

# BARRIERS, REMEDIES AND GOOD PRACTICES FOR WOMEN'S ACCESS TO JUSTICE IN GEORGIA



Prepared under the Programmatic Cooperation Framework Project  
“Improving Women’s Access to Justice in the five Eastern Partnership Countries”  
Armenia, Azerbaijan, Georgia, Republic of Moldova, and Ukraine

**Programmatic Cooperation Framework for  
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus**

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This national study, "Barriers, remedies and good practices for women's access to justice in Georgia", has been prepared by Babutsa Pataraiia. The opinions expressed in this work are the responsibility of the author and do not necessarily reflect the official policy of the Council of Europe or the European Union. The information contained in this document is up to date as of February 2017.

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# GENERAL INTRODUCTION TO THE FIVE NATIONAL STUDIES

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Important efforts have been made to strengthen gender equality standards both at the level of the Council of Europe and within its member states. Four major treaties underpin the core Council of Europe gender equality standards. These are the “foundational” treaties: the European Convention on Human Rights and the European Social Charter (revised), and the two “new generation” treaties, the Convention on Action against Trafficking in Human Beings<sup>1</sup> and the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).<sup>2</sup> A number of recommendations of the Committee of Ministers on gender equality topics have been adopted since the 1970s.<sup>3</sup>

The first Council of Europe Gender Equality Strategy 2014-2017<sup>4</sup> provides the strategic framework for the implementation of these standards to bring member states closer to *de facto* gender equality. One of the five objectives of the Council of Europe Gender Equality Strategy is to work with member states towards guaranteeing equal access of women to justice. The Strategy establishes that action in this area seeks to: analyse national and international frameworks to gather data and identify the obstacles women encounter in gaining access to the national courts and to international justice; identify, collect and disseminate existing remedies and good practices to facilitate women’s access to justice; and make recommendations to improve the situation.

The regional project Improving Women’s Access to Justice in Five Eastern Partnership countries (Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine) contributes to the overall implementation of the Gender Equality Strategy and in particular the realisation of Objective 3 of the Strategy: guaranteeing equal access of women to justice. The project is funded by the Council of Europe/European Union Eastern Partnership Programmatic Cooperation Framework (PCF) 2015-2017,<sup>5</sup> and implemented by the Council of Europe Gender Equality Unit.

The main objectives of the project are to:

- ▶ identify and support the removal of obstacles to women’s access to justice;
- ▶ strengthen the capacity of Eastern Partnership countries to design measures to ensure that the justice chain is gender-responsive, including through the training of legal professionals.

While knowledge has increased, there are still systematic gaps in data collection concerning different aspects of women’s access to justice. In order to fill such gaps with respect to the beneficiary countries of the project, the Gender Equality Unit of the Council of Europe commissioned five national studies to map the barriers,

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1. Entered into force on 1 February 2008.

2. Entered into force on 1 August 2014.

3. See factsheet with the main Council of Europe standards on gender equality and women’s rights, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168058feef>, accessed 28 November 2016.

4. Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680590174>, accessed 28 November 2016.

5. See <http://pjp-eu.coe.int/en/web/eap-pcf/home?desktop=true>, accessed 28 November 2016.

remedies and good practices for women's access to justice in Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine. The objectives of each of these studies were to provide:

- ▶ an analysis of the main obstacles to women's access to justice, both legal and procedural, as well as socio-economic and cultural;
- ▶ a set of recommendations for measures to improve women's access to justice in the respective countries, including examples of good practices, where they exist;
- ▶ background information for the subsequent organisation of training for legal professionals (judges, prosecutors, lawyers, and possibly law enforcement).
- ▶ The studies were carried out by five independent national experts who were asked to answer the following questions:
  - ▶ what are the gender gaps in access to justice in your country?
  - ▶ how responsive is the justice system to women's needs?
  - ▶ what can be done to improve the gender responsiveness of the justice system?

All five studies are structured around a similar set of themes and issues. The first part of each study addresses gender gaps in the access to justice, by analysing the legislative and policy frameworks as well as the implementation practices and mechanisms that affect women's access to justice. Socio-economic and cultural barriers to women's access to justice are also discussed in this first part. The second part of each study examines the gender responsiveness of the justice system in the respective country. The following issues are addressed in all five studies: women's access to courts; whether sex-disaggregated data on court applicants is available; gender stereotypes among legal professionals, especially the judiciary; and the availability of gender equality training in the initial and further education of legal professionals. The third part of each study presents the available remedies and good practices and formulates a set of recommendations. When relevant, and to the extent possible in the scope of addressing these general themes and issues, attention has been paid to obstacles affecting women from disadvantaged groups, such as women in rural areas; disabled women; elderly women; women from ethnic minorities; women victims of violence; lesbian, bisexual and transwomen; and women held in detention/prison.

Research for the five studies was mostly desk-based and the national consultants sampled as extensively as possible the existing sources available. In Armenia and Azerbaijan, the consultants conducted a limited number of interviews with lawyers and civil society advocates. In Georgia and the Republic of Moldova, the consultants also requested official data from a number of institutions. In Ukraine, the national consultant conducted a small survey among judges, based on a pre-defined questionnaire. The initial findings of the five studies were presented at the regional conference on Improving Women's Access to Justice in Five Eastern Partnership countries that took place on 5 and 6 November 2015 in Kvareli, Georgia. Feedback received from governmental officials, academic experts and civil society representatives at this conference was integrated in the studies. Furthermore, each consultant presented the findings of their country study to a national audience in the first months of 2016. Feedback from these validation meetings was also integrated in the final version of the studies.

The studies found that there are still significant gaps in women's access to justice, despite progress made especially in the adoption of laws and policies.

With respect to legal and policy frameworks, Eastern Partnership countries have made significant progress in passing legislation and adopting policies to advance gender equality. Guarantees of equality between women and men are included in the constitutions of each participating country, including most recently the Constitution of Armenia. All five countries have specific laws on gender equality, with Azerbaijan having adopted one in 2006, Armenia in 2011, Georgia in 2010, the Republic of Moldova in 2006, and Ukraine in 2005. Special anti-discrimination laws were adopted in Georgia in 2014, the Republic of Moldova in 2012 and Ukraine in 2012. There is no separate anti-discrimination law in Azerbaijan, though a special law on domestic violence was adopted in 2010. In addition, Georgia, the Republic of Moldova and Ukraine have all adopted specific legislation against domestic violence (in 2006, 2007 and 2001, respectively). Armenia, meanwhile, is preparing an anti-discrimination legislation and a law to prevent and combat domestic violence.

As of February 2017, three of the beneficiary countries, Georgia, the Republic of Moldova and Ukraine, have signed the Istanbul Convention with ratification pending. The other two countries have not yet signed the Istanbul Convention.

Despite the significant legislative progress, legal obstacles to women's access to justice persist. Specific barriers include *de jure* discrimination of women or gaps in the anti-discrimination legislative frameworks. The national



studies offer numerous examples of the discriminatory effects of protective labour legislation in each of the five countries. Further barriers have been observed in the area of labour law, such as unlawful dismissal of pregnant women or limitations on fathers' access to parental leave or the.

With respect to implementation practices and mechanisms, the studies found that while national laws uphold equality on the basis of sex, women rarely invoke these laws in court to protect their rights. The standards of proof and the legal mechanisms that are necessary to prove indirect discrimination are not well developed, while this is arguably the more prevalent manifestation of gender inequality. In all countries studied, gaps in access to justice for women victims of gender-based violence persist, in particular regarding non-criminalisation of all forms of violence against women; severe underreporting of crimes of violence against women; very few convictions of rape; and scarce or no state funding for support services for victims.

The studies also reveal a number of common socio-economic and cultural barriers to women's access to justice. A prominent obstacle is women's economic dependence on or economic inequality to men, which means they have less access to resources, often needed for legal proceedings. In addition to women's lower employment rates and significantly lower participation in the business sector, as either employees or entrepreneurs, there is a significant gender pay and revenue gap in all five countries. Secondly, patriarchal attitudes and beliefs persist about men's superiority to women and the naturalness of segregated gender roles that see women mainly as caregivers and men as breadwinners. The belief in men's superiority underpins the still-present practice of prenatal sex selection and selective forced abortions, addressed in the studies on Armenia, Azerbaijan, and Georgia, that results in skewed sex ratios in favour of men and represents a severe violation of women's rights. The same gender-biased attitudes also underlie the high social tolerance or even justification of domestic violence in the five countries. Thirdly, lack of access to information is a significant obstacle, especially among women from rural areas.

The studies provide ample evidence of the limited gender responsiveness of the justice systems in the five countries. There is very limited use of international standards in judicial decisions. In some of the countries, women are also significantly underrepresented in the judiciary. Gender stereotypes persist in the justice system and they are compounded by other stereotypes linked to age, ethnicity or social status. The national studies provide illustrations of such stereotypes, particularly affecting women confronted with gender-based violence.

The studies also present a number of good practices. In Armenia, an action plan to promote gender equality and gender balance in the judiciary was adopted by the judicial self-governance body (the Armenian Council of Court Chairpersons) in 2015. It includes measures such as the development of gender equality training materials and thematic training programmes. The equality bodies set up in Georgia and the Republic of Moldova offer potentially effective mechanisms to combat sex-based discrimination. Since 2013, the Public Defender's Office of Georgia has had a specific Gender Equality Department that monitors the implementation of gender-related legislation and policies, and studies complaints and individual cases of sex and gender-based violations of human rights. It also conducts public-awareness activities and training, collects data to monitor the effectiveness of protection mechanisms to prevent violence against women, and prepares annual reports. In Azerbaijan, the law takes into account the needs of rural women in respect of maternity leave. Women working in agriculture get more days of maternity leave: from 70 calendar days after birth up to 110 calendar days in cases of multiple births. In the Republic of Moldova, the Equality Council set up as an independent body under the anti-discrimination law in 2013 examines individual complaints, including cases of sex-based discrimination. It also analyses draft laws for compliance with anti-discrimination legislation and conducts awareness-raising activities on discrimination issues. The National Human Rights Action Plan of Ukraine, covering the period 2015-2020, offers a good practice example of a human rights policy that contains ample provisions on gender equality closely matching priority areas of the Council of Europe Gender Equality Strategy. A number of civil society initiatives, such as the online Virtual Legal Aid Service for women set up by the Women's Consortium of Ukraine, as well as the specialist support services provided by women's organisations to women victims of gender-based violence, show that civil society expertise is an important resource to improve women's access to justice.

Access to justice is central to the rule of law and integral to the enjoyment of human rights. It is also an essential precondition to social inclusion and a critical element of a well-functioning democracy. The requirement of equality, including gender equality, is at the centre of the scope, exercise and fulfilment of the right to justice. It is hoped that these five national studies will contribute to the further development of tools to improve women's access to justice. In particular, the information provided by the national studies will be used in the elaboration of a training manual for judges and prosecutors on ensuring access to justice for women, to be used by judicial training institutions in the five beneficiary countries of the project.



# GEORGIA

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*Report prepared by Babutsa Pataraiia*

## 1. SUMMARY

This study discusses the issue of women's access to justice in Georgia. It reviews Georgian legislation, recent developments, the cultural context and specific legal aspects related to gender and sex. It also reviews implementation mechanisms of the laws and identifies shortcomings. Major stakeholders of the justice system are characterised and assessed. Based on an analysis of state policies and practices, the study highlights barriers and good practices. In addition, to further understanding of the local context the study offers an overview of selected research, including opinion polls, which reflect the socio-economic and cultural specificities of Georgian society. In its conclusion, the study provides a number of recommendations to improve the Georgian justice system in order to make it more accessible for women.

