




PROTECTION OF RELIGIOUS MINORITIES

Report on the monitoring of the implementation of human rights
strategies and action plans for 2016-2017



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The present report overviews the findings of the monitoring of the Georgian Government 2016-2017 Action Plan on LGBTI rights, freedom of speech and freedom of assembly, and the rights of religious minorities. This report is a part of a comprehensive study conducted by several organizations with the objective to monitor human rights strategies and action plans. The comprehensive study also involves the monitoring of issues such as criminal law, the right to a fair trial, prosecution, human rights protection in the penitentiary system, combatting torture and improper treatment, as well as the rights of people with disabilities, children's rights, gender equality and women's rights.

Monitoring of human rights strategies and action plans has been supported by the Promoting Rule of Law in Georgia (PROLoG) program, funded by the USAID and managed by the East-West Management Institute (EWMI), and the Open Society Georgia Foundation (OSGF). Within the framework of the project, a comprehensive methodology has been developed for the purposes of monitoring similar action plans in the future.

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Methodology

For the purposes of monitoring the implementation of the Human Rights Action Plan and other related action plans, the following instruments were used:

Analysis of legislation and policy papers

One of the most important sources for monitoring was the existing legislative framework and practice based on this framework. Therefore, human rights strategies, action plans, normative acts and other official documents were processed and used. This information created a normative context for each activity and enabled the evaluation of their adequacy and effectiveness on one hand, and the scope of their implementation on the other hand. This is especially important in relation to the activities that envisage legislative amendments in one direction or another.

Study of international standards and practice

In addition to the domestic legislative normative framework, international standards (international agreements and treaties, as well as systems of case laws, recommendations and comments) and relevant practice. This is especially important in relation to the objectives and aims that envisage amendments to the Georgian legislation in order to ensure its convergence with international standards. The use of international standards also made it possible to assess the adequacy and effectiveness of aims and relevant objectives and activities.

Definition of the importance of international standards in specific chapters of the governmental action plan

Research of international standards and practices is essential in relation to the specific chapters of the action plan that envisage convergence of domestic legislation and practice to “international standards” as one of their objectives or aims. Before evaluating the activities envisaged by the responsible authority to achieve a specific aim or the progress in terms of achieving that aim, the specific meaning behind “international standards” was defined.

Firstly, in each case, the study focused on the specific right that the mentioned aim/objective was related to. Accordingly, the European Convention on Human Rights and the practice of the European Court of Human Rights, or the UN Convention and approached elaborated by relevant treaty bodies were considered as international standards.

In the exceptional cases when the above-mentioned bodies had no international practice related to the case in question, best practices of other states with relevant models for Georgia were regarded as the international standard.

Freedom of Information requests from responsible state bodies

The primary sources of information in the monitoring process were the responsible state bodies envisaged by the action plan. Therefore, during the monitoring process, information related to the fulfillment of each activity was regularly requested from these bodies.

Analysis of secondary sources

Additionally, the reports, research studies, and evaluations/assessments published by local and international organizations, as well as the Public Defender of Georgia, represented an important source for monitoring. The reports of the Public Defender are often among the indicators envisaged by the action

plan. Hence, such information created the possibility of a more comprehensive evaluation of the progress in terms of achieving a specific aim or objective, as well as the scope of fulfillment of different activities.

Focus groups

In the monitoring process, additional information was obtained through focus groups. This included meetings with beneficiaries, community organizations and persons related to beneficiaries (parents, etc.), which enabled, on one hand, identification of problems they encounter and, on the other hand, assessment of the impact of activities envisaged by the action plan.

Individual interviews and workshops

In addition to requesting documents, the monitoring process also envisaged meetings with state bodies and other actors. These interviews made it possible to obtain additional information about the fulfillment of activities, as well as the definition of ambiguous terms in the action plan, etc. Workshops and individual interviews were also conducted with specialists of relevant issues, representatives of academic circles, etc.

Protection of Religious Minorities

1. Key Findings

The purpose of this report is to assess implementation of the provisions under Chapter 11 of the Action Plan of the Government of Georgia on the Protection of Human Rights and present recommendations to the government for future development of policies and a new Action Plan.

The protection level for freedom of religion in a country is an indicator of democracy and pluralism and affects political and social inclusion of various ethnic, religious, cultural and linguistic groups as well as social stability and peace in the society.

In Georgia, challenges concerning freedom of religion are of a systematic nature and result from years of non-secular and discriminatory government practices. The legislation in force and the government's relationship with religious organizations is mainly based on an approach that gives exclusive preference to the Christian Orthodox Church, which is recognized at the legislative level and institutionalized in everyday policies.

Beyond an asymmetrical legal and institutional environment, non-dominant religious groups frequently face discrimination practices. Moreover, wider problems exist concerning political and social exclusion and marginalization of large and densely populated settlements of religious groups.

Religious freedom issues have been acutely present on the agenda since 2012 and have now acquired even more urgency. A series of religious conflicts¹ against the Muslim community, a tendency of increase in religious persecution of Jehovah's Witnesses², a policy of instrumentalization and control of religious organization by the State Agency for Religious Issues³, unsecure public rhetoric and attitudes by the political government,⁴ are among the clearest indicators of the current situation. It should be noted that recent cases of restriction in freedom of religion were not isolated and largely consisted in conflicts between different religious and social groups, which indicates the complexity of the problem and requires the government to adopt systematic policies. Unfortunately, the government has failed to respond to these challenges with an effective policy, which is why most of the religious conflicts remain conserved at this time. The government's loyalty to the dominant religious group and the ensuing environment of impunity has left a deep trail of exclusion of the non-dominant religious groups.

The government's response to the challenges concerning freedom of religion was the creation of a State Agency for Religious Issues, and from the very beginning, this agency's mandate, vision and work strategy became subject to criticism by religious organizations and organizations working on protection of

¹ Human Rights Education and Monitoring Center (EMC), Crisis of Secularism and Loyalty towards the Dominant Group – The Role of the Government in the 2012-2013 Religious Conflicts in Georgia, 2014, available at: <https://emc.org.ge/2013/12/05/25/>

² Analysis of the crimes committed against Jehovah's Witnesses in 2016, Human Rights Education and Monitoring Center (EMC), 2017, available at: <https://emc.org.ge/ka/products/2016-tsels-iehovas-motsmeta-mimart-chadenili-danashaulebis-analizi>

³ Freedom of Religion – Critique of Discriminatory and No secular state policy, Human Rights Education and Monitoring Center (EMC), 2016, available at: <https://emc.org.ge/ka/products/kvleva-religiis-tavisufleba-sakhelmtsifos-diskriminatsiuli-darasekularuli-politikis-kritika>

⁴ Analytical video material, created by Human Rights Education and Monitoring Centre:

<https://www.youtube.com/watch?v=voOBWUH9pIs&t=193s> : Religion, Society and Politics in Georgia, Christine Margvelashvili, Available at: <http://www.cipdd.org/upload/files/religion%20society%20and%20politics%20in%20Georgia.pdf>

human rights. The agency's work created risks of formalization and institutionalization of non-progressive practices and approaches (inter alia, hierarchization of religious organizations, intervention in the autonomy of religious organizations, strengthening the safety paradigm in the religious freedom policy).

General Institutional Shortcomings Pertaining to Chapter 11 of the Plan

Taking into account the scope of challenges, an important shortcoming of Chapter 11 of the Human Rights Action Plan 2016-2017 (Protection of religious minorities) is the lack of a research-based approach in developing it. In addition, the involvement of religious organizations and local religious communities in developing the plan was low.

The obligations set forth in Chapter 11 of the plan are general and unable to duly respond to challenges in the protection of freedom of religion. The general and vague nature of the commitments set in the Action Plan involves risks of arbitrary policies in protecting freedom of religion and definitely makes it more difficult to measure them. The activities outlined in the plan are as a rule fragmented, giving rise to suspicions that the government and individual agencies do not regard the plan as a realistic and active document that determines their policy. The indicators of the implementation of the activities are mostly technocratic in content and do not provide a real opportunity for measuring the impact on the rights/social impact on concrete social groups/target groups and political or social changes, which also has a negative impact on the agencies' efficiency and their focus on the protection of rights.

The plan regards the State Agency for Religious Issues, which is a legal entity under public law, as the main agency that determines policy aimed at protecting religious freedoms. In conditions of low trust in the agency on the part of human rights and religious organizations, it is clear that such an approach diminishes from the outset chances of positive changes in the policy.

Important challenges Chapter 11 of the Plan Does Not Respond To

The Action Plan does not consistently reflect important issues concerning religious freedom and equality, such as: 1. **Determination of an exhaustive list of discriminatory records existing in the legislation and recognition of the obligation to remove those.** The Action Plan does not include creation of a list of legislative acts (including the State Property Law, decree #117 "on establishing rules for implementing certain measures for partial compensation of damages caused during Soviet totalitarian regime in Georgia") which creates unfair legal environment for non-dominant religious organizations and is recognized as discriminatory by international and local organizations; 2. **Development of restitution related legislation, mechanisms and a non-discriminatory policy system.** Although the Action Plan includes fragmented instructions on the obligation of the State Agency for Religions Issues (and other Ministries) to establish historical (confessional) ownership of buildings and facilities for religious practices, as well as quick, transparent and fair resolution of disputes concerning the matter of ownership of places of worship, the government does not have a systematic approach to eliminate the existing discriminatory restitution policy, which leaves non-dominant religious groups without a legal settlement and will not grant them legal achievability to have properties confiscated during the Soviet period restituted to them. Planning for restitution without resorting to legislative regulation implies a high risk of

politicization and arbitrariness of the process, which the existing practices tend to confirm.⁵ 3. Plan is missing state's obligation to develop a general anti-discrimination policy, which includes positive measures carried out by its institutions to support equality. 4. **Supporting the elimination of discriminatory practices for construction of places of worship.** The recent incidents in terms of religious conflicts and restrictions of freedom of religion are mainly related to the construction of places of worship. A fundamental problem in this regard is the actions of self-governing bodies that do not protect the principle of religious neutrality and are often loyal to dominant religious groups. In addition, they often complicate or delay the construction procedures. It was important for the existing Action Plan to tackle this issue and take into consideration the obligation to educate and train local self-governing bodies in acting legislation. 5. **Ensuring convergence with constitutionally agreed terms through revision of the funding systems for religious organizations and the Constitution.** For many years, the funding of the Orthodox Church has been in violation of the terms and legal framework envisaged by the Constitutional Agreement. Instead of damage compensation, the church annually receives direct subsidies from the budget. Since 2014, four other religious organizations are also being subsidized directly, since the legislation does not include objective criteria for damage assessment and compensation. In order for the funding practices to meet the standards of secularism, they need to be revised in accordance with damage restitution logic and criteria. Despite governmental promises, the #117 resolution did not apply to other religious groups, who, just like the ones the resolution concerns itself with, suffered material and moral damage in the Soviet era. 6. **Promotion of multilateral resolutions of ongoing religious conflicts.** Up to 8 religious conflicts have been recorded in Georgia since 2012 (Nigvziani (2012), Tsintskaro (2012), Samtatskaro (2013), Chela (2013), Kobuleti (2014), Mokhe (2014), Adigeni (2016), Terjola (2014)). Some of them are still unsolved and conserved (Samtatskaro, Kobuleti, Mokhe). Social tension can still be observed between the parties in the remaining areas of the conflict. In order to eliminate the conflicts' traumatic social consequences, it is important for the government to guarantee fulfillment of its obligation to protect rights (where it is still problematic) on one hand, and on the other hand, to work on restoring trust and building unity among communities. Despite the explicit reference to conflict resolution in the mandate of the State Agency for Religious Issues, the work of the agency is clearly very poor and overly basic.

