

Universal Periodic Review

Georgia

23th Working Group Session
2-13 November 2015

Joint Stakeholders' submission of 20 March 2015

Discrimination on basis of sexual orientation and gender identity in Georgia

Submitting organizations:



**Women's Initiatives
Supporting Group (WISG)**



**European Region of the International Lesbian,
Gay, Bisexual, Trans and Intersex Association
(ILGA-Europe)**

*This joint stakeholder's submission is submitted by **WISG** and by **ILGA-Europe**, in the framework of the second Universal Periodic Review of Georgia. **Women's Initiatives Supporting Group** is a non-governmental, non-profit-making organization defending the human rights of lesbian, bisexual and trans women in Georgia. **ILGA-Europe** is the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association.¹ The aim this submission is to draw the attention of the Human Rights Council on violations of the human rights of lesbian, gay, bisexual and transgender (LGBT) people in Georgia. The report is based on materials collected and documented by WISG: cases of human rights violations of LGBT persons in Georgia, interviews and focus groups conducted with community members and health care specialists, NGOs working on LGBT rights and other related issues, a representative of the Public Defender's Office in Georgia and other experts, WISG's discrimination study conducted in 2012, results of monitoring of CM/rec(2010)5 recommendation in Georgia (2013), study "Situation of transgender persons in Georgia" (2014), Needs assessment of LGB people in Health Care Sphere, Policy paper on Transgender health care needs prepared by WISG (2015), and other reports by international stakeholders.*

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¹ ILGA-Europe works for equality and human rights for lesbian, gay, bisexual, trans and intersex (LGBTI) people at the European level. It is an international non-governmental umbrella organisation bringing together 407 organisations from 45 of the 49 countries in Europe and was established in 1996. ILGA-Europe advocates for human rights and equality for LGBTI people, before organisations such as the European Union, the Council of Europe and the Organisation for Security and Cooperation in Europe. It enjoys participative status at the Council of Europe and consultative status at the Economic and Social Council of the United Nations (ECOSOC) since 2006.

A. Introduction

1. In January 2011, Georgia submitted the state report for the 10th session of Universal Periodic Review (UPR). Out of 169 received recommendations, Georgia accepted 141. Unfortunately, none of the recommendations addressed specifically discrimination on basis of sexual orientation and gender identity. Taking into consideration the fact that LGBT persons represent one of the most marginalized groups in the country and face violence which is becoming ever larger in scale, it is extremely important that discrimination on basis of sexual orientation and gender identity is openly included in wide spectrum of human rights and freedoms, that are reflected in UPR recommendations towards the Georgian state.
2. After the first cycle of the Universal Periodical Review, a set of changes took place in Georgia in relation to LGBT rights. In 2012, an amendment was introduced into Georgian Criminal Code, according to which homophobic and transphobic bias while committing a crime, is considered an aggravating circumstance.² In 2013, the Labor code was amended to make discrimination on basis of sexual orientation (and other bases) illegal not only during the employment, but also in pre-employment/recruitment relations.³ In 2014, the Constitutional Court ruled that the part of the decree issued by the Minister of Labor Health and Social Affairs prohibiting gay men to donate blood was, in fact, unconstitutional.⁴ In 2014, a Law on Elimination of all Forms of Discrimination was adopted, explicitly prohibiting discrimination on basis of sexual orientation and gender identity (among other bases).⁵ Unfortunately, the abovementioned law does not include an efficient implementation mechanism. The National Human Rights Strategy (to be reviewed in 7 years) and the two-year Action Plan also include issues regarding SOGI.
3. However, these positive steps taken by the State were insufficient, and the scale of violence and discrimination towards LGBT people continued to grow. Indeed, there are still gaps on legislative level, which put LGBT and especially transgender persons in an unequal position compared to other citizens. In many cases the law is not explicitly discriminatory, but LGBT people are de facto refused the rights guaranteed by law.⁶
4. Despite positive legislative changes it is alarming how homophobic/transphobic attitudes are spreading throughout the country. A proof of this gap between legislative progress and public opinion was witnessed in 2013, when the peaceful demonstration on IDAHOT⁷ was interrupted and violently attacked by tens of thousands of counter-demonstrators, among which many priests from Georgian Orthodox Church (the most dominant religious institution in Georgia) were present.
5. We want to stress that positive legislative changes, without elaborating efficient implementation mechanisms, are insufficient, and that the gap between the *de facto* and *de jure* situation of LGBT people in Georgia is increasing.

