

REPORT ON THE MONITORING OF THE IMPLEMENTATION OF HUMAN RIGHTS STRATEGIES AND ACTION PLANS FOR 2016-2017



LGBTI RIGHTS

FREEDOM OF SPEECH

FREEDOM OF ASSEMBLY AND ASSOCIATION

PROTECTION OF RELIGIOUS MINORITIES





LGBTI Rights Freedom of Speech Freedom of Assembly and Association 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.

Authors: LGBTI persons' rights - Women's Initiative Supporting Group (WISG)

Freedom of speech - Georgian Young Lawyers' Association (GYLA)

Freedom of assembly and association - Georgian Young Lawyers' Association (GYLA)

Religious minorities – Human Rights Education and Monitoring Center (EMC)



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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.

LGBTI Rights

Executive Summary

The present report aims to assess the measures proposed by the 2016-2017 Human Rights Action Plan of the Georgian Government to improve the human rights status of lesbian, gay, bisexual, transgender and intersex persons. The report will look at the situation of LGBTI persons in the country, as well as recommendations put forth by international and local organizations and how these recommendations were reflected in the Action Plan.

The 2016-2017 Human Rights Action Plan of the Georgian Government sets extremely few goals, objectives and actions to improve the human rights situation of lesbian, gay, bisexual, transgender and intersex persons. Given that LGBTI persons constitute a particularly marginalized community in the country, the few issues that the Action Plan refers to cannot effectively tackle the systemic problems facing the LGBTI community. By and large, the activities and indicators listed in specific chapters do not fully correspond to the goal and objective of the Plan. The indicators and activities are often superficial and inadequate to achieve the goal they are meant to serve. For example, only one activity – developing training modules and retraining personnel – is listed in the Action Plan under the objective to take effective measures to ensure access to healthcare for vulnerable groups. Although this activity - if fully implemented – can contribute to the objective, it is obvious that the latter cannot be attained through this activity alone. Furthermore, the indicator set for this activity is purely nominal and while it envisages the development of a module and retraining personnel, it fails to set a criterion which would determine whether the retrained personnel apply the new information in their work, and, consequently, whether and how the activity contributes to the objective.

Given that the Action Plan does not have a dedicated chapter to explore the issue in question but rather touches upon it throughout, it is imperative that the needs of LGBTI persons are considered for each activity, as in a number of cases, the set objective cannot be fully accomplished unless the activities also cover the LGBTI group. In frequent cases, the goal and the objective includes the rights of LGBTI persons, but the content and/or the practical implementation of the activities do not provide for the goal and objective to be realized for these persons. This is precisely the case with the objective related to the professional development of teachers for the implementation of rights-focused activities in schools, the promotion of mutual respect and the protection of students' rights. Although the activities under this objective envisaged training sessions on children' rights and bullying, the fact that the actual training focused solely on cyberbullying and neglected homophobic and transphobic bullying, indicates that conditions for LGBTI students in schools have largely remained unchanged . Consequently, it can be argued that the activity has failed to achieve the set objective for this group.

Apart from this, there are a number of other major challenges that the Action Plan has omitted. These include: Legal gender recognition, regulation of trans-specific healthcare procedures and medical procedures for “sex normalization” in intersex children, recognition of harassment as a form of discrimination, regulation of conditions for MSM prisoners, the right of LGBTI persons to extended family visitation in penitentiary institutions, etc. Ultimately, the main concern of the Action Plan with

respect to the LGBTI community appears to be its failure to consider the very issues necessary for and critical to the protection of the rights of these persons.

Several problems have been identified pertaining to the activities outlined in the Action Plan, one of them being that the activities largely entail training persons who come into contact with the LGBTI community as part of their work, but – as mentioned above - these activities do not involve result analysis or monitoring the extent to which the retraining of relevant personnel contributes to the objectives set for the training and education programs. In addition, the training material covers few, if any, issues geared towards the improvement of the human rights situation for LGBTI persons.

General Assessment

The present report overviews the human rights of LGBTI persons in Georgia, the recommendations offered by international and local organizations and the degree to which these recommendations are reflected in the Action Plan. Currently, on a daily basis, LGBTI persons face a multitude of problems in terms of discrimination, hate crime, health-specific needs, and the absence of a range of legal norms depriving them of due legal remedies. In 2014-2015, the Committee overseeing the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the European Commission against Racism and Intolerance (ECRI) and various countries as part of their universal periodic reviews issued multiple recommendations to the Georgian government with respect to the elimination of discrimination on the grounds of sexual orientation and gender identity (SOGI). The recommendations have yet to be reflected in the Action Plan. As the Action Plan does not have a dedicated chapter on improving the rights of LGBTI persons, the present report will analyse the objectives which are presented in various chapters and are directly linked to the rights of LGBTI persons. The report will focus separately on the issues that are relevant for the LGBTI community but were not considered in the 2016-2017 Action Plan.

In the process of monitoring the implementation of the Action Plan, a number of meetings were conducted with the Human Rights Secretariat of the Georgian Government Administration (hereinafter referred to as the Secretariat) and various government agencies. Regrettably, the Action Plan fails to reflect the majority of recommendations offered by the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation and gender identity¹. Besides, although the chapter on gender equality and women's empowerment sets separate goals and objectives to tackle discrimination on grounds of sexual orientation and gender identity, the activities listed under these objectives appear identical to those outlined in the 2014-2015 Action Plan, while no other key issues have been identified and included, such as legal gender recognition, regulation of trans-specific healthcare procedures and medical procedures for “sex normalization” in intersex children, recognition of harassment as a form of discrimination, regulation of the conditions for MSM prisoners, the right of LGBTI persons to extended family visits in penitentiary institutions etc.

The above is critical to the provision of the rights of LGBTI persons, and the Action Plan falls short of these requirements. Despite the fact that in its recommendations issued in July 2014, the CEDAW

¹ http://women.ge/data/docs/publications/CM_REC20105GEORGIA_ENG_extended-version.pdf

Committee called upon the government to take measures in response to the violence and harassment perpetrated against lesbian, bisexual and Trans women, and abolish restrictions for transgender persons in obtaining identity documents, the Action Plan for 2016-17, like the 2014-15 document, failed to put legal gender recognition on the agenda. Nowadays, changing a person's sex marker in their ID is one of the key challenges for transgender persons. As a result, transgender persons in Georgia remain victim to "forced outing" which often becomes grounds for transphobic hate crime and/or discriminatory treatment. Tackling this issue requires developing completely new regulations as Georgian law does not provide grounds for legal gender recognition. Under a procedure approved by the Justice Ministry, in order to change their sex marker, a person is required to undergo costly and frequently undesirable medical sex reassignment procedures, which in many cases also involves irreversible sterilization. It is imperative that a mechanism for legal gender recognition is developed to decouple medical sex reassignment procedures from the legal process of changing the sex marker in identity documents. The right to name and sex change should be guaranteed without subjecting persons to medical/surgical intervention, as this type of coercion violates the standards established by the Council of Europe.²

The Action Plan also has no reference to the regulation of trans-specific healthcare procedures. Article 9 of Georgian Law on Gender Equality stipulates equal access to health care without discrimination. According to part 2 of the same Article, procedures carried out with consideration to gender characteristics are not considered discrimination. The Law on Health Care does not recognize the specific medical needs of transgender persons. The Ministry of Labour, Health and Social Affairs does not have clinical guidelines and protocol for the care of transgender persons.³ Accordingly, trans-specific medical procedures are not covered by the universal state healthcare program. As a result, the medical and rehabilitation needs of transgender persons are completely neglected and these persons are denied access to quality medical services, let alone receive them free of charge.

Another issue is that there are no regulations which are in line with international standards as regards to medical procedures for "sex normalization" in intersex children. Intersex persons face multiple challenges related both to legal regulations and medical procedures. It is imperative that legal and medical personnel are better informed about the fundamental rights and needs of intersex persons, especially intersex children, and states strive to avoid cases of "sex normalization" in intersex persons without the latter's consent.⁴ No study has been conducted in Georgia which would examine the medical needs of intersex children and would assess against international standards "sex normalization" surgeries intersex persons are subjected to in infancy or at later stages. In order to guarantee the rights of intersex children, their medical needs should be studied and relevant guidelines be developed for various medical personnel. This is important in order to avoid unnecessary surgeries or other procedures performed with the purpose of placing children within the gender binary. In addition, persons who come into contact with intersex persons as part of their work require special training. Developing such regulations is a means to combat discrimination against intersex persons and provide them with necessary services.

² General Comment No. 14 The Right to the Highest Attainable Standard of Health, paragraph 8

³ CEDAW/C/GEO/CO/4-5, Concluding observations on the combined fourth and fifth periodic reports of Georgia, 24 July 2014

⁴ FRA, The fundamental rights situation of intersex people, 04/2015

Yet another issue not covered in the Action Plan is the need to recognize harassment as a form of discrimination. Although Georgia has adopted the Law on the “Elimination of All Forms of Discrimination”, which is indeed a step forward, the legislation is not all-encompassing and fails to regulate harassment as a form of discrimination. The absence of this definition is especially problematic for LGBTI persons as they often fall victim to such discrimination. In a number of European countries, harassment has been recognized as a form of discrimination and is listed separately in anti-discrimination legislation. We believe it is necessary for the Georgian anti-discrimination law to also define harassment as a form of discrimination. The LGBTI community is one of the most vulnerable groups whose members face discrimination in almost all spheres of social life, and although the anti-discrimination Law formally bans all forms of discrimination, it should nevertheless contain a clearly defined legal norm pertaining to harassment based on which victims of discrimination could restore their rights. This would also simplify court processing. Given that the courts still have little experience in this matter, it is vital that the Law define all forms of discrimination and thus establish the unambiguous position of the lawmakers. In cases where provisions pertaining to other types of discrimination fail to guarantee the protection of LGBTI persons, such regulations will ensure that these cases do not remain without response. In addition to the above, the special chapters of the Action Plan do not cover essential issues such as the absence of regulations for MSM prisoners (men who have sex with men) in the penitentiary system.

Chapter 1

(See detailed analysis of the chapter in the report on Criminal Justice prepared by the Georgian Democracy Initiative)

Goal 1.1. *Review the Criminal Code in order to align it with international human rights standards*

Objective 1.1.4. *Improve human rights protection in criminal justice by enhancing the authority of judges*

Activity 1.1.4.1. *Retrain judges and develop a series of modules to ensure greater effectiveness and fairness in hate crime hearings*

Indicator: *Mandatory module developed (2016); Number of training sessions delivered and number of judges retrained (2017);*

According to information provided by the High School of Justice⁵, a training curriculum on hate-motivated crimes was developed and one training session was conducted on 20 June 2017. According to High School of Justice representatives, the training module explores the peculiarities of hearings on crimes against LGBTI persons. However, the School has refused to make the syllabus of the curriculum public, citing copyright protection. Since it is not known what portion of the module pertains to LGBTI persons and how much time is allocated to this subject, the effectiveness of the module is impossible to assess. The insufficient number of training sessions and low rate of participation should also be subject to criticism. In order to ensure the effectiveness of hate crime hearings and enhance the degree of impartiality, the High School of Justice should ensure the training of criminal court judges. In the given case, the project failed to include judges altogether.

⁵ Letter N02/1663. Thirteen judges representing the Tbilisi Court of Appeals, the Rustavi City Court, and the district courts of Telavi, Akhaltsikhe, Zestaponi, and Gurjaani were trained. The training took up to 15 hours.

Training judges in hate crime litigation alone cannot improve the quality of hearings on crimes motivated by homophobic and transphobic hate. Given that deep-rooted stigma towards LGBTI people, it is important to address personal prejudices and stereotypes harboured by judges and raise their sensitivity. Georgia should also be guided by a UPR recommendation urging judges, along with other professionals, to be sensitized in terms of sexual orientation and gender identity (SOGI) issues. According to the High School of Justice, judges are not obliged to take part in specialized trainings; nevertheless, considering that these training sessions provide one of the best means to attain the given objective, the School needs to find ways to ensure that such trainings are prioritized/recommended for all judges.

Goal 2.3. Improve the quality of independence, effectiveness, impartiality and professionalism of the justice system

Objective 2.3.3. Increase substantiation and publicity of and access to court rulings

Activity 2.3.3.2. Develop methodologies, criteria and standards for substantiating court rulings

Indicator: Methodology and criteria developed

With regard to substantiation of court rulings, focus should indubitably be placed on hate crime court decisions. Such crimes are most widespread with regard to LGBTI persons. Evidently, the application of Article 53¹ of the Criminal Code of Georgia (hate motive as an aggravating circumstance) in practice has been problematic. Ascertaining and proving hate motive remains one of the key challenges to improving substantiation of court rulings.

According to information provided by the High Council of Justice of Georgia, workshops were conducted to discuss methodologies, criteria and standards for substantiating court rulings on civil and administrative cases. However, recommendations on the standards and criteria for court rulings are yet to be developed.

The interim report of the Human Rights Secretariat contains similar information. It is indeed commendable that consultations and discussions with international organizations on the matter are ongoing. Yet, Activity 2.3.3.2. under the Action Plan was not implemented in 2017.

The objective set by the Action Plan was to increase the substantiation of court rulings in general, rather than court decisions taken by the collegiums on civil and administrative affairs. Consequently, it is imperative that recommendations also be developed with regard to criminal cases. Furthermore, this activity alone cannot help attain the relevant objective unless it is accompanied by an analysis of court rulings. Succinctly, recommendations cannot improve substantiation unless they are applied in practice.

Given the above, in order to fulfil the goal, methodology development should be followed by a comparative analysis of court rulings and an assessment of the extent to which the developed standards have been applied in the substantiation of court rulings.

Chapter IV - Human Rights Protection in the Penitentiary System

(See detailed analysis of the chapter in the report on Human Rights Protection in the Justice System prepared by the Georgian Democracy Initiative)

Goal 4.1. Develop a penitentiary system aligned with international standards

In order to achieve the above goal, it is imperative that, in cooperation with LGBTI rights organizations, a policy document or a long-term strategy (e.g. for a period of six years) be developed, aiming to eliminate discriminating attitudes and practices at penitentiary institutions, improve the knowledge and sensitivity regarding prisoner-related issues among penitentiary staff, ensure the regular provision of means for protected sexual intercourse (condoms, lubricants) to MSM prisoners, raise awareness among MSM inmates on HIV issues and support their re-socialization.

Despite the chapter being of special significance to LGBTI persons and MSM, it has largely failed to consider the needs of these groups. In order to determine the human rights situation of LGBTI persons, it is significant to monitor the number of LGBTI inmates in penitentiary institutions and the conditions they are in. Statistical data available at the Ministry of Corrections furnish only a simple disaggregation - by sex (women/men), age (adult/minor) and by month, and do not render a comprehensive picture by presenting prisoner breakdown by identity, orientation or any other sign.

The Public Defender and NGOs have been vocal about an informal segregation of prisoners in Georgian penitentiary institutions, and more than one study has confirmed the existence of so-called “henhouses”⁶. A civil society organization, Identoba, defined “henhouse” in its 2013 study as an informal name for prison cells or barracks holding a certain group of inmates. Reason for being assigned to the group may be as follows: an inmate’s sexual orientation or gender identity, either true or presumed, or the type of crime for which a prisoner is serving their term. It is obvious that the Ministry of Corrections is well aware of this practice but has not developed a policy to eliminate this flagrant practice.

The issue of MSM prisoners’ access to confidential complaints is also unclear, and cannot be identified in the information provided by the Ministry.

The Action Plan fails to outline access of LGBTI persons to extended family visitation in penitentiary institutions. Although nowadays LGBTI prisoners have the right to short and video visitation, they and their partners are subjected to severe distress as they are denied the right to extended family visits. Given that Georgian law does not recognize same-sex marriage and/or partnerships, LGBTI persons cannot exercise the right to family extended visitation with their partners, and there are no legal measures available to secure this right.