General Assessment of Chapter 11 of the Action Plan

The Action Plan implementation monitoring results show that the carrying out of planned activities was mostly fragmented and the agencies did not have a systematic vision for achievement of the objectives under the plan of action (including the fragmented and arbitrary practice of handing over property rights for historic places of worship; problems in terms of developing a unified strategy and action plan, and lack of coordination between agencies, to create policies against hate crimes; problems in terms of absence of systematic approaches and methods to establish religious neutrality and equality principles in the education system; the absence of non-discriminatory and need-based priorities and a plan of action for maintenance of places of worship). This problem is apparent, among other reasons, in the weakness and

⁵ Review of legal dispute concerning the restitution of Imam Ali mosque, EMC, 2017, available at: <https://emc.org.ge/ka/products/emc-ma-marneulshi-imam-alis-mechetis-restitutsiis-problemastan-dakavshirebit-sasamartlo-dava-daitsqo> and assessment of the final decision of Mokhe Commission on the confessional ownership of the disputed building, EMC, 2017, available at: <https://emc.org.ge/ka/products/emc-mokhis-komisiis-saboloo-gadatsqvilebas-afasebs>

flaws of coordination between agencies. Public information about the implementation of the plan clearly reveals the problem of technocratic approach to the process. In some cases, the implementation of the obligations under the plan of action was postponed (revision of manuals, reflection of the component of knowledge in diversity management and intercultural education in training standards for directors, revision of a discriminatory tax regime) or these obligations were simplified to a narrow and technical definition (including a revision of legislation from a discrimination point of view, and implementation of internal monitoring in the education system). In other cases, due to the lack of access to exhaustive public information from the agencies, carrying out the planned actions was also significantly problematic. Flagrant and typical cases of violation of rights during the reporting period should also be noted (e.g. the problem of non-fulfillment of its original purpose by the so-called Mokhe Commission ⁶, handover of property rights for the Armenian Tandoyants church to the Patriarchate,⁷ handover of rights to the Imam Ali mosque to another religious organization⁸, restriction of the rights of Muslim girls in schools of village Karajala and village Mokhe and inadequate response of the Ministry to these violations), to which the government failed to respond adequately and which indicates the existence of systematic shortcomings and possible formality in the process of achievement of the goals set under the plan of action.

It should be noted that during the reporting period, a tendency toward better institutionalization and positive changes in the policy against hate crimes could be observed and deserves positive evaluation and encouragement, as well as the explicit reflection of religious neutrality in the public service Code of Ethics and a series of trainings about this issue planned to take place in public service agencies.

2. General Assessment of Chapter 11 of the Action Plan

Relevance of the responsible agencies

One of the systematic challenges of the Action Plan in terms of determining the responsible agencies is the nomination by the government of the State Agency for Religious Issues (hereinafter Agency) for an exclusive and unbalanced role of implementation of a religious freedom policy. Considering the significant amount of legitimate criticism against the Agency, this issue is particularly problematic and undermines the possibility to change the existing policy.

The creation of the Agency was criticized from the very beginning by part of the religious organizations as well as organizations working with protection of human rights, as it presented risks of politicization and distancing the issue of freedom of religion from the paradigm of rights. Several institutions with the same mandate as that of the Agency exist in post-Soviet countries and, despite their variable functions; they are usually ultimately an instrument of control over religious organizations. The initiatives and activities that the Agency has carried out reinforce these suspicions⁹. In its four years of existence, the main focus of the Agency has been the management of funding processes for four religious communities

⁶ EMC assessment : <https://emc.org.ge/ka/products/emc-mokhis-komisiis-sabooloo-gadatsqvetilebas-afasebs>

⁷ EMC and TDI joint assessment <https://emc.org.ge/ka/products/emc-da-tdi-sapatriarkostvis-tandoiantsis-eklesiis-tvitneburigadatsemis-sakmeze>

⁸ EMC assessment: <https://emc.org.ge/ka/products/emc-ma-marneulshi-imam-alis-mechetis-restitutsiis-problemastan-dakavshirebit-sasamartlo-dava-daitsqo>

⁹ Research by EMC: “Freedom of Religion – Critique of Discriminatory and Nonsecular state policy”, available at: <https://emcrights.files.wordpress.com/2017/03/170x250-geo-web.pdf>

and settlement of individual property-related cases for religious organizations based on unsystematic and politically biased approaches. The funding practice and other types of support are used by the Agency as a means of social control over some religious organizations, this tendency being most obvious with regard to the Muslim community.

Despite operating under direct supervision of the Prime Minister and possessing significant resources in terms of political influence over ongoing processes, the Agency failed to resolve important disputes and problems related to freedom of religion, which seems to point to a lack of the appropriate political will.¹⁰

The Agency's initiatives and approaches regarding freedom of religion are for the most part non-progressive and the analytical documents prepared by the Agency are in contradiction with principles of equality and protection of human rights. Among other things, the Agency's activities display attempts to hierarchize religious organizations and strengthen approaches based on security and control.¹¹

Despite the fact that research-related functions are dominant in its mandate, the State Agency for Religious issues does not conduct comprehensive documentation and research of the situation in terms of freedom of religion. For instance, the Agency did not adequately assess the series of religious conflicts involving the Georgian Muslim community and their social contexts, since 2012.

The activities of the Agency also exhibit government attempts to intervene in and exert control over the autonomy of religious organizations, as most clearly displayed in the practice of funding four religious organizations. 75% of funding for the Muslim organizations is spent on salaries for the clerics.¹² In addition, suspicions are reinforced by the weak and unsupportive positions shown by the Administration of all Muslims of Georgia towards the community's interests for significant challenges faced by the Muslim community (e.g. as an alternative to building a new mosque in Batumi in 2014, the Administration of all Muslims in Georgia requested a residence and facilities for theological teachings, which the Muslim community openly disapproved and resulted in self-organization to build a new mosque independently from the Administration¹³; during the conflict in Mokhe, the disparity of positions between the Administration of all Muslims and the local community and the case of dismissal of clerics opposing the decision taken by the Agency concerning the historic mosque in Mokhe¹⁴).

Therefore, despite strong criticism against the Agency, the Action Plan under review aims at reinforcing the power of the State Agency for Religious issues even more and turning it into the main and exclusive agency working on issues related to freedom of religion, which, of course, significantly decreases the probability of positive changes in the policy.

¹⁰ Research by EMC: "Freedom of Religion – Critique of Discriminatory and Nonsecular state policy", available at: <https://emcrights.files.wordpress.com/2017/03/170x250-geo-web.pdf>

¹¹ "Assessment of the Strategy for the Development of Religious Policy of the State of Georgia", available at: <https://emc.org.ge/2015/03/19/%E1%83%A1%E1%83%90%E1%83%A5%E1%83%90%E1%83%A0%E1%83%97%E1%83%95%E1%83%94%E1%83%9A%E1%83%9D%E1%83%A1-%E1%83%A1%E1%83%90%E1%83%AE%E1%83%94%E1%83%9A%E1%83%9B%E1%83%AC%E1%83%98%E1%83%A4%E1%83%9D/>

¹² EMC, funding of four religious organizations, legal analysis: <https://emc.org.ge/ka/products/otkhi-religiuri-organizatsiis-dafinansebis-praktikis-samartlebrivi-shefaseba>

¹³ Statement of EMC on the construction of a new mosque in Batumi, available at: <https://emc.org.ge/ka/products/emc-batumshi-akhali-mechetis-msheneblobis-sakitkhs-gamoekhmaura>

¹⁴ Commentary by Tengiz Beridze, recorded by EMC, 05.03.2018

It should be noted that the plan entirely ignores the role of the Council of Religions, which exists under the auspices of the Public Defender, represents a highly legitimate autonomous platform for horizontal unification of religious organizations (33 organizations) and has been working on freedom of religion and self-organization issues for 10 years.¹⁵ The Council of Religions regularly publishes recommendations for the relevant agencies based on the main concerns and violations of rights of religious organizations and such documents would be valuable for developing Action Plans as well as for monitoring its implementation. Involving the Council of Religions in the process of developing policy and Action Plans would make the state policy more democratic. The inter-religious council existing under the Agency only includes 10 organizations¹⁶ and does not fulfill the same requirements of operating under a state agency, independence and democracy.

- Actions and objectives are not aligned with the aim

Only one goal and four objectives are listed under chapter 11 of the Action Plan. The goal and the objectives are all quite general and poorly structured. For instance, the plan does not classify objectives thematically by grouping prevention, investigation and victim support of crimes based on religious intolerance; restitution and protection support for places of worship; ensuring religious neutrality and protection of equality in public schools; this shortcoming in terms of definition of goals and objectives makes it more difficult to determine the essence and purpose of responsibilities taken. In addition, the objectives do not cover fully the systematic challenges identified by the Public Defender, international organizations, organizations working on human rights and the Council of Religions under the auspices of the Public Defender. In some cases, duplication and overlapping are problematic (for instance, action 11.1.2.2. - Implement a series of qualified trainings for staff of the Ministry of Internal Affairs and Prosecutors' offices on freedom of religion and equality and 11.1.2.6. – Retrain respective staff of the Ministry of Internal Affairs of Georgia and Prosecutors' Offices in investigating crimes instigated by religious intolerance, religion or belief-based discrimination) as well as their general/vague formulation (for instance, action 11.1.3.6. – Ensure the expression of individual and collective rights guaranteed by freedom of religion and belief), which complicates their fulfillment and verification of their effectiveness.

- Impossibility to assess activities appropriately using the defined indicators

As in other chapters of the Action Plan, indicators in this chapter are problematic because of their general and technocratic nature. The indicators do not measure the effect of the actions on the situation in terms of rights for the target groups. Instead, it mostly includes quantitative characteristics of activities carried out.