B. Right to equality and non-discrimination [Art. 2. UDHR, Art. 26 ICCPR, Art. 14. ECHR, Art.1 of the Protocol no.12, CEDAW/C/GC/28, Yogyakarta Principles 2]

6. Norms prohibiting discrimination are included and enshrined in the Constitution⁸ and in legislation. The “Law on the Elimination of All Forms of Discrimination“, which entered into force on 7 May 2014,

² Amendment to Criminal Code of Georgia, March 27, 2012;

³ Amendment to Labor Code of Georgia, June 12, 2013;

⁴ See *Asatiani et.al v. The Minister of Labour, Health and Social Protection*, decision #2/1/536 of the Constitutional Court.

⁵ Law of Georgia on Elimination of all Forms of Discrimination, Article 1.

⁶ CM/REC(2010)5 implementation report, WISG, 2012. http://women.ge/wp-content/uploads/2013/01/CM_REC20105GEORGIA_ENG_extended-version.pdf

⁷ International Day Against Homophobia and Transphobia

⁸ Article 14 of the Constitution of Georgia prohibits discrimination on grounds such as, for instance, a person's national and ethnic origin, religion, belonging to a social group, sex, etc.

includes “sexual orientation, gender identity and expression” among grounds prohibiting discrimination.⁹

7. The Public Defender (ombudsperson) was put in charge of monitoring the implementation of the abovementioned law, in order to provide elimination of discrimination and ensure equality. A dedicated structure, the Equality Department, was formed inside the Public Defender’s Office only in November, 2014.¹⁰ This is why it is still too early to evaluate the practice of the implementation of this law, although many NGO’s were duly criticizing the government for the weak implementation mechanism embedded in the law.¹¹ Unfortunately, the government did not take into consideration the demands of NGO’s and other involved parties and did not amend the implementation mechanism to become more efficient. For instance, the Anti-discrimination law does not provide for fines (or other kind of sanctions) in case of discriminatory actions. The Public Defender’s Office can only limit itself to non-binding recommendations addressing the subjects that perpetrated discriminatory actions and at most can address Administrative court demanding the issuance of an administrative act or taking administrative action.
8. **Recommendation:**
 - The Law of Georgia on Elimination of All Forms of Discrimination should include a mechanism of fines and sanctions by the Public Defender’s Office in case of discriminatory actions.

C. The Right to Privacy [Art. 8 .ECHR , Art. 16. ICCPR, CEDAW Convention Article 1, 2, 3, 15, principle 3, 6. The Yogyakarta Principles)

Problems related to legal gender recognition

9. Legal gender recognition for a transgender person is often of vital importance. Difference in a person's gender self-perception/self-expression and an official record of gender often restricts transgender persons’ possibilities to be employed, receive education, and avoid insult and humiliation. Transgender persons living in Georgia do not have access to legal recognition of their gender without their bodily integrity being harmed. While it is true that “sex change” is mentioned in the law as one of the circumstances providing a basis for changing one’s name and last name¹², the Law does not define “sex change”. In an official letter, the State Services Development Agency stated that the legal gender could be adapted when providing a Certificate issued by a medical institution confirming the change of sex.
10. As for the gender reassignment treatment, the response letter of the Ministry of Labor, Health and Social Welfare of Georgia¹³ stated that **Georgian legislation does not regulate gender reassignment**. In general, any medical intervention is carried out only based on medical evidence, in line with a patient's health interests, by recognized professional and ethical standards, based on international evidence. Further, the response N01/35621 dated 29 April 2014 noted that any medical institution is authorized to draw up and issue a certificate on changing a sex, including medical institutions that carry out medical services/intervention related to sex change/reassignment procedures.
11. These responses make it clear that **under the pursued practice, undergoing irreversible sterilization, hormonal treatment, and preliminary surgical procedures is mandatory for a person to receive a medical “sex change” certificate allowing for their legal gender identity to be adapted.**¹⁴ Moreover, new ID cards indicate the sex, which aggravates conditions of transgender persons further, and

⁹ The Law of Georgia on the Elimination of All Forms of Discrimination, Art. 1.

¹⁰ <http://ombudsman.ge/en/news/department-of-equality.page>

¹¹ Appeal of NGOs and Religious Groups to the Government of Georgia about the Draft Law on the Elimination of all Forms of Discrimination. <http://www.civil.ge/files/files/2014/Anti-Discrimination-Statement-April%2028-2014%20-eng.pdf>

¹² this issue is regulated based on Paragraph “g” of Article 78 of the Law of Georgia “on Civil Acts”, which states that changing a sex is one of the grounds for amending a civil act record.

¹³ Response dated 27 March 2014 N01/25617.

¹⁴ Response letter of the Ministry of Justice, N. 26948, Date: 26.06.2012.

especially of those in the transition process (the procedure takes a year and a half up to two years). Often this period is longer due to financial non-affordability of services).¹⁵ Apart from personal distress, inconsistency of an official sex record with an individual's gender self-expression often serves as basis for discrimination of transgender persons in labor relations and state and private institutions, where submitting personal identification documents is required.

