³ The Law of Georgia “On the Rights of Persons with Disabilities”, Arts. 5, 26.

¹⁴ The Law of Georgia “On Mental Health”, Art. 2.

¹⁵ The Report of the National Preventive Mechanism of the Public Defender of Georgia, 2020.

¹⁶ Ordinance N 762 of the Government of Georgia of December 31, 2014 “on Approval of the Strategic Document for Mental Health Development and the Action Plan for 2015-2020”

¹⁷ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2020, pp. 383 – 384.

been prepared or published by the Ministry so far,¹⁸ which makes it impossible to identify the main barriers and/or positive experiences during its implementation and to evaluate the content of the completed and unfulfilled activities.

Although the Mental Health Development Strategy expired in 2020, the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs has not adopted the new strategy yet. Moreover, the Ministry failed to develop a transparent and inclusive development process of the draft version of the new Strategy, where the active involvement of any interested person, primarily, people with psychosocial needs, would be ensured. Unfortunately, the draft version of the Strategy is not yet available to the general public. Its current content is mainly focused on the medical paradigm and the corresponding interventions, while human rights-based approaches and visions are poorly reflected, which is unequivocally problematic.

Like the Mental Health Strategy, a deinstitutionalization strategy has not been yet developed that would outline short- and long-term visions of dismantling and reforming mental health services. With hundreds of people living in large institutions in Georgia, it is clear that deinstitutionalization will take years to complete. Therefore, the country needs to have a realistic vision for the implementation of this process, which would ensure the return of an institutionalized group in society based on the primacy of human rights standards.

Unimplemented Legal Capacity Reform

In addition to general legislative and policy gaps in the mental health sphere, it is important to focus on the serious barriers to implementing legal capacity reform, which ultimately prevents persons with psychosocial and intellectual disabilities from being independent and making their own decisions about their own lives. Currently, 6010 people are registered as recipients of support,¹⁹ which further increases the need for immediate and effective measures by the state.

The reform of the legal capacity is an important step forward, both nationally and internationally, due to its progressive content, which is relatively compliant with the international standards. The reform was carried out as a result of the 2014 decision of the Constitutional Court of Georgia on the Case - “Irakli Kemoklidze and Davit Kharadze v. Parliament of Georgia”,²⁰ which abolished the previous model of incapacity and introduced a system of supported decision-making.

¹⁸ Correspondence of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia N 01/15335, 4.10.2021.

¹⁹ Correspondence of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia N 01/13107, 1.09.2021.

²⁰ See, Decision of the Second Panel of the Constitutional Court of Georgia N 2/4 / 532,533 – “Citizens of Georgia – Irakli Kemoklidze and Davit Kharadze v. Parliament of Georgia”, 2014.

Despite the importance of the reform, it remains only on paper so far, and the vision, system and mechanisms for its implementation have not yet been developed by the state.²¹ Despite numerous challenges, for example in terms of the legislative framework,²² institutional barriers are a major problem at the national level. A particular problem is the weakness and overcrowding of agencies involved in the support system, which is a clear symptom of insufficient tools, knowledge, human and financial resources to fulfill the obligation.

Unfortunately, the state has not yet discussed the establishment and implementation of professional support services, while the supporters provided by the current legislation - family members, relatives, representatives of the Guardianship and Custodianship Agency – are unable to fulfill their obligations due to lack of proper support from the state, lack of appropriate tools, knowledge and being overloaded. This circumstance puts the recipients of support in the state of incapacity;²³ It has a particularly severe effect for people who are institutionalized and against whom the use of involuntary measures is common practice.

Institutionalization and Inadequacy of Inpatient Services

The institutionalization of people with psychosocial needs is still a pressing and unresolved problem in the country. Hundreds of people live in specialized psychiatric institutions for years in harsh conditions (in parallel with the violence, physical and chemical restraints, labor exploitation) and in isolation from the community,²⁴ while the Government practically maintains the status quo regime and no effective steps have been taken to change the current situation.

In parallel with the lack of vision and strategy for carrying out deinstitutionalization, it is extremely problematic for the country to properly develop community-based services and maintain community inpatient mental health services²⁵ that would provide persons with psychosocial needs with therapeutic services, based on the support and tailored to the individual needs.²⁶ Instead, due to lack of state oversight of services in the context of the privatization of the mental health system,²⁷ as well as the

²¹ See, Social Justice Center (former EMC), Partnership for Human Rights (PHR), Georgian Association of Social Workers (GASW) and Global Initiative on Psychiatry – Tbilisi (GIP – Tbilisi), Assessment of the Legal Capacity Reform: Legislation and Practice, 2020.

²² Ibid., pp. 38 – 39.

²³ Ibid., pp. 96 – 144.

²⁴ The Report of the National Preventive Mechanism of the Public Defender of Georgia, 2020, p. 157.

²⁵ World Health Organization Regional Office for Europe, The European Mental Health Action Plan 2013-2020, p. 4.

²⁶ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2009, A/64/272, paras. 92 – 93; World Health Organization Regional Office for Europe, The European Mental Health Action Plan 2013-2020, p. 7.

²⁷ See, Public Defender of Georgia, Global Initiative on Psychiatry – Georgia, Federation Global Initiative on Psychiatry, Privatization of Mental Health Care Facilities in Georgia – Assessment, Conclusions and Recommendations to the Georgian Government, 2017.

shortcomings of the funding system of inpatient mental health services, the current situation in this area does not have a static but a regressive nature.²⁸

Despite the declared policy of deinstitutionalization, the Georgian Government has failed to provide adequate support to community-based mental health inpatient services and to offer them a funding system differentiated from specialized/large-sized psychiatric facilities.