- Terms for carrying out activities

A significant challenge for this chapter as well as other chapters of the Action Plan is the lack of specific timelines, which does not allow for measurement of progress for actions carried out by the relevant agencies and complicates the intermediate performance process. The lack of specific timelines also makes it problematic to work in a systematic and consistent manner on the issues and affects the perception of the Action Plan as a policy-determining textbook document/tool by the agencies.

¹⁵ Note: ECRI on the importance of cooperation with the religious council.

¹⁶ 2016-2017 Report of the State Agency for Religious Issues, 2018;

3. Assessment of the Goals, Objectives and Actions under Chapter 11 of the Action Plan

Goal - 11.1. Establishment of secularism and religious tolerance

As mentioned above, chapter 11 of the plan includes only one aim that is very general and wide. It would be advisable to define more tangible goals based on different issues, as it was done in the other chapters of the plan.

Objective - 11.1.1. Assessment of Religious Neutrality in Public Service

Under this objective in the Action Plan, only one action is indicated, which, naturally, will not be able to cover and fulfill the defined objective. Most importantly, although the plan aims at assessing religious neutrality in public service, the action only includes activities for raising awareness among public servants and therefore is inconsistent with the objective. It should be noted that the Agency's report does not show what preparation and research work has been conducted to determine the main challenges and practices in terms of protection of religious neutrality in the public service. Such preliminary work should be the basis for determining the thematic and institutional priorities in order to plan and conduct trainings for public servants. Naturally, this shortcoming affected the appropriate determination of the types and frame of actions under the objective and the effective implementation of the planned actions. It would also be better to move action 11.1.2.4. (Initiate the standards for religious neutrality for public services and its incorporation into code of ethics of each of agencies) under this objective.

Action 11.1.1.1. – Raise Awareness of Public Servants on Issues Related To Secularism and Religious Neutrality

In this regard, the government mainly uses the project “Religious Tolerance and Secularism”, conducted in 2015-2016 by the State Agency for Religious Affairs with donor support and encompassing working meetings with local self-governing bodies (city hall, administration, assembly), regional administrations and representatives of the Supreme Council and government agencies of the Autonomous Republic of Adjure. According to the Agency's information, over two hundred public servants took part in the project. In addition, the Agency issued a practical textbook for public servants: “Secularism and Religious Neutrality in Civil Service”.

Initiating a series of such trainings/discussions for public servants is a positive action by the government, although the matter of suitable planning for the teaching process and methodology of measurement for its effect on the behavior of public servants remains problematic. The Agency began the trainings without a preliminary analysis of common practices and trends for violation of religious neutrality in public service and identification of high-risk institutions within the public sector. Moreover, the training process began without a clear determination of standards and norms related to religious neutrality, which must have caused problems in terms of different interpretations and serious approach towards the training material. It is unclear whether the Agency has any kind of methodological tool for measuring the effect of trainings conducted for public servants and the implementation of standards in practice, allowing monitoring organizations to assess the effectiveness of said trainings. Under the circumstances, it is important for the

government to ensure development of a unified, complex system for the training of public servants in human rights, incorporating issues related to religious neutrality and freedom of religion accordingly.

Objective - 11.1.2. Establishment of Religious Tolerance and Non-Discriminatory Environment

Actions listed under this objective can be divided into four main lines: effective investigation of crimes motivated by religious intolerance and enhancing qualification, study of discriminative element in the acting legislation and conducting corresponding initiatives by the government, solving the problem of restitution and ensuring protection and maintenance of historic places of worship. These problems are so major and systematic that it was important to define them individually. This flaw renders the objectives and actions vague and non-comprehensive, which also affects the overall perception of the Action Plan as a textbook/practice document for protection of rights. Under this objective, in some cases the Action Plan lists vague actions such as ensuring the expression of individual and collective rights guaranteed by freedom of religion and belief (action 11.1.3.6.) for which it is difficult to determine specific meaning and monitor completion.

Action 11.1.2.1. – Raise Awareness of General Public on Religious Tolerance

Under actions for this objective, the Agency lists creation of an inter-religious calendar, religious maps and preparation of video material about religious diversity and freedom of belief principles.

Preparation of such material by the Agency aims at promoting religious diversity but the contents of the material are problematic. Firstly, the symbolic hierarchization of religious organizations in the material should be noted. The contents of the calendar and religious map do not reflect the full specter of religions in Georgia and for the most part exclude the religious groups which are not part of the Agency's inter-religious council. In addition, the description of the maps is technical, dry (no references) and lacks analytical approach. It should be noted that illegal practice of collecting personal information about clerics of religious organizations has been recorded on the Agency's part in the process of preparing the maps, and this was strongly criticized by religious organizations and human rights organizations¹⁷. After the maps were published it became clear that they had no connection whatsoever with the collection of personal data on clerics.

Overall, problematic statements issued by government representatives concerning the issue of secularity¹⁸, in connection with the role of the dominant church as well as ineffective response to major violations of non-dominant religious groups, damage the government's religious neutrality on a symbolic/discourse level and the trust/perception of equality so much that the Agency, with its fragmented and equally problematic actions, cannot have the resources to transform public awareness in terms of religious tolerance.

¹⁷ Joint statement of organizations working on human rights, available at: <https://emc.org.ge/ka/products/ara-fobias-tsevri-organizatsiebis-gantskhadeba-religiis-sakitkhta-sakhelmtsifo-saagentos-mier-religiuri-konfesiiebisgan-sasuliero-pirebis-personaluri-informatsiis-mopovebis-mtsdelobis-taobaze>

¹⁸ Statement of Prime Minister Giorgi Kvirikashvili on the issue of secularism, 2017, available at: <http://netgazeti.ge/news/209228/>

Action 11.1.2.2. – Implement a Series of Qualified Trainings for Staff of The Ministry of Internal Affairs and Prosecutor’s Offices on Freedom of Religion and Equality in Cooperation with International Organizations and the Public Defender

According to the government’s information, a series of trainings was conducted in the Prosecutor’s offices on offences committed based on discrimination and hatred, including issues related to freedom and equality of religion. **232 prosecutors, prosecution detectives and interns attended the trainings in 2016 and 286 persons in 2017 (28 trainings in total).** The teaching courses were conducted in collaboration with the European Council, OSCE democratic institutes and the Human Rights Office (ODIHR). According to the Main Prosecutor’s Office information, a training program also took place for 2 groups of interns in 2017. Said program includes issues related to freedom and equality of religion. 62 interns were trained in the frame of the program.

This series of trainings for prosecutors and staff of the Main Prosecutor’s office is to be assessed positively, especially since the results of the chain of trainings were positively put in practice, as shown by the recent tendency of identification of hate as a motive and increased statistical data on indication (verbal) of motive in procedural documents.

Training of the MIA staff on issues defined by the action is conducted in the MIA Academy in the frame of a general program about discrimination. In addition, 141 persons attended training in the MIA Academy in collaboration with the Agency on secularism and religious neutrality. Analysis of the MIA Academy syllabus shows that said teaching program is very general and does not cover specific matters concerning the prevention, investigation and victim protection for hate crimes.

The actions of the Ministry of Internal Affairs in relation with the previous 2014-2015 Action Plan as well as the 2016-2017 Action Plan under review were characterized by a passive approach and poor performance of the taken responsibilities by its agencies. The training programs of the MIA Academy only include general discrimination issues and do not sufficiently reflect the specifics and best practice of investigation, prevention and interaction with victims of hate-motivated crimes. In addition, sufficient time is not taken in the program to cover issues related to freedom of religion and other discriminated groups, which clearly affects the issue of knowledge and sensitivity of police officers. The Ministry of Internal Affairs is the agency that comes in direct contact with the victims of hate crimes and leads the investigation of the cases; therefore shortcomings at this institutional level have a strong effect on the entire policy for combatting such crimes. The homo/bi/transphobia at the institutional level causes victims to distrust legal protection mechanisms and increases violent practices and vulnerability. At the end of 2017, the new MIA management announced the formation of a Human Rights Department which, among other things, will be working on offences related to discrimination.¹⁹ The creation of such an institutional ring in the MIA that will work on coordination of the battle against discrimination offences gives rise to expectations for positive changes within the Ministry, which is proved by results of 2018 (50 hate motivated crimes where identified by May, 2018). The plan, which was announced during a working meeting by the Ministry, includes training of special police officers/detectives in police departments. In

¹⁹ The Human Rights Department was created based on the order issued on January 12th, 2018, the document is available at: <https://matsne.gov.ge/ka/document/view/3999709>

needs to be noted that for years, the state has been disregarding the recommendation to establish specialized unit under the MIA and thus, it was not reflected in the Action Plan.

Action 11.1.2.3. – Prevent crimes instigated by religious intolerance and investigate religious hate crimes in an effective manner, run detailed statistics of crimes and offenses instigated by religious hatred by the Ministry of Internal Affairs and Prosecutors' Offices

Most high-profile cases involving religious intolerance have remained not investigated up to now, which intensifies the feeling of impunity. In addition to the lack of awareness and sensitivity among law enforcers and the problem of the preparedness of institutions to respond in an efficient manner, the problems of loyalty to the dominant religious group and the lack of political will should also be mentioned as reasons for the failure to investigate such offences. In addition to the chain of religious conflicts involving the Georgian Muslim community in 2012-2016,²⁰ a mounting trend of religious violence, persecution, and opposition to religious practices against Jehovah's Witnesses has become obvious in the same period.²¹ (It is noteworthy that the trend comparatively weakened by 2017, but still remains at a high level compared to the previous years.) In particular, according to the data available to the ombudsman and the Christian Organization of Jehovah's Witnesses, 12 crimes were registered in 2010-2012 and 122 crimes in 2013-2016. According to the data at the disposal of the ombudsman and the Christian Organization of Jehovah's Witnesses, the dynamic of crimes after 2013 was as follows: 17 crimes in 2013, 45 in 2014, 37 in 2015, 23 in 2016, and 15 in 2017.

