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**Public Defender of Georgia**

Written Contribution to the Office of the High Commissioner for Human Rights  
 In relation to the Human Rights Council Resolution 27/32  
 National Human Rights Institution – Public Defender (Ombudsman) of Georgia

As a Public Defender of Georgia, I have the honor to submit to the Office of the High Commissioner for Human Rights present written contribution regarding the Human Rights Council Resolution 27/32 on Human Rights, Sexual Orientation and Gender Identity. The Office of Public Defender of Georgia, as a National Human Rights Institution and within a broad mandate provided to it by the Organic Law of Georgia on Public Defender is empowered to monitor and promote respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind. Monitoring and promoting human rights of LGBT persons are one of the core priorities of Public Defender's activities. With regard to the undertaken functions and in connection with the Report of the United Nations High Commissioner for Human Rights, it is important to refer the attention to the number of positive developments and violations of human rights based on sexual orientation and gender identity that were identified by the Office of the Public Defender of Georgia.

- **Activities of the Office of Public Defender of Georgia in the field of elimination of discrimination against LGBT persons**

Public Defender of Georgia takes full account of the Report of the United Nations High Commissioner for Human Rights on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. The report (Para 78) underscores the important role NHRIs play in countering discrimination and recommends the Member States to ensure that combating discrimination on grounds of sexual orientation and gender identity is included in the mandates of national human rights institutions.

Along with the Organic Law of Georgia on Public Defender, the Law of Georgia on Gender Equality (Article 14 (1)) mandates the Public Defender of Georgia to protect gender equality, monitor the given field and respond to violations of gender equality within the framework of its competences. The powers of Public Defender were further strengthened by the adoption of the Law of Georgia on Elimination of All Forms of Discrimination (May 7, 2014) which authorizes the Ombudsman of Georgia to carry out the oversight on the issues of elimination of discrimination and ensuring equality (Article 6). The National Human Rights Strategy, adopted by the Parliament of Georgia in May 2014 and its Action Plan set relevant standards for ensuring gender equality. By active participation in the working group meetings established within the framework of the National Human Rights Action Plan Public Defender of Georgia plays pivotal role in monitoring the implementation of the aforesaid documents within its competences.

Furthermore, Public Defender of Georgia contributes to eliminate gender inequality through effective and accountable management of cases and ensures the compliance of government and public institutions with human rights and gender equality national and international legal obligations. To this end, in May 2013, Public Defender of Georgia established Gender Equality Department that facilitates the work of Public Defender in combating discrimination based on gender. The Annual Parliamentary Report of the Public Defender of Georgia for 2013 includes special chapter on Gender Equality which examines conditions of human rights of LGBT persons, challenges and trends related to the protection of their rights.

- **Observations with regard to human rights conditions of LGBT persons in Georgia**

Public Defender of Georgia welcomes the decriminalization of homosexual conduct which was accompanied by elimination of the discriminatory approaches in the legislation and enhancement of legal guarantees of LGBT persons.

In particular, Article 14 of the Constitution of Georgia affirms prohibition of discrimination. In spite of the fact that the list of discriminatory grounds provided in this article does not specifically include sexual orientation and gender identity, the list is not exhaustive and includes such grounds for non-discrimination, which are not expressly mentioned in it.<sup>1</sup> Sexual orientation as the prohibited grounds for discrimination is provided under the Law of Georgia on “Health Care” and Labor Code of Georgia, covering labor and pre-contractual relations.

Furthermore, sexual orientation and gender identity were defined as aggravating circumstances for the crime committed with the motive of intolerance by Article 53 (3<sup>1</sup>) of the Criminal Code of Georgia in March 27, 2012.