12. Based on the results of studies conducted by WISG and on best practices from abroad, WISG elaborated recommendations for the State on legal gender recognition. These recommendations are included in shadow reports and policy documents prepared by our organization.¹⁶ In 2014, the CEDAW Committee examined this issue and called on the state to “abolish restrictions for transgender persons to obtain identity documents”,¹⁷ based on a shadow report by WISG.¹⁸ In 2013, the Public Defender’s Office also recommended the Government to “introduce a rapid, transparent and accessible procedure for transgender persons to indicate their gender identity in all key documents ... by introducing new administrative practices based on the gender dysphoria diagnosis”.
13. Practice of legal gender recognition that includes forced sterilization, is in conflict with principles of equality and non-discrimination (*Art. 2 and 26 ICCPR; Art.2 IESCR*). In its Recommendation CM Rec 2010(5),¹⁹ the Council of Europe has set “quick, transparent and accessible” procedures as a standard for legal recognition of gender. Further, “requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements”. This position has been fully accepted by the World Health Organization, the UN Office of the High Commissioner for Human Rights, UN Women, UNICEF, UN Population Fund, etc.²⁰
14. Based on the results of a study WISG prepared a public policy document about the needs of transgender persons in Georgia, in which we included clear recommendations for the State on legal recognition of gender. Presently, our organization is working actively with the Ministry of Justice and Ministry of Labor, Health and Social Affairs, to put these recommendations into practice.
15. **Recommendations:**
 - The Ministry of Labor, Healthcare and Social Affairs should work in coordination with Ministry of Justice in order to establish fast, transparent and accessible new administrative practice allowing transgender persons to change their gender markers in all the documents issued by state and private institutions, a procedure that will be clearly separated from the process of medical transition.

¹⁵ Until recently, it was impossible to obtain a repeated higher education diploma, which would indicate a changed sex. Such practice created significant problems for transgender persons, especially in the job searching process. Pursuant to the 26 June 2012 Order (№120/n) of the Minister of Education and Science of Georgia allowed to issue a duplicate of a diploma if a person submits a document confirming the change to name and/or surname.

¹⁶ *Shadow Report on implementation of CM/Rec2010(5) in Georgia*. WISG. 2014; A joint shadow report on the protection of the right to health by WISG, ILGA-Europe, and TGEU for the European Social Charter, 2014; *Health Care Needs of Transgender persons in Georgia. Policy paper*. WISG. 2015.

¹⁷ CEDAW/C/GEO/CO/4-5. Concluding observations on the combined fourth and fifth periodic reports of Georgia. Adopted by the Committee at its fifty-eighth session (30 June – 18 July 2014): „Para. 34. The Committee is concerned about: [e] Physical violence and harassment faced by lesbian, bisexual and transsexual women and restrictions to obtain identity documents for transgender persons; Para. 35. The Committee calls upon the State party to: ... [e] Take measures to address violence and harassment of lesbian, bisexual and transsexual women and abolish restrictions for transgender persons to obtain identity documents.”

¹⁸ Natsvlshvili A., Aghdgomelashvili E., Rights of LBT Women in Georgia. Shadow Report for CEDAW. Submitted for the 58th Session. WISG. 2014. http://women.ge/wp-content/uploads/2014/06/WISG_LBT-women-in-Georgia_CEDAW-58th-session.pdf

¹⁹ CM/Rec(2010)5 Recommendation of the Committee of Ministers to member states “on measures to combat discrimination on grounds of sexual orientation or gender identity”.

²⁰ Eliminating forced, coercive and otherwise involuntary sterilization. An interagency statement. OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO. 2014. http://www.unfpa.org/rights/Eliminating_forced_sterilization.pdf

D. Right to life, liberty and security of the person [Art 3. UDHR, Article 6, 9 ICCPR, Art. 1-4, 6, General Recommendation #19 CEDAW Convention, Yogyakarta Principles 4, 5]