The trend of the strengthening of ultra-conservative (including Neo-Nazi) radical groups since 2016 is to be mentioned as another problem.²² In some, cases, the groups openly demonstrate violent intentions and behavior in the public space.²³

In addition to timely and effective response to such criminal incidents, the complexity of the problems puts the challenge of strengthening a systematic preventive policy on the government's agenda. Implementing a preventive policy is closely connected to collection of statistical data and its detailed analysis and processing. Since law enforcement agencies do not consider paragraph 3¹ of Article 53 of the Criminal Code as a norm to be enforced (the law considers hatred as an aggravating circumstance, which is reviewed in court at the stage of the use of the sentence), they refused to record statistics on the basis of this article, which was more of a lack of political will than a theoretical problem, since the technical use of norms indicated for statistical purposes is not directly linked to legal consequences. Alternatively, the government can initiate addition of a special article in the Criminal Code for statistical purposes, which it did not do. Despite the above, the Main Prosecutor's Office has lately been trying to improve its rules for collection of statistics, which remain flawed and determined through verbal communication of Division of Human Rights Protection with prosecutors. The newly created Human Rights Department under the MIA

²⁰ Freedom of Religion - Critique of Discriminatory and Nonsecular state policy. Human Rights Education and Monitoring Centre (EMC), 2016. Available at: <https://emc.org.ge/ka/products/kvleva-religiis-tavisufleba-sakhelmtsifos-diskriminatsiuli-darasekularuli-politikis-kritika>.

²¹ Analysis of the crimes against Jehovah witnesses in 2016. Human Rights Education and Monitoring Centre (EMC), 2017. Available at: <https://emc.org.ge/ka/products/2016-tsels-iehovas-motsmeta-mimart-chadenili-danashaulebis-analizi>.

²² The assessment of the violent march of ultra-conservative groups in Aghmashenebeli Avenue. EMC, 2016, Available at: <https://emc.org.ge/ka/products/emc-27-sektembers-ultranatsionalisturi-jgufebis-mier-gamovlenili-dzaladobis-fakts-ekhmianebe>.

²³ Anatomy of Georgian Neo-Nazism, Transparency International - Georgia, 2018. Available at: <http://www.transparency.ge/ge/blog/kartuli-neonacizmis-anatomia>.

announced collection of statistics and analytical work as one of its important tasks, which is a ground for expectation of improvement in this regard. The department counts the number of hate crimes by means of oral communications with investigators, which confirms that the system and methodology ought to be improved in this regard.

According to the Prosecutor's Office of Georgia, criminal charges were brought against 15 persons for crimes committed on the grounds of religious intolerance in 2016. Namely, charges were brought against 2 persons under article 155 of the Criminal Code of Georgia and 13 persons under article 156. In 2017, charges were brought against 3 persons under article 156 of the Criminal Code of Georgia. In addition, the Prosecutor's Office refers to the recommendation developed by the Division of Human Rights Protection and reviewing the specifics of investigation and qualification of crimes motivated by hatred.

According to the Ministry of Internal Affairs, an investigation has been launched for 5 cases under article 155 (illegal interference with religious practices) of the Criminal Code of Georgia in 2016, while there is no record of investigation for cases under article 155 of the Criminal Code of Georgia for the months of January to August of 2017.

Despite organization of statistical data by the Prosecutor's Office and MIA and its increase, the available data is much poorer than the information collected by religious organizations or independent organizations (See above).

Action 11.1.2.4. – Initiate the standards for religious neutrality for public services and its incorporation into the code of ethics of each of the agencies

On April 20th of 2017, the Government of Georgia adopted a resolution on determination of general rules of ethics and behavior in a public institution, and said resolution includes the protection of religious neutrality in public service. Introduction of such standards is to be assessed positively, however, the government has not taken the steps necessary to popularize this resolution and said standards have not been included in the code of ethics of specific agencies for the purpose of their implementation into practice.

Action 11.1.2.5. – Monitor measures taken for the prevention of and response to crimes based on religious hatred, revise and further improve the respective legislation

According to the MIA's information, the relevant investigative departments are conducting a study and analysis of offences committed based on religious intolerance by location, social background, ethnic and cultural diversity. Preventive measures are planned based on an individual approach. According to information of the Prosecutor's Office, a meeting was held in October 2017 with the Council of Religions under the auspices of the Public Defender to discuss existing challenges and plan future collaboration.

Based on the reasoning presented under action 11.1.2.3, it appears that positive changes can be observed in specific law-enforcement agencies in terms of prevention of offences committed based on religious intolerance, including legislation improvement, although institutionalization of a policy to fight against such offences only really began in 2018 in the MIA, and attempts by the Prosecutor's Office require better systematization.

In the mentioned activities, the role of the Agency is problematic and information received from law-enforcement agencies does not confirm any tangible measures taken by the Agency in this direction. It should also be noted that activities listed under this chapter and other chapters with regard to hate crimes chapters do not fully cover the existing challenges. Namely, the plan fails to include, or only partially includes the following: 1. Establishment of a unified state policy and development of strategy by the MIA and the Prosecutor's Office for combatting hate crimes; 2. Eliminating barriers for victims of offences committed based on intolerance to resort to law-enforcement agencies, which includes several components, such as, on one hand, prevention of repeated victimization and effective response by police officers to offences and workplace violations motivated by religious, racial, sexual preference and gender identity intolerance, and on the other hand, simplification of resorting to police for the victim, which in the practice of other countries has been done by implementation of an anonymous complaints system and intermediary involvement of non-governmental/community-based organizations; 3. Establishment of a victim-oriented approach, which implies implementation of strategies and services aimed at reducing damage suffered by the victims, namely the improvement, refining and functionality of the witness and victim coordination system; 4. Important activities aiming at building trust towards law-enforcement structures, including active cooperation and regular meetings with potential victims of hate crimes and their groups, regular analysis of their condition; 5. Collection of unified statistical data based on demographic data, motive and geographic location, for further use for analysis and strategy planning; 6. Organization of joint/common trainings for the staff of the MIA and the Prosecutor's Office aiming at the creation of a unified strategy for cooperation and coordinated work on offences motivated by hatred; 7. Formation of a separate mandatory course on hate-motivated crimes at the Police Academy of the Ministry of Internal Affairs and retraining instructors of the Academy; 8. Conducting campaigns aiming at raising awareness that hate-motivated crimes are punished under the Criminal Code, dissemination of information on the punitive norms for said crimes in the Criminal Code and the criminal liability forms for committing said crimes.

Overall, the insufficiency of activities listed in the plan attests to the important challenges in the prevention of discriminatory crimes. It is not just the actions under the plan, but the general policy as well, that require systematization and strengthening analytical and preventive work.

Action 11.1.2.6. - Retrain respective staff of the Ministry of Internal Affairs of Georgia and Prosecutors' Offices in investigating crimes instigated by religious intolerance, religion or belief based discrimination

Said action is identical to action 11.1.2.2., therefore, for assessment of this action please refer to assessment of action 11.1.2.2.

Objective 11.1.3. Protection of individual and collective rights guaranteed by freedom of religion and belief

Action 11.1.3.1. – Revise existing legal framework and submit recommendations to the Government if necessary in order to ensure the full implementation of individual rights to religion and belief.

According to the Action Plan, revision of the existing legal framework and submission of recommendations to the government if necessary to ensure full implementation of individual rights to

freedom of religion and belief was to be ultimately assessed based on reports, recommendations and assessments of the Public Defender and prepared legislative initiatives.

Based on information provided by the Agency, the Agency reviewed the legislative and normative framework for the purposes of said action. In addition, the Agency stated that the first stage of study concerning said acts is currently being summarized. The Agency also continues reviewing relevant legislative projects entered into the Parliament of Georgia.²⁴

It should be noted that according to the Action Plan, said action was to be carried out in 2016; therefore the Agency should have fulfilled the action determined under the Action Plan within that year. As mentioned, the indicators for carrying out said action are reports, recommendations and assessments of the Public Defender and prepared legislative initiatives, therefore it should be assessed in this regard.

It should be emphasized that only general review of existing legislation cannot be considered as fulfillment of the Action Planned under the Action Plan.

The fact that no flaws have been identified by the Agency within the reporting period and therefore no recommendations have been issued to the government does not stem from the fact that there are no shortcomings in the legislation in this regard, but rather indicates that said action under the Action Plan has not been fulfilled by the Agency.

Therefore, a similar obligation should be included in the new Action Plan, defining not only a general review of existing legislative regulations, but including identification of specific discriminatory elements in the legislation (see below assessment of action 11.1.3.2.) and their eradication as a result.

Action 11.1.3.2 – Revise existing legislation and if necessary, submit recommendations to the government in order to ensure smooth operation of activities by religious associations.

Under the Action Plan, revision of existing legislation by the Agency for the purpose of ensuring freedom of religion for religious organizations and, if necessary, determining the obligation to submit recommendations to the government is an important declaration statement in terms of establishing a suitable legislative basis for freedom of religion. However, this obligation has not been fulfilled by the government, which confirms once again its loyalty to a preferential system for the dominant church.

According to the mid-term progress report of the Action Plan of the Government on the Protection of Human Rights (for 2016-2017), the Agency studied and analyzed the existing national and international legislation and consequently identified the following main directions in need of improvement and enhancement: protection of religious organization property (including property rights), equal rights for religious organizations in terms of tax breaks and regulations on construction of religious buildings and places of worship (including construction of places of worship on public school grounds and surrounding area).²⁵

²⁴ LEPL State Agency for Religious Issues, letter N1/1228 of October 25th, 2017;

²⁵ See the preliminary results of the NHRAP monitoring (2016-2017) pp. 144

In order to assess the extent of fulfillment of this action defined under the Action Plan by the Agency, detailed information is needed on what type of assessments and recommendations were prepared by the Public Defender, international and local organizations and the direct beneficiaries of said action (religious organizations), how well the directions identified by the Agency reflect these requirements

The practice of funding four religious communities

On January 27th, 2014, the government adopted a resolution "on Implementation of Certain Measures related to the Partial Reparation of Damages Inflicted during the Soviet Totalitarian Regime to the Religious Organizations present in Georgia",²⁶ which recognizes damage inflicted to Georgia's religious organizations during the Soviet totalitarian regime and the responsibility for partial, symbolic compensation of moral and material damages for Islamic, Jewish, Roman Catholic and Armenian Apostolic organizations..

Despite the fact that severe damages were inflicted during the Soviet totalitarian regime to other religious organizations present in Georgia (Lutheran Church, Evangelical Faith Church, Evangelical-Baptist Church and other denominations), the selection of religious organizations (communities) was carried out without a preliminary assessment of criteria and study under the resolution. Under the circumstances, funding only four religious organizations for the purpose of reparation of damages inflicted during the Soviet period is discriminatory, and, taking into account the approaches and public statements of the State Agency for Religious Issues, represents an attempt to hierarchize and formalize religious organizations on a normative level.