Goal 4.5. Improve medical services for convicted/accused persons

⁶See:

https://emcrights.files.wordpress.com/2014/01/e18393e18390e183a1e18399e18395e1839ce18390_e1839be183a1e1839b_e1839ee18390e183a2e18398e1839be18390e183a0e18397e18390_e183a1e18390.pdf

Objective 4.5.6. *Take effective measures to improve access of vulnerable groups to healthcare*

Activity 4.5.6.1. *Develop and upgrade/improve relevant training programs in cooperation with competent international and local organizations/agencies; Include topics related to vulnerable groups in all core education programs running at the Penitentiary and Probation Training Center. Train/retrain healthcare personnel on the provision of adequate medical service to individuals with special needs based on international recommendations and the national legal framework in order to ensure the protection of the right to health without discrimination of any kind.*

Indicator: *Number of prepared and upgraded programs; Number of trainings delivered; Number of sessions on relevant topics in the core programmes; Number of trained staff.*

According to information provided by the Penitentiary and Probation Training Center under the Ministry of Corrections,⁷ in 2016, a long-term program was developed for training medical personnel in the penitentiary system. The syllabus aims to provide modern approaches and improve the personnel's existing knowledge on the specifics of the treatment of special categories of convicted/accused prisoners (including LGBTI persons) and familiarize trainees with national legislation and international standards. Besides, as per communication from the Training Center⁸, the syllabus for the training of newly recruited medical personnel is currently being updated, and training sessions using the updated syllabus are scheduled to commence as of the second quarter of 2018.

No specific topics pertaining to the rights, treatment and needs of LGBTI persons can be found in the materials provided by the Training Center, except for the Yogyakarta Principles. Nor does the interim report of the Human Rights Secretariat provide comprehensive information as to the specific topics related to LGBTI persons encompassed by the training course at the Penitentiary and Probation Training Center.

In order to fully accomplish the task, it was important and expedient to develop a training module on the rights, treatment and needs of accused/convicted LGBTI persons in cooperation with LGBTI rights organizations and conduct trainings for penitentiary staff based on this module.

It is noteworthy that the above activity is the only means outlined in the Action Plan towards meeting the objective. While training prison medical staff is partly a solution to the identified problem, it is also clear that this activity, even if implemented in its full extent will not be sufficient to guarantee access to health care for vulnerable groups in the penitentiary system.

Goal 4.6. *Ensure the protection of rights for special categories of inmates*

Objective 4.6.1. *Conduct trainings on the rights of particularly vulnerable groups of inmates*

Activity 4.6.1.1. *Include a course on human rights of special categories of inmates in a training programme of the staff of the penitentiary system who work directly with the accused and convicts*

⁷ Letter MOC 1 17 00783615

⁸ Letter N MOC 7 18 00290707 02/04/2018

Indicator: *A course on special categories of prisoners (women, juveniles, inmates with disabilities, foreign prisoners, elderly prisoners, prisoners serving long or life sentences, LGBTI prisoners) included in the training programs.*

According to information provided by the Penitentiary and Probation Training Center,⁹ a significant focus in all core training programs is placed on the treatment of special categories of inmates, including accused and convicted LGBTI persons, in accordance with international standards. The programs were applied in training/retraining 1,729 staff in 2016, and 212 staff in 2017. Of these, 121 staff attended the training on the treatment of special categories of prisoners (in total 12 academic hours, but it is not known as to how much time was allocated to the needs of LGBTI persons). Professional development training sessions were organized for 24 psychologists and social workers dealing with juvenile delinquents. The four-hour module focused on issues such as “human sexuality and its components” and “persons belonging to sexual minorities”. In addition, within the framework of the project supported by Penal Reform International (PRI) - *Increasing oversight over Georgia’s anti-torture commitments and compliance with international standards* - the directors and deputies of penitentiary institutions received information on the particulars of imprisonment of persons with special needs. According to the annual statistics report for 2016 available at the Ministry of Corrections, by the end of 2016, the number of staff in the penitentiary system amounted to 3,783. Thus, over half of the Ministry personnel underwent the training.

The introduction of a course on special categories of inmates and their treatment is certainly a step forward. The training program encompasses the following: European Prison Rules; Standard Minimum Rules for the Treatment of Prisoners; Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules). However, there is no clear breakdown of the specifics of treatment of LGBTI inmates in the penitentiary system. Moreover, four academic hours allocated for the training on vulnerable groups cannot be sufficient given the fact that the topic is particularly sensitive and requires a more comprehensive approach.

The information provided by the Penitentiary and Probation Training Center has not proven to be adequately conclusive to ascertain unequivocally that the possibility to achieve the set objective even if the relevant goal is accomplished, since there is no mechanism to assess whether the training syllabus developed for prison staff can ensure non-discriminating and respectful treatment of prisoners in practice regardless of their sexual orientation and gender identity.

Chapter XII – Protection of Children’s Rights

(See detailed analysis of the chapter of the 2016-2017 Human Rights Action Plan and an assessment of the relevant activities in the report “Protection of Children’s Rights” prepared by Partnership for Human Rights (PHR))

Goal 12.4. Ensure quality and inclusive education for all children

⁹ Letter MOC 3 17 00783617. Mandatory special professional training, certification and periodic retraining programs designed for staff allocate four academic hours to the training on “Special categories of inmates and the specifics of their treatment”

***Objective 12.4.5.** Provide professional development for teachers to enable them to conduct activities focused on children’s rights in schools and to promote mutual respect and protection of each other’s rights among students*

***Activity 12.4.5.1.** Organize a series of training sessions on children’s rights and bullying; develop training modules and training materials; conduct trainings for teachers and school directors*

***Indicator:** Training modules and materials developed; Number of trained teachers and directors (Number of retrained teachers and directors in Tbilisi and the regions)*

According to information provided by the Ministry of Education, Science, Culture and Sport of Georgia¹⁰, training sessions were conducted in 2016-2017 at the National Center for Teacher Professional Development as part of a project focusing on the professional development of teachers and school directors, which included cyber-bullying in schools as a subtopic. Training sessions using this module were delivered to 2,102 participants – secondary school directors and professional development facilitators at schools (teachers).

In 2016, the National Center approved the training module on the prevention of bullying and the promotion of tolerance in schools. Based on the module, 634 school teachers were trained. The Secretariat notes in its report that the teachers gained information about causes and types of violence; various forms of domestic violence; as well as the impact of stigma and stereotypical thinking on violence and bullying. In addition, according to the National Center for Teacher Professional Development, the training also included the general topic of bullying and focused on supporting a tolerant atmosphere in schools. However, the training did not cover bullying on SOGI grounds.

Although some forms of bullying do garner attention, the Action Plan appears unconcerned with the development of a strategy or targeted mechanisms to combat homophobic and transphobic bullying, the implementation of information campaigns aimed at reducing homophobic attitudes in schools, maintaining statistics on bullying cases and delivering special services to victims of bullying (especially on grounds of SOGI). The objective set by the Action Plan can only be achieved by developing a training module which would encompass all types of bullying and would not be narrowly focused on one type of bullying, e.g. cyberbullying. Including the needs of LGBTI teenagers in the Action Plan is critically important because stigma and widespread stereotypes associated with sexual orientation and gender identity lead to the neglect of certain issues vital for these children. As a result, these children are frequently unable to access child protection services. Furthermore, it is crucial to train not only teachers and school directors, but also School Resource Officers and other personnel. This will help identify and eliminate cases of bullying at the initial stage, as well as reduce the risk of ill-treatment of LGBTI persons by school personnel, whether intentional or unintentional.

Recommendations:

¹⁰ Letter MES 4 17 01235989

For the High School of Justice

- Draft one- or two-year preliminary plan for the gradual training of judges;
- In cooperation with LGBTI rights organizations, a) develop methodologies and criteria for substantiation of court rulings on hate crimes (including those perpetrated on grounds of SOGI); b) Carry out comparative analysis of court rulings on hate crimes (including those perpetrated on grounds of SOGI) in order to develop a relevant curriculum.

For the Ministry of Corrections

- In cooperation with LGBTI rights organizations, develop a policy document (or a long-term, e.g. 5-year strategy) aimed at the elimination of discriminatory attitudes and practices in penitentiary institutions, indicating specific activities, measures and financial resources;
- Conduct information/educational campaigns for penitentiary staff with a view to increase their knowledge of and sensitivity to issues concerning LGBTI prisoners;
- Ensure a continuous supply of safe sex measures for MSM prisoners ;
- Take steps to raise HIV awareness among MSM prisoners and introduce programs aimed at supporting their mental health;
- Develop regulations to provide extended family visitation to LGBTI inmates.

For the Penitentiary and Probation Training Center

- In cooperation with LGBTI rights organizations, develop a training module for prison staff on the rights, treatment and needs of accused/convicted LGBTI persons; integrate the module into the training program.

For the Ministry of Education, Science, Culture and Sport

- In cooperation with LGBTI rights organizations, develop strategies to tackle homophobic and transphobic bullying;
- Develop and introduce mechanisms to respond to homophobic and transphobic bullying, based on specific needs of LGBTI children;
- Conduct information campaigns to reduce homophobic attitudes in schools and other educational institutions;
- Develop and set up services for child bullying victims (especially on grounds of SOGI) in schools and other educational institutions;
- Maintain statistics of cases of bullying in schools and other educational institutions (disaggregated according to homophobic and transphobic grounds);
- In cooperation with LGBTI rights organizations, develop training modules for teachers to respond to cases of homophobic and transphobic bullying;
- Develop a one- or two-year detailed training plan for teachers.

For the Ministry of Internal Affairs and the Chief Prosecutor's Office

- In cooperation with LGBTI rights organizations, develop a policy document (or a long-term strategy, e.g. for a period of five years) on combating discrimination on grounds of sexual orientation and gender identity;
- In cooperation with LGBTI rights organizations, develop training plans for police officers, prosecutors and prosecutorial investigators on efficient investigation and criminal prosecution of hate crime (including on grounds of SOGI)

For the Ministry of Labor, Health and Social Affairs

- In cooperation with LGBTI rights organizations, develop and implement rehabilitation programs for SOGI-based domestic violence survivors;
- Develop guidelines on the specific medical needs of transgender persons;
- Conduct a study on the needs of intersex children;
- Examine the compliance of medical interventions performed on intersex persons with international standards;
- Develop a special training program and guidelines for personnel who deal with intersex persons as part of their work.

For the Ministry of Justice

- In cooperation with LGBTI rights organizations, develop criteria necessary to ensure legal gender recognition;
- Separate these criteria from mandatory subjection to medical/surgical intervention;
- Define the legal form of applying these regulations and initiate relevant amendments to the law, if necessary;
- Develop a definition of harassment as a form of discrimination; develop draft amendments to the Law on Elimination of all Forms of Discrimination and other related laws; initiate the draft legislation.

For the Human Rights Action Plan working group

- Develop a separate chapter on strengthening the rights of LGBTI persons;
- Ensure that the objectives in the Action Plan are concrete and unambiguous, and develop a sufficient number of activities to meet the objective;
- Ensure that the activities are formulated in such a way that they encompass all groups;
- Ensure that the indicators are designed so that they make it possible to assess the activity qualitatively

Chapter XIII

Gender Equality and Women's Empowerment

Main Findings

Chapter 13 of the 2016-2017 Human Rights Action Plan of the Georgian Government is dedicated to gender equality and women's empowerment. The chapter sets two objectives –gender equality and women's rights protection¹¹, and combating discrimination on grounds of sexual orientation and gender identity. The present report will explore the objectives and activities aimed at combating discrimination on SOGI grounds, examine the level to which these activities were implemented and assess the results against the objectives.

At present, the LGBTI community constitutes a particularly marginalized group. Violence against LGBTI persons is systemic and calls for an integrated approach on the part of the state. Accordingly, combating discrimination on grounds of gender identity and sexual orientation is a major challenge. Problems include the realization of LGBTI persons' legal rights in practice and the elimination of discriminatory societal attitudes. According to the Action Plan, the state expresses its willingness to pursue anti-discrimination policies, provide remedies to LGBTI persons whose rights have been violated and maintain statistics on the number of these individuals, but in reality the implementation of each activity entails practical shortcomings that prevent the achievement of the goal.

The country's present social, political and cultural context creates serious barriers to the protection of the rights of the LGBTI community in Georgia. The group is subjected to systemic violence, persecution, harassment, intolerance and discrimination. Although the given chapter of the 2016-2017 Action Plan sets separate goals and objectives aimed at eliminating discrimination on grounds of sexual orientation and gender identity, the activities listed under these objectives are identical to the ones in the 2014-2015 Action Plan, despite the fact that in 2014-2015, the Georgian government received multiple recommendations on the elimination of discrimination on the grounds of sexual orientation and gender identity from the Committee on the Elimination of Discrimination against Women (CEDAW), the European Commission against Racism and Intolerance (ECRI), as well as various countries as part of the Universal Periodic Reviews.

One of the problems pertaining to this chapter is the relation between the objectives and their respective activities. Often, the activities are designed in such a way that even if they are fully implemented, they cannot guarantee the fulfilment of the objective. Consequently, it is necessary on the one hand to expand the activities relevant to the objective and, on the other, to improve the existing activities. For example, although in October 2015, the Georgian Parliament initiated relevant amendments to the anti-discrimination law and thus formally accomplished the activity set in the plan, the amendments have yet to be adopted.

It should be explicitly noted that all activities listed in Chapter 13 which stipulate the maintenance of statistics (e.g. special statistical data on hate crimes, domestic violence perpetrated on grounds of sexual orientation and gender identity) have an error, which entails the production of incomplete statistics. Furthermore, the statistical data contradict the data provided by NGOs working in this field.

¹¹ See detailed analysis of the goal in the report *Gender Equality and Women's Rights* prepared by Sapari

One of the goals of the Action Plan is to ensure timely and effective investigation of domestic violence cases perpetrated on grounds of sexual orientation and/or gender identity. However, the study has exposed undocumented cases of domestic violence against the LGBTI group. It has been ascertained that the frequency of recourse to the police is substantially low, which is caused by lack of sensitivity of state services and fear of repeat victimization by the police. This once again demonstrates the need for the establishment of a specialized unit which would deal with homo/bi/transphobic crime (or gender-based crime). This is further substantiated by cases where the nonsensitive approach of staff working with LGBTI persons effectively strips these persons of the opportunity to exercise their rights due to the fact that victims avoid contact with the staff of state institutions.

General Assessment of the Chapter

This section aims to assess Chapter 13 of the 2016-2017 Human Rights Action Plan of the Georgia Government in terms of combating discrimination on grounds of sexual orientation and gender equality. The report will review the objectives and activities outlined in the Action Plan in relation to combatting SOGI-based discrimination, assess the level of implementation of the activities and examine how the outcomes have contributed to the objective and goal.

The implementation of the activities outlined in the chapter to their full extent was crucial to the enhancement of LGBTI rights, especially given the still-frequent instances where the rights of LGBTI persons remain only a theoretical possibility but their realization in practice is associated with a host of problems. LGBTI persons encounter setbacks even in dealing with representatives of state institutions, such as the Ministry of Internal Affairs, the Prosecutor's Office, etc.

Despite the state's pledge to conduct anti-discriminatory policies, seek redress for LGBTI persons, whose rights have been infringed upon, and maintain statistical data on these persons, the implementation of each of these activities is associated with practical deficiencies which rule out the achievement of the goal. Moreover, frequently, the implementation of the activity does not guarantee the fulfillment of the objective, or even if the activity is seen as fully accomplished, it does not yield a practical outcome that would improve the rights of LGBTI persons. This is vividly illustrated by the draft amendments to the anti-discrimination law, which were initiated two years ago, and thus, while the designated activity has formally been accomplished, the goal and relevant objective remain to be achieved.