## Methodology

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The present study is based on a qualitative and comparative research methodology that provides an overview and analysis of research papers produced by local and international organisations. It also contains information provided by relevant state institutions, obtained through official correspondence and interviews, and analyses relevant legislative and policy documents.

## INTRODUCTION

### Background information

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As a developing democracy, Georgia has been undergoing major reforms since its independence from the Soviet Union in 1991. The Rose Revolution of 2003 was a breakthrough for Georgia including from the perspective of gender equality and women's rights, strengthened with important reforms in political, social and economic life. The reforms aimed not only at structural changes, but at transforming Communist-era mindsets to more liberal, Western thinking ones. Despite some shortcomings, the reforms undertaken were unique in terms of the speed and degree of innovation, and the extent of institutional restructuring (World Bank 2009). Despite these reforms implemented by the Government of Georgia, some barriers and challenges still remain in terms of women's access to justice, such as women's economic dependence; cultural barriers and traditional practices; fear and shame of reprisals and social rejection for reporting violence; lack of awareness regarding women's rights and legal safeguards; gender stereotypes; and multiple forms of discrimination, in some cases that involve women with disabilities, women belonging to national minorities and elderly women and internally displaced women.

Georgia ranks 90 out of 144 in the countries listed in the Global Gender Gap Index of 2016 (World Economic Forum 2016). Violence against women remains widespread and one of the most challenging problems it faces. A relatively low level of reporting is a result of women's belief that domestic violence is a private matter, as claimed by 78% of women interviewed by a UNDP survey from 2010, which also found that only 6.9% of all women acknowledged that they had been victims of physical or sexual violence (UNDP 2010: 7). These figures are not unusual including if compared to figures in other European countries. At the same time, it should be mentioned that violence is so stigmatised and related to shame in Georgian society, as demonstrated by various perception studies discussed below, that in many cases victims of violence prefer not to reveal it, unless long-term trust relations develop with a supportive professional. Moreover, as noted by the Committee on the Elimination of Discrimination against Women, Georgian women are sometimes subjected to "virginity tests" in violation of their right to privacy (CEDAW 2014: para. 20). These practices testify to the very deeply rooted traditional and Orthodox Christian values that continue to dominate Georgian society (UNDP 2010: 15-16).

As recognised by the European Parliament, a significant proportion of Georgia's territory is under Russian occupation (European Parliament 2011), and as a result there are 250 000 internally displaced persons (IDPs)

in Georgia facing additional hardship.<sup>6</sup> Overall unemployment rates are high, with 15% in 2013; 53% of youth are employed in subsistence agriculture which contributes less than 10% to the GDP and is considered a low-growth sector of the economy.<sup>7</sup> Poverty is a serious challenge in Georgia, with 32% of population living on less than \$2.5 per day.<sup>8</sup> The justice system has several deficiencies, including the ill-treatment of prisoners, corruption and the lack of independence. As noted by the UN Human Rights Council, however, several initiatives have been taken and the country is moving in the direction of increased public trust in the judiciary (Human Rights Council 2011). Co-operation between the Council of Europe and the Government of Georgia in the field of justice reform has been instrumental in recent years to bolstering judicial bodies and institutions in line with European standards and practices.<sup>9</sup>

This study is based on the understanding that access to justice is central to the rule of law and integral to the enjoyment of basic human rights. It is also an essential precondition to social inclusion and a critical element of a well-functioning democracy. Access to justice can be construed as the ability of people, including people from disadvantaged groups, to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards, without legal, procedural, socio-economic or cultural obstacles. The requirement of equality, including gender equality, is at the centre of the meaning, the exercise and the fulfilment of the right to justice.

## **Brief review of conclusions by international human rights monitoring bodies**

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Georgia is a state party to the international instruments that guarantee women's access to justice, including CEDAW, the ICCPR, the ICESCR, ICERD, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child (CRC) and subsequent optional protocols and the Convention on the Rights of Persons with Disabilities (CRPD). At the European level, Georgia is a state party to the European Convention on Human Rights, the European Social Charter and the Convention on Action against Trafficking in Human Beings. In 2014, Georgia signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), but not yet ratified it at the time of writing of this study. The Ministry of Justice of Georgia has elaborated the draft legislation package towards ratification of the Istanbul Convention, and in 2016, the Government of Georgia commenced the ratification procedure in Parliament.

Several international human rights monitoring bodies have highlighted gaps with regards to access to justice of women, namely:

- ▶ in its 2014 Concluding Observations the CEDAW Committee raised concerns about poor implementation of laws related to non-discrimination and gender equality (CEDAW Committee 2014: para. 10); poor co-ordination of gender policies (para. 14); patriarchal stereotypes and increased "sexualisation" of women in the media (para. 18); women's underrepresentation in the legislative and executive branches (para. 24); a significant wage gap (para. 28); and lack of rehabilitation services for victims of violence or childcare facilities (para. 28);
- ▶ in 2014, the Human Rights Committee issued the following remarks on anti-discrimination and gender equality: the problem of effectiveness of the enforcement mechanism concerning violence against women and trafficking cases; insufficient sanctions to discourage and prevent discrimination (Articles 2 and 26); the practice of sex-selective abortions of female fetuses (Articles 2, 3, 23 and 26); and discrimination, social stigma, hate speech and acts of violence against LGBT persons and violation of their rights to freedom of expression and assembly (Articles 2, 9, 19, 21 and 26), (Human Rights Committee 2014);
- ▶ in 2011, the Universal Periodic Review (UPR) highlighted the following areas of concern regarding women's rights and gender equality: weakness of the judiciary (para. 41); prevalence of domestic violence (para. 64); and feminisation of poverty (paras. 66 and 102), (Human Rights Council 2011);

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6. Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, Number of Registered IDPs by Region, 2014, available at <http://mra.gov.ge/eng/static/55>, accessed 28 February 2017.

7. World Bank, the Jobs Challenge in the South Caucasus – Georgia, 2015, [www.worldbank.org/en/news/feature/2015/01/12/the-jobs-challenge-in-the-south-caucasus---georgia](http://www.worldbank.org/en/news/feature/2015/01/12/the-jobs-challenge-in-the-south-caucasus---georgia), accessed 28 February 2017.

8. World Bank, Georgia Poverty Assessment, 2016, available at [www.worldbank.org/en/country/georgia/publication/georgia-poverty-assessment](http://www.worldbank.org/en/country/georgia/publication/georgia-poverty-assessment), accessed 28 February 2017.

9. See for example Council of Europe Action Plan on Georgia, 2013-2015, CoE doc ODG/Prog/Inf(2013)15, available at [wcd.coe.int/ViewDoc.jsp?id=2102099](http://wcd.coe.int/ViewDoc.jsp?id=2102099), accessed 28 November 2016.

- ▶ in 2016, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) issued its observations (GRETA 2016), emphasising<sup>10</sup> the following issues: further efforts should be made to promote gender equality, combat gender-based violence and stereotypes, and support specific policies for the empowerment of women as a means of combating the root causes of THB (para 76); authorities should continue raising awareness about THB for the purposes of sexual exploitation, including tackling demand in particular in Tbilisi and tourist areas, such as the Black Sea coast (para. 84); reconsider the current practice of interviewing possible victims of THB at their place of exploitation (para 107); improve access to assistance for victims of THB not accommodated in State Fund shelters, including by taking measures to facilitate their reintegration by providing them with vocational training and access to the labour market (para 118); to take measures to facilitate and guarantee access to compensation for victims of trafficking from the offenders (para 153).
- ▶ in 2013, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), with regard to women's situation in prison, raised concerns regarding the lack of sanitary materials for menstruation, despite prisoners receiving other personal hygiene materials (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 2013: para. 34);
- ▶ in 2010, the Group of States against Corruption (GRECO) underlined that corruption remains a problem, with regard to the lack of transparency in funding of political parties, the lack of enforcement of rules and the lack of public trust in the judiciary (Council of Europe Group of States against Corruption 2010: para. 78); and
- ▶ in 2014, the Council of Europe, European Commission for the Efficiency of Justice (CEPEJ) recommended that special measures be used to protect vulnerable persons, including victims of rape and domestic violence, ethnic minorities and disabled persons (Council of Europe, European Commission for the Efficiency of Justice 2012). Georgia has an information mechanism and special hearing modalities for victims of rape and domestic violence but no other special arrangements. Information mechanisms and special hearing modalities are not available for ethnic minorities and disabled persons, which could have an impact on access to justice for women belonging to these groups (CEPEJ 2012: 92). There are few female court presidents, only 2 out of 24 in the first instance and none in the other 2 higher instances (CEPEJ 2012: 329). The distribution of male and female professional judges within the total number of professional judges in 2012 was 56.6% against 43.4% (CEPEJ 2012: 327).

## **Brief review of concepts of gender and discrimination in Georgian legislation**

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In accordance with international standards Georgia has developed extensive legislation concerning gender equality and non-discrimination. It has also introduced relevant definitions. In 2010, the Law on Gender Equality was adopted by the Parliament of Georgia. The Law provides definitions of gender as "a social aspect of relations between sexes which is expressed in all spheres of public life and implies opinions formed about different sexes through socialisation", and gender equality as "a part of human rights which implies equal rights and duties, responsibilities and equal participation of women and men in all spheres of personal and public lives".<sup>11</sup>

In 2014, Georgia adopted the Law on Elimination of All Forms of Discrimination, which provides definitions of direct and indirect discrimination. The definition of direct discrimination partially overlaps with the definition of indirect discrimination. Namely, it contains the following phrase: "or when persons in inherently unequal conditions are treated equally in the enjoyment of the rights provided for by the legislation of Georgia." The definition of indirect discrimination contains a similar phrase: "or equally treats persons who are in inherently unequal conditions."<sup>12</sup> It should be noted that prohibition of discrimination was included in major laws prior to the adoption of the anti-discrimination law, but no definition of discrimination was provided.

10. GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Georgia, Second evaluation round, GRETA (2016)8, 3 June 2016, available at <https://rm.coe.int/168065bf89>, accessed 28 February 2017.

11. Law of Georgia on Gender Equality, Article 3, available at [hmatsne.gov.ge/ka/document/view/91624?impose=translateEn](http://hmatsne.gov.ge/ka/document/view/91624?impose=translateEn), accessed 28 November 2016.

12. Law of Georgia on the Elimination of all forms of discrimination, Article 2, available at [matsne.gov.ge/ka/document/view/233968?impose=translateEn](http://matsne.gov.ge/ka/document/view/233968?impose=translateEn), accessed 28 November 2016.

## 2. GENDER GAPS IN ACCESS TO JUSTICE

### Analysis of the national legal and policy frameworks

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#### Constitutional law

Equality of all persons is guaranteed under the Constitution of Georgia. Article 14 states that “everyone is born free and is equal before the law regardless of race, colour of skin, language, sex, religion, political or other opinions, national, ethnic and social affiliation, origin, property or social status, place of residence.”<sup>13</sup> Despite the fact that the text of this article proposes an exhaustive list of protected grounds, the Constitutional Court of Georgia interprets this article as non-exhaustive and proclaims gender identity and sexual orientation as constitutionally protected from discrimination.<sup>14</sup>

Article 30(4) of the Constitution concerns the right to labour and states that “organic law shall define protection of labour rights, fair compensation for work and safe, healthy working conditions, as well as working conditions for minors and women.” This is the only article in the Georgian Constitution that mentions women. This statement is problematic as it justifies specific regulations of working conditions, not for pregnant women or nursing mothers, but for women in general.