In addition to the above, it is problematic that four religious communities are funded without use of fair and objective criteria to determine inflicted damages. Another flaw is the fact that Muslim religious associations are not distinguished from one another under the resolution based on schisms (Shia and Sunni) while the resolution considers Christian religious churches separately.²⁷

This model of funding is actively criticized in reports by the Public Defender²⁸ and its Council of Religions.²⁹

Flaws in the law on state property

²⁶ Decree N117 issued on January 27th, 2014 by the Georgian government on "Implementation of Certain Measures related to the Partial Reparation of Damages Inflicted during the Soviet Totalitarian Regime to the Religious Organizations present in Georgia";

²⁷ The case is disputed in the Constitutional Court of Georgia, For information on the case, refer to the Constitutional Court record №2/5/750 of March 15th, 2017, available at: <http://www.constcourt.ge/ge/legal-acts/recording-notices/ssip-sruliad-saqartvelos-muslimta-umaglesi-sasuliero-sammartvelo-saqartvelos-mtavrobis-winaagmdeg.page>

²⁸ Parliamentary report of the Public Defender of Georgia 2016, p.416, available at:

<http://ombudsman.ge/uploads/other/4/4494.pdf> ;

Parliamentary report of the Public Defender of Georgia 2015, p.483, available at: <http://ombudsman.ge/uploads/other/3/3891.pdf>

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Parliamentary report of the Public Defender of Georgia 2014, p.327, available at: <http://ombudsman.ge/uploads/other/3/3509.pdf>

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²⁹ Recommendations of the Council of Religions under the auspices of the Public Defender – 2017, p. 11-12., available at:

http://tolerantoba.ge/failebi/qartuli_broshura_saxalxo_dameveli_87902.pdf

Because of gaps in the law on state property, religious organizations are restricted in a number of actions regarding state property. These flaws are in turn based on the fact that religious organizations did not exist in the form of a legal entity of public law when the law was adopted, therefore there used to be no need to define such entities under the legislation.

Because of the flaw in the law, religious organizations cannot carry out simple actions such as, for instance, purchase of state property.³⁰

In addition to not having the general right to purchase property owned by the state, the biggest problem religious organizations face are the obstacles created by the gaps in the said law in the process of restitution of ownership rights for religious buildings confiscated during the Soviet totalitarian regime.³¹

According to subparagraph “m” of article 4 of the law on state property, state property shall not be subject to privatization (including for a price), if they represent religious buildings and places of worship (functioning and no longer functioning), and their ruins, as well as the land plots on which they are located.

Said law does not take into account the exception of special interest of religious organizations in regards to restitution of ownership rights for functioning religious buildings and places of worship registered as state property. The legitimacy of this ban may have been justifiable for handover of such state property to physical or non-religious legal entities, but the law causes disproportionate consequences for religious organizations, which may have a high legitimate interest in the purchase of such property (including restitution) without contradiction with other public interests.

Corresponding recommendations have been issued to correct these flaws by the Public Defender’s Office³² and its Council of Religions.³³

Objective 11.1.3.3 - Revoke discriminatory taxation which privileges the Georgian Orthodox Church over other religious associations

One of the significant obligations under the Action Plan of the Government for Protection of Human Rights was revoking discriminatory taxation privileging the Georgian Orthodox Church over other religious associations to ensure protection of individual rights guaranteed by freedom of religion and belief. Namely, not all tax benefits legally granted to the Georgian Apostolic Autocephalous Orthodox Church (hereinafter Patriarchate of Georgia) extend to minority organizations.

³⁰ Paragraph 1 of Article 3 of the Georgian Law on State Property;

³¹ The appeal of eight religious organizations concerning flaws in the law on state property is under review in the Constitutional Court of Georgia, For information on the case, refer to the Constitutional Court record №1/3/811 of February 6th, 2017, available at: <http://constcourt.ge/ge/legal-acts/recording-notices/1-3-811-ssip-saqartvelos-evangelur-baptisturi-eklesia-ssip-saqartvelos-evangelur-luteruli-eklesia-ssip-sruliad-saqartvelos-muslimta-umaglesi-sasuliero-sammartvelo-ssip-daxsnil-qristianta-sagvto-eklesia-saqartveloshi-da-ssip-saqartvelos-saxarebis-rwmenis-e.page>

³² Report of the Public Defender of Georgia 2016, p.426, available at: <http://ombudsman.ge/uploads/other/4/4494.pdf>;

³³ Recommendations of the Council of Religions under the auspices of the Public Defender - 2017, available at: http://tolerantoba.ge/index.php?id=1281619908&sub_id=1345202134

A taxation regime for religious organizations that grants different privileges for the Patriarchate and does not extend to these organizations was one of the major challenges. Their position does not stem from an interest of religious organizations to be exempted from certain taxes, it is rather essentially associated with their wish to be recognized by the government as having equal needs as the Patriarchate of Georgia and revoke the existing discriminatory privileges.

Recommendations to grant tax benefits equally to all religious organizations have been issued repeatedly by the Public Defender³⁴ and its Council of Religions³⁵.

Religious organizations have entered a lawsuit concerning this matter in the Constitutional Court, which is reviewing the case.³⁶

Therefore, it would be interesting to assess in detail the tax regime in place for the Patriarchate and other religious organizations for each tax and in which taxes the Constitutional Court considers the government has a differential approach for the Patriarchate and other religious organizations.

Tax	Taxation for Georgian Patriarchate	Taxation for other religious organizations
Income Tax	-	-
Profit Tax	Exempted from profit tax for profit received by Georgian Patriarchate through sales of crosses, candles, icons, books and calendars used for religious purposes; ³⁷	The paragraph on religious (non-economic) activities in tax legislation does not provide for an obligation to declare profits and pay profit tax for any religious organization ³⁸
(Value Added Tax) VAT	The following are exempted from VAT: 1. Supply by the Patriarchate of crosses, candles, icons, books, calendars and other liturgical items used for religious purposes only; ³⁹	1. A systematic analysis of the tax code shows that supply of crosses, candles, icons, book, calendars and other liturgical items used for religious purposes only, as a non-economic activity, is exempted from VAT. ⁴¹

³⁴ Report of the Public Defender of Georgia 2010, pp.314-315, available at: <http://ombudsman.ge/uploads/other/0/84.pdf>

Report of the Public Defender of Georgia 2015, p.496, available at: <http://ombudsman.ge/uploads/other/3/3891.pdf>

Report of the Public Defender of Georgia 2016, p.426, available at: <http://ombudsman.ge/uploads/other/4/4494.pdf>

³⁵ Recommendations by Council of Religions under the auspices of the Public Defender, available at:

http://tolerantoba.ge/failebi/qartuli_broshura_saxalxo_damcveli_87902.pdf p. 17, 2017.;

http://tolerantoba.ge/failebi/CR_Rec_GEO_12278.pdf p. 5;

³⁶ Georgian Constitutional Court record №1/8/671 of March 23rd, 2017, available at: <http://www.constcourt.ge/ge/legal-acts/recording-notices/1-8-671-ssip-saqartvelos-evangelur-baptisturi-eklesia-aaip-saqartvelos-sicocxlis-sityvis-eklesia-ssip-qristes-eklesia-ssip-saqartvelos-saxarebis-rwmenis-eklesia-aaip-meshvide-dgis-qristian-adventistta-eklesiis-transkavkasiuri-iunioni-ssip-latin-katoliketa.page>

³⁷ Paragraph “d” of part 1 of Article 99 of the Georgian Tax Code;

³⁸ According to the Tax Code, sales of religious literature or items for religious purposes are considered religious and therefore non-economic activities and are exempt from profit tax (articles 96, 21 and 30), therefore the profit tax payer is the enterprise producing these items, for economic activities not related to religious activities.

³⁹ Paragraph “b” of part 1 of Article 168 of the Georgian Tax Code;

	2. Construction, restoration and painting of churches ordered by the Patriarchate; ⁴⁰	2. The Constitutional Court of Georgia has accepted for review the appeal of 8 religious organizations on exemption of the Patriarchate for construction, restoration and painting of churches
Excise Tax	-	-
Import Tax	-	-
Property Tax	The tax code does not provide for a specific norm on exempting the Patriarchate of Georgia from property tax, although according to the constitutional agreement that is higher in hierarchy, property and land of the Patriarchate used for non-economic purposes is exempt from taxes. ⁴²	Considering the fact that there is no specific provision in the tax code for exemption from property tax of the Patriarchate, the Constitutional Court could not assess how discriminatory the difference in property taxation with other religious organizations is.

Based on the above, the only differences in taxation regime between the Patriarchate of Georgia and other religious organizations are the exemption of the Patriarchate from VAT for construction, restoration and painting of churches and the exemption of the Patriarchate from property tax on property and land used for non-economic purposes.

According to the Ministry of Finance of Georgia, which was responsible for the implementation of said action, the issue of advisability of a legislative change concerning this matter will be considered after final ruling by the Constitutional Court of Georgia on the appeal N671 submitted by eight religious organizations.⁴³

The constitutional appeal submitted by religious organizations cannot in any way be considered as an obstacle of obligations under the Action Plan⁴⁴ and/or a justification for failure to fulfill the action, especially since the obligation under the Action Plan was assumed after the government had information on the existence of the above mentioned appeal in the Constitutional Court.

Based on the above, the obligation taken under section 11.1.3.3 to revoke discriminatory taxation which privileges the Georgian Orthodox Church over other religious associations has not been fulfilled and remains a challenge for religious minorities.

⁴¹ According to paragraph “a” of part 1 of Article 161 of the Georgian Tax Code, supply of goods and/or services in the territory of Georgia within the scope of economic activity is subject to VAT. According to Paragraph “c” of part 2 of Article 9, religious activities are not considered economic activities, and according to Article 11, activities of religious organizations and their enterprises for sales of objects of religious purposes are equated with religious activities, which according to the Tax code are exempt from VAT.

⁴⁰ Paragraph “b” of part 2 of Article 168 of the Georgian Tax Code;

⁴² Paragraph 5 of Article 6 of the Constitutional Agreement;

⁴³ Letter N08-04/167780 of the Ministry of Finance of Georgia, dated November 6th, 2017;

⁴⁴ According to paragraph 5 of Article 13 of the Georgian Law on Constitutional Proceedings, at any stage of the constitutional proceedings, a defendant may admit the claim in full or in part;

Action 11.1.3.4 - Identify historic (confessional) owner of cultic and religious buildings and monuments and handover of these monuments and buildings. Resolve disputes around cultic and religious buildings and monuments in a timely, transparent and fair manner.

The restitution of religious buildings confiscated during the Soviet totalitarian regime to religious organizations remains an important problem.

After the collapse of the Soviet Union, most religious buildings were state property. Unlike other countries with a similar experience, Georgia did not develop regulations for restitution of religious buildings registered as state property to religious organizations and instead, exercised an inconsistent and discriminative practice of dealing with religious buildings confiscated during the Soviet period after its independence.