The activities in this Chapter associated with statistical data gathering should be addressed separately. In all cases, there is a problem that involves incomplete statistics and the inconsistency of these statistics with data collected by NGOs working on the same issue. The discrepancies in the statistical data point to a low frequency of police recourse, which can be attributed to nonsensitive state services and the fear of repeat victimization by police. This once again demonstrates the need for the establishment of a special unit which would respond to homo/bi/transphobic (or gender-based) crime.

Goal 13.2. Combat discrimination on grounds of sexual orientation and gender identity

The goal envisages combatting discrimination on grounds of sexual orientation and gender identity. The goal implies the prevention of all forms of discrimination on any grounds and the elimination of the consequences of discrimination, as well as efficient investigation of cases of discrimination classified as criminal offenses. The goal entails five objectives, which stipulate legislative safeguards against discriminatory treatment; development and efficient implementation of anti-discrimination policies; ensuring efficient implementation of hate crime legislation (including Articles 53.3¹ and 142); timely and efficient investigation of cases of SOGI-based domestic violence and the provision of shelter to victims of domestic violence perpetrated on grounds of sexual orientation and gender identity.

Objective 13.2.1. *Ensure legislative guarantees of protection from discriminatory treatment*

The objective was initially envisioned by the 2014-2015 Human Rights Action Plan of the Georgian Government, which, as in the case of its successor for 2016-2017, included only one activity: providing equal rights and initiating a comprehensive law on the elimination of all forms of discrimination, which in the Action Plan for 2016-2017 was replaced by the objective to develop and initiate legislative amendments to the anti-discrimination law and other relevant legal acts.

Activity 13.2.1.1. *Develop and initiate legislative amendments to the Law on the Elimination of All Forms of Discrimination and other relevant legislative acts in order to enforce anti-discrimination mechanisms in 2016*

Indicator: *Relevant amendments developed and initiated*

The Action Plan assigns this activity to the Public Defender's Office of Georgia (the body responsible for the development of the package of amendments) and the Georgian Parliament (as the initiator of the amendments). The indicator for this activity has been formulated as follows: *Relevant amendments to the anti-discrimination law developed and initiated*. In assessing this activity, the state's readiness to implement certain amendments to the anti-discrimination law is commendable and also signifies that the state recognizes the shortcomings of the law and the need to remedy them.

In February 2015, the Public Defender addressed the Parliament of Georgia with a legislative proposal to implement the relevant amendments to the anti-discrimination law. The proposal refers to procedural and legal changes and envisages the obligation of physical and juridical persons to provide the Public Defender with necessary documentation in the process of examining cases of discrimination and to present information on measures taken to implement the recommendations. The legislative proposal also requests that the term of three months allotted for filing a discrimination case in court be extended to one year, the standard of burden of proof be strengthened, and the timeframe be extended for the Public Defender to examine cases in administrative proceedings.¹²

Despite the fact that the Parliament of Georgia initiated the processing of the proposal in October 2015, the amendments have not yet been adopted. Moreover, the Public Defender's Special Report notes that in 2017 the PDO additionally called on the Parliament to expedite the adoption of the amendments.¹³ The Coalition for Equality, an informal union of NGOs, has repeatedly stressed the need to pass the

¹² Public Defender of Georgia, *Special Report on Combating and Preventing Discrimination and the Situation of Equality in Georgia*, 2017, p.35

¹³ *Ibid.*

amendments. In its reports, the Coalition emphasizes the significant legislative and procedural deficiencies of the Law, which create substantial barriers to ensuring the efficient implementation of the Law and eliminating roadblocks in combatting discrimination.¹⁴

As mentioned above, despite the fact that the amendment process has been initiated, the Parliament has yet to adopt them. Consequently, the relevant activity has failed to result in the outcome that would lead to the fulfillment of the objective and subsequent goal.

Objective 13.2.2. Develop anti-discrimination policies and ensure their effective implementation

This objective in the state Human Rights Action Plan is the only one not present in the similar chapter of the 2014-2015 Action Plan. The objective outlines the following activities: developing guidelines for the introduction of anti-discrimination standards in the public service sector, training public officials on anti-discrimination standards and regulating hate speech in the Law on Public Service and relevant Codes of Ethics. Hence, the inclusion of this objective in the Actopm Plan is a step forward.

Activity 13.2.2.1. Develop guidelines for the implementation of anti-discrimination standards in public service

Indicator: Guidelines developed

According to the Action Plan, the Georgian Government was generally responsible for developing the relevant guidelines but there is no indication of who specifically was responsible for this activity and whether or not the document has been developed. Information on this objective is also not available in the report of the Human Rights Secretariat on the implementation of the Action Plan for 2016-2017.

Activity 13.2.2.2. Systemic training of civil servants, including police, public service providers and municipal officers

Indicator: 500 civil servants trained

According to information made publicly available by the Public Defender's Office of Georgia,¹⁵ during 2016-2017, the staff of the Office delivered trainings on topics pertaining to equality, in particular, hate crime investigation, to 20 prosecutors and 40 police officers. In addition, 50 staffers of the local government bodies and 140 public school teachers were trained as part of the equality and non-discrimination training program.

Consequently, half of the public servants whose training was envisaged by the Action Plan underwent the trainings. Hence, the activity has not been fully implemented. The ratio of the trained staff to the total number of employees should also be taken into consideration, e.g. given that there are over 200 state-funded secondary schools in Tbilisi alone, the extent to which the training of 140 teachers can impact the current situation is uncertain.

¹⁴ The 2016 report of the Coalition for Equality, "The Right to Non-discrimination in Practice for Various Groups in Georgia"

¹⁵ Letter № 12/4904.

Activity 13.2.2.3. Regulate hate speech in the Law on Public Service and relevant Codes of Ethics

Indicator: *Legislative amendments developed*

With respect to the right to equality, the use of offensive remarks or hate speech by public officials towards specific groups constitutes a major challenge. In 2016-2017, the use of violent and discriminatory language towards LGBTI persons escalated, especially during pre-election periods, which gave rise to suspicions that the state exploited the LGBTI community for political purposes. This view is supported by initiatives calling for legislative amendments to the Constitution of Georgia for it to include the definition of the concept of ‘family’ and for a referendum to be held on the subject, which also intensified ahead of the elections. Despite the president’s decision not to hold a referendum on Article 36 of the Constitution, the ruling political power assured the public of the unconditional implementation of the amendments. It should be explicitly stated that the discourse around this initiative effectively contributed to the propagation of homo/transphobic hate speech by some political officials and indirectly encouraged violence against the LGBTI community.¹⁶

Due to the scale of the problem, the Public Defender of Georgia examined statements made by Georgian MPs which had encouraged discriminatory attitudes, and addressed the Parliament with a general proposal on 6 February 2017 whereby the Ombudsman underscored the responsibility of MPs and possible effects of their remarks on the public. Significantly, in December 2017, on the initiative¹⁷ of the the Legal Committee of the Parliament of Georgia, the a draft Code of Ethics was developed for MPs¹⁸. The Code states that MPs shall respect the universally recognized Human Rights and Freedoms and acknowledge equal rights and opportunities for men and women. The Code prohibits the use of hate speech by MPs against minorities based on race, skin color, sex, religion or any other sign.¹⁹ The Code also outlines corresponding disciplinary measures. The development of the Code is of utmost significance but its comprehensive and efficient implementation in practice is key to help eliminate the use of hate speech by politicians and public officials. Notably, the activity is also aimed at the development of anti-discriminatory policy and its effective implementation.

According to the report of the Human Rights Secretariat, Government Decree # 200 dated as of 20 April 2017 established general rules of ethics and conduct for public institutions. The Code of Ethics delineates regulatory norms for the prohibition of hate speech and sexual harassment, and defines in detail points related to the identification, prevention, and inadmissibility of harassment. It is also pertinent to develop draft amendments to the Codes of Ethics of all public institutions, as well as to the Law on Public Service.

¹⁶ E.g. On 2 October 2016, a few days before the election, images of the Saburtalo district MP candidate Aleksandre Bregadze’s election campaign posters were circulated in social media. The poster aimed to attract voter support and interest, and offered, in the event of electoral success, to carry out strict measures against LGBTI persons infringing on their right to equality. The poster contained signs that fostered hostile attitudes in the public, encouraging violence and calling for discrimination. WISG filed a complaint about the campaign material on the basis of Article 45 of the Electoral Code.

¹⁷ See: <http://liberali.ge/articles/view/33246/etikis-kodeqsis-proeqtit-deputatebma-sidzulvilis-ena-ar-unda-gamoiyenon>

¹⁸ Code of Ethics of Members of Georgian Parliament, See: <https://info.parliament.ge/file/1/BillReviewContent/169052?> (last seen 03.02. 2018)

¹⁹ *Ibid.*

Finally, it is not unclear whether an objective or goal can be considered as achieved if information on the implementation of other, equally significant activities listed under the same objective is simply unavailable.

Objective 13.2.3. *Ensure effective enforcement of existing legislation against hate crime (including Articles 53.3¹ and 142 of the Criminal Code of Georgia)*

The above objective, both in terms of its content and activities, is identical to the objective set in the Human Rights Action Plan for 2014-2015. As in the previous case, in order to fulfill the objective, the Action Plan outlines the following activities: ensuring timely and efficient hate crime investigation, introducing the practice of consideration of possible hate motive in criminal prosecution orders, systemic training of law enforcement officers, supporting specialization in hate crime and maintaining special detailed statistical and analytical information on hate crimes. Interestingly, the first activity in the new Action Plan was expanded to include the consideration of a possible hate motive in criminal proceedings. This instruction, on the one hand, stresses the obligation of the Prosecutor's Office of Georgia to indicate possible hate motive in criminal prosecution orders and, on the other hand, demonstrates the state's stance on hate crime.

Activity 13.2.3.1. *Ensure timely and efficient investigation of hate crimes and introduce the practice of consideration of possible hate motive in prosecution files*

Indicator: *Statistical data collected by the Analytical Department of the Ministry of Internal Affairs; Statistics maintained by the Analytical Department of the Prosecutor's Office*

Ensuring timely and efficient hate crime investigation and introducing the practice of consideration of possible hate motive in criminal prosecution files are more indicative of a goal than an activity. The achievement of this goal, in turn, will require more than one activity which should lead to the desirable result, including, for instance, the training of MIA and Prosecutor's Office staff, development of recommendations, etc.

As for the activity itself, following Georgia's ratification on 4 May 2017 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), the Parliament of Georgia has amended the Criminal Code of Georgia wherein the aggravating norm 53.3³ in sentencing on grounds of intolerance was replaced by Article 53¹. Despite the fact that the norm stipulating aggravating circumstances in crimes committed on grounds of intolerance has been in effect since 2012, it had not been applied until 2016. Namely, the Prosecutor's Office of Georgia would note that, on the one hand, the norm was part of the sentence, which would prevented the prosecution from applying it in prosecutorial orders, and, on the other hand, based on the current adversarial system, the Chief Prosecutor could not discuss hate motive or the norm if the motive was not adequately identified or indicated by the state prosecution.

In 2016-2017, LGBTI rights organizations documented cases, where fundamental flaws were identified in the investigation of crimes committed on grounds of intolerance towards LGBTI persons. This, in turn, was indicative of low sensitivity towards and lack of awareness of homo/transphobic crimes, as well as possible tolerant and lenient attitudes of law enforcers towards perpetrators. The case of Zizi Shekiladze,

a transgender woman murdered in 2016 with exceptional brutality underscores the lack of awareness and sensitivity, where the prosecutor justified the refusal to identify the motive by the fact that the victim and the perpetrator had previously known each other. Another example of inefficient and discriminatory treatment was identified in the case involving the executive director of “Equality Movement”, Levan Berianidze and activist Tornike Kusiani, when the two were beaten and subjected to degrading treatment at the hands of police officers and third parties. Yet, to date, they have not been recognized as victims and the culprits have yet to be identified. Despite the fact that 2016 saw a severe exacerbation of violence against LGBTI persons, and particularly transgender women, manifesting in varying frequency and gravity of violent incidents, in the same year, the Prosecutor’s Office of Georgia indicated the motive of SOGI-based intolerance only in four cases.

In 2017, in order to ensure effective implementation of hate crime-related recommendations issued to prosecutors, a special questionnaire was developed detailing instructions on questioning/interrogation of alleged complainants, perpetrators and witnesses of hate crime. The questionnaire was distributed among prosecutorial staff, which contributed to the improvement of the efficiency of the measures aimed at identifying hate motive in criminal cases.

According to information provided by the Prosecutor’s Office of Georgia, in 2017, hate motive was examined in 86 criminal cases. In particular, the grounds of sexual orientation grounds were considered in 12 criminal cases, gender identity grounds – in 37 cases, sex/gender grounds – in 25 cases, grounds of nationality – in one case, ethnic grounds – in one case, and religious grounds – in 10 cases. Criminal proceedings were initiated against 44 persons. Among them, four persons were charged with a crime committed on grounds of sexual orientation, four persons – on grounds of gender identity, two – on religious grounds, 25 persons – on sex/gender grounds, nine persons – on other grounds (estimated grounds: gender identity – six persons, sexual orientation - one person, religion – two persons). A welcome change compared to 2016 was that in 2017, the number of persons criminally prosecuted for homo/transphobic crimes has increased. Furthermore, prosecution records refer to intolerance on grounds of gender identity, rather than sexual orientation only.

Activity 13.2.3.2. Ensure systemic training of law enforcement officers and specialization in hate crimes

Indicator: Number of trained persons

According to the interim report of the Human Rights Secretariat on the implementation of the Action Plan, during the first six months of 2016, two training sessions attended by 42 prosecutors and employees of the Prosecutor’s Office were conducted on effective investigation and prosecution of hate crimes. The trainings were conducted in cooperation with the Public Defender’s Office and the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

ODIHR and the Prosecutor’s Office of Georgia began intensive joint work in March 2016 to implement the Prosecutors and Hate Crimes Training (PAHCT) program. Within the framework of the program, which involves qualified ODIHR personnel, 24 prosecutors from different units are being trained, who will then conduct cascade trainings.

By the end of 2017, two groups consisting of 29 prosecutors and investigators had been trained within the framework of the program. A representative of the Public Defender's Office also attended the training. Furthermore, the topics covered in the syllabus will become part of a mandatory training course for interns in the prosecution system (in 2017, the program was used to train two groups of interns consisting of 62 participants.)

In addition to the above, ODIHR is also involved in developing a training program tailored to the Prosecutor's Office, focusing on effective investigation of hate crimes. The working group comprises representatives of the Supreme Court, the Ministry of Internal Affairs, the Public Defender's Office and NGOs. Furthermore, in 2017, as part of a project run by the Heinrich Boll Foundation and funded by the EU, WISG and EMC conducted two-day trainings for the staff of the Police Academy and the Prosecutor's Office. With support from the CoE and ODIHR, three study visits with a focus on hate crimes were organized: a visit to the UK to obtain lessons learned from UK practice, as well as two trainings of trainers. Ten staff of the Prosecutor's Office of Georgia took part in these activities.

The implementation of training sessions, supported by international organizations, for prosecutors and prosecutorial investigators on effective investigation and criminal prosecution of hate crimes is indeed praiseworthy. However, the number of trained staff is decidedly low, especially in the case of the Ministry's of Internal Affairs. Apart from this, it is unclear whether the training program currently being developed will cover the specificities and peculiarities of hate crimes committed on homo/bi/transphobic grounds. It is true that hate crimes encompass offenses committed on various grounds but each of these have their own characteristics and it is crucial that the specifics are integrated into the program.