Article 36(1) of the Constitution states: “marriage shall be based on the equality of rights and free will of spouses.” No substantive equality of women and men is mentioned in the supreme law of the state. Article 36(3) stipulates that “the rights of mothers and children shall be safeguarded by law”.

#### Criminal law

In 2012, the Criminal Code of Georgia introduced a hate motive as a ground for imposing a higher sanction for committed crimes, including hatred based on sexual orientation and/or gender identity.<sup>15</sup> However, in practice it is not implemented. Prosecutors claim that this article should be implemented solely by judges as they apply sanctions; on the other hand, if the hate motive is not investigated and argued by the prosecution the article remains unusable.

In 2012, the Criminal Code was amended and domestic violence became a separate crime within it. Article 126 criminalises certain forms of domestic violence, namely, “violence, systematic humiliation, blackmail, degrading treatment which causes pain or suffering.”<sup>16</sup> As physical violence, such as beating, bodily damage and sexual violence including rape, was already a crime punished by the Criminal Code, domestic violence now covers some aspects of psychological violence, which represents a new approach.

However, the chapter on sexual crimes is outdated and not in compliance with international standards. For instance, rape is a crime under Article 137, but is not defined in terms of concrete action. In practice it covers only vaginal penetration, while Article 138, which mentions a “violent act of sexual character”, in practice covers other forms of penetration, and uses Soviet-era legal language such as “homosexuality, lesbianism and other perverted actions.”<sup>17</sup> The latter language is proposed to be removed in the draft package of amendments for the ratification of the Istanbul Convention. More recently, the Ministry of Justice has elaborated a new definition of rape as part of legislative changes for the pending ratification of the Istanbul Convention. Neither the existing text, nor the new draft of the chapter on sexual crimes mentions marital rape at the time of writing of this study. In 2012, a new Article 11 was introduced in the Criminal Code, which included a new typology of crimes committed within the family, defining them as domestic crimes. This article enumerates a variety of crimes that are considered domestic crimes if committed by family members, and sexual crimes, including rape, are included under Article 11; it follows that rape committed by a spouse is also considered a crime.

In 2014, forced marriage was introduced in the Criminal Code as a separate article.<sup>18</sup> The Code does not cover the crime of stalking, although it is envisaged in the legislative changes for the ratification of the Istanbul Convention. Crimes that are not envisaged in the Code or in draft legislation are genital mutilation and sexual harassment. There is no recorded practice of genital mutilation in Georgia, but sexual harassment is a

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13. Constitution of Georgia, Article 14, available at [matsne.gov.ge/ka/document/view/30346?impose=translateEn](https://matsne.gov.ge/ka/document/view/30346?impose=translateEn), accessed 28 November 2016.

14. *Beridze and others v. Parliament of Georgia*, Constitutional Court of Georgia, No. 2/1-392, 2008, para. II.2.

15. Criminal Code of Georgia, Article 53(3), Available at [matsne.gov.ge/ka/document/view/16426](https://matsne.gov.ge/ka/document/view/16426), accessed 28 November 2016.

16. *ibid.* Article 126.

17. *ibid.* Articles 137-138.

18. *ibid.* Article 150.

problem, as studies reveal (Center for Social Sciences 2014: paras. 48-50). Sexual harassment is not penalised under the Administrative Offences Code of Georgia. The only provision regarding harassment is disorderly conduct defined as “swearing in public places, harassment of citizens or similar actions that disrupt public order and peace of citizens.”<sup>19</sup> This offence is directed against the public order and not against an individual, which means that according to the law it protects not individuals from assault, but public order from violations. Sexual harassment is defined in the Law on Gender Equality as “any unwanted verbal, non-verbal or physical behaviour of sexual nature with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, or offensive environment.”<sup>20</sup> The problem with this provision is twofold. First, as in the majority of European countries, the definition only covers labour relations, and second, the law as elaborated in the concerned article does not provide any remedies or implementation mechanisms.

## Law on Domestic Violence

The Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence was adopted by the Georgian Parliament in 2006. For the first time, domestic violence was defined in the law. Since the subsequent 2014 changes to the law, domestic violence has been defined as a “violation of constitutional rights and freedoms of one family member by another family member through neglect and/or physical, psychological, economic, sexual violence or coercion.”<sup>21</sup> While physical, psychological and sexual violence, coercion and neglect of a child are prohibited, economic violence remains a mere definition. The enforcement of sanctions against economic violence is not provided by Georgian legislation.

## Family law and property rights

Marriage is regulated under the Constitution of Georgia, which states that marriage shall be based on the equality of rights and free will of spouses.<sup>22</sup> The constitution does not define the sex of the persons in marriage, but the Civil Code of Georgia specifies that marriage is a voluntary union of a woman and a man for the purpose of creating a family.<sup>23</sup> The Civil Code of Georgia defines all aspects of marital rights and duties. It states that only registered marriages shall give rise to marital rights and duties.<sup>24</sup> Article 1108 of the Civil Code defines 18 as the marriageable age. Further, with the most recent change in legislation<sup>25</sup> civil marriage is currently possible at 17 years of age with the permission of the court in case of childbirth; this provision is valid until 1 January 2017, after which underage persons will not be allowed to get their marriages registered under any circumstances.

The problem of early marriage is one of the most widespread child rights violations in Georgia, affecting girls disproportionately (Abashidze 2015). According to the annual report of the Public Defender’s Office of Georgia (PDO), early marriage is one of the prevalent reasons for early dropout from schools for girls. From 2011 to 2013, 7 367 girls dropped out from school before the age of 15; the PDO documented cases of parents promising young girls for marriage in exchange for cattle (Public Defender’s Office of Georgia 2016: 272-3). Sometimes the families of the bride and the groom enter into an agreement for material interests, in some cases completely ignoring the best interests of the child, and violating the right to freely choose their spouse. At this moment many families are created with 16-year-old brides, and remain unregistered. Even though they are unregistered, early marriages remain a serious challenge.

Article 1152 of the Civil Code guarantees equality in personal and property rights and the responsibilities of spouses in domestic relations. Article 1153 prohibits discrimination when entering into a marriage, and in domestic relations rights may not be restricted. The Civil Code defines the following rights and duties of spouses across other articles as well: joint settlement of family affairs (Article 1155); freedom of choice of activity (Article 1156); and freedom of choice of place of residence (Article 1157). Article 1157 states that “each spouse may choose his or her place of residence at his or her discretion unless doing so contradicts the family interests.” The Civil Code Commentaries do not clarify what is meant by “family interests”, though it states

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19. Administrative Offences Code of Georgia, Article 166.

20. Law of Georgia on Gender Equality Article 6 (1) (b), available at [matsne.gov.ge/ka/document/view/91624?impose=translateEn](https://matsne.gov.ge/ka/document/view/91624?impose=translateEn), accessed 28 November 2016.

21. Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence, Article 3, available at [matsne.gov.ge/ka/document/view/26422?impose=translateEn](https://matsne.gov.ge/ka/document/view/26422?impose=translateEn), accessed 28 November 2016.

22. Constitution of Georgia, Article 36, available at [matsne.gov.ge/ka/document/view/30346?impose=translateEn](https://matsne.gov.ge/ka/document/view/30346?impose=translateEn), accessed 28 November 2016.

23. Civil Code of Georgia, Article 1106, available at [matsne.gov.ge/ka/document/view/31702?impose=translateEn](https://matsne.gov.ge/ka/document/view/31702?impose=translateEn), accessed 28 November 2016.

24. *ibid.* Article 1151.

25. *ibid.* Article 1507.

that this article does not oblige a wife to live with a husband, and that spouses can live separately.<sup>26</sup> There have been two cases decided by the Supreme Court of Georgia referring to Article 1157, but both deal with inheritance and property division and not disputes over the place of residence.<sup>27</sup>

The Civil Code regulates property issues between spouses. Article 183 states that acquisition of ownership of immovable property should be agreed in writing and registered in the Public Register. Furthermore, Article 1158 states that “any property acquired by the spouses during their marriage shall be treated as their joint (matrimonial) property, unless otherwise determined by the marriage contract.” Paragraph 2 of the same article guarantees the right to matrimonial property to the spouse who does not have an independent income for valid reasons. The law also states that the care of children and the running of a household qualify as valid reasons. Notwithstanding, despite the fact that spouses have equal rights to matrimonial property (Article 1159) and that matrimonial property should be administered by their mutual agreement (Article 1160 (1)), the transaction of matrimonial property cannot be voided even if one of the spouses had no knowledge or disagreed with the transaction (Article 1160 (2)). This last provision disproportionately affects women as administration of property and transactions are mainly performed by men in their traditional role as head of the family. This practice was particularly widespread in the context of the privatisation processes during the period from 1992 to 2007, when land property was assigned to families and the act of acceptance was signed by the heads of families, usually men (Rolfes and Grout 2013: 38-42).

The Civil Code also regulates issues related to inheritance. In case of intestacy, the first degree heirs are the decedent’s spouse, children, including those born after death, and parents (Article 1336). Civil Code Article 1371 states that regardless of the content of a will, the children, parents and spouse of a testator shall be entitled to a compulsory portion that shall be one half of the portion to which each of them would have been entitled by inheritance on intestacy (compulsory share).

## Labour law

The concept of gender is not integrated into the Labour Code of Georgia. The only article where the sex of a person is mentioned is the one referring to the prohibition of discrimination based on sex in labour and pre-contractual relations.<sup>28</sup> “Gender”, however, is not mentioned either in this article, or in others.

There are women-specific provisions in the Labour Code. Namely, it prohibits contracting pregnant women or nursing mothers for hard, harmful or hazardous work. This prohibition is introduced as a protective measure.<sup>29</sup>

The Order of the Minister of Labour, Health and Social Affairs No. 147/N on the List of Hard, Harmful or Hazardous Work contains 538 articles and a long list of work that is prohibited for pregnant women and nursing mothers.<sup>30</sup> Some of the prohibited positions are: anchors and directors of radio and television (Article 509 (1)); taxi drivers (Article 481 (6)); confectioners responsible for cooking syrup (Article 431 (5)), etc. The Order clearly needs revision in order to avoid undue restrictions on pregnant women and nursing mothers.

As a measure of protection, the Labour Code foresees that pregnant women and women who have recently given birth should not be permitted to undertake overtime work.<sup>31</sup> In addition, night work, from 10 p.m. to 6 a.m., is prohibited for pregnant women, women who have recently given birth, nursing mothers and persons who babysit children under the age of three.<sup>32</sup> Employers shall be obliged to prevent a pregnant woman from performing work endangering her welfare and physical or mental health, or the health of her foetus.<sup>33</sup>

According to Article 27 of the Labour Code, leave for pregnancy, maternity and childcare can be granted at the employee’s request for up to 730 days, out of which 183 days are paid to the amount of 1 000 GEL from the state budget.<sup>34</sup> The law does not differentiate among pregnancy, maternity and childcare. It is obvious that pregnancy and maternity leave can be granted only for women. As for childcare leave, the Labour Code does not specify whether it is applicable for fathers as well, but the Order of the Minister of Labour, Health

26. Commentaries to the Civil Code of Georgia, volume five (2000), pp. 106-7.

27. Supreme Court of Georgia, Case No. 3k/215-01, 11 April 2001 and Supreme Court of Georgia, Case No. as-839-788-2010, 18 January 2011.