It should be noted that systematic restitution by the government of religious buildings with ownership rights was carried out only for the Georgian Orthodox Church.⁴⁵ Almost no religious buildings were restituted with ownership rights to other religious organizations. It is noteworthy that several international organizations have issued recommendations to Georgia on restitution of religious buildings.⁴⁶ Aside from international organizations, this problem is repeatedly brought up by the Public Defender and its Council of Religions.⁴⁷

Restitution of religious buildings confiscated during the Soviet period to other religious organizations only began in 2014, and, unlike for the Patriarchate, by restitution of only the rights to use them.⁴⁸ The handover of religious buildings with rights to use to religious organizations was justified by the government by the flaws in the law on state property.⁴⁹ Needless to say, handover of religious buildings to religious organizations with the right to use them cannot be considered as restitution.⁵⁰

The problem of historic religious buildings can be classified in three main directions: 1. Historic religious buildings that their historic owners factually own and worship in, but the state does not recognize their rights to ownership; 2. Historic religious buildings that the state has not returned to their historic owner, although they are not confessionally disputed by other religious organizations; 3. Historic religious

⁴⁵ According to paragraph 1 of Article 7 of the Constitutional Agreement between the Georgian state and the Apostolic Autocephalous Orthodox Church of Georgia, the state recognizes orthodox churches, monasteries (active and inactive), their ruins, and the land plots they are located on in the entire territory of Georgia as property of the Church;

⁴⁶ UN Human Rights Committee, Concluding observations on the fourth periodic report of Georgia, CCPR /C/ GEO/CO/4, 19 August 2014, available at: <http://bit.ly/2ef4O5a>; Advisory committee on the framework convention for the protection of national minorities, Second Opinion on Georgia, June 15, 2015, available at: <http://bit.ly/1SxitBq>; U.S Department of State, International Religious Freedom Report for 2015, Georgia, available at: <http://bit.ly/2dbRloS>

⁴⁷ Report of the Public Defender of Georgia 2014, p.342, available at: <http://ombudsman.ge/uploads/other/3/3509.pdf>; Report of the Public Defender of Georgia 2015, p. 483, available at: <http://ombudsman.ge/uploads/other/3/3891.pdf>

Recommendations by the Council of Religions under the auspices of the Public Defender – 2017, p. 15, available at: http://tolerantoba.ge/index.php?id=1281619908&sub_id=1345202134

⁴⁸ Report of the State Agency for Religious issues 2015, p. 14, available at: <http://religion.geo.gov.ge/images/8706%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98-2015.pdf>

⁴⁹ See detailed assessment of paragraph 11.1.3.1. of the action plan;

⁵⁰ See assessment of the state's restitution policy in EMC's research "Freedom of Religion – Critique of the Discriminatory and Non-secular State Policy" pp 91-102, available at: <https://emcrights.files.wordpress.com/2017/03/170x250-geo-web.pdf>

buildings for which confessional and historic origins are controversial and in which other religious organizations may practice religious activities. The state does not pursue a policy of returning any of the types of religious buildings listed above and only grants temporary rights to use the buildings of the first type to religious organizations. Naturally, this practice cannot be considered as a proper exercise of restitution policy.

It should be noted that undertaking fulfillment of the obligation defined under the Action Plan of the Government for Protection of Human Rights is a significant step forward, as it is actually the first legal document that recognizes the state's obligation to restitute property confiscated during the Soviet totalitarian regime to religious organizations other than the Patriarchate, but of course it cannot be considered as effective in terms of starting a real restitution process, since this process firstly requires development of a legislative act for regulation of restitution, which would create a clear legal structure for the interested parties with criteria determining in which cases it would be possible to have religious buildings returned with ownership rights (restitution) and at the same time defining a real and not illusory mechanism for rapid, transparent and fair resolution of disputes over religious buildings, although no political will has been shown to develop such a legislative framework, which is also a failure to fulfill actions as defined under the Action Plan.

In 2014, the Agency created a Recommendatory Commission on the Study of Property and Financial Issues of Religious Organizations, which among other tasks will hand over ownership of religious buildings registered as property to religious organizations. According to the agency, about 200 cult buildings have been handed over to their historical (confessional) owners since 2014.⁵¹

In addition to determining the historical owners of cult buildings and issuing recommendations on handing over these buildings to them for temporary use, the advisory commission set up to study property and financial issues of religious associations is working on other issues. (For example, it issues recommendations on constructing new buildings of cult, allocating financial/property resources from the state/local budget, and so forth.) The commission discussed 284 cases in 2016 and 205 cases in 2017. Most of the issues discussed were related to the Orthodox Christian Church and the Muslim community.⁵²

As regards the problem of the handover of historic buildings of cult proper, according to the National Agency of State Property, a legal entity under public law, four historic buildings of cult were handed over to non-dominant religious organizations in 2017 (the Jewish Union - two synagogues in Vani and one synagogue in Sachkhere; Evangelist Lutheran Church - one operational building of cult in Tbilisi). The analysis of the handovers in the reporting period demonstrates that the state has mainly handed over to religious organizations the cult buildings that are not disputed.

According to the State Agency for Religious Issues, assessing the expediency of handing over cult buildings to religious organizations for use, the decisions of the advisory commission set up to study property and financial matters of religious associations is based on the opinions of the commission

⁵¹ Report on the activities of the State Agency for Religious Issues in 2016-2017, p 18.

⁵² Ibid, pp 34, 74.

members, and all issues are resolved by a majority vote. The commission takes into account whether concrete religious organizations are using cult buildings.⁵³

It should also be noted that despite numerous requests during the monitoring period, EMC was denied access to concrete decisions by the commission whereas such an access would allow the organization to better process and assess the decisions. It is also noteworthy that the commission has discussed hundreds of applications from the Georgian Patriarchate and the precise content of the applications is also unknown. However, this is the continuation of the non-secular practice of handing over material resources to the Patriarchate, which points to the agency's attempt to centralize the process.

The assessment above once again confirms that the state does not have foreseeable and objective criteria for handover of religious buildings to religious organizations, which makes the process even more inconsistent and creates risks of new disputes over religious structures among religious organizations.

It should also be noted that the advisory commission set up to study property and financial issues of religious associations looks into the process of handover for temporary use of historic buildings of cult only to non-dominant religious organizations and issues recommendations. Given that historic buildings of cult were declared as property of the Orthodox Church under the constitutional agreement, the Georgian Patriarchate can simply register such buildings as its property by appealing to the Public Registry, according to the established rule.

Despite defining the obligation to resolve disputes around cultic and religious buildings and monuments in a timely, transparent and fair manner under the Action Plan, disputes around religious property remain unresolved in practice and the clearest example of the inability of the government to fulfill its obligations is the activities carried out by the commission created by the State Agency for Religious Issues with the aim to resolve the matter of the confessional origins and dispute over the religious building in village Mokhe, since despite working on the case during 2 years, said commission refused to study the confessional origins of the disputed construction⁵⁴ and resolved the dispute through political negotiations, ignoring the local Muslim community's concerns and demands. As an alternative to the resolution of the dispute, the commission offered the Muslim community to help with the construction of a new mosque.⁵⁵ Part of the Muslim community negatively assessed this decision and as a protest against the decision of the commission they continue praying outdoors to this day.⁵⁶ Therefore, despite years of work by the commission, the government was not able to effectively solve the problem.⁵⁷

Another problematic aspect is the process of handover of religious buildings by the government without appropriately researching the owner. The Imam Ali mosque in Marneuli, where a religious organization created by the local community (non-registered union “Imam Ali Mosque”) had been conducting religious activities for years, was handed over with rights to use by the government without any

⁵³The letter of the State Agency for Religious Issues of 28 September 2017, No 1/1121.

⁵⁴ EMC met with Christian and Muslim communities in village Mokhe goo.gl/AkqPtL

⁵⁵ Journal “Liberali”, “Mokhe construction was granted the status of Monument – Zaza Vashakmadze says everything is fine” goo.gl/pYyNAh

⁵⁶ Facebook group for saving Mokhe historic mosque goo.gl/jdF5sD

⁵⁷ EMC assessment of the final decision by Mokhe commission <https://emc.org.ge/2017/05/12/emc-mokhe-2/>

preliminary research to a different Muslim organization, LEPL “Administration of Muslims of All Georgia”.⁵⁸

In 2017, the state registered in the ownership of the Patriarchate an Armenian church “Tandoyants Surb Astvatsatsin” located on Aghmashenebeli ave. #38. The handover of this Armenian Church to the Patriarchate was based on the general indication by the Patriarchate that there used to be an Orthodox church in the area. Despite having referred to the confessional property of the church as that of the Armenian eparchy for years, the government ultimately decided to hand the monument over to the Patriarchate.⁵⁹

Based on the above, although determination of the action and its recognition under the Action Plan is a step forward, it does not address the recommendations issued over the years by international organizations and the Public Defender, therefore, performed actions cannot be considered as an effective measure. The action, of course, implies a long and difficult process, but initially, it needs to be planned properly through the creation of a suitable transparent and objective system with a legislative basis, which has unfortunately not been done by the government, and as a result, a proper and fair process of restitution to religious organizations remains a priority.

Action 11.1.3.5. - Take measures for the restoration of cultic and religious monuments with the status of historic and cultural heritage based solely on the needs of aforementioned monuments.

For religious organization, maintenance and care for cultic and religious monuments with the status of historic and cultural heritage, while they often have no legal rights (ownership, use) over the property, is an important problem. Often, the government shows no will to maintain these monuments either, even though it is the legal owner.

This problem is most acute for non-functional and disputed cultic monuments⁶⁰, which remain without necessary maintenance work while the owner is being determined, their condition deteriorating all the while.

At the same time, for monuments which have a specific historic owner, financial support is necessary from the government because of the costs of necessary works for the monument, since without such support, it would be unimaginable for most religious organizations to achieve the preservation of cultic monuments independently.

Based on the above, the action defined under the Action Plan is important for freedom of religion as well as the preservation of the cultural and religious identity and heritage of religious minorities present in Georgia.

⁵⁸ EMC initiated a legal dispute for the problem concerning restitution of the Imam Ali mosque in Marneuli <https://emc.org.ge/2017/09/26/emc-359/> EMC will represent the plaintiff for the case.

⁵⁹ The government handed Tandoyants church over to the Patriarchate of Georgia goo.gl/sKkHdd. EMC and TDI will represent the plaintiff in court.

⁶⁰ See the report of the Human Rights Center on the condition of religious minorities' cultural heritage in Georgia - 2016

According to the data of the National Agency for Cultural Heritage Preservation of Georgia, 3095 cultic monuments are registered in the cultural heritage monuments registry on Georgian territory. Unfortunately, there is no exact data as to how many of them are cultic monuments of religious minorities, as the registry does not distinguish them by confessional/historic origin.