Violence against LGBT persons

16. **Georgian legislation does not define or criminalize hate crime as such.** However, art. 53 of the Criminal Code ensures that a bias motivated by perceived sexual orientation or gender identity of a victim may be taken into account as an aggravating circumstance when determining sanctions.²¹ As noted by WISG in its CEDAW Shadow Report and Report on implementation of CM/Rec(2010)5, crimes which in fact are motivated by hatred towards LGBT people are labelled under different provisions of the Criminal Code, such as bodily injury, hooliganism, etc. As a consequence, no official statistical data can be gathered about hate crimes in general or hate crimes against LGBT people in particular. **Data on the prevalence and nature of LGBT discrimination is not gathered or analyzed by the state.**²²
17. It is noteworthy that in 2014 the Parliament adopted a 7 years' National Human Rights Strategy and an Action Plan for 2014-2015,²³ both including SOGI issues. One chapter is dedicated to combating homophobic and transphobic discrimination and to the adoption of an Anti-Discrimination law. It mentions training for law-enforcement agencies with a focus on hate crimes, in order to enable them to identify this type of crime, collect information around it and compile statistics.
18. **Violence against LGBT people (verbal as well as psychological and physical abuse, bullying and particularly domestic violence) remains widespread in Georgia.** However, very rarely do victims report such incidents to police or NGOs, primarily because of strong reluctance towards disclosing their sexual orientation or gender identity. Moreover, LGBT people often fear that they will become victims of homophobic treatment by the authorities themselves, as has been the case on several occasions.²⁴ WISG's discrimination study shows that many victims of violence have little trust in law enforcement agencies and believes that there is no point in reporting to the police²⁵
19. The monitoring of implementation of CM/Rec(2010)5 showed that Georgia does not have efficient mechanisms nor a strategy against hate crimes towards LGBT persons. LGBT persons are not enabled to overcome fear and mistrust towards law-enforcement agencies and to report the cases of violence to the police. Police officers are taking part in general training and courses on human rights protection, but there is no specialized unit working specifically on hate crimes. This prevents the State from acting against homophobic and transphobic hate crimes and from documenting them, which in turn makes it difficult to take preventive action, necessary to eradicate hate crimes.

Statistics compiled by the NGOs WISG and Identoba:

20. A 2012 WISG Survey on discrimination of LGBT people showed that:
 - 32% of all respondents experienced physical violence. 89.93% experienced psychological violence.
 - 26.09% of victims of physical violence reported to the police (12 respondents), while 73% of

²¹ Criminal Code of Georgia – Art.53(3¹)

²² WISG requested from the ministry of internal affairs and prosecutor's office of Georgia to provide information regarding the investigations that started on the ground of Article 53 (3) of CCG. The response received from the Ministry of Internal Affairs (#2293989, 13.11.2014) indicates that "For the period of 19 April 2012 to August 2014 ...Department of Information and Analysis does not possess any information regarding the cases concerning article 53 (3) of CCG that are at the investigation stage or in the court" (#13/11028, 24.02.2015)

²³ Chapter 14 on Gender equality.

²⁴ *Shadow Report on implementation of CM/Rec2010(5) in Georgia.* WISG. 2012;

²⁵ Aghdgomelashvili E., Gvianishvili N., Todua T, Ratiani T., Needs of Transgender Persons in Healthcare. p.10. WISG. 2015. <http://women.ge/wp-content/uploads/2015/03/TRANSHEALTHpolicypapereng.pdf>

all victims (34 respondents) did not.²⁶

- Out of those who did seek help from police, 46.15% regretted doing so because police reacted in non-friendly and homophobic manner. 30% individuals were received well and 23.08% persons said they were treated in a neutral manner.
21. A survey conducted in 2013 by the NGO “Identoba”, showed that GBT men living in Georgia were very often victims of violence. According to the survey, 48 respondents out of 109 replied positively to the question “have you been victim of physical violence because of your sexual orientation or gender identity”; among them, 36 never reported to the police.²⁷
22. A 2015 WISG Study on needs of LGB persons in healthcare even showed that the frequency of violence is increasing, compared to the results of the 2012 Survey.²⁸ Moreover, the number of LB women who faced physical violence three or more times was higher than their male counterparts (36% LB women, 22% GB men). Out of those who became victim of physical violence in the past 2 years, only 30% addressed the police, in case of psychological violence only 4.4% notified the police.
23. **Recommendations:**
- To ensure efficient and timely reaction to cases of homophobic or transphobic hate crimes.
 - To take all necessary measures for the efficient implementation of codes of conduct of police officers and other state officials in order to prevent homophobic/transphobic treatment of LGBT persons, including administrative and criminal sanctions for those who violate the code of conduct or relevant legal norms.
 - To include SOGI issues in the training of police officers and judges, in order to enable them to identify homophobic and transphobic hate crimes and adequately assist the victims;
 - To create a specialized police unit investigating hate crimes and closely collaborating with LGBT organizations and community members, in order to establish a trust-based relationship.