Inpatient mental health services are funded for more than half of the state budget on mental health - up to 55% (16 million GEL).²⁹ Nevertheless, most of the funding (up to 14 million GEL) is allocated for large-sized and/or specialized psychiatric institutions, and the funding mechanism is the same for all institutions. In particular, under the existing system, the financing of an acute case (regardless of how many days a person will need treatment) is a fixed amount of 690 GEL,³⁰ which includes the costs of psychiatric services, staff remuneration, administrative costs. Given that the psychiatric units of the multi-profile hospitals are designed for a small number of patients and an adequate number of staff members (as opposed to large psychiatric facilities where staff scarcity is a common occurrence), it becomes factually impossible to provide quality services and to ensure the proper functioning of the unit.

On the other hand, in the case of long-term hospitalization, in particular, mainly in large psychiatric institutions, 26 GEL is allocated for each patient per day, which is also sharply inadequate. It should be noted, that given, on the one hand, the large number of residents in the institutions, and, on the other hand, the scarcity of staff and remuneration allocated to them, as well as the unfavorable living conditions created for the beneficiaries, such institutions continue to function.

Due to the shortcomings of the above-mentioned system, two out of three multi-profile clinics in Tbilisi (Ghudushauri Hospital and Evex Clinic) have stopped providing inpatient services, and only 2 (two) multi-profile clinics throughout Georgia - N 5 Clinic in Tbilisi and “Terjolamedi” in Imereti have remained, which provide with the above-mentioned service to persons with psychosocial needs.³¹ If such a funding system is maintained, it is unclear to what extent the remaining multi-profile clinics will be able to operate psychiatric units.

²⁸ For example, See, “Organizations Working on the Mental Health Issues Responding to the Closure of a Mental Health Unit”, <https://bit.ly/3kM39Eh>.

²⁹ Ordinance N 828 of the Government of Georgia of December 31, 2020 “On Approval of the 2021 State Program of Health Care 2021”.

³⁰ Before 2017, this amount was 840 GEL.

³¹ Ordinance N 828 of the Government of Georgia of December 31, 2020 “On Approval of the 2021 State Program of Health Care 2021”.

Is there any Potential for Changes?

The problems posed in this paper are just one part of the challenges in the field of mental health. In fact, the shortcomings are even more acute and systemic than they seem at first glance. **The inaction of the state and the invisibility of the existing problems** will not solve them, on the contrary - it will further deepen the challenges and lead to disastrous consequences for the system.

Given the scale of the challenges, it is difficult to give an unambiguous answer to the question of whether there is potential for changes. One thing is clear - the mental health field and the protection of the rights of mental health service users **is not a priority for the Government**. Despite the need, this area was not included in the Government's vision even **during the COVID-19 Pandemics**:

- During the Pandemics, the Government has not realized the estimated burden of mental health, both on the general population and the people with psychosocial needs. Consequently, in the first half of 2020, the policy of preventing the spreading the virus did not cover any measures to be taken in this area;³²
- Despite the recommendations at the international level, concerning the special attention to be paid to the persons living in the institutions, the Government of Georgia adopted special protocols to be used for such institutions only in May 2020.³³ Despite the importance of such an instrument, numerous reports of the Public Defender show the practical non-implementation of the existing recommendations;³⁴
- The vaccination policy clearly shows the overlooking of the needs of persons with psychosocial needs. Despite the increased risk of the virus spreading in closed institutions, the information provided by the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs shows that even a year and a half after the start of the Pandemics, no patients in psychiatric facilities were vaccinated.³⁵

All of the above is accompanied with **the complicated communication with decision-maker public officials** whose flexibility and potential for participation in changes is further diminished during a

³² See, Decree of the Government of Georgia N 164 of January 28, 2020, “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for Cases of Novel Coronavirus Disease”.

³³ By order N01-222/O of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia of May 27, 2020, the protocols “Mental Health and COVID-19” and “Safe Management of Patients in Inpatient Mental Health Services during COVID-19” were approved.

³⁴ For example, see, Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2020, pp. 384 – 385.

³⁵ Correspondence of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia N 01/15335, 4.10.2021.

Pandemics; The acute problem is also the lack of mechanisms for the involvement of representatives of the community of persons with disabilities and/or psychosocial needs in the decision-making process by state agencies, which ultimately creates less inclusive and non-transparent processes. The process of eradication of a number of the issues raised in this paper should be commenced with addressing the above challenge.

According to the draft State Budget for 2022, the funds for the State Program on Mental Health will be increased by 6.1. Million GEL and will amount to 35 million GEL.³⁶ Clearly, this funding is insufficient for the fundamental transformation of the issues addressed in this paper, however, in the first instance, even with limited financial resources, it is possible to develop a vision for mental health reform and reflect it in the relevant legislative or policy framework.

However, one thing is clear - despite the potential for future funding increases, in the absence of a political will, in particular, if **the state does not change its attitude** and prioritize the mental health sphere, the transformation of the system and the establishment of human rights perspectives will be virtually impossible. Consequently, thousands of existing or potential recipients of the service may suffer irreparable damages.

³⁶ “Draft Law of Georgia “on the Budget of Georgia for 2022”, with the attached materials, Document "Basic data and directions of the country for 2022 – 2025”, <https://bit.ly/3mqUVlJ>.