A large part of the financial resources for restoration and maintenance are naturally allocated on Georgian Orthodox cultic monuments, but rehabilitation of several religious minority cultic monuments was also planned for the reporting period.⁶¹

According to the Agency data of 2017, a total of 977 344 GEL was allocated for renovation of religious buildings (designing, rehabilitation/conservation, infrastructure), a large portion of which is spent on renovation of Georgian Orthodox religious monuments, while 4585 GEL are allocated for inventory of Armenian monuments in Samtskhe-Javakheti region.⁶²

It is important for the government to have a unified strategy and a plan based on fair priorities for restoration and rehabilitation of historic cultic monuments. It is also essential to take into account the severe risks of destruction and loss of authenticity, which are present for a large number of monuments, and to implement this policy in a non-discriminative manner.

Objective 11.1.4. - Implementation of principles of secularism and religious equality within the education system

Fostering an environment of secularity and equality is an important challenge of the general education system. Despite having provided appropriate material guarantees (e.g. articles 3 and 13) to protect religious neutrality and equality in public schools under the law on general education, the government policy in this regard is still ineffective, and facts of indoctrination, proselytism and discrimination are of a systematic nature.⁶³ This is confirmed by several studies⁶⁴ and reports on the condition of human rights⁶⁵. The studies attest to the fact that systemic problems with the teaching process and daily life in school are deeply ingrained⁶⁶ and hinder the process of imparting secular, academic knowledge.

These problems can be divided as follows: 1. Inaccurate presentation of non-dominant religious and cultural systems at a textbook and teaching program level and archaic interpretations of matters

⁶¹ The restoration-rehabilitation works on Norasheni church have been completed. In collaboration with Germany, an inventory of diverse German heritage existing in Georgia has been conducted in 2015-2016, including research and inventory of cultic monuments. Projects of rehabilitation of the village Ota mosque in Aspindza municipality and preparation for rehabilitation of village Sakuneti mosque were planned in 2017.

⁶² See above;

⁶³ Freedom of Religion – Critique of Discriminatory and Non-secular state policy, EMC, 2016, available at: <https://emc.org.ge/2017/03/26/emcr/>

⁶⁴ Religion in Public Schools, EMC, 2014, available at: https://emc.org.ge/2014/03/31/religia_sajaro_skolebshi/

⁶⁵ Public Defender's report on the condition of protection of human rights and freedoms, 2015, pp. 700-703, available at: <http://ombudsman.ge/uploads/other/3/3512.pdf>

^{5th} cycle of monitoring by the European Commission against Racism and Intolerance, 2016, p.22, available at: <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Georgia/GEO-CbC-V-2016-002-ENG.pdf>

American State Department report on the condition of freedom of religion in Georgia, available at: <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2015&dliid=256191#wrapper>

⁶⁶ Framework Convention for the Protection of National Minorities, second opinion on Georgia, 2016, p. 19, available at: http://new.smr.gov.ge/Uploads/1_e7beda71.pdf

concerning religion and politics;⁶⁷ 2. Low levels of academic and civic knowledge among teachers and inefficiency of systematic training programs in this direction⁶⁸; 3. Formal and non-formal influences of the Patriarchate on the Ministry of Education and Science and public schools⁶⁹; 4. Inefficient and non-systematic work of internal monitoring mechanisms. Aside from the improvement of the teaching process and quality, which is a long-term and serious challenge and is directly related to the problem of education and civic awareness of the teachers, an essential problem lies in the monitoring systems of the Ministry of Education and Science. In addition to the fact that the methodological tools for general monitoring of schools do not appropriately reflect the necessity for inspection of matters related to religious neutrality and equality, the internal auditing service of the Ministry usually fails to respond effectively and with sufficient independence to possible violations of religious neutrality or freedom of religion and remains loyal to the school administration's policies. This issue is confirmed among other events by the way the Ministry responded to several high-profile cases of discrimination in public schools in 2017, which was ineffective and incompatible with human rights standards. **Despite systematic challenges, the state has no consistent policy to transform educational spaces into secular, free and non-discriminatory academic spaces, which is also shown in the contents of the reviewed Action Plan.**

Actions defined under this objective of the Action Plan are not sufficient to achieve said objective and fail to cover important issues. Matters such as the following should be included in the Action Plan: 1. Assessment of the existing condition in public schools in terms of religious neutrality and equality and development of a policy based on this study. When discussing aforementioned issues, the Ministry of Education and Science very often states that only individual violations take place in public schools and the problem is not of a systematic nature. For accurate identification of the problem, it would be advisable for the Ministry to conduct a comprehensive study with the collaboration of independent research organizations in public schools and consequently base its strategy and Action Plan on the results of this study. 2. Improvement of the methodological tool for monitoring of public school and strengthening approaches based on human rights in said tool, including an emphasis on the component concerning religious neutrality and equality. Better coordination between the departments of the Ministry for the monitoring process and development of integrated approaches; 3. Necessity to conduct special positive activities around issues of tolerance and equality for regions affected by religious conflict and mixed regions; 4. Developing a unified approach with regard to individual use of religious attributes in public schools, especially considering that several instances of Muslim girls being forbidden from wearing a headscarf were recorded in 2016-2017, which caused tension in the local community. Therefore, the actions defined under the objective are not comprehensive and do not address the challenges existing in this regard to the full extent.

Action 11.1.4.1. - Arrangement of textbooks (criteria for the approval of textbooks must include a requirement which obliges authors to put together contents of textbooks with due consideration of

⁶⁷ Religion in public schools (EMC), 2014, available at: https://emc.org.ge/2014/03/31/religia_sajaro_skolebshi/
Also "Reflecting religious and ethnic diversity in school textbooks", mid-term report, Tolerance and Diversity Institute (TDI), available at: http://tdi.ge/sites/default/files/saxelmzgvanloebis_analizi_tdi_2016.pdf

⁶⁸ Research on intercultural education aspects in universities of Georgia based on the education programs for teachers, Center for Civil Integration and Inter-ethnic Relations, (CCIIR), 2014, available at: <http://cciir.ge/upload/editor/file/jurnali%20%20bilingvuri%20/politikis%20dokumentebi%20/geo/axali/interkulturuli%20umaglesebshi.pdf>

⁶⁹ Framework Convention for the Protection of National Minorities, second opinion on Georgia, 2016, p. 19, available at: http://new.smr.gov.ge/Uploads/1_e7beda71.pdf

diversity of Georgian students based on race, skin colour, political and other views, national, ethnic and social affiliation, origin, property, place of residence etc). Textbooks nurture non-stereotypical reasoning among students

During the reporting period, a project was developed for assessment criteria of textbook contents, to allow assessment of the textbooks in terms of discriminatory elements and equality perspective. Said document was introduced to interested parties in 2016. The plan for 2017 was to refine the document with the involvement of interesting parties and to approve it, although the Ministry of Education and Science did not provide EMC with the result summary, therefore we are not able to assess the contents of the documents as needed.

Action 11.1.4.2 - Integrate inter-confessional/intercultural education themes in teachers' professional development programmes

According to information provided by the Ministry of Education and Science, work was completed during the reporting period for the following training modules: gender equality issues; prevention of bullying and promotion of a culture of tolerance; gender equality/reproductive health/healthy lifestyle/types of abuse and domestic violence; "Children's Rights in Schools" for school directors; a course in civic education for teachers of civic education in non-Georgian language schools and other educational institutions. The aforementioned training modules include information on child protection programs and referral measures conducted by the government, responsibilities of social workers, healthcare and education system representatives in case of child abuse, and measures to be taken. In addition, teachers will be given information about the consequences of early marriage, prevention of bullying, domestic violence, encouraging a culture of tolerance, gender equality, and reproductive health.

The presented information shows that the module does not reflect to a sufficient extent the modern concepts of religious and ethnic diversity, nationalism, secularism, and equality. Studies conducted in the education area show that violations of neutrality and xenophobia are essentially linked to the dissemination of non-academic ideas and approaches based on ethnocentrism and enmity by teachers in the educational process, which places the raising of awareness and sensitivity of teachers on the critical agenda. In addition, the information provided by the Education Ministry does not make it clear what strategy is used by the ministry to retrain teachers and what are the priorities in this process. In addition, no information has been provided on how the ministry plans to measure the results/impact of the process of teaching/retraining, which is directly linked to the effectiveness of this activity.

Action 11.1.4.3. - Include the requirement of the knowledge of diversity management and intercultural education in the standard for school directors

During the reporting period, a working version of the standard for directors was prepared and is currently under review. Since the Ministry of Education and Science is working on a concept selection and evaluation of directors, it has been deemed advisable to review the standard in the context of this work. The working standard document reflects issues related to the creation of a tolerant and inclusive environment. In addition, determining the minimal knowledge of the director will be based on the items and indicators included in the standard and describing the behavior and attitudes of the director. According to information from the Ministry of Education and Science, this obligation has not been

entirely fulfilled during the reporting period. In addition, it is important for the Ministry of Education to ensure provision of school directors with appropriate knowledge, guideline documents and consultation resources, which will help them, establish democratic competences, create an inclusive teaching and social environment that is based on equality and tolerance and enact the corresponding policy in public schools.

Action 11.1.4.4. Monitor the implementation of requirements for secularism and religious equality during education process in public and private schools

According to information of the Ministry of Education and Science of Georgia, it regularly monitors the fulfillment of requirements of acting legislation for general education institutions, including secularism and religious equality. The Ministry of Education did not provide EMC with statistical data of the internal monitoring service on possible violations concerning religious neutrality, equality and freedom of religion during the reporting period, making it difficult to properly assess the Ministry's actions in this regard. However, unwarranted decisions made by the Ministry of Education and Science during the reporting period in response to several high-profile cases of restriction of freedom of religion indicate that the internal monitoring mechanism is inefficient and loyal to the school administration (for instance, the cases of Muslim girls' hijabs in village Mokhe⁷⁰ and village Karajala). It should be noted that during the reporting period, the Public Defender addressed the Ministry of Education with a general statement on said issue and urged for specific measures as responses to cases of violation of religious neutrality and discrimination on religious grounds in public schools.⁷¹

It should be noted that there are systematic flaws in the policy of inspection of the situation in terms of religious neutrality and equality in public schools and resolution of existing problems. The general monitoring tool for public schools do not accurately reflect the requirement inspection and ensuring of protection of children's rights, including freedom of religion, equality and religious neutrality. In addition, the internal monitoring mechanism poorly ensures proactive inspection of the current situation in public schools and the implementation of positive measures to improve said situation.