28. Labour Code of Georgia, Article 2(3), available at [matsne.gov.ge/ka/document/view/1155567?impose=translateEn](https://matsne.gov.ge/ka/document/view/1155567?impose=translateEn), accessed 28 November 2016.

29. *ibid.* Article 4(5).

30. Order of the Minister of Labour, Health and Social Affairs No. 147/N on the List of Hard, Harmful or Hazardous Work, available at [matsne.gov.ge/ka/document/view/70600](https://matsne.gov.ge/ka/document/view/70600), accessed 28 November 2016.

31. *ibid.* Article 17 (2).

32. *ibid.* Article 18.

33. *ibid.* Article 35(7).

34. Labour Code of Georgia, Article 29, available at [matsne.gov.ge/ka/document/view/1155567?impose=translateEn](https://matsne.gov.ge/ka/document/view/1155567?impose=translateEn), accessed 28 November 2016.



and Social Affairs No. 231/N stipulates that pregnancy, childbirth and childcare paid leave will not be given to a family member of the birth-giving woman. In case of death of the birth-giving woman, childcare paid leave will be granted to the father of a living child.<sup>35</sup> Thus according to Georgian legislation, fathers are not entitled to receive childcare paid leave if the mother of the child is alive. Georgian legislation does not define paternity leave as such.

It should be noted that civil service employees are paid the full amount of salary for maternity and childcare leaves,<sup>36</sup> but the same does not apply for the private sector.

Maternity and childcare leaves, leaves due to adoption of a new-born and any extra maternity or childcare leaves shall not be considered vocational paid leave under the Labour Code.<sup>37</sup> Unpaid childcare leave up to 12 weeks can be granted to anyone who actually takes care of a child.<sup>38</sup>

The right to retire and receive a pension is connected to the retirement age, which is 65 for men and 60 for women.<sup>39</sup>

The Labour Code does not specifically prohibit sexual harassment at the workplace, which is problematic, although Article 2 states that direct or indirect harassment constitutes discrimination.

## Anti-discrimination law

In 2014, Georgia adopted the Law on Elimination of All Forms of Discrimination. It was adopted to meet commitments in the framework of the EU Visa Liberalisation Action Plan (European Union 2013). The purpose of the Law is to ensure equal rights and eliminate all forms of discrimination, and it enumerates all protected grounds, including sex and gender.<sup>40</sup> The law has a wide scope of regulation as it applies to the actions of public institutions, organisations, and natural and legal persons in all spheres of life.<sup>41</sup>

As mentioned earlier, the definition of direct discrimination is problematic, as it covers certain aspects of indirect discrimination as well. That is, direct discrimination is defined as “when persons in inherently unequal conditions are treated equally in the enjoyment of the rights”. The same statement is seen in the definition of indirect discrimination.<sup>42</sup> Thus the law should be amended to distinguish between direct and indirect discrimination. Another problem of the law is that it omits harassment as a separate form of discrimination.

Article 2 of the law defines temporary special measures as measures designed to “accelerate *de facto* equality, especially in gender, pregnancy, and maternity issues, also, with respect to persons with limited capabilities”. The law stipulates that such measures “shall not be considered discrimination”.

One novelty introduced by the law is the monitoring mechanism established under the Public Defender’s Office (PDO). The PDO is entitled to “examine acts of discrimination based on applications or complaints, as well as on his/her own initiative and make appropriate recommendations”; in addition, it can prepare general proposals and propose legislative changes to the Georgian Parliament.<sup>43</sup> The major shortcoming of the mechanism is that its recommendations are not mandatory and have a purely advisory character, which creates fertile ground for non-compliance.

## Law on Gender Equality

The Law on Gender Equality was adopted in 2010 to prevent and eliminate discrimination and create proper conditions for the realisation of equal rights.<sup>44</sup> The Law offers definitions of discrimination based on sex. As with the anti-discrimination law, the definitions of direct and indirect discriminations overlap.<sup>45</sup>

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35. Order of the Minister of Labour, Health and Social Affairs No. 231/N on the Rule of Paying Leave on Pregnancy, Childbirth, Childcare, Adoption of an Infant, Article 10(6), available at [matsne.gov.ge/ka/document/view/66208](https://matsne.gov.ge/ka/document/view/66208), accessed 28 November 2016.

36. Law on Civil Service, Article 41.

37. Labour Code of Georgia, Article 22(4), available at [matsne.gov.ge/ka/document/view/1155567?impose=translateEn](https://matsne.gov.ge/ka/document/view/1155567?impose=translateEn), accessed 28 November 2016.

38. *ibid.* Article 30(2).

39. Law on State Pensions, Article 5, available at [matsne.gov.ge/ka/document/view/27946?impose=translateEn](https://matsne.gov.ge/ka/document/view/27946?impose=translateEn), accessed 28 November 2016.

40. Law of Georgia on the Elimination of All Forms of Discrimination, 2014, Article 1.

41. *ibid.* Article 3.

42. *ibid.* Articles 2(2) and 2(3).

43. *ibid.* Article 6(2).

44. Law of Georgia on Gender Equality, 2010, Article 2.

45. *ibid.* Article 3(1).

The Law identifies the spheres in which gender equality should be guaranteed: labour relations (Article 6), education and science (Article 7); access to information (Article 8); health care and social security (Article 9); family relations (Article 10); and equal suffrage (Article 11). The Law also obligates state institutions to process sex-disaggregated data (Article 5).

Chapter 3 of the Law on Gender Equality addresses issues of monitoring the protection of gender equality. Four state institutions are identified as being in charge of monitoring gender equality: the Parliament of Georgia, the autonomous republics of Georgia, local self-government bodies and the PDO.

The Georgian Parliament is also obliged to set up a Gender Equality Council, which should elaborate action plans and monitor their implementation, perform analysis of the legislation, propose amendments, and produce recommendations (Article 12).

The Law on Gender Equality was amended in 2014 and according to the new Article 12, the supreme representative bodies of the autonomous republics are henceforth obliged “to set up a Gender Equality Council in order to ensure systematic and co-ordinated work with the Gender Equality Council of the Parliament of Georgia on gender issues in the relevant autonomous republic.”<sup>46</sup>

According to Article 13, local self-government bodies shall develop and carry out activities to ensure detection and elimination of discrimination locally. In addition, according to Article 14, the PDO is mandated to monitor the protection of gender equality and provide appropriate responses in cases of violation.

The major shortcoming of the Law on Gender Equality is that it does not provide an individual complaint mechanism, which would enable one to bring a case to court in case of a violation. The Law identifies the above-mentioned bodies to monitor its implementation, but does not contain any implementation mechanism, unlike the anti-discrimination law, which establishes a monitoring mechanism entitled to receive complaints and issue recommendations regarding discrimination.

### **The negative impact of gender-neutral legislation**

Most laws in Georgia are gender-neutral. The legislator treats Georgian citizens equally, lacking gender sensitivity and the political will to effectively address gender imbalance and male-dominated social structures. Gender-neutral legislation is not enough to overcome the inherent inequality between women and men, which is observed in every sphere of social, economic and political life in Georgia. Substantive equality will not be achieved with gender-neutral legislation, as gender-neutrality is an illusion. In fact, since men constitute the norm, gender-neutral laws are constructed based on the opinions, values and needs of men (Council of Europe Gender Equality Commission 2013: 9).

It is necessary to assess the impact of gender-neutral legislation on women, but the practice of gender assessment of legislation is not yet developed in Georgia.

## **Analysis of practices and mechanisms for the implementation of laws**

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### **Implementation of laws and policies on domestic violence**

To effectively develop state policy and support the implementation process of the Law on Domestic Violence, the Inter-Agency Co-ordination Council was established in 2008 under Presidential Decree No. 625. It was superseded in 2015 by the Inter-Agency Council on Domestic Violence, established under Resolution No. 630. Both had similar aims, the only difference being that the new Inter-Agency Council consists of representatives of governmental agencies while civil society representatives are members of a separate advisory council. The old council had representatives of international organisations and local NGOs as invited members, thus the meetings of these stakeholders constituted a forum for direct consultation of all parties. The new Council does not guarantee this possibility by law. One of its major tasks is to prepare state action plans regarding the fight against domestic violence, each for the duration of three years.

Protective and restraining orders have been envisaged by the Law on Domestic Violence since its adoption in 2006. When domestic violence was specifically criminalised in 2012, the police were not clear about whether to use administrative or criminal measures, or both. Technically, the legislation did not restrict usage of either or both, but a 2014 amendment of the Law on Domestic Violence clarified that “the use of measures provided

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46. There are two autonomous Republics in Georgia, the Autonomous Republic of Ajara and the Autonomous Republic of Abkhazia. Constitution of Georgia, Article 3, available at [matsne.gov.ge/ka/document/view/30346?impose=translateEn](https://matsne.gov.ge/ka/document/view/30346?impose=translateEn), accessed 28 November 2016.

in the criminal legislation of Georgia (criminal mechanisms) against the perpetrator of domestic violence shall not hinder the issuance of a restraining or protective order to ensure the protection of the person affected by violence (victim).<sup>47</sup>

Rehabilitation services and compensation are guaranteed under the Law on Domestic Violence. As a Legal Entity of Public Law (LEPL), the State Fund for Protection and Assistance of (statutory) Victims of Human Trafficking (Atipfund) operates under the Ministry of Labour, Health and Social Affairs and organises rehabilitation services for the victims of domestic violence.<sup>48</sup> Currently Atipfund runs state shelters in Tbilisi, Gori, Kutaisi and Batumi, but the state does not operate any crisis centres. Crisis centres for victims of domestic violence are run by two NGOs and are able to provide services for only 10 to 15 victims simultaneously for up to 9 days.

According to Article 10 of the Law on Domestic Violence (on rehabilitation of the abuser), the “protective order may instruct the abuser to complete mandatory training courses that are focused on changing the violent attitude and behaviour of the abuser.”<sup>49</sup> The problem is that rehabilitation services for abusers have not been developed by the state. The Law obliges the Ministry of Labour, Health and Social Affairs to determine the state body authorised to organise mandatory training courses focused on changing the violent attitude and behaviour of abusers,<sup>50</sup> as well as rehabilitation services for persons who have committed domestic violence. It should be mentioned that development of rehabilitation services has been envisaged by the Law since 2006, but the Georgian Government keeps postponing its implementation.

Following a reported rise in femicide, according to which 17 women were killed by family members in 2014 (Public Defender’s Office of Georgia 2015a: 32), at the end of 2014, the Ministry of Internal Affairs initiated the drafting of a state strategy on prevention of violence, including domestic violence. The draft strategy was heavily criticised by civil society, for its content and for the very low engagement of relevant stakeholders. Currently the process is suspended.