The information above refers to the training of the Prosecutor's Office. Although the Prosecutor's office, within its legal mandate, carries out procedural oversight of criminal investigation, it is still the investigators who come into initial and direct contact with the circumstances of a crime. Therefore, it is especially significant that the staff of the Ministry of Internal Affairs get trained on the specifics of hate crimes.

Activity: *13.2.3.3. Gather special detailed statistical data on hate crimes and perform relevant analyses*

Indicator: *Statistical data on investigating hate crimes and launching criminal proceedings developed and processed*

According to the information provided by the Chief Prosecutor's Office of Georgia,²⁰ proceedings were launched against 14 people in 2016 under Article 142¹ of the Georgian Criminal Code²¹. All 14 were men,

²⁰ Letter N13/66907

²¹ "Article 142¹. Violation of human equality on the grounds of language, sex, age, nationality, origin, birthplace, place of residence, material or rank status, religion or belief, social belonging, profession, marital status, health status, sexual orientation, gender identity and expression, political or other views or of any other signs that have substantially breached human rights", See: <https://matsne.gov.ge/en/document/download/16426/157/en/pdf>

including seven minors. All 14 cases were registered in Tbilisi. Proceedings under Article 155²² were launched against two people. Both were adult males. Both cases were registered in Tbilisi. Proceedings under Article 156 were launched against 13 people, of which one was a woman and one – a minor. Eight people were registered in Tbilisi, one in Adjara, two in Samegrelo-Zemo Svaneti, and two – in West Georgia.

In 2017, proceedings under Article 156 were launched against two people (nine months). Both were adults. One of the cases was registered in Tbilisi and one – in Shida Kartli.

Women's Initiative Supportive Group (WISG) requested information on the number of cases, where the Prosecutor's Office invoked Article 53¹ of the Criminal Code of Georgia, as well as the number of cases, where courts took the norm into account.

However, the Chief Prosecutor's Office of Georgia noted in its correspondence that such statistical information is not recorded.

According to the interim report of the Human Rights Secretariat, as of 22 January 2016, hate motive as defined in Article 53.3¹ of the Criminal Code of Georgia was identified by the prosecution in four criminal cases. Criminal proceedings were launched in all the above cases. One person was found guilty in each case. Criminal proceedings in these cases were/are underway with the following classification: 1) Article 120 (Intentional [light] bodily injury) of the Criminal Code (two cases). The court passed a guilty verdict in one case, while the other case was filed in court for essential consideration; 2) Article 125 (Battery) of the Criminal Code (two cases), of which one case was filed in court for essential consideration and the other concluded in a guilty verdict in court. The interim report of the Human Rights Secretariat does not specify the motive when referring to the four cases. However, it follows from the information provided by the Prosecutor's Office to nongovernmental organisations²³ that the four cases entailed crimes based on sexual orientation, which is an important precedent in acknowledging such crimes and taking efficient measures against them. However, the relevant statistical information is insufficient and does not adequately reflect the scope and scale of violent practices against the LGBTI community. For example, in 2016, EMC handled eight cases, while WISG undertook up to 30 cases bearing signs of hate-motivated crimes.²⁴ Victims in the cases reported that they were persecuted on homophobic and transphobic grounds. However, the Prosecutor's Office did not identify a hate motive and the potentially aggravating circumstance was not mentioned either in the bench ruling or the imposition of punishment.²⁵

Interestingly, the database of hate crime reporting of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) provides information on cases investigated in 2016 and submitted by the Georgian government. It shows that police registered a total of hate crime 42 cases, 12 of which were

²² Unlawful interference with the performance of divine service

²³ "Operational Guideline on Investigation and Prevention of Crimes Based on Sexual Orientation and Gender Identity", EMC, 2017.

²⁴ The 2016 report of the Coalition for Equality, "The Right to Non-discrimination in Practice for Various Groups in Georgia", p 24.

²⁵ Unidentified Violence - Litigation Report, Women's Initiatives Supportive Group, WISG, 2017.

offenses based on sexual orientation and gender identity.²⁶ However, the government did not disclose the content of individual cases, which makes it impossible to better highlight the degree and concrete motives (homophobia, biphobia, lesbophobia, transphobia) and conduct an appropriate analysis.

Ostensibly, the investigation of hate crimes on grounds of sexual orientation and gender identity is inefficient and there have been serious drawbacks in gathering statistical, which makes it impossible to reduce the number of cases of discrimination and violence against the LGBTI community, let alone eliminate them. The discrepancies between statistical data submitted by state agencies and information provided by the non-government sector are also noteworthy. This is due to the low number of LGBTI people who address state agencies, which, in turn, is contingent on the LGBTI community's lack of trust in state institutions. It is this circumstance that makes it particularly important to take into account the ECRI recommendation to establish a specialized unit trained to effectively respond to homo/bi/transphobic (or SOGI-based) crimes.

Given the above, gathering statistical data as such may formally be interpreted as implementation of the relevant activity envisioned in the Action Plan, but as the statistical data gathered do not reflect the situation at hand, this activity cannot lead to the achievement of the goal and the objective set by the Action Plan.

Objective 13.2.4. Ensuring timely and efficient investigation of domestic violence cases based on sexual orientation and/or gender identity

This is the only objective in the chapter not listed in the 2014-2015 Human Rights Action Plan of the Government of Georgia. The inclusion of this objective is clearly a step forward, however, it contains only one activity – the maintenance of special statistics on and analyzing cases of domestic violence committed on the grounds of sexual orientation and gender identity. Thus, the objective cannot be achieved by statistical data gathering alone, even if these statistics were complete.

Activity 13.2.4.1. Provide special statistics and analysis of cases of domestic violence based on sexual orientation and/or gender identity

Indicator: Statistical data from the Analytical Department of the Ministry of Internal Affairs of Georgia maintained; Statistical data from the Analytical Department of the Prosecutor's Office gathered; Report by the Public Defender of Georgia produced

Domestic violence against LGBTI persons is an unidentified and invisible problem. The frequency of victims reporting to the police is substantially low and is caused by the lack of sensitivity of public services and the fear of repeat victimization by the police. LGBTI persons become victims of different forms of domestic violence, be that forced marriages, social isolation, forced change of appearance, etc. Violence is frequently linked to voluntary or forced “outing” to family members. Respondents in the study conducted by the Women’s Initiative Supportive Group (WISG) have noted that they avoid speaking about their sexual orientation with their family members in fear of violence. LGBTI persons are

²⁶ Cf.: <http://hatecrime.osce.org/georgia>

also subjected to continuous psychological violence by family members, manifested in humiliation and insults.²⁷

Despite the above, neither the Ministry of Internal Affairs nor the Prosecutor's Office of Georgia provide a detailed breakdown of domestic violence motives which makes it impossible to identify crimes that were perpetrated on grounds of sexual orientation and gender identity.

Although, according to the interim report of the Human Rights Secretariat on the implementation of the Human Rights Action Plan, as of 22 January 2016, the Prosecutor's Office has been providing information to the Department of Human Rights Protection of the Prosecutor's Office on cases where hate crime motive has been identified, the statistical data still do not include cases of domestic violence committed on grounds of sexual orientation or gender identity. This has been confirmed by the Department, stating that no report about this type of crime had been lodged as of September 2017. However, information recorded by NGOs differs from that provided by the state. For example, in 2016-2017, EMC documented four relevant cases, and one complaint received by the Public Defender referred to an underage person who was subjected to domestic violence by his/her parents on grounds of sexual orientation²⁸ (according to the Public Defender's special report, social services placed the minor in foster care).

Intimate partner violence is one of the most widespread forms of domestic violence, which is prevalent both in heterosexual and homosexual partners. In many countries, including Georgia, the law does not recognize same-sex marriage or partnerships, and sexual partners are not regarded as family members. Due to such conceptualization, intimate partner violence among LGBTI couples are rendered invisible and, accordingly, access of survivors of violence to available services is limited. Given that same-sex couples are unable to establish their relationship (marriage/partnership) in any legally recognized form, there is a need to develop a regulation which would enable these persons to exercise their legal rights.

To summarize, the analysis of this activity once again yields the problem associated with incomplete data. Thus, even though statistics are indeed maintained, data gathering and documentation is not conducted in a way that would make it possible to draw conclusions, identify key problems and develop strategies. It is critical that the Ministry of Internal Affairs, the Prosecutor's Office and all relevant agencies consider discrimination grounds/motive when gathering statistical data. This will help identify and develop strategies to combat cases of domestic violence perpetrated on grounds of SOGI.

Objective 13.2.5. Provide shelter to survivors of domestic violence based on sexual orientation and/or gender identity

This objective was listed as an activity in the 2014-2015 Action Plan. It is commendable that the activity has been transformed into an objective, which by extension should incorporate separate activities. Nevertheless, the objective lists only one activity, which envisages awareness raising on sexual orientation and gender identity among Crisis Center staff. The problem does not lie solely in the inadequate level of staff training and awareness, but also, the limited access of transgender women to necessary social, legal and physiological services. Naturally, these services should be available outside the shelter as well, and

²⁷ Unidentified Violence - Litigation Report, Women's Initiatives Supportive Group, WISG, 2017.

²⁸ Public Defender of Georgia, Special Report on Women's Rights and Gender Equality, 2016, p.49

the fact that the availability of these services is contingent on placement in the Center limits LGBTI women's access to protection mechanisms, which consequently diminishes the very idea of the mechanism itself.

Activity 13.2.5.1. *Raise awareness of personnel of shelters and crisis centers on gender identity and sexual orientation*

Indicator: *Information on persons placed in shelters; Report by the Public Defender of Georgia*

According to international standards, victims of gender-based violence should have unimpeded access to shelters with the consideration of their specific needs. The monitoring carried out by the Public Defender's Office in the centers for survivors of domestic violence in 2016 revealed that the Crisis Center staff do not possess an appropriate level of knowledge and experience to treat LGBTI victims. Awareness-raising trainings which have been conducted for the staff are principally focused on domestic violence and trafficking.²⁹ Also, the Crisis Center which provides shelter to domestic violence survivors in Georgia is not gender-segregated. According to the interim report of the Human Rights Secretariat, not a single victim of domestic violence on grounds of sexual orientation applied to the facility during the reporting period.³⁰

According to information provided by the State Fund for Protection and Assistance of Victims of Human Trafficking, as of July 2017, services provided at shelters run by the Fund are available to victims of domestic violence, violence against women, sexual violence, as well as the dependants of such persons. Furthermore, the crisis centers provide the following services to victims or possible victims of violence: a) psycho-social support/rehabilitation; b) provision of first aid and emergency medical services; c) legal advice; d) provision of interpreter services, as needed; e) other services, if necessary.

Furthermore, in 2017, seven persons received services at the centers (shelters) for victims of domestic violence on grounds of SOGI. It is expedient for the Ministry of Labour, Health and Social Affairs of Georgia to plan and implement more activities to raise the awareness of Ministry staff on SOGI issues and with regard to the rehabilitation of victims of domestic violence on SOGI grounds.

As mentioned above, not a single victim of domestic violence on SOGI grounds received shelter services in 2016. Thus, the fact that seven persons benefited from such assistance in 2017 should be considered a step forward.

Despite the fact that in 2017, some shelter and crisis centre staff were trained on specific topics, it is still necessary that a separate training module be developed with a focus on sexual orientation and gender identity.

²⁹ Public Defender of Georgia, Special Report on Women's Rights and Gender Equality, 2016, p.49

³⁰ The report also speaks about the training sessions conducted by the Women's Initiative Supportive Group aimed at the professional development of relevant staff: A session on "Sex, Gender, Orientation" was held on 7-8 November 2016; Another session "Assisting Victims of Sexual Violence" was organized on 19-20 December 2016 as part of the project "Prevention of Domestic Violence and Sexual Abuse". According to the CEDAW Committee's General Recommendation No 19, family violence victims should have access not only to shelter but also to counselling and rehabilitation programs. However, there is no mention of measures aimed at the provision of counselling or rehabilitation in this section of the Action Plan.

Recommendations:

For the Ministry of Internal Affairs and the Chief Prosecutor's Office

- Develop a policy document (or a long-term strategy, e.g. for a period of five years) on combating discrimination, in cooperation with LGBTI rights organizations;
- Conduct information campaigns with a view to raise public awareness on hate crimes;
- In order to increase reporting on homo/bi/transphobic crimes, establish a specialized unit which would respond to homo/bi/transphobic (or gender motivated) crime;
- In cooperation with LGBTI rights organizations, develop guidelines necessary to ensure timely and efficient investigation of domestic crimes committed on grounds of sexual orientation and/or gender identity;
- Maintain detailed statistics: Number of calls made to the police and the Prosecutor's Office; Number of repeat calls about the same alleged perpetrator; Number of repeat calls by the same complainant; Number of persons criminally prosecuted for domestic violence on grounds of SOGI; Number of guilty verdicts.

For the Parliament of Georgia

- Study the use of domestic violence protection mechanisms by same-sex couples; Review Georgian legislation with the aim to identify deficiencies and make timely amendments to the law;
- Develop amendments to the ethics codes of different public sector agencies in reference to hate speech; Initiate these changes.

For the Ministry of Labour, Health and Social Affairs

- Develop a training module on SOGI issues and a training plan for the staff of domestic violence shelters and crisis centres;
- Maintain detailed statistics on the admittance/relocation/release of survivors of domestic violence on grounds of SOGI at the shelters and crisis centres.

Comparative analysis of the Human Rights Action Plans for 2014-2015 and 2016-2017

Like the 2014-2015 Action Plan, the Human Rights Action Plan for 2016-2017 failed to dedicate a separate chapter to the human rights of LGBTI persons. The goals and objectives outlined in this area are, in both cases, listed in the chapter on gender equality and women's empowerment. Both Plans set largely similar objectives and activities. Furthermore, the 2016-2017 Action Plan still fails to reflect certain fundamental issues, the absence of which was the principal drawback of the 2014-2015 Action Plan.

Despite the fact that in 2014-2015, the Georgian state received numerous recommendations pertaining to the elimination of discrimination on the grounds of sexual orientation and gender identity from the Committee on the Elimination of Discrimination against Women (CEDAW), the European Commission against Racism and Intolerance (ECRI), as well as various countries as part of universal periodic reviews, the majority of these recommendations has not been reflected in the Action Plan.

Interestingly, the chapter on gender equality and women's empowerment in the 2016-2017 Action Plan outlines separate goals and objectives focusing on discrimination on the grounds of sexual orientation and gender identity. These, however, are identical to the ones set in the 2014-2015 Action Plan. The new Plan does not identify and include key issues such as legal gender recognition and regulation of trans-specific healthcare and medical procedures, as well as "sex normalization" procedures in intersex children. It does not delineate harassment as a form of discrimination; nor outline conditions for MSM prisoners; and the granting of extended family visitation for LGBTI inmates in penitentiary institutions.

The objectives set in the relevant chapter are identical to or only slightly differ from the objectives included in the 2014-2015 Action Plan. For instance, the objective aiming to guarantee legal remedies against discriminatory treatment, which was duly included in the 2014-2015 Action Plan, still outlines a single activity in the present Action Plan. In the previous case, the activity involved the provision of equal rights and the development of a comprehensive law on the elimination of all forms of discrimination, whereas in the new Action Plan, the activity has been updated to focus on the development and initiation of legislative amendments to the Law on the Elimination of All Forms of Discrimination and other relevant legislative acts with a view to strengthen anti-discrimination mechanisms. The indicator for this activity, as per the Action Plan, precisely entails the development and initiation of relevant amendments to the anti-discrimination law. When assessing this activity, it is worth noting that the state is ready to acknowledge the shortcomings of the Law on the Elimination of All Forms of Discrimination and the need to eradicate these shortcomings, and considers the new Action Plan as a means to finalize the fulfillment of the objectives outlined in the previous Plan.