Public Defender particularly welcomes the decision of the Constitutional Court of Georgia of February 4, 2014, by which the Court declared non-constitutional certain provisions of Orders of Minister of Labor, Health and Social Affairs of Georgia #241/5 №1, 05.12.2000 and #282/5 , 27.09.2007 which regulated “homosexuality” as the indicator against donation of blood and its component.<sup>2</sup>

Despite the fact that Georgian legislation is not discriminatory towards LGBT persons, its practical enforcement is not adequately guaranteed. The incidents of discrimination of LGBT persons in labor, health, social and economic relations are quite frequent. They suffer violence and unequal treatment in different areas of life, in families and communities. In most cases they do not apply to law enforcement bodies for restoration of infringed rights, as they have no trust and believe that if they apply to police, they will become victims of homophobic treatment. Public Defender is particularly concerned with frequent cases of domestic violence against LGBT persons as it forces them to conceal their gender identity and sexual orientation. The attitude of family members is often negative and there are forceful attempts aimed at changing their identity and orientation.

Homophobic attitudes among public still remain challenge, which result in hate crimes and other discriminatory activities. No awareness raising measures are carried out, which would support destruction of current stereotypical approaches.

Freedom of assembly and expression of LGBT are defined as one of the problematic issues. Of particular importance is the dispersal of demonstration of LGBT persons on May 17, 2013, when NGOs “Women's Initiatives Supporting Group” and “Identoba” planned a silent rally, which aimed at attracting people’s attention to the problem of homophobia in Georgia. The

<sup>1</sup> Judgment №2/1–392 of the Constitutional Court of Georgia for March 31, 2008 on case “Georgian citizen Shota Beridze and others vs Parliament of Georgia”, [http://constcourt.ge/index.php?lang\\_id=GEO&sec\\_id=22&id=460&action=show](http://constcourt.ge/index.php?lang_id=GEO&sec_id=22&id=460&action=show)

<sup>2</sup> The judgment of the Constitutional Court of Georgia on case “citizens of Georgia Levan Asatiani, Irakli Vacharadze, Levan Berianidze, Beka Buchashvili and Gocha Gabodze vs the Minister of Labor, Health and Social Affairs of Georgia” February 4, 2014 [http://constcourt.ge/index.php?lang\\_id=GEO&sec\\_id=22&id=824&action=show](http://constcourt.ge/index.php?lang_id=GEO&sec_id=22&id=824&action=show);

rally was attacked and dispersed by the participants of parallel rally, including members of church. Ministry of Internal Affairs of Georgia was given several-days prior notice about the parallel rallies planned to be held in one and the same area, and was warned about possible threats that might have occurred. At the outset of the rally patrol police was mobilized in the area; the cordon was arranged, but police could not maintain the cordon. Verbal and physical abuse was detected. Gender equality department of the Office of Public Defender documented 32 incidents of May 17 and sequential days and is currently studying these cases. As for 2014, May 17 was not celebrated by the LGBT community representatives and human rights defenders as they feel that the state cannot ensure the safety.

Situation of rights of transgender persons remains problematic in Georgia. Necessary medical service, required for re-designation of gender is not affordable to majority of transgender persons.<sup>3</sup> Besides, there are no established procedures for the medical facilities providing such service. The sequence/order of the procedures for re-designation of gender is not established as well. Transgender persons further face problems when making the entry into the Civil Acts Registry on changed gender, which is an impediment for education and employment prospects.

#### **Recommendations:**

- **To carry out timely, effective and accountable investigation of hate crimes and other incidents motivated by hatred;**
- **To resolve the issue of providing shelter to LGBT persons in emergency situations, when diversion is necessary for protection of life and health;**
- **To enhance collaboration with the community for elimination and prevention of current homophobic practices;**
- **To support establishment of a specialized group within police, which will work on investigation of hate crimes;**
- **To establish expedient, transparent and easily available procedure of registration of the gender of transgender persons in all documents issued by public and private institutions through implementation of new administrative practice, on the basis of the diagnosis of gender dysphoria;**
- **To support regulation of gender re-designation process in a way that transgender persons have easy access to recognized medical services, in compliance with international standards.**

Hereby, the Office of Public Defender (Ombudsman) of Georgia avails itself of the opportunity to renew to the United Nations High Commissioner for Human Rights and the Human Rights Council assurances of its highest consideration and expresses his readiness to contribute to the work of international human rights system in the promotion and protection of rights of LGBT persons.

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<sup>3</sup> Materials for study of transgender persons' needs in healthcare sector, organization "Identoba", 2012;