E. Right to employment [Art 6. ICESCR, Art. 11, 13, 16 [1], [h] CEDAW Convention, Yogyakarta Principles, 12]

24. The Labour Code expressly prohibits discrimination based on sexual orientation and gender, but does not include gender identity.²⁹ Until 2013, serious gaps remained, particularly at the stage of hiring and dismissing a person. This gap was remedied thanks to a recent amendment.³⁰ Nevertheless, the **legislation still contains flaws and lacks implementation mechanisms**. Some community members recalled that they were not employed or were fired because of their orientation or gender identity. Transgender persons are especially vulnerable in labor relations. Due to the actual practice of legal gender recognition, the majority of transgender persons do not have identification documents that are in line with their gender expression. Because of this they try to find unofficial employment and often have to agree to bad working conditions and remuneration. Many transgender persons (especially transgender women) may become involved in commercial sex work, which makes them even more vulnerable to violence.³¹
25. **Recommendation:**

²⁶ Reasons for not reporting (physical violence) were: police acts ineffectively – 21,62%, was afraid of homophobic reaction – 29,73%, didn’t find it serious – 27,03%, other – 21.62%. Situation of LGBT persons in Georgia, p 83. WISG. Tbilisi. 2012. http://women.ge/wp-content/uploads/2012/12/WISG_situation-of-lgbt-persons-in-Georgia_ENG-www.pdf

²⁷ Social being of Gay, bisexual and transgender men. Identity; 2013

²⁸ Aghdgomelashvili E., Study on LGB Needs in the Healthcare Sector, technical report, WISG, 2014

²⁹ The Labor Code of Georgia. Article2(3).

³⁰ 12 June 2013 amendments to the Labor Code (729-IIs).

³¹ Gvianishvili N, Situation of Transgender Persons in Georgia, WISG, Tbilisi, 2014. http://women.ge/wp-content/uploads/2015/02/Transgender_survey-to-send.pdf

- To close remaining gaps in protection against discrimination of LGBT persons in the field of employment and to provide for effective implementation mechanisms in legislation.

F. Right to education [Art. 26 UDHR, Art. 13 ICESCR, Art. 10 CEDAW Convention, Yogyakarta Principles, 16]

26. In Georgia, discrimination is prohibited in the field of education and equal access to education is recognized by law both in primary as well as secondary and higher education. Law on General Education confirms the right of citizens to receive the education (Article 9), as well as the ‘equal access for all’ (Article 3.2.A).³² The law on Higher Education also makes obligatory the equal treatment at the institutions of higher education, regardless of ethnic origin, sex, social belonging, political or religious opinion and other grounds.³³
27. According to the National Education Objectives Document, education aims to forge mutual respect and understanding in today’s dynamic and ethnically and culturally diverse world and aims to develop human rights protection and skills among young people.³⁴ However the practice does not always correspond with this objective and with the law. **Bullying in general and especially towards LGBT youth at school remains a problem in Georgia.** Attitudes towards LGBT persons and issues at schools and universities echo general societal patterns and are under strong influence from traditional stigmas, taboo and values promoted by the Church.³⁵
28. According to a large scale study conducted in 2013 showed that:³⁶
 - 81.5% of respondents agreed that “everybody is free and equal despite their sexual orientation”
 - However, 74,9% of teachers agreed that “People of different sexual orientation create danger to the country and public”.
 - 47% thought that “different sexual orientation should be punished by law”.
29. Another study, aimed at exploring teachers’ attitudes and knowledge regarding gender equality, showed that their awareness of LGBT issues is extremely low. They believe that hatred and violence towards “this kind of people” is unacceptable because homosexuality is “an abnormality, a deviation” and it is not acceptable to “oppress those who are sick”. At the same time, the study revealed that teachers do not see the marginalization and isolation that LGBT teens face in school as bullying or violence.³⁷
30. Considering the abovementioned attitudes from the teachers, it is not surprising that according to the study conducted by WISG in 2014, the groups that LGBT community trusts the least are teachers and professors (11%).³⁸ In another study, all the participants in the age group 16-18 indicated to have experienced bullying at school.³⁹
31. **No special programs (awareness, psychological counseling, etc) are run at schools or in higher education institution to meet the needs of LGBT pupils.**

³² The Law of Georgia on General Education. – art. 13(3)

³³ The Law of Georgia on High Education.art. 16(1)d

³⁴ Adopted by Georgian Government’s Decree N84 from October 18, 2004

³⁵ Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity. Sociological Report: Georgia, COWI.2010. para.67.

³⁶ Tabatadze S., Gorgadze N. Intercultural education research in primary grades of Georgia. Research Report.CCIIR. Tbilisi.2013.

http://cciir.ge/upload/editor/file/jurnali%20%20bilingvuri%20/politikis%20dokumentebi%20/geo/axali/PUB2_ENG_PRINT_edited_new_table%20final_10_01_2014.pdf

³⁷ Gvianishvili N., Exploring knowledge and attitude of teachers towards gender equality, TRG, 2013

³⁸ Aghdgomelashvili E., Needs of LGBT people in Health Care. Technical analysis. WISG 2015.