Of particular interest is the notion that the 2016-2017 Human Rights Action Plan includes the objective to develop and efficiently implement an anti-discrimination policy, a detail that was not included in the corresponding chapter in the 2014-2015 Action Plan. The objective outlines the following activities: the development of a guideline with a view to introduce anti-discrimination standards in public institutions, the training of civil servants on anti-discrimination standards, and the prohibition of hate speech in the Law on Public Service and associated Codes of Ethics. The addition of this objective is a positive step, especially given that it introduces the concept of hate speech.

Another positive development is the insertion in the 2016-2017 Action Plan of the objective, absent in the previous Action Plan, to ensure timely and effective investigation of domestic violence perpetrated on the grounds of sexual orientation and/or gender identity. However, the objective envisages only one activity - the maintenance and analysis of special statistics of domestic violence perpetrated on the grounds of sexual orientation and gender identity. Obviously, the objective cannot be achieved in full through data gathering alone. In general, both Action Plans entail complications related the practical implementation and application of statistical data collection. In particular, statistics can be formally maintained but not in a way that would make it possible to draw specific conclusions, identify major problems, and develop relevant strategies.

Special focus is placed in both Action Plans on effective implementation of hate crime legislation (including Articles 53.3¹ and 142 of the Criminal Code). This objective, both in terms of its content and the activities it envisages, fully duplicates the objective stated in the previous Action Plan. This once again confirms the state's stance on hate crimes on the one hand, and on the other, demonstrates that the fulfillment of this objective is a continuous process.

The provision of shelter to victims of domestic violence perpetrated on the grounds of sexual orientation and/or gender identity was described as an activity in the 2014-2015 Action Plan. Its reformulation into an objective in the 2016-2017 Action Plan should be positively assessed, given that, in essence, it does constitute an objective requiring a set of separate activities. Regrettably, however, the objective includes only one activity which involves awareness raising among shelter and crisis center staff on issues related to sexual orientation and gender identity.

In conclusion, it can be said that serious shortcomings of both Action Plans are manifested in the absence of a separate chapter focusing on the rights of LGBTI persons, few trainings and the impossibility to evaluate the outcomes of these trainings, as well as the divergence between statistics maintained by the state and the NGO sector.

Freedom of Expression

1. Main Findings

Democratic society is unimaginable without freedom of expression and freedom of the media. Chapter 8 of the Human Rights Action Plan (2016-2017) explores freedom of expression. In terms of freedom of expression in Georgia, problems persist: investigation is still pending on a case involving the blackmail of a journalist using material depicting; there is no independent agency that could require a government institution to submit relevant information in a timely manner; personal data on high-ranking officials remain inaccessible, despite being of high public interest; and digital broadcasting is unavailable in regions populated by ethnic minorities.

The assessment of Chapter 8 of the Human Rights Action Plan has demonstrated that the objective set by the Action Plan is more general than the objective set by the Human Rights Strategy. Despite the general nature of one of the objectives, the chapter on freedom of expression responds to existing challenges at the level of objectives. The activities aimed at the achievement of the objectives are also largely relevant. In spite of this, we nevertheless encounter activities that have little to do with the objectives.³¹ There are also activities that are as general in nature as the objectives themselves.³² On the other hand, the Action Plan does not encompass activities that would resolve the most pressing issues in terms of freedom of expression, for example, improvement of regulations for the placement of banners in public spaces and the provision of minority-populated regions with set-top boxes.

In the meantime, the state of the implementation of the Action Plan makes it clear that individual fundamental objectives/activities have not been implemented: the draft law on freedom of information has not been initiated in Parliament; offences against the private lives of journalists have not been investigated; and criminal acts against journalists have not been subject to appropriate legal assessment. Notwithstanding the above, progress has been made in terms of the implementation of activities that entail the investigation of violent crimes against journalists and gathering special statistical data on crimes against journalists.

2. Ensuring freedom of expression and access to information

The objective, as outlined in Chapter 8 of the Action Plan, is to ensure freedom of expression and access to information. The National Strategy for the Protection of Human Rights in Georgia (2014-2020) further specifies the final objective. The Strategy does not imply simply ensuring freedom of expression. It stipulates that the state guarantees in terms of freedom of expression should be in line with constitutional and international standards. It is noteworthy that the objectives and activities are not set forth in such a manner as to meet any international standards or the constitutional standards established by the Constitutional Court of Georgia. The goals and activities set forth in the Action Plan are mostly focused

³¹ For example, launching an investigation on the basis of information disseminated by the media has no correlation with the objective of termination and prevention of obstacles to the professional duties of journalists.

³² For example, the activity aimed at the identification of shortcomings in legislation in general is planned to achieve the objective to revise legislation pertaining to freedom of expression. The activities do not specify the legislation to be analysed.

on the objectives determined by the Strategy as ensuring freedom of the media and protection from interference in journalists' professional activities.

The Action Plan sets three objectives aimed at ensuring freedom of expression and access to information:

1. Termination and prevention of interference in the professional duties of journalists;
2. Identification and elimination of legislative ambiguities pertaining to freedom of expression;
3. Ensuring access to information.

The first and third objectives serve best the overall goal - ensuring freedom of expression and access to information. The second objective to identify and eliminate legislative ambiguities pertaining to freedom of expression is quite general in nature. It is important that to identify concrete gaps in legislation that require attention before an Action Plan is developed. Setting such general objectives enables the government to plan activities that are ultimately inconsequential in ensuring freedom of expression in Georgia. For example, setting the objective to identify and remedy legislative shortcomings has enabled the government to set an activity aiming to revise the concept of obstruction of the professional duties of journalists, however, this is essentially not a significant issue pertaining to freedom of expression. In the meantime, the development of legislation regulating the placement of banners in public spaces was disregarded.

The installation of banners in public locations constitutes a more pressing problem than the need to revise the concept of obstruction of professional duties of journalists in the Criminal Code. In 2017, the Georgian Young Lawyers' Association (GYLA) published a report titled "Protest Deemed a Criminal Offense". The report cites four cases involving detentions and administrative proceedings launched as a result of remonstrative inscriptions made and banners installed on public buildings.³³ Article 150.1 of the Code of Administrative Offences of Georgia envisages administrative liability for placing various unauthorized inscriptions, drawings, and symbols on the facades of buildings, shop windows, fences, pillars, trees, and planted vegetation as well as for the installation of placards, slogans, and banners in places not specifically earmarked for this purpose. This norm is seen as problematic, since it does not indicate locations, where the installation of temporary banners or placards is permitted. GYLA was involved in judicial proceedings against political party activists, who were put on trial for installing a banner, bearing the inscription "Dishonest Government", on the roof of a residential building. The opposition activists used the banner to protest against the visit of Prime Minister Irakli Gharibashvili to the town of Ozurgeti.

It is evident that fabric banners can do little harm to a building, especially given that they are installed temporarily. In spite of this, according to Article 150 of the Code of Administrative Offences, the roofs and facades of residential houses are locations not earmarked for these purposes. Correspondingly, the installation of such a banner is deemed an offense implying an administrative fine in the amount of GEL 50. If the action is repeated within a year, the fine will amount to GEL 500. This ambiguity in Article 150 of the Code of Administrative Offences inflicts major damage to the proper manifestation of freedom of expression. Evidently, a general reference to the revision of legislation pertaining to freedom of expression may also imply regulations for the placement of banners in public spaces. Nevertheless, it

³³ The Georgian Young Lawyers' Association, "Protest Deemed a Criminal Offense", 2017, p 18: <https://gyla.ge/files/news/2008/geo.pdf>.

would be pertinent to specifically outline this activity in the Action Plan, since otherwise, the final objective to ensure freedom of expression cannot be achieved.

3. Preventing interference in the professional duties of journalists

The following activities are set to achieve the goal of terminating and preventing interference in the professional duties of journalists: swift and efficient investigation of cases of the obstruction of the professional duties of journalists; launching investigations on the basis of information disseminated by the media; and appropriate determination by prosecution authorities of the nature of offenses in cases of interference in the professional duties of journalists.

All of the activities essentially serve the purpose of the goals with the exception of launching investigations based on information disseminated by the media. Each activity will be discussed below in the sequence they are listed in the Action Plan.

The first activity included in the Action Plan under this goal is the swift and efficient investigation of cases of interference in the professional duties of journalists. The 2016 report of the Public Defender mentions five cases, of which only one ended in the prosecution of three people under Article 156 (persecution) of the Criminal Code.³⁴ The case referred to an attack on a journalist at the “Chashnagiri” restaurant. According to information provided by the Prosecutor’s Office, on 6 March of 2018 Tbilisi City Court found two persons guilty and one person – not guilty. The ruling was contested in the Appellate Court.

Two other instances that took place in 2016-2017 are also noteworthy here: The first entails threats made to the editorial team of the *Tabula* online magazine, which ended in a conditional sentence passed on the defendant³⁵.

According to the Prosecutor’s Office, the person who had issued the threats was found guilty as charged on 15 February 2018. The journalists were recognized as complainants by the prosecution.

The second case referred to criminal proceedings launched against three persons who had taken part in an attack on Giorgi Gasviani, a journalist with the TV company “Iberia”.

According to the Prosecutor’s Office, criminal proceedings were launched against three police officers under Section 1 of Article 126 (Violence) and Article 151 (Threat) of the Criminal Code. Akhaltsikhe District Court found all three defendants guilty as charged.

³⁴ Public Defender of Georgia, Report Human Rights and Freedoms in Georgia, 2016; pp 441-442; <http://www.ombudsman.ge/uploads/other/4/4494.pdf>.

³⁵ <https://leaderinfo.ge/2018/02/15/%E1%83%9E%E1%83%98%E1%83%A0%E1%83%98-%E1%83%A0%E1%83%9D%E1%83%9B%E1%83%94%E1%83%9A%E1%83%98%E1%83%AA-%E1%83%A2%E1%83%90%E1%83%91%E1%83%A3%E1%83%9A%E1%83%90%E1%83%A1-%E1%83%9F%E1%83%A3%E1%83%A0>.

Yet another case involves journalist Inga Grigolia who was blackmailed using videos depicting her private life. This case has not yet been investigated.

On 10 March 2015, by submitting a unilateral statement to the European Court of Human Rights, the Georgian government recognized the violation of Article 3 of the European Convention on Human Rights (prohibition of torture and inhumane and degrading treatment or punishment) against photojournalist Nestan Inasaridze in a procedural aspect, and the violation of Article 10 of the Convention (the right to freedom of expression and information) against two staff members of the TV company “Maestro”. The case refers to the dispersal of a protest rally in an area adjacent to the Main Department of the Ministry of Internal Affairs on 15 June 2009, when Maestro’s camera crew were prevented from filming the rally whereas Nestan Inasaridze was physically assaulted while taking photos of the dispersal. On 8 February 2016, the action in this case was categorized as a crime under subparagraph b, Paragraph 3 of Article 333 (abuse of power using violence or weapons) of the Criminal Code of Georgia. However, no charges were filed. One member of the camera crew has nevertheless been recognized as a plaintiff.

Thus, the activity envisaging timely and efficient investigation of crimes against journalists has been partially fulfilled.

The second activity entails launching an investigation on the basis of information disseminated by the media. It is noteworthy that Article 101.1 of the Criminal Procedure Code already designates information disseminated by the media as a plausible basis for launching an investigation. This activity is not limited to the obligation to launch an investigation into cases involving offences described in the media and linked to the professional duties of journalists. The activity applies to all offenses without exception. The correlation between the obligation to launch an investigation on the basis of information disseminated by the media and the objective to prevent interference in the professional duties of journalists and, ultimately, the goal to ensure freedom of expression, is unclear. This activity is obviously irrelevant in terms of achieving the relevant goal. Law enforcement agencies are bound to launch investigative action on the basis of information disseminated by the media even without this provision.

Thus, it is essential to note the case reported by the media and referred to in the Public Defender’s Report on Human Rights and Freedoms, pertaining to violence against four journalists at Tbilisi State University. The journalists themselves refused to cooperate with law enforcement agencies, so no investigation was launched on this incident.³⁶ The Public Defender rightfully noted in the report that an official complaint by the plaintiff was not required to start a probe. The fact that no investigation was launched into the offense against the journalists makes it clear that the Ministry of Internal Affairs and the Prosecutor’s Office do not implement the relevant activity outlined in the Action Plan in cases pertaining to the goal of preventing interference in the professional duties of journalists.

According to the Action Plan, the third activity under the relevant objective entails adequate identification of the nature of offenses in cases of interference in the professional duties of journalists. The Public Defender’s report submitted to Parliament in 2016 emphasizes the fact that appropriate legal classification of offenses against journalists continues to be a problem. The Public Defender mentions a case, in which

³⁶ Public Defender of Georgia, Report on Human Rights and Freedoms in Georgia, 2016; p 442 <http://www.ombudsman.ge/uploads/other/4/4494.pdf>.

a journalist's video camera was damaged in the course of his/her duties.³⁷ An investigation was launched, and the value of the camera was established at GEL 50. Article 187 of the Criminal Code imposes liability for the damage or destruction of property. The note to Article 177 of the Criminal Code defines the value of significant damage to property worth over GEL 150. Correspondingly, no criminal provisions were invoked in relation to damages incurred by the journalist.

The Public Defender recommended that the Ministry of Internal Affairs classify the action under Article 154 of the Criminal Code (Unlawful interference with the journalist's professional activities). The Prosecutor's Office has stated that it has taken the Public Defender's recommendation into consideration and has re-categorized the action as an offense regulated under Article 154 of the Criminal Code.

Charges have not been filed under Article 154 in connection with violations against the journalist and camera crew member formerly with the TV company "Maestro" and the photojournalist, Nestan Inasaridze. It appears that appropriate classification of criminal offenses in terms of interference with journalistic duties still constitutes a problem.

Activity 4 under the objective to terminate and prevent interference in the professional duties of journalists envisages the maintenance of special statistics of registered crimes that involve obstruction of journalistic activities as well as statistics of resolved cases. At the Public Defender's recommendation, law-enforcement agencies should maintain statistical data on all crimes linked to journalistic activities, not only those that fall under Article 154.

Hence, the Prosecutor's Office has stated that in accordance with the Chief Prosecutor's Decree as of 11 October 2017, all structural units of the Prosecutor's Office have been tasked to provide information to the Human Rights Department about crimes that fall under Article 154 as well as all criminal cases with journalists as possible plaintiffs. Consequently, the Human Rights Department has been keeping special statistics of instances involving interference with journalistic activities since 2016.

In 2016, criminal proceedings in connection with interference with the professional duties of journalists were launched against four persons. Of these, one person was charged under Article 154 of the Criminal Code (Unlawful interference with the journalist's professional activities), and three persons under Article 156 (Persecution).

In 2017, criminal proceedings in connection with interference with journalistic activities were initiated against four persons. Of these, three persons were charged under Article 126 of the Criminal Code (Violence), and one person under Article 151 (Threat).

Thus, law-enforcement officers responded in an efficient manner to criminal acts perpetrated against the "Tabula" magazine and journalist Giorgi Gasviani, but their response was not appropriate in the case of interference with the professional duties of journalists that took place at Tbilisi State University. The results of the investigation of an attack on a journalist's private life are still unknown; nor were effective steps taken in connection with the incident on 15 June 2009.

³⁷ Public Defender of Georgia, Report on Human Rights and Freedoms in Georgia, 2016; p 441 <http://www.ombudsman.ge/uploads/other/4/4494.pdf>.

Given the above, the activity can be considered partially fulfilled, however, launching investigations following media reports cannot be seen as contributing to the objective. The classification of crimes against journalists under Article 154 of the Criminal Code remains a problem. Special statistics are maintained on all crimes committed against journalists and thus, the associated activity can be deemed fulfilled.