The number of recorded crimes of domestic violence has significantly increased since the end of 2014. The same can be said with regard to issuing protective orders. The situation can be explained by the active awareness-raising campaign and tougher criminal policy towards domestic violence by the Georgian Government, which means that more crimes are reported to the police, who have also responded more appropriately. According to the data provided by the Supreme Court of Georgia, the police issued 249 restrictive orders in 2013, 975 in 2014, and 1 463 in the first half of 2015.<sup>51</sup> On the other hand, the number of protective orders requested by the victims of violence from the courts without assistance of the police was 60 in 2013, 102 in 2014, and 82 in the first half of 2015.<sup>52</sup> Thus, one can say that the number of victims of domestic violence seeking justice on their own grew only incrementally (Pataraja 2016: 2).

In addition, according to the statistical data for the last three years, the number of prosecutions of crimes committed within the family has increased. Based on official correspondence from the Prosecutor’s Office of Georgia,<sup>53</sup> the number of prosecutions for domestic violence has steadily increased (Table 3.1).

**Table1: Number of prosecutions for crimes committed in the family, as per information provided by the Prosecutor’s Office of Georgia**

	2012	2013	2014	2015 (Jan-Sept)
Crime of domestic violence (Article 126)	41	155	411	575
Intentional infliction of grave bodily injuries (Article 117) committed by a family member	0	11	19	16
Infliction of less grave bodily injury (Article 120) committed by a family member	1	14	19	10
Infliction of light bodily injury (Article 120) committed by a family member	6	26	49	66

47. Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence, Article 10 (5), available at [matsne.gov.ge/ka/document/view/26422?impose=translateEn](http://matsne.gov.ge/ka/document/view/26422?impose=translateEn), accessed 28 November 2016.

48. Official webpage of Atipfund, available at [www.atipfund.gov.ge/index.php/en/about-us/branches-and-shelters/shelter-for-victims-of-domestic-violence](http://www.atipfund.gov.ge/index.php/en/about-us/branches-and-shelters/shelter-for-victims-of-domestic-violence), accessed 28 November 2016.

49. *ibid.* Article 10 (7).

50. *ibid.* Article 21 (10).

51. Official Letter from Supreme Court of Georgia No. p-167-15, dated 5 October 2015.

52. *ibid.*

53. Official letter from the Chief Prosecutor of Georgia No. 13/66099, dated 23 October 2015.

It is worth mentioning that sexual crimes in a domestic context are practically unreported in Georgia, as shown by Table 3.2.

**Table 2: Number of prosecutions for domestic violence crimes, involving sexual violence, committed by a family member, as per information provided by the Prosecutor’s Office of Georgia**

	2012	2013	2014	2015
Rape (Article 137)	0	0	0	3
Violent sexual assault (Article 137)	0	0	2	3
Coercion to sexual act (Article 139)	0	0	1	0

Sexual violence is one of the least reported gender-based crimes. This is also confirmed by the analysis conducted by the PDO of Georgia. In his special report on domestic violence and violence against women, the Public Defender found that only seven out of 881 protective and restraining orders mentioned sexual violence (Public Defender’s Office of Georgia 2015b: 44).

This is despite the fact that in violent families, physical violence is frequently accompanied with sexual violence, and sexual assaults on women victims of violence are as high as 50% to 70%, based on numerous surveys (Mahoney and Williams 1998: 8). Data provided by Georgian law enforcement agencies does not reveal this correlation of physical and sexual violence within marriage. The low number of reported sexual crimes in Georgia is due to a lack of trust in the justice system and cultural taboos that blame and shame victims of sexual crime and therefore act as a barrier in the reporting of these crimes.

### Implementation of law and policies on gender equality

Implementation of the Law on Gender Equality is ineffective for the following reasons. First, the Gender Equality Council of the Georgian Parliament does not effectively monitor the implementation of the law; the reports it produces concern its own activities rather than those of other state institutions. Secondly, as already mentioned in the section on the Law on Gender Equality, the Law does not provide for a complaint mechanism, which would make a violation justiciable. Therefore, the Law is of declaratory character and not justiciable.

The Gender Equality Council was established in 2008 by the Parliament of Georgia and it became a permanent body in 2010, after the adoption of the Law on Domestic Violence. After 2012, the council was less active. The activity report of 2012-13 is available on the official webpage of the Georgian Parliament and a major activity indicated is the participation in various national and international events organised by local and international organisations.<sup>54</sup> In the reporting period there were only two legislative changes presented by the members of the council, but again, these were prepared by local and international organisations. The council also elaborated and adopted the Gender Equality Action Plan of 2014-2016.<sup>55</sup> This is the second such action plan for Georgia, but it still lacks concrete activities and commitments. It does not have a budget and detailed timeline, completely omits such acute problems as early marriage. Even the implementation reports of the state action plans are written with the help of international organisations and not the council itself. The overall performance of the council could be assessed as poor, despite the fact that according to its mandate, it could fulfil a significant role in gender mainstreaming.

### Implementation of anti-discrimination law in cases of discrimination based on sex and gender

The Law on Elimination of All Forms of Discrimination was adopted in 2014. The process of drafting the law was initially transparent. The Ministry of Justice had discussions with civil society and international organisations, but when the draft was brought for discussion to the Government of Georgia, the situation drastically changed. The Government significantly changed the draft and without any public discussion, sent it to Parliament and requested expedited hearings. Within a week the hearings were appointed, and civil society had very little time to study the new draft and prepare comments. On the other hand, the Georgian Orthodox Church strongly opposed the adoption of the Law and required postponement of its adoption. Nonetheless, the Law was adopted in a very short period of time and contains a number of shortcomings, particularly regarding its implementation mechanism.

54. For the Gender Equality Council of Georgia and the Activity Report for 2012-2013, please see: [www.parliament.ge/ge/ajax/downloadFile/27258/sabchos\\_saqmianobis\\_angarishi](http://www.parliament.ge/ge/ajax/downloadFile/27258/sabchos_saqmianobis_angarishi), accessed 28 November 2016.

55. For the Gender Equality Action Plan 2014-2016, please see: [www.parliament.ge/ge/ajax/downloadFile/27264/NAP\\_2014-2016\\_FINAL](http://www.parliament.ge/ge/ajax/downloadFile/27264/NAP_2014-2016_FINAL), accessed 28 November 2016.

As noted earlier, the PDO is designated to discuss claims submitted by applicants against discrimination committed by public or private persons, but it can only issue recommendations, which are not mandatory. In September 2015, the PDO published its first special report on discrimination. According to the report, from May 2014 to August 2015, the PDO received 107 claims and initiated 4 cases itself. It was able to issue 8 decisions, 1 recommendation and 2 general recommendations. There are 60 ongoing cases; 21 were inadmissible; 13 were directed to other departments; and 2 were terminated as the cases went to the common courts (Public Defender's Office of Georgia 2015a: 10-1). For the first year, 107 claims on discrimination to the PDO office could be assessed as satisfactory, but the same could not be said regarding the speed of the PDO's work. If the department working on discrimination cases under the PDO is not strengthened, the institution will be overwhelmed.

The Equality Coalition of NGOs also prepared a one-year report on the implementation of the anti-discrimination law. The report focuses on the need for legislative changes that will make the implementation process more effective. Namely, the recommendations are to enable the PDO to fine private persons in case of non-fulfilment of PDO recommendations; increase the statutory limitation to application to the courts from a one-month period to a year; to allow proceedings by the PDO to continue even after a case is brought to court, etc. (Equality Coalition 2015: 65).

## **Socio-economic and cultural barriers affecting women's access to justice**

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### **Gender attitudes and stereotypes in Georgia**

#### **Attitudes on women's place in society**

Georgia is a patriarchal society, where gender roles are highly dichotomised. A woman's major role is to become a mother and to look after the household. According to a UN Women study, 65.6% of respondents think that women are valued by their contribution to their families and not by their careers (UN Women 2014: 27), while 92% of respondents believe that the most important role of women in life is taking care of the family (UNDP 2013: 19). Professional life is viewed only as an addition to this main role. To reconcile family with a career, women choose more "feminine" jobs, which are part-time, have short working days or do not require working overtime or travelling, such as teaching and certain types of medical professions. On the other hand, men are considered to be the major breadwinners and it is their responsibility to financially support their families. Men's role in taking care of children is insignificant and they generally do not perform household chores (UNDP 2013: 19), which are considered shameful and "unmanly".

In Georgia, both tradition and religion urge women to be obedient. According to a UNDP study, 63% of respondents (56% of women and 72% of men) believe that a good wife should obey her husband even if she disagrees with him (UNDP 2013: 19-20). Georgian families are highly hierarchical, and acknowledge the supremacy of men. Men are considered to be the decision makers within the families. According to the same UNDP study, 62% of male respondents think that men should make decisions in the family, while 62% of women think that the spouses should make decisions in the family together (UNDP 2013: 18).

In Georgia, most of the population thinks that women and men are equal in planning their private life and defining their future, 68% of the population consider having sexual relations before marriage as unacceptable behaviour for women, while only 31% deem it unacceptable for men (UNDP 2013: 64). The same study shows that consumption of alcohol and smoking is regarded as inappropriate for women (UNDP 2013: 19).

The perceived superiority of men is also reflected in the preferences of parents for distributing property between sons and daughters. According to the UNDP study, 56% of respondents think that the parents' house should be given completely, or in major part, to a son; the rest think that it should be divided equally. None of the respondents think that real estate should be given exclusively to a daughter. As for jewellery and movable property, 66% think that it should be divided equally (UNDP 2013: 70).

While Georgian society considers giving education to children as equally important for both sexes, in case of limited financial resources, 44% of the respondents would rather pay an education fee for boys, compared to 22% who would prefer to pay for educating girls (UNDP 2013: 73).

#### **Attitudes towards violence against women**

As in other societies, domestic violence is one of the most insidious forms of violence women experience in Georgia. Studies show that one in three women suffers abuse from a partner and one in 11 suffers physical or sexual violence in marriage or a similar relationship (Chitashvili et al. 2010: 38). Research finds that 82.5% of

women and 69% of men consider that domestic violence is prevalent, while only 61% of women and 50% of men think that domestic violence is unacceptable and should always be punished by law. Some respondents justified beating in the following cases: 13.7% if the woman does not pay attention to the children, 6.6% if the wife quarrels with the husband, 5.4% if the wife burns the food, 4.6% if the wife refuses to have sex, and 4.3% if the wife leaves home without the husband's permission (Chitashvili et al. 2010: 27-8 and 34-8).

The majority of respondents think that divorce is appropriate in case of violence (79%); the same amount considers that a woman should not marry her kidnapper. But 17.5% of respondents think that a woman should marry her kidnapper if sexual intercourse has taken place, while for 8.9% marrying the kidnapper would be justified in any circumstances (Chitashvili et al. 2010: 41-3). Most of the respondents believe that domestic violence takes place where there is abuse of alcohol or narcotic substances by men and in cases of adultery committed by women (Chitashvili et al. 2010: 39).

An absolute majority of respondents (94%) consider promotion of gender equality as the most effective way of combating domestic violence (Chitashvili et al. 2010: 56).

### **Attitudes regarding women's careers**

According to the UNDP study on attitudes towards gender equality, 85% of women realise that having a job is crucial for women's economic independence. However, even more women and men think that family and children are a higher priority for women, and 51% of respondents think that doing housework makes women as satisfied as they would be in a paid job. Moreover, half of respondents believe men need employment more than women, and almost the same amount of respondents think that men need a higher salary (UNDP 2013: 38).