³⁹ Situation of LGBT persons in Georgia, p.74. WISG. Tbilisi. 2012. http://women.ge/wp-content/uploads/2012/12/WISG_situation-of-lgbt-persons-in-Georgia_ENG-www.pdf

32. State reports say that school text books are free from stereotypes, but this is highly debated. In any case, it would not suffice that text books are not discriminatory, but they must actively promote tolerance and non-discrimination with regard to SOGI.⁴⁰

33. **Recommendations:**

- The Ministry of Education, in cooperation with relevant state agencies and civil society, must introduce programmes to ensure a truly inclusive educational system and to overcome bullying in schools, by including topics like SOGI in school curricula and by organising training programmes for educational staff, counselling of LGBT pupils, etc.
- The Ministry of Education must examine, in cooperation with civil society and particularly LGBT organizations, whether textbooks promote tolerance or whether they incite to homophobia

G. Right to health [Art.25. UDHR, Art.12(1) ICESCR, CESCR’s General Comment #14, 20, Art.12, 11[f] General Recommendation #19, #24 CEDAW Convention, Yogyakarta Principles, 17, 18]

General health care legislation and policies

34. Sexual orientation as the basis for prohibiting discrimination is found also in the Law of Georgia on Health Care.⁴¹ The Law of Georgia “on the Rights of Patient” also prohibits discrimination of patients on any grounds.⁴² Principles of non-discrimination are also outlined in the ethics standards that regulate the healthcare field.⁴³
35. The right to receive quality medical services is regulated in Georgia at legislative level⁴⁴ as well as by ethical and medical standards in effect in the country. The law⁴⁵ provides for the state’s prevailing role on the control of quality of medical services. Quality control mechanisms include licensing of a medical institution as well as certification system of physicians and development of national clinical practice manuals.⁴⁶
36. Until very recently, a ban on blood donation by certain categories of individuals, including homosexuals, alcohol-addicts, sex-workers, etc. was in force. Such a ban was inconsistent with the principles of equality and human dignity, and the Constitutional Court of Georgia ruled in February 2014 that this ban was unconstitutional.⁴⁷
37. Despite legal improvements, studies conducted by WISG in 2014 show that significant protection gaps the field of healthcare remain, both in terms of legal regulations and practice. These shortcomings place LGBT people in an unequal position and can amount to human rights violations. **Moreover, State action plans, strategies and research do not take into consideration any specific needs of LGBT people, especially of transgender persons.**⁴⁸ There are no suicide prevention programmes in Georgia. LGBT patients do not have the right to freely designate “next of kin” as the legislation gives an exhaustive and limited list of who can be regarded as such.
38. Working with children and juveniles entails a number of significant problems. One cannot work with LGBT children without involvement or permission of their parents. Sexologists/psychologist usually have the right to work with adults, but not children, so this issue who is authorized to work with

40Materials for preparation of CEDAW shadow report concerning LBT women’s situation in Georgia. WISG. 2012.

41 Article 6, Paragraph 1.

42“The Law of Georgia “on the Rights of Patient”, Article 6.

43 Physician's Code of Ethics of Georgia: Chapt. “Physician and Patient”, Para. 2.; Physician's Professional Rules of Activity, Chapt. 2.1.1

44 The Law “on the Rights of Patient”, Article 5.

45 The Law of Georgia “on Health Care”, Article 63.

46 The Law “on Health Care”, Article 16, Paragraph “b”.

47 See *Asatiani et.al v. The Minister of Labour, Health and Social Protection*, decision #2/1/536 of the Constitutional Court.

48 http://www.healthrights.ge/wp-content/uploads/2012/05/jandacva_Eng.pdf

them in this field needs to be regulated.⁴⁹

39. Due to the high levels of homophobia and transphobia (see above), transgender persons face high risks of homelessness and poverty and suffer from the absence of medical guidelines on trans-specific health services. Gender reassignment treatment is highly expensive and a low awareness of medical personnel on SOGI prevents LGBT people from receiving adequate healthcare.