4. Revision of the legislation

The activity involving the identification and elimination of legislative ambiguities pertaining to freedom of expression is essentially identical to the relevant objective. It envisages, in particular, the identification of legislative gaps pertaining to freedom of expression. This provision is so general that it is impossible to pinpoint the statutory acts that need to be revised. In addition, such approximation of the activity and objective complicates the assessment of the implementation of the latter and, ultimately, the overall goal. The wording "identification and elimination of legislative gaps pertaining to freedom of expression" is followed by the phrase "among others", which signifies that the Action Plan does not comprise an exhaustive list of activities that would lead to the implementation of the objective.

In 2017, the Parliament of Georgia introduced Constitutional amendments pertaining to freedom of expression. Among them, upholding the freedom of the Internet was the most crucial. A provision related to a public broadcaster free of political influence was also introduced in the Constitution. The National Communications Commission also acquired a constitutional status. These amendments are in line with the general provisions in the Action Plan: identification and elimination of legislative gaps pertaining to freedom of expression. In spite of this, the activity was carried out by the State Constitutional Commission, rather the Government or the Ministry of Justice.

In addition to the general phrase, "among others", the Action Plan entails only two specific activities: Revision of the concept of interference in the professional duties of journalists, and, if need be, the development of recommendations and a relevant draft necessary to amend legal regulations pertaining to digital broadcasting. In order to implement the objective of eliminating ambiguity associated with freedom of expression, it would have been more pertinent to include in the Action plan a designated activity delineating the rules for the installation of banners in public spaces. Unfortunately, the notion was not included in the Action Plan.

The Public Defender's reports emphasize that the problem lies not in the revision of the concept of interference in the professional duties of journalists, but rather in the investigation of such offenses and their efficient legal assessment (as discussed in the previous chapter). Therefore, the implementation of this activity is absolutely insignificant in terms of achieving the final goal - ensuring freedom of speech.

The Government and the Ministry of Justice of Georgia have assumed responsibility to revise Article 154 of the Criminal Code (Unlawful interference with journalists' professional activities). The letter received from the Ministry of Justice in response to an application sent to the government, including the Ministry, to request public information does not indicate whether the Ministry has done any work to revise Article 154 of the Criminal Code. The wording of Paragraph 1 of the Article remains the same as that formulated

on 22 July 1999, when the Criminal Code was adopted: Article 154.1 envisions retribution for unlawful interference in the professional duties of journalists, in other words, coercing a journalist into disseminating or refraining from disseminating information. It is noteworthy that Article 153 envisions liability for illegal obstruction of the freedom of speech or freedom to receive and disseminate information, which results in considerable damage or is committed by the abuse of official power. These two articles essentially supplement each other and practice has not revealed any problems in this regard at this stage.

On 1 June 2017, the sanctions associated with Article 154 of the Criminal Code, rather than the notion of its disposition, were amended. As per the amendment, the list of sanctions was expanded to include house arrest for a period of 6 to 24 months. Apart from the general provision on identifying legal gaps pertaining to freedom of expression, the amendment has nothing to do with the revision of the concept of interference in the professional activities of journalists.

The second specific activity set in the Action Plan is the development of recommendations and a draft to amend legal regulations pertaining to digital broadcasting. The analogue broadcasting signal was disconnected in Georgia in 2015³⁸ and the country successfully transitioned to digital broadcasting.³⁹ The Ministry of Economy and Sustainable Development of Georgia purchased set-top boxes for digital broadcasting only for families scoring below 70,000 on the social vulnerability scale.⁴⁰ The Public Defender's report states that most of the ethnic minority households in Samtskhe-Javakheti and Kvemo Kartli have no set-top boxes, which makes Georgian broadcasting inaccessible to them.⁴¹ Thus, residents receive information from Russian, Armenian, Azerbaijani, and Turkish TV channels.⁴² As of today, the fact that following the transition to digital broadcasting, Georgian citizens belonging to ethnic minorities are deprived of the right to receive information on the events unfolding in Georgia constitutes a major problem, especially in light of increased Russian propaganda in the regions. The Action Plan includes no specific activity to address this issue and the Ministry of Economy and Sustainable Development has not adopted any regulatory act to resolve the problem of expanding digital broadcasting in regions populated by ethnic minorities.

According to a letter received on 11 April 2018 from the Ministry of Economy and Sustainable Development, by 31 December 2015, set-top boxes had been distributed in the Samtskhe-Javakheti and Kvemo Kartli regions to families whose rating score on the social vulnerability scale was less than 70,001. Thus, during the reporting period, no steps were taken to provide these devices to ethnic minority regions.

No activities have been carried out in the reporting period to implement the two activities set in the Action Plan - revision of Article 154 of the Criminal Code and the procurement of set-top boxes required

³⁸ <http://liberali.ge/news/view/17459/1000-stdan-saqartveloshi-analoguri-mautsyeblobis-gatishva-daitsyo>.

³⁹ Institute for Development of Freedom of Information, Report on the implementation of the project "Supporting and Monitoring of the Transition to Digital Terrestrial Broadcasting in Georgia" (April 2015 - February 2016); p 3. <https://docs.google.com/viewerng/viewer?url=https://idfi.ge/public/upload/Digital/reportgeo.pdf>.

⁴⁰ *Ibid.* p 14. <https://docs.google.com/viewerng/viewer?url=https://idfi.ge/public/upload/Digital/reportgeo.pdf>.

⁴¹ Public Defender of Georgia, Report on Human Rights and Freedoms in Georgia, 2016; p 435; <http://www.ombudsman.ge/uploads/other/4/4494.pdf>.

⁴² *Ibid.*

to receive Georgian digital broadcasting in regions populated by ethnic minorities (this is one of the key legal problems in terms of digital broadcasting).

Although the Action Plan refers in general terms to the revision of legislation pertaining to freedom of speech, Decree #57 of the Government of Georgia dated as of 24 March 2009 "On construction permits and conditions for issuing permits" was not revised in the reporting period. According to Article 65.1 of the Decree, no construction permit is required to install signposts or advertisements. However, a written agreement with City Hall is necessary. According to Article 66.2 of the Decree, a permit on installing a signpost shall be obtained five days prior to the installation. This norm prevents citizens from expressing spontaneous protest by installing signs on building facades.

As mentioned above, GYLA has processed a case involving three citizens prosecuted under Article 150 of the Code of Administrative Offences for installing a banner in a location that was not deliberately earmarked for the purpose. The three citizens protested against Prime Minister Irakli Gharibashvili's visit to the town of Ozurgeti. The protesters were not informed of the Prime Minister's visit sufficiently in advance, and thus they could not have obtained from the local government the relevant permit to install the banner five days in advance and, naturally, there was no sense in placing the banner after the end of the visit. Although the government decree had an impact on freedom of expression, it was not revised and the right to spontaneous protest was not ensured.

Thus, there was no reference to or identification of the most important legislative issue pertaining to freedom of expression, which, in turn, is linked to protests using banners and placards installed in public areas. Consequently, the associated objective was not achieved. The revision of the concept of interference in the professional activities of journalists was less significant in terms of ensuring freedom of expression, but this activity was not carried through in the reporting period. The problem involving access to digital broadcasting in ethnic minority regions also remained unattended, , which once again led to the failure to contribute to the relevant objective.

5. Ensuring access to information

The Action Plan sets the objective to ensure access to information. The content of the associated activities implies that the objective entails access to public information at government organizations, rather than that maintained by private entities. The Action Plan sets only one activity aimed achieving the objective – the development of legal amendments to expand access to public information and their submission to the Parliament of Georgia.

This activity is quite general and does not point to challenges in terms of access to public information. The main problem is that public information is not released in due time. According to Article 40.1 of the Code of Administrative Offences, public information shall be released immediately upon request or within 10 days. In spite of this, the timeframes are often violated in practice. Court proceedings over the failure to provide public information are also delayed. According to Article 59.3 of the Civil Procedure Code, proceedings can last from two to five months, which is also quite frequently delayed. Finally, the petitioner may lose interest in the public information due to the protracted delays.

To eliminate this problem, it is crucial to establish an independent agency that would ensure free unrestricted access to public information and would be entitled to apply punitive measures (fines, imposition of obligations, and so forth). Most importantly, such an agency would be quicker than the courts in considering issues associated with access to public information.

In terms of access to public information, there is a problem concerning the concealment of guilty verdicts against former and incumbent officials that are of public interest.⁴³ Such information is classified under a special category of personal data. The legislation knows no test of public interest that could be used to declassify personal data.

Certainly, it would be expedient for the Action Plan to include an activity aiming at the adoption by the Ministry of Justice of a draft law on the establishment of an independent agency responsible for freedom of public information and declassifying information on the basis of public interest in spite of the fact that this is not directly mentioned in the Action Plan. Fortunately, the draft law developed by the Ministry of Justice does reflect the two issues.

The institution of the post of Commissioner responsible for making information public is a novelty in the draft law. The Commissioner is an independent agency that obliges a public agency to release public information. If the agency fails to release the requested information, the Commissioner is authorized to impose a fine. The draft law also introduces the public interest test, which ensures that classified information is made public.

Notwithstanding the above, the draft law was not initiated in parliament during the reporting period as envisaged by the Action Plan. A letter dated 17 October 2017 received from the Ministry of Justice states the following: "Among others, the draft law 'On freedom of information' ... is on the list of bills to be raised at the autumn 2017 session of the Parliament of Georgia as submitted to the Parliamentary Secretary of the Government of Georgia by the Ministry of Justice". In spite of this, the autumn 2017 session ended without the government's consideration of the draft law.

Thus, this activity can be deemed as partially implemented: the Ministry of Justice has developed a draft law that raises the standard of the right to freedom of information and creates a mechanism to ensure the release of public information. Nevertheless, the relevant draft law has not yet been discussed in parliament.

Recommendations:

For the Prosecutor's Office

- Conduct effective investigation of crimes perpetrated against journalists
- Assign correct classification to acts committed against journalists

⁴³ Public Defender of Georgia, Report on Human rights and Freedoms in Georgia, 2016; p 451; <http://www.ombudsman.ge/uploads/other/4/4494.pdf>.

For the Government of Georgia

- Together with the Ministry of Justice, ensure timely submission to Parliament of the draft law "On freedom of information".

For the Ministry of Economy and Sustainable Development

- Make efforts to provide technical devices necessary for the reception of digital broadcasts in regions of Georgia populated by ethnic minorities.

For the Human Rights Secretariat

- In developing the chapter on freedom of expression, ensure the active engagement of persons who are most likely to enjoy this right, or are subject to restrictions in using this right. Hence, it is of utmost significance to involve journalists in the development of the chapter on freedom of expression.

Right of Freedom of Assembly and Manifestations

1. Key Findings

The right to freedom of assembly and manifestation is guaranteed by Article 25 of Constitution of Georgia. Chapter 9 of Human Rights Action Plan (206-2017) is related to freedom of assembly and manifestation. In terms of right of assembly and manifestation, crowd management by LGBT community when marking May 17 in Tbilisi central streets still remains to be a problem. In consideration of the administrative offense case, policemen testimonies continue to be the hard evidence against gathering participants. Georgian legislation is not familiar with spontaneous assembly institute.

The objective set by Chapter 9 of the Action Plan - establishment of high standards of freedom of assembly – requires farther specification. In order to achieve the objectives two tasks are set: approximation of legislation related to the right of assembly and manifestation to international standards, as well as response and prevention of assembly and manifestation right violations. Both tasks ensure achievement of the objective. However, tasks related to legal response and prevention of assembly and manifestation right violation need to be differentiated. The Action Plan does not comprise a higher standard establishing the right of assembly and manifestations, in particular, the recommendations of the UN special rapporteur on the rights to freedom of peaceful assembly and of association.⁴⁴

During the reporting period, regardless the fact, that it was envisaged in the Action Plan, Georgian legislation did not apply to the recommendations of the Venice Commission and case laws of the European Court of Human Rights. In order to accomplish task related to prevention of assembly right violations, active application of policemen body worn cameras in administrative offense cases shall be envisaged in the Action Plan. The Action Plan shall also clearly indicate on application of disciplinary and administrative measures against violation of the right to assembly by Ministry of Internal Affairs.

Elaboration of crowd management instructions by Ministry of Internal Affairs, as well as trainings on international standards on right to assembly carried out at the Academy of the Ministry, requires positive evaluation.

2. Establishment of Guarantees for High Standards of Protection of the Right to Assembly and Manifestation

The objective of the chapter on freedom of assembly and manifestations is to establish guarantees of high standards of the protection of the right of assembly and manifestations. Of course, improvement of existing standards on right of assembly and manifestation is an important objective; however, detailed specification is required to easy the perception of the accomplishment. Accomplishment of the objective is easier to measure, if we know compared to which standard the improvement has been made. Therefore, it is important to highlight, that objective of the Action plan is to establish high standards of protection guarantees for the right of assembly and manifestation in accordance with international obligations. This would simplify measurement of accomplishments.

⁴⁴ Standards mentioned in the report by the UN special rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai.

Two tasks have been selected in order to achieve the objective of establishing high standards for assembly and manifestation: approximation of legislation related to the right of assembly and manifestation to international standards, as well as response and prevention of assembly and manifestation right violations. Both goals ultimately serve the achievement of the objectives.

Regardless the fact that the Action Plan does not specify the international standard, this topic is covered in the section on Scope of Activity, where two international legal instruments are noted: practices of European Court of Human Rights and Venice Commission. Taking into consideration the fact that the objective is to achieve high standards in assembly and manifestation rights, the latter cannot be achieved by implementation of European case law and Venice Commission resolutions in Georgian Legislation.

There is a report dated June 8, 2012 elaborated by the UN special rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, which compared to recommendation of Venice Commission sets higher standards. It will be covered later, that according to UN special rapporteur recommendations, small number of demonstrators shall be allowed to use the highways for a reasonable period of time, while the Venice Commission does not require inscription of latter in law on assembly and manifestation. It is clear that in such cases, the report by the special rapporteur establishes a higher international standard and the objective set by the Action Plan cannot be achieved without it. Regardless the above mentioned, the Action Plan does not require implementation of the high standard established by the UN special rapporteur report.

The Action Plan represents the legal response and prevention of assembly and manifestation right violations as unified objective. For the purposes of this chapter, we find unification of investigation and prevention goals irrelevant. One part of the Scope of Activity- for example, Crowd Management is exclusively related to prevention, while effective and timely investigation of assembly and manifestation right violations- is related to legal response.

3) Legal Amendments

One of the activities defined by the Action Plan is revision of the Law “On Assembly and Manifestation: in accordance with international and constitutional standards. The Action Plan does not specify the amendments to be made in the Law of Georgia "On assembly and manifestations"; however, the Action Plan envisages amendments in accordance with the practices of the European Court of Human Rights and recommendations of the Venice Commission. Based on the aforementioned standards, draft law was supposed to be elaborated envisaging opportunity of spontaneous demonstrations, use of roadways by small number of demonstrators for a reasonable period of time and timeframes for “Assembly and Manifestation” related dispute consideration.

In 2016-2017, the Georgian government was to develop and submit to parliament a draft law on amendments to the law "On Assembly and Manifestations". In spite of this, the draft law has not been developed, and accordingly it was not submitted to the parliament.

In this section, we will discuss standards established by the European Court of Human Rights and Venice Commission, also recommendations of UN special rapporteur on the rights to freedom of assembly and

association, as well as compatibility of existing Georgian legislation with these standards in the scope of activities envisaged in the Action Plan. As the activity implies amendments to the Georgian legislation in accordance with the standards of the European Court of Human Rights and the Venice Commission, it is important to identify the specific standards that these two European mechanisms demand from Georgia and other member states of the Council of Europe. Afterwards, it will be necessary to identify to what extent these standards will be introduced in Georgian legislation. These are the topic which will be covered in following chapters.