Of the respondents, 58% declared that men make better business leaders than women, and 47% consider women to be weak and that politics is not an appropriate career for them. Half of the respondents believe that men are usually better at any activity than women. The respondents also consider involvement of women in business more acceptable than in politics (UNDP 2013: 41, 48, 58).

On the other hand, respondents think that women should not be excluded from politics; half of the respondents consider that the country would be better off if more women got involved in politics. It should be noted that they consider only certain spheres of politics to be appropriate for women, not including high-level positions (UNDP 2013: 54-5).

Interestingly, 46% of respondents agree, and 39% disagree, that women cannot be as successful in a career as men because of housework and family, which stand as obstacles to women's career development (UNDP 2013: 29).

## **Brief overview of key statistics concerning women's position in society, the economy and politics**

### **Women in the economy**

Gender inequality is apparent from various statistical data regarding income, expenditure, salaries, agriculture, etc. The economically active population in Georgia comprises 57% of women (49% employed and 8% unemployed) and 78% of men (66% employed and 13% unemployed); 16% of women are housewives (National Statistics Office of Georgia 2013: 51).

According to a study on gender discrimination in the labour market conducted in 2014, women's average salaries were between 251 GEL and 400 GEL, whereas for men it was between 401 GEL and 700 GEL (Centre for Social Sciences 2014: 3). The same study revealed that the educational level of men did not affect their salary, while women had to have a graduate degree to earn a man's average salary. The National Statistics Office of Georgia (GeoStat) also collects information regarding the salary gap. In 2012, in comparison to 2011, the average monthly nominal salaries of hired employees increased by 14.6% for women and by 18.5% for men. The nominal salary of employed women is lower than men's in every sector of the economy (National Statistics Office of Georgia 2013: 67). The average monthly nominal salary of hired employees in 2013 was 585 GEL for women and 920 GEL for men, so the wage gap stood at 36.4% in 2013, 39.7% in 2012, 40.4% in 2011 and 42.6% in 2010 (National Statistics Office of Georgia 2013: 11 and 92).

Studies on labour discrimination reveal that horizontal and vertical segregation was an aspect of wage inequality. Of the respondents, 65% reported that they had a male manager, and only 31% reported having a female direct manager, thus showing vertical segregation. Horizontal segregation is reflected in findings with regards to sector employment: women constitute 79% of employees in the health and social work sector and 78% in the education sector, whereas men constitute 96% of employees in the construction sector, 91%

in the transportation and storage sector and 47% in public administration and in defence (Centre for Social Sciences 2014: 3). In addition, gender inequality exists in additional wage benefits and bonuses: 66% of men compared to just 34% of women received them (Centre for Social Sciences 2014: 4).

There are more men employed in business compared to women: 342 062 men and 208 823 women (National Statistics Office of Georgia 2013: 14). In agriculture, 70% of farm heads are men compared to 30% women (National Statistics Office of Georgia 2013: 99). The total income distribution, cash and non-cash, is 649 GEL for women compared to 861 GEL for men; the total expenditure by women is 635 GEL and by men is 834 GEL (National Statistics Office of Georgia 2013: 64).

### **Women in politics**

Politics in Georgia is a male-dominated sphere, like in most countries, although the gender imbalance is very prevalent. Women constituted 16% of the Georgian Parliament after the October 2016 election (Inter-Parliamentary Union 2017a), while the global average of women parliamentarians was 23.3% as of March 2017 (Inter-Parliamentary Union 2017b). Georgia ranks 123 out of 190 countries according to the Inter-Parliamentary Union's Women in National Parliaments ranking (Inter-Parliamentary Union 2017a).

Female representation at the local self-government level is also very low. Women were able to secure only 11% of seats in the local self-government elections (local self-government body – *Sakrebulo*) in 2014, the same as in the 2010 elections (International Society for Fair Elections and Democracy 2014). The executive branch is no exception when it comes to gender balance; there are no female mayors in Georgia and only 2 out of 69 *Gamgebelis* (executive heads of local municipalities) are women, and 3 out of 19 members of the Cabinet of Ministers are women.

The Government of Georgia tried to improve the low representation of women in elective bodies through the introduction of financial incentives in 2011. The Organic Law of Georgia on Political Unions of Citizens offered a 10% increase of funding to parties nominating 2 women candidates in every 10-party list position. Currently the law states: “the election subject receiving funding from the state budget in accordance with rules prescribed by this article, will receive from the state budget 30% of supplement, if in the nominated party list (local self-government elections – all party list), it includes at least 30% of the different sex among every 10 candidates”.<sup>56</sup>

The problem of this initiative is that ruling parties do not use it, thus the political participation of women remains low, which gives rise to lobbying and advocacy for imposition of mandatory legislative party quotas. Currently women's organisations and activists actively lobby for gender quotas in elective bodies (Patariaia 2015).

### **Social life of women**

In deciding to engage in social life, not all women in Georgia are free to do what they may choose. Domestic violence research shows that more than one third of respondents (36%) reported having experienced acts intended to control their behaviour by their husbands or partners (Chitashvili et al. 2010).

Compared to the official data on unemployment provided by GeoStat, a UNDP study shows that a significantly higher number of persons considered themselves unemployed, 75% of women and 59% of men. Of the unemployed women, 18% admit it is hard for them to combine work with housework, therefore they have given up on working outside the home. Also, more women than men do not wish to work, 25% compared to 19% (UNDP 2013: 28).

An important characteristic of gender inequality in Georgian society is the existence of sex-selective abortions against girl foetuses. After the dissolution of the Soviet Union, male births started to increase in some post-Soviet countries, especially in the Caucasus. While the normal sex ratio at birth is 105, Georgia has a ratio of 111.8, due to more male children being born (UNFPA 2015: 2). Of women who live with their husbands, 9% say that they have thought about an abortion for the sole purpose of prenatal sex selection (UNFPA 2014b: 18).

Child marriage is practiced in Georgia. In 2012, out of 30 412 marriages 14% of the brides were between 16 and 19 years old (UNFPA 2014a: 9), while marriages under 16 are not registered, as it is not allowed under Georgian legislation. In 2012, there were 114 births to mothers 15 years of age, and 26 births to mothers under the age of 15. Adolescent mothers aged 15 to 19 who gave birth accounted for approximately 10% of all births in 2012 (UNFPA 2014a: 9). Early marriages are estimated to comprise 17% of total marriages in Georgia (Christiansen 2012). According to the PDO report of 2012, it received data from the Ministry of Education and

<sup>56</sup>. Organic Law of Georgia on Political Unions of Citizens, Article 30(7<sup>1</sup>), available at [matsne.gov.ge/ka/document/view/28324](https://matsne.gov.ge/ka/document/view/28324), accessed 28 November 2016.

Science indicating that 7 367 girls terminated their education before the end of basic level education, grades seven to nine, (Public Defender's Office of Georgia 2012: 394-7); some of the cases are directly related to early marriages or to the fear of parents that their daughters would be kidnapped for the purpose of marriage.

The level of social engagement of ethnic minority women is also low, according to an assessment of the European Centre for Minority Issues (ECMI). Very few women in this group have experienced co-operation with NGOs. The major social activities of these women are participation in various cultural activities, including activities related to their children's needs (ECMI 2014: 37).

### **Level of women's awareness of their rights**

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The national curricula developed by the Ministry of Education and Science only superficially cover the themes of human rights and equality. In the current national curriculum for 2011 to 2016, gender, gender equality or equality between sexes is not mentioned; neither are women's rights (Ministry of Education and Science of Georgia 2014). The school educational system in Georgia, nine grades of mandatory education at primary and secondary school, does not provide students with an in-depth knowledge of human rights, nor are girls taught about the specific rights they have and the specific challenges they may face in life. Georgian secondary education does not offer sex education to its students.

National research on domestic violence from 2010 concluded that women lacked knowledge of the forms of violence other than physical, and very few women admitted that they had been sexually abused, while focus groups with service providers revealed that physical violence is usually accompanied by sexual abuse (Chitashvili et al. 2010).

It should be noted that women belonging to national minorities have additional problems due to their poor knowledge of the state language. The minority women groups in Georgia are Armenian, Azerbaijani, Dukhobor, Meskhetian Turk and Roma women (ECMI 2014: 34).

## **3. GENDER RESPONSIVENESS OF THE JUSTICE SYSTEM**

### **Access to legal aid**

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The Law of Georgia on Legal Aid regulates the functioning of an independent body, the Legal Entity of Public Law (LEPL) Legal Aid Unit, which comprises the central office, Legal Aid Bureaus (LABs) and Consultation Centres.<sup>57</sup> LABs are available in all 11 regions of Georgia. In those remote locations where there are no LABs, a Consultation Centre ensures the involvement of a public lawyer in a proceeding. Legal aid is provided through public lawyers, such as LAB lawyers, a legal aid provider or a lawyer recorded in the register.<sup>58</sup>

The Legal Aid Unit provides the following services: drafting of legal documents such as applications, claims, complaints, statements of defence, motions and other documents; defending an accused, convicted or acquitted person in criminal proceedings; protecting victims in criminal proceedings when conducting a defence in cases provided by the Criminal Procedure Code of Georgia at the expense of the state; providing representation in court with respect to administrative and civil cases; and providing representation before an administrative body.<sup>59</sup> The Legal Aid Unit therefore offers its services in the following areas of law: criminal law, civil law, commercial law, labour law and administrative law.<sup>60</sup> Legal aid is provided when persons are accused, convicted and/or acquitted, and representation in courts in civil and administrative proceedings is provided based on the importance and complexity of the case; at the same time, assistance with drafting of legal documents is provided without this distinction.<sup>61</sup> Free legal aid is provided by the Legal Aid Unit only for insolvent persons in Georgia. The Director of the Legal Aid Unit can also decide on the provision of services for a non-insolvent person, who is nevertheless socially indigent and who, due to difficult socio-economic conditions, cannot afford a lawyer's services.<sup>62</sup>

57. Law of Georgia on Legal Aid, Article 8, available at [www.legalaid.ge/cms/site\\_images/FOI/Primary%20Legal%20Acts/Law%20on%20legal%20Aid\\_ENG%202015\\_matsne.pdf](http://www.legalaid.ge/cms/site_images/FOI/Primary%20Legal%20Acts/Law%20on%20legal%20Aid_ENG%202015_matsne.pdf), accessed 28 November 2016.

58. *ibid.* Article 2.

59. *ibid.* Article 3.

60. Legal Aid Service website, available at [www.legalaid.ge/index.php?action=page&p\\_id=290&lang=eng](http://www.legalaid.ge/index.php?action=page&p_id=290&lang=eng), accessed 28 November 2016.

61. *ibid.* Article 5.

62. *ibid.* See also, Decision N10 of Legal Aid Council, dated 11 July 2014.



Insolvency is defined by the Government of Georgia as applying to a member of a family registered in the unified database of socially vulnerable families. According to the relevant Government of Georgia Resolution:<sup>63</sup>

- ▶ a socially vulnerable person is deemed insolvent if his/her ranking amounts to 70 000 or fewer points;
- ▶ a socially vulnerable person is also considered insolvent if s/he has 100 000 or fewer points and belongs to one of the categories listed below:
  - member of a family with many children: 3 or more children under 18 years old;
  - veteran of war or the military forces;
  - a person with limited capacity status under 18 years of age;
  - an adult with the status of distinct or significant limited capacities;
  - an individual with the status of distinct, significant or moderate limited capacities, if this limitation of capacities is in place from childhood;
  - an orphan under 18 years of age;
  - an IDP as a result of Russian military aggression against Georgia.