Attitudes and knowledge of medical personnel

40. WISG studies showed that the majority of LGBT respondents have not felt discrimination and negative attitude from physicians. However, the fact **that a majority of respondents avoids visiting doctors** sheds a very different light hereon.⁵⁰ Particularly lesbian and bisexual women and transgender persons avoid regular medical examination. Despite the high level of depression and suicide attempts in this group,⁵¹ only 31% of the interviewees have addressed a psychologist in the past 2 years. In case of depression, anxiety or feeling low members of LGB community choose different strategies to cope with the problem. Only 7% named talking to a mental health specialist as one of these strategies.
41. A majority of healthcare service providers believes that generally, **most physicians are negatively disposed towards transgender and LGB persons**.⁵² Respondents reporting about negative attitude of other medical personnel stressed that this is mostly linked with gaps within the education system, lack of knowledge, and non-awareness. Indeed, a WISG survey has shown⁵³ that **healthcare workers have a quite vague or non-existent knowledge about sexual orientation and gender identity**. Lack of awareness among medical personnel on trans-specific issues and needs is one of the significant factors affecting the highest attainable standard of health for transgender, intersexual and gender non-conformist persons.
42. **Currently available textbooks and methodology are not consistent with contemporary standards** either and do not reflect clinical experience accumulated in recent years or study results and the best medical practices.

Legislation and health care regarding transgender persons

43. The certification and re-certification system of physicians is suspended in recent years. As for clinical guidelines, **although trans-specific medical services are available in Georgia, a clinical guideline still does not exist**, which would describe transition-related diagnostic and treatment measures.⁵⁴
44. Currently, **transgenderism is fully medicalized and pathologized** in Georgia and does not cover a wide spectrum of transgenderism. It is believed that every single transgender person eventually aims to undergo a sex reassignment surgery, which is inconsistent with results in other countries. Classification of transgender identities under mental illnesses means that transgender persons should be subject to psychiatric evaluation in order to obtain access to the desired hormone and surgical treatment. The situation of transgender persons living in Georgia is even more problematic, since pathologization and further medical procedures (including gender reassignment surgery) are a necessary precondition for legal gender recognition.
45. Georgian legislation neither prohibits gender reassignment surgery, nor regulates it. This gives

⁴⁹ Materials for preparation of CEDAW shadow report concerning LBT women's situation in Georgia. WISG. 2012.

⁵⁰ Numerous studies establish that marginalization, stigma and the stress of minorities, along with other factors, have a significant impact on the general health condition and well-being of LGBT persons, as well as on the use of healthcare services.

⁵¹ 44% of the interviewed LGB persons have considered suicide in the past 2 years, 7% have attempted suicide, 11% took an overdose, 16% have engaged in different self-harm behaviors (for example: cutting). Aghdgomelashvili E., Study on LGB Needs in the Healthcare. technical report, WISG, 2014.

⁵² ibid

⁵³ Ibid.

⁵⁴ ibid

absolute discretion to medical institutions when deciding who is eligible for the gender reassignment surgery and on procedures applicable to the entire reassignment process. Such a gap can result in arbitrariness, lack of consistency and create obstacles for people willing to undergo the procedure.

46. Gender reassignment treatment for transgender persons, despite their high social importance, are not included in any legal act. Given the poverty and unemployment level in Georgia, **many cannot afford costs required for gender reassignment treatment.**⁵⁵ Taking into account that the majority of transgender persons encounter serious problems in the process of employment due to inconsistent gender records in their identity documents (which, based on the current practice, foresees undertaking a full transition process) and often have to agree to low-paid and unqualified jobs, procedures required for transition remain as financially non-affordable for them. Hence, escaping from this somewhat vicious circle is difficult without relevant regulations or special measures taken by the State.
47. **Recommendations:**
- The Ministry of Labor, Health and Social Affairs should coordinate its work with Ministry of Education in order to provide revision of medical textbooks containing stigmatizing and discriminatory definitions and terminology;
 - To include basic information on SOGI in the qualification, requalification or certification programs and in curricula for personnel working in the healthcare sector.
 - To regulate a medical transition process in a way that transgender persons have effective access to medical services of universally recognized international standards and to have public healthcare cover these costs.
 - To adapt and introduce international clinical guideline focused on the needs of transgender, transsexual, and gender non-conforming persons for securing transgender persons' access to quality healthcare;
 - To examine social needs of LGBT people (especially transgender persons) and reflect them adequately in State plans and healthcare strategies.

H. Right to freedom of expression, association and peaceful assembly [art.20. UDHR, art.21. ICCPR, art. 10 and 11. ECHR, Yogyakarta Principles 20]

48. The right to freedom of expression and assembly is guaranteed by the Constitution⁵⁶ and is protected by different international instruments.⁵⁷ The State has a positive obligation of providing favorable conditions for peaceful demonstrations. Offenses perpetrated against such peaceful demonstrations demand a prompt and adequate reaction.
49. High levels of homophobia and transphobia remain a significant obstacle for LGBT persons to enjoy their right to freedom of expression and assembly. Peaceful rallies on the International Day against Homophobia and Transphobia on May 17 2012 and 2013 were both interrupted. In the first case the **LGBT activists were violently attacked** by several groups of religious extremists, while the second demonstration in 2013 was violently disrupted by a massive counter-demonstration of thousands during which also Georgian Orthodox clerics played an active role. The readiness of the police forces was insufficient and they did not manage to contain the angry mob of counter-demonstrators.⁵⁸
50. These brutal attacks received **differing responses from politicians.** While some of the politicians

⁵⁵ Under various data and calculations, the cost of a full transition process ranges between 12 000 to 20 000 USD.