3.1. Spontaneous Assembly and Manifestations

On September 30, 2001 the Venice Commission published its opinion regarding the law "On assembly and manifestations". However, recommendations introduced in this opinion have not implemented. One of the recommendations was to regulate spontaneous manifestations in the Georgian legislation.

According to Section 1, Article 5 of law of Georgia "On assembly and manifestations", this law requires prior notification of the local self-government executive authority if assembly or manifestation is to be held on highway or may prevent transportation. Also, Section 1, Article 8 of the same law stipulates that local self-government executive authority shall be notified on assembly no later than 5 days prior to assembly or manifestation. Venice Commission noted in its opinion: "The Venice Commission had previously recommended that notification conditions envisaged in Article 8 (the fact that, there is no exception for 5 day prior notification, makes it impossible to hold spontaneous assembly) shall become more flexible. This important recommendation has regrettably not been addressed".⁴⁵ In the same conclusion, the Venice Commission urges the Georgian government: "some of important issues are still in place (notably the impossibility to hold spontaneous assemblies), and these issues need to be addressed by the government. The Venice Commission remains at the disposal of the Georgian authorities in this respect".⁴⁶

European Court of Human Rights judgment dated February 7, 2017, regarding the case of Lashmankin and Others v. Russia is the most recent example pertaining to spontaneous demonstrations.⁴⁷ European Court of Human Rights in its judgment states as follows: "To sum up, the Government did not give any reasons why it should have been 'necessary in a democratic society' to establish inflexible time-limits for notification of public events and not to make any exceptions ... in cases of justified spontaneous

⁴⁵ Paragraph 26 of the opinion of the Venice Commission;
[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2011\)092-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2011)092-e).

⁴⁶ Paragraph 46 of the opinion of the Venice Commission;
[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2011\)092-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2011)092-e).

⁴⁷ In this case, the plaintiff was protesting against the draft law that aimed at prohibiting US citizens from adopting Russian children. The public was informed about the discussion of the draft law in parliament two days prior to it. According to the Russian legislation, a notification was to be filed three days in advance. Complying with the time limits, the plaintiff would be unable to hold the assembly on the day, when the draft law was to be discussed, and administrative responsibility would ensue from the failure to observe the three-day time limit. The Russian legislation did not provide for an exception from the obligation to file a notification three days in advance; <http://hudoc.echr.coe.int/eng?i=001-170857>.

assemblies... In the light of the foregoing, the Court considers that the automatic and inflexible application of the notification time-limits in applications ... without any regard to the specific circumstances of each case amounted to an interference which was not justified under Article 11 § 2 of the Convention".⁴⁸

Similar to Russian legislation, Georgian legislation also prohibits occupation of highways without five days prior notification. This provision applies even in case of unpredictable events, which require immediate response and may be delayed for five days later. It is for this reason that the Venice Commission recommended the Georgian government to introduce an exception from the 5-day timeframe in order to enable people to hold spontaneous demonstrations. The recommendation was given in 2011, but it has not been implemented up to now. At the same time, the Action Plan envisages amendments to the legislation, not the resolution of this problem, which is a serious shortcoming of the Action Plan, as it fails to ensure the achievement of the ultimate objective of introducing higher standards of the protection of the right of assembly and manifestations.

Accordingly, by stipulating spontaneous demonstrations in legislation Georgia failed the process of approximation with standards set by Council of Europe, as well as failed to achieve the goal to improve standards for the right of assembly.

3.2 Occupation of Highway by Small Number of Demonstrators

According to Section 1, Article 5 of Law of Georgia "On assembly and manifestations", this law requires prior notification of the local self-government executive authority if assembly or manifestation is to be held on highway or may prevent transportation. Also, Section 1, Article 8 of the same law stipulates that local self-government executive authority (city hall) shall be notified on assembly no later than 5 days prior to assembly or manifestation. Although a notification on holding an assembly on a carriageway can be filed at the city hall five days in advance, participants in the action will have no right to occupy the area, if the number of demonstrators is low. In particular, Article 11¹.1 of the Georgian law "On assembly and manifestations" states that "if participants in an assembly or manifestation partially or fully block the carriageway, the local self-government's executive body is authorized to decide to reopen the carriageway or/and restore traffic in case it is possible to hold the assembly or manifestation in another manner given the number of the participants of the assembly or manifestation".

In its opinion, the Venice Commission welcomed the fact that the term "authorized" was added to Article 11¹ of the law "On assembly and manifestations". According to the Venice Commission, when few demonstrators hinder transport movement, the assembly should not be dispersed automatically, but after taking into account specific circumstances.⁴⁹ The UN special rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, demanded introduction of higher standards in Article

⁴⁸ Paragraph 456 of the judgement on the on the Case of Lashmankin and Others v. Russia; <http://hudoc.echr.coe.int/eng?i=001-170857>.

⁴⁹ Paragraph 26 of the opinion of the Venice Commission; [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2011\)092-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2011)092-e).

11¹ of the law "On assembly and manifestations". In his opinion, small number of demonstrators should have the opportunity to occupy the carriageway for a reasonable period of time.⁵⁰

In spite of these recommendations, the Georgian legislation does not provide for the right of demonstrators few in number to block carriageways for a reasonable time, which has made it impossible to achieve the objective of introducing a high standard.

3.3 Court Proceedings Related To the Restriction of the Right of Assembly

According to Article 11.7 of Law of Georgia "On assembly and manifestations", "the decision to terminate an assembly or manifestation can be appealed against through the court, which shall consider the legality of the decision at every level within three working days under the current statutory procedure".

Thus, the three-day time limit of considering a case at each level is valid only in cases, where the government terminates an assembly or manifestation. It cannot be applied to an assembly that continues, but the government restricts its time, location, or the manner of conduct on the basis of the literal interpretation of the norm. The restriction of the time, location, and manner of holding a manifestation may often make an assembly senseless.

It was established in the Lashmankin case that Article 13 of the Convention (right to efficient defense at the national level), in combination with Article 11 of the Convention, was violated, because complaints about the restriction of the time, location, and manner of conduct of assemblies were not considered in due time: "The complaints relating to freedom of assembly were not considered to be urgent, and did not have any priority over other cases, which, combined with the heavy case-load of the Russian courts, resulted in recurrent delays in their examination. The Court reiterates in this connection that a heavy case-load cannot serve as a justification for delays in judicial proceedings".⁵¹

Taking into account the fact that the law "On assembly and manifestations" mentions termination of an assembly without implying restrictions in terms of time, location, or the manner of conduct, general time limits will apply to the latter, specifically the two-month time limit under Article 59.3 of the Civil Procedure Code or the five-month time limit in particularly complicated cases. At the same time, these time limits can also be violated due to the heavy case-load of courts. In order not to make an assembly senseless, it is necessary to add to Article 11.7 of the law "On assembly and manifestations" an inscription saying that together with the termination of an assembly, the time limit for the consideration at every level is three days for complaints linked to the time, location, or the manner of conduct of the manifestation.

3.4 Conclusion

⁵⁰ Paragraph 74 of the report by UN special rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai; https://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_4107.pdf.

⁵¹ Paragraph 350 of the judgement on the on the Case of Lashmankin and Others v. Russia; <http://hudoc.echr.coe.int/eng?i=001-170857>.

Thus, the Georgian government did not meet the commitments under the Action Plan that envisaged harmonization of the Georgian legislation pertaining to the right of assembly and manifestations with the practice of the European Court of Human rights and recommendations of the Venice Commission. The Georgian legislation does not recognize spontaneous demonstrations; demonstrators, who are few in number, do not have the opportunity to occupy carriageways for a reasonable time; and courts do not consider cases related to the time, location, and manner of conduct of assemblies in short period of time. We can say that, regardless expiration of reporting period, the activity of developing a draft law on the right of assembly and manifestations and initiating it in parliament was not implemented. As a result, Georgian legislation failed the process of approximation with international standards and accordingly, the objective of establishing a higher standard of assemblies and manifestations was not achieved.

Accordingly, no amendments were made to the law "On assembly and manifestations" during the reporting period. Accordingly, related activity set in the Action Plan was not implemented at all.

4. Prevention of Violations of the Right of Assembly and Manifestations

One of the activities the Action Plan sets in order to implement the goal of preventing violations of the right of assembly and manifestations is the goal itself. More specifically, prevention of violations of the right of assembly and manifestations. This circumstance indicates on irrelevancy of the activity. At the same time, the activity that is supposed to achieve the goal of prevention is set to be the improvement of the skills of subdivisions of law enforcement agencies in managing/controlling crowds, which is quite an appropriate activity taking into account the challenge of safe conduct of events on 17 May, Day Against Homophobia and Transphobia.

In order to achieve the goal of preventing violations of the right of assembly, the Action Plan does not set the activity such as making recordings of policemen's communication with people by application of body worn cameras prior to initiating examination of violations in courts as provided for by Article 173 on Code of Administrative Offences (malicious disobedience of demands of the law enforcement agencies). Inclusion of this activity in the Action is important as assembly participants are most commonly arrested on the basis of Article 173 of the Code of Administrative Offense and the courts recognize individuals as offender only based on the evidences provided by the policemen without looking into other more reliable evidences. Setting this activity is going to create additional guarantees for ensuring the right of assembly.

From the public defender's report it becomes clear that, arrests on the ground of disobedience to law enforcement agency representative's order, in other words action which in accordance with Article 173 of the Administrative Offense Code is an offence, is still a challenge. According to the Public Defender, the testimonies of a policeman, who draws up the record of arrest, is sufficient for recognizing a person as an offender.⁵²

⁵² The Georgian Public Defender's report of 2016 on the state of the protection of human rights and freedoms in Georgia; pp 462-463; <http://www.ombudsman.ge/uploads/other/4/4494.pdf>. The report refers to the arrest of an active participant in the peaceful assembly against the construction of an electricity transmission line in the village of Tsdo. The courts of two levels found him guilty of wrongdoing under Article 173 of the Code of Administrative Offences. No recordings of shoulder cameras were used in this case and only law enforcers testified that the citizen disobeyed legitimate demands. The courts relied only on these testimonies, finding the person guilty of wrongdoing.

According to Article 27.1a of the law "On police", "to ensure public safety, police is authorized to install/place, in line with the rules established by the Georgian legislation, automatic photo and video equipment on the uniforms, vehicles, roads, and the outside perimeter of buildings and use the said installed equipment belonging to others for the purposes of preventing crimes, ensuring safety of people and their property and public order, and protecting minors from harmful influence".

According to Article 236.2 of the Code of Administrative Offences, videos are evidence in cases of administrative offences. Taking into account the fact that Article 173 of the Code of Administrative Offences is quite often used mostly against demonstrators, in order to avert unfounded restrictions of the right of peaceful assembly, it is important to instruct policemen that they should turn on their cameras before coming into any kind of contact with assembly participants. Uninterrupted recordings of interaction between citizens and policemen are supposed to be irreplaceable and reliable evidence to confirm whether participants in the action indeed disobeyed lawful orders of policemen or not. Such a provision is also supposed to be a measure for preventing violations of the right of peaceful assembly.

We have requested information from the Ministry of Internal Affairs regarding the number of cases where materials from body worn cameras were presented to the courts as a proof offence under Article 173 of the Code of Administrative Offences. In response to our inquiry, Ministry of Internal Affairs stated that ministry does not track statistics in question.

Based on the information obtained from the Ministry of Internal Affairs regarding activities for improvement of crowd management/control skills in structural units of the law enforcement agencies, it becomes clear that in 2015 in accordance with Ministerial Order N1002, "Instructions on Conduct of MIA Servicemen during Assembly and Manifestation" was approved. These guidelines comprise and regulate issues such as efficient performance of duties by the Ministry of Internal Affairs personnel during authorized assemblies and manifestations and peaceful conduct of manifestations and protection of participants' rights. This instruction defines general rules of conduct for law enforcement agency servicemen during assembly and manifestation; defines topics related to establishment of action plan for law enforcers during the assembly and manifestation...

Unfortunately, Ministerial Order N1002 was not attached to the response letter from the Ministry of Internal Affairs and accordingly crowd management related details could not be assessed.

Taking into account the fact that the Ministry of Internal Affairs did not provide the Ministerial Order N1002, regarding "Instructions on Conduct of MIA Servicemen during Assembly and Manifestation", it is impossible to fully assess the efficiency of trainings provided to the personnel of the Ministry of Internal Affairs on crowd management. In addition it is difficult to assess the efficiency of implementation of these rules. Also, taking into account that according to the Action Plan, policemen are not obliged to turn on the body worn cameras from the beginning of communication with the participant and citizens, and continue recording till the end of communication, implementation of preventive measures against assembly right related violations remains unattained.

5. Legal Response to Violations of the Right of Assembly and Manifestations

The Action Plan sets two activities for achieving the goal of legal response to violations of the right of assembly and manifestations: timely and efficient investigation of violations of the right of assembly and manifestations and the initiation of criminal proceedings, as well as inclusion of training courses on timely and efficient investigation of violations of the right of assembly and manifestations in curricula of Ministry of Internal Affairs Academy. The Action Plan rests on the Ministry of Internal Affairs the responsibility for investigating facts of violations of the right of assembly and manifestations. However, it is unclear whether investigation implies only criminal investigation or the term shall be understood in a broader sense, which may also imply examination of offenses with disciplinary misconduct or administrative offense signs.

Both activities ensure achievement of the goal. However, the Ministry of Internal Affairs is not unambiguously charged with the obligation to carry out disciplinary and administrative examination of violations of the right of assembly, what means that the two activities are not going to be sufficient for implementation of the goal.

The Ombudsman's report indicates that the gravest violation of the right to freedom of assembly was an attack on the supporters of the National Movement in the village of Kortskheli in the Zugdidi Municipality. According to the Prosecutor's Office, six persons were presented charges under Paragraph a of Section 2 of Article 239 of the Georgian Criminal Code (hooliganism perpetrated intentionally by a group of people) and one person was presented a charge under Paragraph a of Section 2 as well as Section 3 of Article 239 (hooliganism committed using a firearm or using a different object as a weapon). On 2 June 2016, these persons were released on bail by the Zugdidi district court ruling. Ten people were recognized as victims. Currently, the case is being considered in Zugdidi district court.

The 2016 report of the Public Defender mentions three cases of violation of the right of assembly. In one of the cases, a participant of a protest outside the office of the Georgian Dream was detained and delivered to a mental clinic against his will.⁵³ In the second case, residents of Gonio, who staged a protest in the square outside the building of the government of the Ajarian Autonomous Republic, were deprived of mattresses and detained on 22 June 2016.⁵⁴ And the third case is about the manner of prohibiting those on hunger strike outside the former building of parliament in Tbilisi on 26 December 2016 from using umbrellas and erecting a tent.⁵⁵ The Public Defender recommended the Ministry of Internal Affairs that personnel involved in above mentioned three cases shall be held responsible.

Within the sphere of its competence, the Ministry of Internal Affairs had two ways of complying with the recommendations on these three cases: To start an agency check to make its own personnel subject to disciplinary action or launch an administrative case under Article 174² of the Code of Administrative Offences that provides for responsibility for using official position to hinder assemblies or manifestations

⁵³ The Georgian Public Defender's report of 2016 on the state of the protection of human rights and freedoms in Georgia; pp 460-461; <http://www.ombudsman.ge/uploads/other/4/4494.pdf>.

⁵⁴ The Georgian Public Defender's report of 2016 on the state of the protection of human rights and freedoms in Georgia; p 458; <http://www.ombudsman.ge/uploads/other/4/4494.pdf>.