It should be highlighted that insolvency is determined based on family income. This might create problems for those women who do not have an independent income or do not have access to the family's financial resources, especially when the woman has a conflict with or is in the process of divorcing the breadwinner of the family.

In addition, a compulsory defence offered by the Legal Aid Unit is prescribed under the Criminal Procedure Code of Georgia when the accused has not hired a lawyer and where:<sup>64</sup>

- ▶ s/he is a minor;
- ▶ s/he does not know the language of the criminal proceedings (the state language);
- ▶ s/he has a physical or mental defect that inhibits her/him in self-realisation;
- ▶ the decision has been made about appointing a forensic enquiry;
- ▶ the alleged crime envisages a lifetime sentence pursuant to the Criminal Code of Georgia;
- ▶ negotiations are taking place about a plea-bargaining agreement;
- ▶ the case will be heard by jury trial;
- ▶ s/he refrains from appearing before the law enforcement agencies;
- ▶ s/he was removed from the courtroom;
- ▶ s/he is a non-identified person.

Tables 3.3 and 3.4 summarise the statistical information provided by the LEPL Legal Aid Service on the cases dealt with in 2014 and 2015.

**Table 3: Number of cases dealt with by the Legal Aid Service, by sex, 2014**

Type of service	Women	Men
Consultation	8 263	6 047
Legal aid in criminal cases	527	7 663

Since 2015, the Legal Aid Unit has also provided legal consultation in civil and administrative cases and established a more comprehensive statistical data collection system, which enables the presentation of more detailed information, as below.

**Table 4: Number of cases dealt with by the Legal Aid Service, by sex, 2015 (Jan-Aug)**

Type of service	Women	Men
Consultations	4 902	3 584
Administrative cases	15	4
Civil cases	137	154
Domestic violence cases	13	88
Property cases	3	1

63. Government of Georgia, Resolution No. 424.

64. CPCG, Article 45, available at [matsne.gov.ge/ka/document/view/90034](https://matsne.gov.ge/ka/document/view/90034), accessed 28 November 2016.

<b>Inheritance cases</b>	6	1
<b>Alimony</b>	9	3
<b>Divorce</b>	2	0

In 2015, there were no discrimination cases argued by the Legal Aid Service.<sup>65</sup> Also, the Legal Aid Unit did not litigate any administrative cases regarding protection of victims of domestic violence.<sup>66</sup> Of beneficiaries who received legal consultations on civil and administrative issues, 60% were women in 2015.<sup>67</sup> The fact that significantly more men than women receive legal aid in domestic violence cases has to do with the entitlement to legal aid, which is guaranteed by law for the accused, not the victim. The victim is not a party to the legal proceedings in criminal cases.

## Access to courts

Georgia has a three-instance common court system: 26 city courts, 2 appellate courts and 1 Supreme Court (cassation).<sup>68</sup> In addition, Georgia has a Constitutional Court. The city courts are based in all regions of Georgia; the appellate courts in Kutaisi (west Georgia) and in Tbilisi (east Georgia).

Given the overall poor economic situation of the country, as well as the economic inequalities affecting women in particular, court fees might act as a barrier to access to courts for many women. The fees are regulated under the Civil Procedure Code of Georgia. Article 39 defines that fee as constituting up to 3% of the disputed object, but no less than 100 GEL. For non-pecuniary claims it is 100 GEL, for the appeal court it is 150 GEL and for the court of cassation it is 300 GEL.<sup>69</sup> The law envisages several instances when the applicant is exempt from paying the court fee:

- ▶ alimony;
- ▶ damages caused by illness, injury or death of the breadwinner;
- ▶ damages incurred due to crime;
- ▶ violations of the rights of children;
- ▶ persons registered as socially vulnerable;
- ▶ cases related to the return of wrongfully retained or removed children or the exercise of the right to access a child.<sup>70</sup>

The law also envisages the possibility of a court to decide on exemptions from court fees on a case-by-case basis if the applicant proves to the court an incapacity to pay them.<sup>71</sup>

In addition, the Administrative Procedure Code of Georgia also grants an exemption from court fees when the case is argued in terms of social vulnerability and in administrative procedures regarding domestic violence.<sup>72</sup>

## Women applying to the courts

According to an official letter received from the Supreme Court of Georgia, the common court system does not collect disaggregated data on the sex of the parties to disputes. Therefore it is impossible to know how many women apply to the courts.<sup>73</sup>

In addition, the above-mentioned letter demonstrates that courts collect information on certain disputes and not on others. For example, courts do not have information about disputes that fall within the scope of Article 1152 (Equality of Spouses), but do collect information on the number of disputes concerning divorce (2 498 cases in 2013, 2 391 cases in 2014).

65. Information was provided through an interview with the Deputy Head of the Legal Aid Service, Irakli Shonia, on 18 August 2015.

66. Legal Aid Service, Performance Report of 2015, p. 20.

67. *ibid.* p. 21.

68. Official website of Courts of Georgia, available at [http://court.ge/geo\\_courts](http://court.ge/geo_courts), accessed 28 November 2016.

69. Civil Procedure Code of Georgia, Article 39.

70. *ibid.* Article 46.

71. *ibid.* Article 47.

72. Administrative Procedure Code of Georgia, Article 9.

73. Official Letter from Supreme Court of Georgia No. p-167-15, dated 5 October 2015.

The courts also provide information regarding issuance of protective and restrictive orders in cases of domestic violence.<sup>74</sup> A woman victim of domestic violence can request a protective order from the court herself, while restrictive orders are issued by police and approved by a court.<sup>75</sup> Table 3.5 shows the dynamic over the past three years. It can be observed that the requests for protective orders increased gradually, while the number of restrictive order increased dramatically, which is related to the toughening of the policy towards domestic violence by the Ministry of Internal Affairs.

**Table 5: Protection orders issued in cases of domestic violence, 2013-2015**

	2013		2014		2015	
	Issued	Denied	Issued	Denied	Issued	Denied
<b>Issuance of protective orders</b>	57	3	92	10	76	6
<b>Approval of restrictive orders</b>	241	8	945	30	1 410	53

### **Lack of trust in law enforcement and the justice system**

Various studies reveal that there is a lack of trust towards the police and the justice system. A study on attitudes towards the judiciary revealed that of the political and social institutions in Georgia, the judiciary inspires among the lowest levels of trust. In 2014, 37% of respondents said that they either “fully trust” or “partially trust” the courts, up from 32% in 2011 (CRRG-Georgia 2014a: 36). The same study revealed that trust towards police is much higher compared to other law enforcement agencies, at 78%. It is worth mentioning that persons who have used court services tend to positively change their attitudes towards them. A study of the quality of court services revealed that 44% of respondents who had used them obtained more positive attitudes towards the judiciary, while 36% declared that their attitudes had not changed, as they were positive prior to using the court services.<sup>76</sup>

Another study on domestic violence provides a different picture regarding trust in the police. Among reasons for not calling the police in cases of domestic violence was a lack of trust (52% of respondents) (Sumbadze 2014: 47). In the same study, an absolute majority of respondents prioritised talking to family members in cases of domestic violence. Divorce was considered an appropriate response to domestic violence by 79% of respondents, while 62% felt that the appropriate response was to call the police, and 65% considered talking to a lawyer to be appropriate (Sumbadze 2014: 44). Respondents felt that they would refrain from calling the police because of shame (91%) and the fear of more violence (90%). The study concludes that an absolute majority of respondents did not feel that protection from police would be effective in cases of domestic violence (Sumbadze 2014: 46).

The Gender Poll of 2014 revealed that 72% of respondents thought that in cases of domestic violence police and courts are entitled to interfere; on the other hand, 39% of respondents thought that cases of physical violence should be solved within the family, with 64% thinking the same about non-physical violence (CCRC-Georgia 2014b: 26-7).

### **Women in the judiciary**

According to CEPEJ, Georgia is one of the lowest ranking member states of the Council of Europe as regards the number of female city court presidents (7%) and appellate court presidents (none) (Council of Europe, European Commission for the Efficiency of Justice 2014: 330). Currently there are 6 female justices out of 16 and the Chair of the Supreme Court is a woman.<sup>77</sup> According to CEPEJ, 43% of judges in Georgia are women (Council of Europe, European Commission for the Efficiency of Justice 2014: 327).

Currently, there are 1 080 women employed in the court system, of which 128 are judges and 42 are employed in managerial positions.<sup>78</sup>

74. *ibid.*

75. Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence, Article 3, Available at [matsne.gov.ge/ka/document/view/26422?impose=translateEn](http://matsne.gov.ge/ka/document/view/26422?impose=translateEn), accessed 28 November 2016.

76. Study of quality of court services, satisfaction of customers, 2014, available at [www.supremecourt.ge/files/upload-file/pdf/2014-wlis-kvleva.pdf](http://www.supremecourt.ge/files/upload-file/pdf/2014-wlis-kvleva.pdf), accessed 28 November 2016.

77. Official website of Supreme Court of Georgia, available at [www.supremecourt.ge/eng/judges/judges](http://www.supremecourt.ge/eng/judges/judges), accessed 28 November 2016.

78. Official Letter from the Supreme Court of Georgia No. p-167-15, dated 5 October 2015.

## Gender bias within legal professions

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### Judiciary

To discuss the gender bias of judges, the decisions and applicability of law by the judiciary should be analysed. One of the examples that shows how relevant legislation has not been applied is Article 1153 of the Civil Code, the prohibition of discrimination in domestic relations. None of the cases of the Supreme Court of Georgia mentions Article 1153. As for Article 1152 – equality of spouses – it has been used in seven cases discussed by the Supreme Court of Georgia. One case concerned alimony while all others were related to property acquired by the spouses during their marriages.<sup>79</sup> Practice shows that Article 1152 is used in conjunction with other articles such as Article 1158 on matrimonial property, and Articles 1159 and 1160 on management and administration of matrimonial property by mutual agreement.

### Police

Implementation of the legislation depends not only on existing mechanisms but also the perceptions and attitudes of law enforcers and representatives of legal professions. Despite the fact that according to surveys, domestic violence is a widespread crime in Georgia, the statistics show a different picture. If we look, for example, at statistics of the Ministry for Internal Affairs for 2013, we see that in 5 447 cases people asked for help with regards to conflict within the family through the police hotline, investigations were started in over 300 cases, and in only 212 cases was the administrative procedure of issuing a protective order to the victim of domestic violence realised.<sup>80</sup> It should be taken into consideration that many people in Georgia consider domestic violence to be a private issue and try to resolve it within the family, thus refraining from engaging the police in these cases. After two years of very active social campaigns conducted by civil society and the Ministry of Internal Affairs, emergency calls to the police have increased three-fold, and in 2015 totalled 15 910 calls (Patraia 2016: 3). The number of investigations increased up to 949 cases and the number of protective orders issued increased ten-fold to 2 726. This means that of all hotline calls, the police took action in only 15% of cases, leaving open the question of what happened to the rest.

The UPR shadow report of 2015 on women's rights in Georgia indicates that NGOs that provide services to the victims of domestic violence report that police frequently do not provide adequate help to the victims, because of their stereotypical attitude towards the crime of domestic violence; this increases the impunity of abusers and leads to more severe crimes within the family in the long run (NGO Coalition 2015: para. 12).