⁵⁶ Constitution of Georgia, Article 25.

⁵⁷ ECHR, Article 11; ICCPR, Article 25;

⁵⁸ Hammarberg T., Georgia in Transition.

http://eeas.europa.eu/delegations/georgia/documents/virtual_library/cooperation_sectors/georgia_in_transition-hammarberg.pdf

officially condemned the violence,⁵⁹ others contributed to spreading openly homophobic statements, blaming the organizers of the demonstration in “provoking” the violence.⁶⁰

51. On July 23, 2013 **the Human Rights and Civil Integration Committee of the Parliament** issued a statement on the events that had taken place on May 17. It expressly condemned what happened and denounced “the violations of physical integrity that have taken place during the demonstration held on May 17”. However, the Committee disagreed with the critical statement of NGOs **and of the Public Defender’s Office** regarding the measures taken by the State.⁶¹ The Committee claimed that *“the Ministry of Internal Affairs has expressed the maximum effort and responsibility, which made it possible to avoid the probable victims.”*⁶²
52. Inefficient measures to respond and stop the perpetrated violence and punish the perpetrators, caused increased hate crimes towards different marginalized groups in the following period. According to official information, 28 persons were injured during the attack on peaceful IDAHOT demonstration on May 17, 2013. In the days following May 17, WISG as well as Identoba documented increased violent attacks on members of LGBT community.
53. The negative experience of May 17, 2013 made it impossible to celebrate IDAHOT in 2014. The Georgian Orthodox Church declared May 17, the day of traditional family and arranged a massive march in the centre of the city. During this march the participants were demanding (and gathering signatures) to remove sexual orientation and gender identity from the Law on Elimination of All Forms of Discrimination.⁶³ The State did not conduct a thorough and efficient investigation regarding the attacks took place on May 17, 2012 and 2013 and did not punish the perpetrators.⁶⁴ The trial is currently ongoing.
54. **Recommendations**
 - The state should without further delay and efficiently investigate the events that have taken place on May 17 2012, 2013 and hate crimes that took place shortly after.
 - To ensure training of police officers so that they have the capacity to protect participants of peaceful LGBT rights’ rallies and efficiently prevent the attempts to unlawfully disrupt such assemblies.
 - The State needs to pay more attention to actions regarding prevention of violence.
 - To elaborate a plan for raising awareness of police officers on LGBT issues in order to ensure that police officers protect and act respectfully towards LGBT persons and their supporters during similar demonstrations.
 - State officials should publicly condemn cases of unlawful interference with peaceful demonstrations and violation of freedom of assembly and manifestation, in order to avoid sense of impunity and further discrimination of LGBT persons.

⁵⁹ Former PM Bidzina Ivanishvili: “The right to gather peacefully and to freely express one's opinion is fundamental to our democracy. Every Georgian citizen benefits fully and equally from this right. Acts of violence, discrimination and restriction of the rights of others will not be tolerated, and any perpetrators of such acts will be dealt with according to the law.” Ivanishvili Condemns Violence. Civil Georgia. 2013.05.17.;

⁶⁰ Homophobic statements by Parliamentarian Majority. Netgazeti.2013.05.17. ; David Saganelidze, Georgian Dream: “I am a man raised according to traditions. I have my own life and I do not interfere with other peoples’ lives. I know that everybody has the right of expression, but, on the other hand, the violence originating from such organizations, when they are trying to impose their way of life on the whole society, is also not acceptable.” (Rustavi 2, Kurieri, May 17, 2013)

⁶¹ <http://gdi.ge/en/news/a-statement-of-ngos-in-connection-with-the-events-of-may-17.page>

⁶² The Committee also offers a recommendation to the MIA: “According to the OSCE Guidelines on Freedom of Peaceful Assembly, the representatives of the law enforcement bodies, that are responsible for upholding order during manifestations, should possess the technique of managing the assemblies as well as the so called “soft” skills. Netgazeti. 23.07.2014.

⁶³ <http://dfwatch.net/30000-conservatives-demand-anti-discrimination-law-changed-52543-29261>

⁶⁴ <http://emc.org.ge/2015/01/26/ertoblivi-media-ngo/>