⁵⁵ The Georgian Public Defender's report of 2016 on the state of the protection of human rights and freedoms in Georgia; p 457; <http://www.ombudsman.ge/uploads/other/4/4494.pdf>.

and to violate the right of participants therein. According to Article 239.23 of the Code of Administrative Offences, the Ministry of Internal Affairs is responsible for drawing up a protocol of such offences.

The letter received from the Ministry of Internal Affairs dated 16 February 2018, highlights that "no offence under Article 174² of the Code of Administrative Offences (using official position to hinder assemblies or manifestations) was registered in 2016-2017". The same letter states that "according to the information provided by the Ministry of Internal Affairs General Inspection, based on inspection of the personnel of the Ministry of Internal Affairs, in 2016-2017 none of the personnel was subject to disciplinary measures for violation of the right of assembly".

Thus, the Ministry of Internal Affairs did not provide any information on its response to the Public Defender's recommendation, but it is clear that in the during the reporting period, the Ministry of Internal Affairs did not resort to any disciplinary or administrative measures in connection with the three cases. It is unlikely that the cases could be submitted to the Prosecutor's Office for initiation of criminal prosecution against the personnel of the Ministry of Internal Affairs on the grounds of cases of minor importance.

The second activity set by the Action Plan for achieving the goal of investigating violations of the right of assembly and manifestations is inclusion of training courses on timely and efficient investigation of violations of the right of assembly and manifestations in curricula of Ministry of Internal Affairs Academy. Although requested, no curricula were provided.

The written answer of the Ministry of Internal Affairs states that training was held on August 25-26, 2016 and July 6-7, 2017, in the framework of joint EU and UN project "Human Rights for All". Training course addressed international and national standards regulating freedom of assembly and manifestations. The letter makes it clear that prevention of violations of the right of assembly and manifestation, including measures in terms of the crowd management, is integrated in the international standards of the right of assembly and investigation into the violations of the right. Although no curricula were submitted, the detailed information received from the Ministry of Internal Affairs makes it clear that training courses on efficient investigation into violations of the right of assembly and manifestations have been integrated and the activity has been carried through.

In the case of the Kortskheli incident, the case has gone to court. In this regard, the Prosecutor's Office has fulfilled its obligation to investigate the case. The activity which envisaged integrating training on rapid and effective investigations of incidents related to violations of the right to freedom of assembly and association into the curricula of the Police Academy has been fulfilled. Fulfilling the objective of applying legal response to violations of the right to assembly takes more than just stating such a commitment in the action plan. The Ombudsman's report shows that in majority cases there is an indication that a police officer has committed a disciplinary or administrative misconduct. Therefore, it is imperative that the action plan should state that disciplinary and administrative measures apply to police officers who violate the right to freedom of assembly.

Recommendations:

- 1) The right of spontaneous assembly must be reflected in the legislation;
- 2) Demonstrators few in number must be allowed to occupy carriageway for a reasonable time;
- 3) A three-day time limit of considering a case must be valid at each judiciary level in cases of restricted time, location, or the manner of conduct of assemblies;
- 4) The segment of the Action Plan dealing with the right of assembly must isolate from each other the goals of legal reaction to violations of human rights and prevention of violations of this right;
- 5) As one of the activities for the prevention of violations of the right of assembly, policemen must be obliged to constantly keep body worn cameras turned on until they draw up protocols as provided by Article 173 of the Code of Administrative Offences. The Ministry of Internal Affairs must gather special statistic data of the cases, where recordings of body worn cameras are submitted to courts in cases initiated under Article 173 of the Code of Administrative Offences.
- 6) The Action Plan must clearly state that the Ministry of Internal Affairs is obliged to use measures for disciplinary or administrative responsibility to achieve the goal of legal response to violations of the right of assembly.
- 7) It is of decisive importance to have LGBT community organizations, environmentalists, student organizations, opposition political parties, and trade unions involved in drawing up the chapter on assembly and manifestations.

Comparative Analysis of Action Plans 2014-2015 and 2016-2017 in relation to Freedom of Expression and Manifestation

Freedom of expression

Action Plans 2014-2015 and 2016-2017 envisaged identification of the law related to the right to expression and implementation of relevant amendments. The plans also envisaged revision of the concept of interference with professional journalistic activities. Neither of the two activities has been fulfilled. The goals and objectives set in both action plans are identical.

Both action plans planned for a move to digital broadcasting and regulation of the relevant legislation. In 2015, the country successfully moved to digital broadcasting but following that, the state has done next to nothing to tackle problems such as e.g. distribution of set-top boxes in the regions populated with minorities.

Both action plans envisaged ensuring rapid and effective investigations of cases of interference with professional journalistic activities. This activity has been partly fulfilled: there are incidents that have been investigated (such as an attack on the journalists of the Tabula magazine) but there are also cases which have not been investigated to date (circulating materials depicting journalist Inga Grigolia's private life, an attack on journalists on 15 June 2009).

Both action plans pledged to ensure keeping statistics of crimes perpetrated against journalists. To date, statistics has been kept on crimes that fall under Article 154 of the Criminal Code (interference with professional journalistic activities) along with statistics of cases which involved journalists as victims. According to a representative of the Ombudsman's Office, investigation agencies still find it difficult to prove that a specific criminal activity is linked to the journalist's professional activity. Therefore, it is challenging to fulfill this objective in practice fully.

Both action plans envisaged ensuring correct categorization of crimes perpetrated against journalists. With regard to the fulfillment of the objective, there was a problem in 2016 when the video cameras belonging to the journalists broadcasting from the Tbilisi State University were damaged and the action was not categorized as a crime regulated by Article 154 of the Criminal Code (interference with professional journalistic activity). The situation changed and the action was classified as a crime under Article 154 only following the Ombudsman's recommendation. Yet, the crime perpetrated against the Maestro TV's journalists on 15 June 2009 has not been classified as such to this date.

The commitment to launch investigations was included in the 2016-2017 Action Plan following much media coverage. The activity was not linked to the goal of ensuring freedom of speech, though.

The 2014-2015 and 2016-2017 action plans envisage adoption of a new law on freedom of information. To date, the Justice Ministry has not fulfilled the commitment.

Freedom of Assembly

In order to attain high standards of freedom of assembly and association, the 2014-2015 and 2016-2017 action plans set a commitment of making changes to the Law on Assemblies and Associations in accordance with the practices of the Constitutional Court, the Venice Commission and the European Court of Human Rights. The objective has not been fulfilled at any stage.

Both action plans pledged ensuring rapid and effective investigations of violations of the right to freedom of assembly and association. Currently, a criminal case is being heard in Zugdidi district court in connection with the incident that took place in the village of Kortskheli. No disciplinary or administrative charge has been presented to any public official involved.

The 2016-2017 Action Plan also envisaged improving the training of units of law enforcement agencies on crowd management/control. Moreover, the 2014-2015 Action Plan stipulated development of standard procedures for relevant units of the Ministry of Internal Affairs, as well as learning/sharing experience from the leading European countries with respect to the performance of the Ministry of Internal Affairs during gatherings and demonstrations.

In order to meet these obligations, the Ministerial Decree N1002 approved “Instructions on Conduct of MIA Servicemen during Assembly and Manifestation”. The instructions cover and regulate issues such as effectively executing their official capacity by the ministry’s personnel during sanctioned gatherings and rallies, guiding these peacefully and protecting the safety of participants. Thus, the aforementioned activity has been fulfilled. The Ministry of Internal Affairs has developed instructions for crowd management and participants’ safety protection.

With regard to rapid and effective investigations of violations of the right to freedom of assembly, both action plans envisioned integrating relevant trainings into the Police Academy’s curricula. The trainings conducted at the academy in 2016-2017 dealt with international and national standards regulating the right to freedom of assembly and association. Thus, the commitment to train the academy’s students can be considered fulfilled.

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 conflicts⁵⁶ against the Muslim community, a tendency of increase in religious persecution of Jehovah's Witnesses⁵⁷, a policy of instrumentalization and control of religious organization by the State Agency for Religious Issues⁵⁸, unsecure public rhetoric and attitudes by the political government,⁵⁹ 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

⁵⁶ 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/>

⁵⁷ 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>

⁵⁸ 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>

⁵⁹ 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.⁶⁰ 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

⁶⁰ 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 Commission⁶¹, handover of property rights for the Armenian Tandoyants church to the Patriarchate,⁶², handover of rights to the Imam Ali mosque to another religious organization⁶³, 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 suspicions⁶⁴. In its four years of existence, the main focus of the Agency has been the management of funding processes for four religious communities

⁶¹ EMC assessment : <https://emc.org.ge/ka/products/emc-mokhis-komisiis-saboloo-gadatsqvetilebas-afasebs>

⁶² EMC and TDI joint assessment <https://emc.org.ge/ka/products/emc-da-t-di-sapatriarkostvis-tandoiantsis-eklesiis-tvitneburi-gadatsemis-sakmeze>

⁶³ EMC assessment: <https://emc.org.ge/ka/products/emc-ma-marneulshi-imam-alis-mechetis-restitutsiis-problemastan-dakavshirebit-sasamartlo-dava-daitsqo>

⁶⁴ 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.⁶⁵

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.⁶⁶

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.⁶⁷ 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 Administration⁶⁸; 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 Mokhe⁶⁹).

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.

⁶⁵ 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>

⁶⁶ "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/>

⁶⁷ EMC, funding of four religious organizations, legal analysis: <https://emc.org.ge/ka/products/otkhi-religiuri-organizatsiis-dafinansebis-praktikis-samartlebrivi-shefaseba>

⁶⁸ 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>

⁶⁹ 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.⁷⁰ 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 organizations⁷¹ 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.

⁷⁰ Note: ECRI on the importance of cooperation with the religious council.

⁷¹ 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 organizations⁷². 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 secularity⁷³, 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.

⁷² 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>

⁷³ 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.⁷⁴ 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

⁷⁴ 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 2012-2016,⁷⁵ a mounting trend of religious violence, persecution, and opposition to religious practices against Jehovah's Witnesses has become obvious in the same period.⁷⁶ (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.⁷⁷ In some, cases, the groups openly demonstrate violent intentions and behavior in the public space.⁷⁸

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

⁷⁵ 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>.

⁷⁶ 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>.

⁷⁷ 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-ekhmianeba>.

⁷⁸ 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.⁷⁹

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).⁸⁰

⁷⁹ LEPL State Agency for Religious Issues, letter N1/1228 of October 25th, 2017;

⁸⁰ 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",⁸¹ 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.⁸²

This model of funding is actively criticized in reports by the Public Defender⁸³ and its Council of Religions.⁸⁴

Flaws in the law on state property

⁸¹ 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";

⁸² 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>

⁸³ 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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⁸⁴ 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.⁸⁵

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.⁸⁶

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 Office⁸⁷ and its Council of Religions.⁸⁸

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.

⁸⁵ Paragraph 1 of Article 3 of the Georgian Law on State Property;

⁸⁶ 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>

⁸⁷ Report of the Public Defender of Georgia 2016, p.426, available at: <http://ombudsman.ge/uploads/other/4/4494.pdf>;

⁸⁸ 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 Defender⁸⁹ and its Council of Religions⁹⁰.

Religious organizations have entered a lawsuit concerning this matter in the Constitutional Court, which is reviewing the case.⁹¹

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; ⁹²	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 ⁹³
(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; ⁹⁴	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. ⁹⁶

⁸⁹ 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>

⁹⁰ 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;

⁹¹ 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>

⁹² Paragraph “d” of part 1 of Article 99 of the Georgian Tax Code;

⁹³ 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.

⁹⁴ Paragraph “b” of part 1 of Article 168 of the Georgian Tax Code;

	2. Construction, restoration and painting of churches ordered by the Patriarchate; ⁹⁵	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. ⁹⁷	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.⁹⁸

The constitutional appeal submitted by religious organizations cannot in any way be considered as an obstacle of obligations under the Action Plan⁹⁹ 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.

⁹⁶ 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.

⁹⁵ Paragraph “b” of part 2 of Article 168 of the Georgian Tax Code;

⁹⁷ Paragraph 5 of Article 6 of the Constitutional Agreement;

⁹⁸ Letter N08-04/167780 of the Ministry of Finance of Georgia, dated November 6th, 2017;

⁹⁹ 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.¹⁰⁰ 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.¹⁰¹ Aside from international organizations, this problem is repeatedly brought up by the Public Defender and its Council of Religions.¹⁰²

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.¹⁰³ 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.¹⁰⁴ Needless to say, handover of religious buildings to religious organizations with the right to use them cannot be considered as restitution.¹⁰⁵

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

¹⁰⁰ 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;

¹⁰¹ 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>

¹⁰² 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

¹⁰³ 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>

¹⁰⁴ See detailed assessment of paragraph 11.1.3.1. of the action plan;

¹⁰⁵ 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 2014.¹⁰⁶

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.¹⁰⁷

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

¹⁰⁶ Report on the activities of the State Agency for Religious Issues in 2016-2017, p 18.

¹⁰⁷ 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.¹⁰⁸

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 construction¹⁰⁹ 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.¹¹⁰ 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.¹¹¹ Therefore, despite years of work by the commission, the government was not able to effectively solve the problem.¹¹²

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

¹⁰⁸The letter of the State Agency for Religious Issues of 28 September 2017, No 1/1121.

¹⁰⁹ EMC met with Christian and Muslim communities in village Mokhe goo.gl/AkqPtL

¹¹⁰ Journal "Liberali", "Mokhe construction was granted the status of Monument – Zaza Vashakmadze says everything is fine" goo.gl/pYyNAh

¹¹¹ Facebook group for saving Mokhe historic mosque goo.gl/jdF5sD

¹¹² 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”.¹¹³

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.¹¹⁴

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 monuments¹¹⁵, 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.

¹¹³ 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.

¹¹⁴ The government handed Tandoyants church over to the Patriarchate of Georgia goo.gl/sKkHdd. EMC and TDI will represent the plaintiff in court.

¹¹⁵ 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.¹¹⁶

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.¹¹⁷

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.¹¹⁸ This is confirmed by several studies¹¹⁹ and reports on the condition of human rights¹²⁰. The studies attest to the fact that systemic problems with the teaching process and daily life in school are deeply ingrained¹²¹ 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

¹¹⁶ 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.

¹¹⁷ See above;

¹¹⁸ Freedom of Religion – Critique of Discriminatory and Non-secular state policy, EMC, 2016, available at: <https://emc.org.ge/2017/03/26/emcr/>

¹¹⁹ Religion in Public Schools, EMC, 2014, available at: https://emc.org.ge/2014/03/31/religia_sajaro_skolebshi/

¹²⁰ 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>

¹²¹ 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;¹²² 2. Low levels of academic and civic knowledge among teachers and inefficiency of systematic training programs in this direction¹²³; 3. Formal and non-formal influences of the Patriarchate on the Ministry of Education and Science and public schools¹²⁴; 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

¹²² 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/saxelmzgvaneloebis_analizi_tdi_2016.pdf

¹²³ 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%20umagle_sebshi.pdf

¹²⁴ 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 Mokhe¹²⁵ 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.¹²⁶

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.

¹²⁵ EMC's assessment on the case of Teona Beridze, available at: <https://emc.org.ge/2017/02/08/emc-213/>

¹²⁶ 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.¹²⁷ 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,¹²⁸ 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 defender¹²⁹, 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.¹³⁰

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

¹²⁷ 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-tlebis-samtavrobosamokmedo-gegmis-shesrulebastan-dakavshirebit>

¹²⁸ Coalition for Equality, Annual Report , 2015, available at: http://www.osgf.ge/files/2015/News/29%20ivlisi/Report_210x270mm.pdf

¹²⁹ 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).

¹³⁰ 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**);

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