### Teaching women's rights at universities

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Teaching women's rights or related topics is not common in Georgian universities. To analyse the existing situation, universities were chosen according to the 2014 ratings from the LEPL National Assessment and Examination Centre under the Ministry of Education and Science.<sup>81</sup> There were 62 accredited universities in Georgia and the top 4 were chosen from among the 10 most popular universities that offer law degrees: Tbilisi State University (TSU), Free University of Tbilisi (Freeuni), Ilia State University (Iliauni) in Tbilisi, and Batumi Shota Rustaveli State University (BSU) in Batumi, Ajara region.

Based on an analysis of the curricula of faculties of law of the above-mentioned universities, the following courses were identified:

- ▶ TSU: no relevant Bachelor of Law courses<sup>82</sup> or Master of Law<sup>83</sup> programmes identified. At the level of the Master in International Law there was a practical course/law clinic on "International standards in combating human trafficking and domestic violence".<sup>84</sup> In addition, there is a Master's Programme of Gender Studies that offers "Women's human rights" as an elective course;<sup>85</sup>

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79. Supreme Court of Georgia, case law search engine, available at [prg.supremecourt.ge](http://prg.supremecourt.ge), accessed 28 November 2016.

80. See the statistics of the Ministry of Internal Affairs, available at [www.gurianews.com/view\\_left\\_wide.html?item=21121&title=თუჯახური+ძალადობის+სტატისტიკა&cat\\_id=74&lang=ka](http://www.gurianews.com/view_left_wide.html?item=21121&title=თუჯახური+ძალადობის+სტატისტიკა&cat_id=74&lang=ka), accessed 28 November 2016.

81. Available at [www.naec.ge](http://www.naec.ge), accessed 28 November 2016.

82. TSU, Bachelor of Law programme, available at [www.tsu.ge/data/file\\_db/Faculty-Law-Bakalavriati/samartlis-bak-prog2012\\_61132.pdf](http://www.tsu.ge/data/file_db/Faculty-Law-Bakalavriati/samartlis-bak-prog2012_61132.pdf), accessed 28 November 2016.

83. TSU, Master of Law programme, available at [www.tsu.ge/data/file\\_db/Faculty-Law-Bakalavriati/samartlis%20samagistro%20programa%202012.pdf](http://www.tsu.ge/data/file_db/Faculty-Law-Bakalavriati/samartlis%20samagistro%20programa%202012.pdf), accessed 28 November 2016.

84. TSU, Master's in International Law programme, available at [www.tsu.ge/data/file\\_db/Faculty-Law-Bakalavriati/saertashoris%20sam%20mag%20programa.pdf](http://www.tsu.ge/data/file_db/Faculty-Law-Bakalavriati/saertashoris%20sam%20mag%20programa.pdf), accessed 28 November 2016.

85. TSU, Master's programme in Gender Studies, available at [https://tsu.ge/data/file\\_db/faculty\\_social\\_political\\_master/MA-%20Gender%20curriculum.pdf](https://tsu.ge/data/file_db/faculty_social_political_master/MA-%20Gender%20curriculum.pdf), accessed 28 November 2016.

- ▶ Freeuni: there is an “Anti-discrimination law” elective course at the Bachelor of Law level. The course covers discrimination based on sex and gender;<sup>86</sup>
- ▶ Iliani: no relevant courses are available;<sup>87</sup>
- ▶ BSU: no relevant courses are available.<sup>88</sup>

As the curricula of the universities show, women’s rights, gender issues and non-discrimination are not topics offered by universities in Georgia, even as elective courses. Given that the legal education does not offer a gender perspective, it becomes difficult to raise gender sensitivity among professionals at later stages of their career development.

## Gender training for legal professionals

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This section provides an overview of training courses offered to judges, prosecutors, lawyers and policemen by state institutions through the High School of Justice, the Training Centre of Justice, the Georgian Bar Association and the Ministry of Internal Affairs Academy:

- ▶ judges: judges are trained by the LEPL High School of Justice. In 2014, the High School of Justice with the co-operation of international organisations elaborated a curriculum for training on “Supporting justice through gender equality”.<sup>89</sup> One pilot training and two trainings of trainers were conducted for judges in 2014. The training covered understanding gender, gender bias, stereotypes, violence, women justices, leadership, among others. The High School of Justice is currently developing curriculum regarding anti-discrimination law in co-operation with NGOs and national experts;
- ▶ prosecutors: the Training Centre of Justice of Georgia is in charge of organising trainings for prosecutors. The trainings offered do not contain relevant courses with regard to women’s rights or gender equality.<sup>90</sup> However, in 2012 all prosecutors underwent two hours of training on domestic violence following its criminalisation under the Criminal Code of Georgia;
- ▶ police: the Ministry of Internal Affairs Academy offers basic and specialised courses for police. The basic programme covers teaching issues related to domestic violence (17 academic hours). In 2014, 2 groups of 244 policemen underwent training on domestic violence.<sup>91</sup> In 2014, the Ministry of Internal Affairs Academy received the status of a higher educational institution and Bachelor’s and Master’s programmes received accreditation from the LEPL National Centre for Educational Quality Enhancement. The Ministry of Internal Affairs Academy elaborated Bachelor’s and Master’s degree programmes in Law. Both of the programmes include teaching anti-discrimination law according to Georgian legislation and the European Convention on Human Rights standards. In addition, the Ministry of Internal Affairs Academy regularly organises training on gender-based violence in co-operation with NGOs and in 2014, 385 policemen were trained;<sup>92</sup>
- ▶ lawyers: the Training Centre of the Georgian Bar Association is in charge of trainings and providing continuous education for advocates in Georgia. In 2013, in co-operation with UN Women, it developed a training module on the “Elimination of domestic violence, protection and support of victims”. Trainings were conducted from 2013-15 in Tbilisi, Telavi and Zugdidi. In 2013, in co-operation with the Council of Europe, the Training Centre conducted training on the European Convention of Human Rights and the revised European Social Charter”. The training focused on anti-discrimination, covering gender and sex as protected grounds. The cascade trainings continue and have trained 1 340 lawyers so far.<sup>93</sup>

86. Freeuni, Master of Law programme, available at [http://freeuni.edu.ge/sites/default/files/u113/LS\\_Curriculum\\_%28BL%29\\_2015-2016.pdf](http://freeuni.edu.ge/sites/default/files/u113/LS_Curriculum_%28BL%29_2015-2016.pdf), accessed 28 November 2016.

87. Iliani, Bachelor and Master of Law programmes, available at <http://iliauni.edu.ge/ge/iliauni/AcademicDepartments/samartlis-skola-654/programebi-656/samartlis-skolis-sabakalavro-programebi>, accessed 28 November 2016.

88. BSU, Bachelor and Master of Law programmes, available at [www.bsu.edu.ge/text\\_files/ge\\_file\\_411\\_2.pdf](http://www.bsu.edu.ge/text_files/ge_file_411_2.pdf), accessed 28 November 2016.

89. High School of Justice, official letter No. 02/649, dated 17 June 2015.

90. TCJ, available at [www.tcj.gov.ge/ka/training](http://www.tcj.gov.ge/ka/training), accessed 28 November 2016.

91. Ministry of Internal Affairs Academy, official letter No. 1502823, dated 9 July 2015.

92. *ibid.*

93. GBA Training Centre, Available at <http://edu.gba.ge/ფეხვინს-შესახებ/პროექტები>, accessed 28 November 2016.

## 4. REMEDIES, GOOD PRACTICES AND RECOMMENDATIONS

### National good practices to promote equal access of women to justice

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#### Parliamentary overview of the executive

In 2014, the Georgian Women's Movement (GWM), an informal initiative group composed of around 600 women activists, prepared a petition demanding changes to the state policy regarding violence against women and submitted it to the Parliament of Georgia. In response to the petition, the Human Rights and Civil Integration Committee of the Parliament (CRCC) established a working group on violence against women. The authors of the petition – activists of GWM – were invited to participate in the process. The working group, composed of members of parliament and high-level officials from the Government of Georgia, conducted three public hearings. During the parliamentary hearings, deputy ministers reported to the working group about ongoing and planned reforms. GWM members and other representatives of civil society had the opportunity to ask questions during the committee hearings. In June 2015, the working group with the co-operation of GWM representatives drafted recommendations for the Ministry of Internal Affairs, the Prosecutor's Office, the Ministry of Labour, Health and Social Affairs, the local self-government body (*Sakrebulo*) of Tbilisi and the City Hall of Tbilisi. The CRCC planned to conduct two hearings per year to assess the implementation process of the recommendations from relevant state institutions.<sup>94</sup>

The Georgian Parliament consultation process in designing state policy on the acute problem of violence against women should be considered as a good practice, particularly when the process is open to the wider public in recognition of the importance of the direct involvement of society, civil society organisations and unregistered initiative groups of human rights activists.

#### Gender Equality Department of the Public Defender's Office

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The Gender Equality Department of the Public Defender's Office (GED) was established in 2013. The GED conducts monitoring of implementation of gender-related legislation and policies, shelters for domestic violence victims and the operation of hotlines on domestic violence. It reviews complaints and individual cases of violations of human rights, including related to discrimination on the basis of sex and gender. The GED also conducts public awareness activities and trainings for relevant state institutions. It collects information from these institutions and conducts qualitative studies to evaluate the effectiveness of various protection mechanisms for women against violence. Special reports on violence against women and domestic violence in Georgia are produced on an annual basis, and the GED has raised attention on many issues faced by women in Georgia that have often been considered taboo.

#### Introduction of typology of domestic crimes in the Criminal Code of Georgia

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As noted, the Criminal Code of Georgia was amended in 2012 and a new Article 11 introduced a new typology of domestic crimes. This article stipulates that domestic crimes are crimes committed by one family member against another and defines who is a "family member". Since the introduction of this article, it has become possible to obtain disaggregated data regarding all crimes committed within the family. This data enables further analysis of the characteristics of domestic violence in Georgia.

#### Legal aid reform

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Initially, free legal aid was provided only in criminal cases for the socially vulnerable population of Georgia. In 2015, Legal Aid Service provided legal aid for civil and administrative cases for eligible persons and collected disaggregated data regarding the nature of civil disputes. This reform has significantly increased access to justice for women. Additional information can be found in the relevant section of this study on legal aid.

#### Recommendations to improve women's access to justice

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In order to improve women's access to justice, the Government of Georgia should:

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<sup>94</sup> Human Rights and Civil Integration Committee of the Parliament of Georgia, Recommendation No. 7574, dated 29 June 2015.

- ▶ increase awareness of women's human rights among the general population, through short-term and long-term educational activities. Women should be informed about available services and protection mechanisms from violence;
- ▶ increase gender sensitivity of the justice system through professional development programmes and educational institutions;
- ▶ address the lack of trust in the judiciary and law enforcement including through effective awareness-raising campaigns;
- ▶ conduct a gender impact analysis of various laws and policies;
- ▶ develop gender-sensitive legislation and policies to overcome low participation of women in social, economic and political life. Special and temporary measures should be introduced to empower women;
- ▶ combat stereotypes and harmful traditions that violate women's rights; short-term and long-term solutions should be adopted and implemented to overcome gender inequality and oppression of women;
- ▶ introduce the collection of sex-disaggregated data in the justice system for analysis.

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