⁷⁰ EMC's assessment on the case of Teona Beridze, available at: <https://emc.org.ge/2017/02/08/emc-213/>

⁷¹ Information on general statement of the Public Defender at: <https://emc.org.ge/2017/09/22/emc-357/>

Comparative evaluation of the implementation of the Georgian government's action plans for 2014-2015 and 2016-2017

Interestingly, the Georgian government's action plans for 2014-2015 and 2016-2017 have set commitments the content of which are essentially similar. Over a four-year period, signs of significant improvement can be traced.⁷² A comparative evaluation of the implementation of the action plans with regard to several important issues is given below.

Anti-discrimination laws and policies

Following the adoption of the law on Elimination of all Forms of Discrimination in 2014, despite many recommendations received from international organizations, the ombudsman and rights organizations,⁷³ Georgian government has not ensured initiating changes to the law that would eliminate its institutional and procedural shortcomings. In this respect, outstanding problems include: improving current equality mechanisms and handing over effective levers of their implementation to the public defender⁷⁴, and the urgency of introducing comprehensive and modern definitions of various forms of discrimination (e.g. discriminatory harassment, sexual harassment, value judgment). The existing institutional flaws significantly weaken the application of equality mechanisms and the role of the latter in the process of establishing equality. While the 2014-2015 Action Plan set a commitment to pass the anti-discrimination law, the 2016-2017 Action Plan pledged to initiate changes to the law. However, no progress has been made in this connection to date.⁷⁵

Despite more than one recommendation from EMC that the government dedicate a separate chapter in the action plan to defining obligations of implementing systemic anti-discrimination policies in public agencies and local government bodies with a view to ensuring equality, the action plan does not contain such a chapter. The executive government's attempts to strengthen equality approaches in public administration and policies have been weak, as have been the attempts to create an equality-supporting public discourse through public statements, information and education campaigns.

Discriminatory legislative environment

⁷² EMC's evaluation of the implementation of the Georgian government's Human Rights Action Plan for 2014-2015 can be accessed at: <https://emc.org.ge/ka/products/emc-is-shefasebebi-adamianis-uflebata-datsvis-2014-15-tsebis-samtavrobosamokmedo-gegmis-shesrulebastan-dakavshirebit>

⁷³ Coalition for Equality, Annual Report, 2015, available at: http://www.osgf.ge/files/2015/News/29%20ivlisi/Report_210x270mm.pdf

⁷⁴ Note: When an act of discrimination is committed by an individual, the implementation of the Ombudsman's recommendation depends on the individual's goodwill and is not guaranteed by any lever of execution. Moreover, the law does not obligate an individual to provide information and their own opinion during the consideration of discrimination-related disputes. This essentially weakens the chances for the ombudsman to consider such disputes. In the case of public entities not following recommendations, the ombudsman has to launch an administrative court dispute using the three-instance rule, which hinders the timely and effective implementation of the recommendation. Three months, which is allotted for appealing to common courts from the moment of receiving information about the act of discrimination, is also problematic, as it is too short a time for starting complex disputes, and also complicates the use of complementary mechanisms - the ombudsman and the court (an opportunity to continue the dispute in court at the Ombudsman's recommendation and use a more effective mechanism for the restitution of their rights).

⁷⁵ Note: Georgian parliament has not yet considered the ombudsman's legislative proposal of 2015 with regard to these deficiencies.

Both, the 2014-2015 and 2016-2017, action plans aimed to ensure elimination of discriminatory wording in the law. Moreover, in some cases, specific acts were listed to which the government was expected to make changes. For these purposes, the agency has conducted more than one study and yet the agency/government has failed to even initiate the changes. E.g. in spite of the promises, the circle of religious organizations receiving compensation under Decree 117 has not been expanded and the discriminatory records in the Tax Code and the Law on State Property have not been removed.

The role of the State Agency for Religious Issues

The 2014-2015 Action Plan saw the role of the State Agency on Religious Issues in almost all activities related to religious freedoms. This, in some cases, created problems of duplication and conflict (which was especially obvious in relation to construction of cult buildings and education issues). The 2016-2017 action plan has a better approach to these issues, but the government still sees the agency as the main actor implementing the policies related to religious freedoms. Given the level of criticism that the agency gets for its activities, such an approach considerably diminishes possibilities to effect positive changes with regard to religious freedoms. The findings of monitoring of both action plans demonstrate that the activities carried out by the agency are not systemic and have not brought about considerable legal and social impact. Systemic legislative and institutional problems with respect to religious freedom remain topical, including undemocratic and unsecular practices of financing, the problem of restitution, discriminatory records in the legislation, ineffective resolutions of religious conflicts. Moreover, there arise questions regarding unjustified interventions by the agency into the activities of religious organizations, which create social tensions in religious groups (the issue of construction of a new mosque in Batumi, reclaiming the historic mosque in Mokhe).

Non-systemic and arbitrary policies of restitution

When in 2014 the State Agency for Religious Issues started handing over (for temporary use only) to non-dominant religious organizations the property which had been seized in the Soviet era, there was no legislation regulating restitution. Under such circumstances, the process of “handover” of cult buildings was arbitrary and fragmented and, in some cases, political (the cases of the Imam Ali mosque, the Tandoyants Armenian church, the Mokhi historic mosque). Despite the fact that recommendations have been made with regard to both action plans in this connection, the government has not shown a political will to develop a fair and non-discriminatory legislation and policy of restitution.

Prevention and investigation of hate crimes

The objectives and activities aimed at combating hate crimes were essentially similar in both action plans. However, a significant improvement in the work of law-enforcement bodies since 2017 can be observed in this regard. Moreover, the Ministry of Internal Affairs has carried out measures that were not envisaged by either plan. This positive dynamic deserves praise. However, it is important that the state should properly identify structural social causes of crimes perpetrated on grounds of discrimination and improve preventive measures at all levels - in law enforcement, as well as social and education levels.

Recommendations for the relevant agencies

It is important for the following issues to be reflected or taken into account for the Action Plan of the next years:

Aim for in-depth comprehension of the important challenges for freedom of religion and development of a unified strategy for protection of freedom of religion, equality and religious neutrality, in which the active participation of religious organizations as well as the Council of Religions under the auspices of the Public Defender, public organizations and international organizations. The government should base the goals, objectives and actions envisaged under the corresponding chapter of the next Action Plan on research and democratic participation **(Government)**.

Prepare and submit specific legislative initiatives to the Parliament, to change the existing discriminatory legislation and provide progressive standards for the protection of freedom of religion, equality and religious neutrality in the legal framework **(Ministry of Justice, government)**;

To initiate developing the legislation and planning policies on restitution of the property seized during the Soviet era, including the legislation defining rules and mechanisms of resolving disputes over cult buildings **(the Ministry of Justice, the government)**;

To initiate and submit to parliament changes to the law on Elimination of All Forms of Discrimination which will contribute to the institutional strengthening of equality mechanisms, handing over to the ombudsman effective executive competencies and enable the law to reflect a wider spectrum of forms of discrimination **(the Justice Ministry, the government)**;

To review and revise the current legislation, including expanding the circle of religious organizations receiving compensation under Decree 117 with a view to redressing the flaws in the current practice of financing religious organizations, and to protect invariably the principles of the rule of law, religious neutrality and democracy **(the Justice Ministry, the government)**;

To revise the mandate and activity strategy of the State Agency for Religious Issues and review the necessity of such a centralized institution, otherwise ensuring its objectives are fully aligned with the rule of law, protection of human rights and equality and inclusion of religious groups **(the government)**;

To stop the policy of intervention in the activities of religious organizations and to ensure that religious groups, in particular, the Muslim community, have an opportunity to institutionalize and manage independently their own religious life **(the government)**;

To take appropriate steps to eliminate discriminatory practices related to the construction of cult buildings, including steps to support the process of building a new mosque in Batumi **(the government)**;

To analyze the causes of political, social and cultural alienation of non-dominant religious/ethnic groups in the regions compactly populated by religious minorities (including Pankisi Gorge, Ajara, Samtskhe-Javakheti and Kvemo Kartli) which has resulted in a grave social and rights situation and take positive

and special measures to uphold policies based on equality, tolerance and religious neutrality in analogous regions **(the government);**

To ensure that special positive work is carried out which focuses on rebuilding trust and tolerance in the regions of religious conflicts **(the government, the Ministry of Education, Science, Culture and Sport);**

To develop a common strategy of combating hate crimes, which, among other things, will improve the approaches to keeping/analyzing statistics on discrimination-based crimes and their prevention, and the approaches of trust building and harm reduction for the victims of rights violations **(the Ministry of Internal Affairs, the Prosecutor's Office);**

To develop a systemic, wide prevention policy of combating discrimination-based crimes and incidents, this, besides the law enforcement approach, will draw on social and educational approaches and will coordinate the activities of the relevant agencies in this area. In this connection, strengthening of the rehabilitation and education programmes for convicts is especially important **(the Government, the Ministry of Justice);**

To ensure efficient response to crimes perpetrated on the grounds of religious intolerance (e.g. criminal actions committed during the conflicts in Kobuleti, Mokhe, Samtatskaro), timely, independent and efficient investigations of these, which among other things, imply appropriate categorization, identifying hate motive and the invariable protection of the complainant's rights during proceedings **(the Ministry of Internal Affairs, the Prosecutor's Office);**

To study practices of religious indoctrination, proselytizing and discrimination in state-funded schools and develop a systemic policy to eliminate these in close cooperation with the Religion Council at the Ombudsman's Office, and civil organizations and international agencies **(the Ministry of Education, Science, Culture and Sport);**

To ensure proactive and effective work of internal monitoring mechanisms and simultaneous operations of response and education policies **(the Ministry of Education, Science, Culture and Sport);**

To ensure the revision of textbooks and removing of the content which draws on ethno-religious nationalism, religious intolerance and racism, and strengthening of positive images of other religious groups' historical and cultural roles **(the Ministry of Education, Science, Culture and Sport);**

To identify systemic causes which hamper the creation of an environment of secular academic learning and equality, and, with this aim, develop practical guidance for school administrators and introduce positive policies **(the Ministry of Education, Science, Culture and Sport);**

To ensure protection/restoration of cultural heritage of non-dominant religious organizations/communities (including historic mosques and Armenian churches in Samtskhe-Javakheti and Ajara) and develop fair priorities and an action plan in this connection, in close cooperation with religious organizations /communities and experts **(the Ministry of Education, Science, Culture and Sport);**

To eliminate cases of changing the appearance and destroying the value of historic buildings belonging to religious minorities (e.g. the case of the Tandoyants Armenian church), and for the ministry to strictly adhere in its policies to the principles of religious neutrality and equality (**the Ministry of Education, Science, Culture and Sport**);