

LGBTI Hate Crimes in the Republic of Georgia: Continuing Struggles Despite Reform

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Abstract:

While Georgia has recently undertaken a series of legal and institutional reforms to prevent and improve the problem of LGBTI hate crimes, implementation remains lacking. LGBTI NGOs report higher incidence of hate crimes compared to the state, while LGBTI citizens continue to under-report them due to distrust in law enforcement. Additionally, police frequently fail to conduct an effective investigation that uncovers SOGI-motivated hate bias or prejudice.

Introduction:

Despite Georgia's notable legislative and institutional steps to identify, investigate, and prosecute sexual orientation and gender identity (SOGI)-motivated hate crimes within the last ten years, the state still fails to tackle the foundational problem of entrenched homophobic attitudes in civil society and law enforcement. While Georgia claims its recent reforms have resulted in a higher rate of identifying SOGI-motivated hate crimes, LGBTI NGOs report that progress has been modest at best, and state data underrepresents the discouraging scope of the problem. LGBTI people significantly under-report hate crimes due to lack of trust in the criminal justice system, as well as substantiated fears of outing, discrimination, and re-victimization from law enforcement. Furthermore, even if law enforcement officials initiate investigations into alleged hate crimes in the first place, they often fail to assign hate-motivated bias to the perpetrator. Most often, investigations into SOGI-motivated hate crimes lack due diligence — victims are not interviewed, video footage is left unexamined, and perpetrators are not identified. Consequently, Georgia's

national non-discrimination protection laws lack proper implementation, and outcomes are less than satisfactory for LGBTI survivors of hate crimes.

In this capstone project, I will account for Georgia's recent legal and policy reforms to combat SOGI-motivated hate crimes and argue that while many of these initiatives are to be commended, more interventions are required to protect LGBTI people from violence and ensure access to justice. The capstone thesis's scope will include two dimensions of SOGI-motivated hate crimes in Georgia — the individual dimension, where one person is targeted and victimized, and the collective dimension, where groups of LGBTI demonstrators are targeted and victimized by Orthodox and far-right counter-protestors. To that effect, I will rely on the European Court of Human Rights (ECtHR) rulings condemning Georgia's persistent violations of LGBTI rights: *Identoba v. Georgia* (2015), *Aghdgomelashvili and Japaridze v. Georgia* (2020) and *Women's Initiatives Supporting Group and others v. Georgia* (2021).¹ These cases illustrate individual and group violations of the European Convention of Human Rights Articles 3, 11, and 14 and highlight ongoing institutional discrimination within state agencies that continues unabated despite recent reforms. The practical component will include an advocacy strategy with recommendations to prevent hate crimes focusing on the foundational issue of homophobic social attitudes.

The capstone thesis's methodology includes government documents, peer-reviewed literature, and reports from a variety of sources, including Georgian NGOs, think tanks, the public defender's office, the Council of Europe, and United Nations mechanisms. Chapter I accounts for the relevant foundational theories of hate crimes, while Chapter 2 applies these theories to the Georgian context, emphasizing how the Georgian Orthodox Church and far-right groups

¹ *Identoba and Others v. Georgia*, Application no. 73235/12, ECHR, 12 May 2015.
Aghdgomelashvili and Japaridze v. Georgia, Application no. 7224/11, ECHR, 8 October 2020.
Women's Initiatives Supporting Group and others v. Georgia, Application nos. 73204/13 and 74959/13, ECHR, 16 December 2021.

strengthen homophobic attitudes, creating the social conditions for increased prevalence of LGBTI hate crimes. Chapter 3 examines Georgian LGBTI hate crime cases before the ECtHR, while Chapter 4 provides an overview of Georgia's legal and policy reforms from 2012-2020 to prevent SOGI-motivated hate crimes and improve effective investigations. Chapters 5 and 6 map the enduring human rights violations experienced by LGBTI people when it comes to hate-crime reporting and investigations, contrasting it with the state's more optimistic account of the issue.

Chapter I: Theoretical Foundations of Hate Crimes:

In common parlance, “hate crime” has become a frequently heard “buzzword” that lacks a universal definition, much less an international consensus of its components.² Brax argues that “hate crime is primarily understood as a social problem. It is, in fact, the intersection of two different problems: crime in general, and hate/bias/prejudice in general.”³ From this intersection, definitions abound on what constitutes a hate crime, and as a result, what differentiates it from other criminal offenses.

Speaking from the U.S. system, Turpin-Petrosino splits hate crimes into two parts: “1) the predicate or base criminal offense, such as harassment or intimidation, aggravated assault, malicious damage, arson, or even murder, and 2) evidence that the perpetrator’s actions are motivated by *prejudice or animus* against the group represented by the victim.”⁴ For Petrosino, the perpetrator does not necessarily have to be motivated by *hate* toward the victim, but rather a “prejudiced attitude” that drives them to physical or psychological violence.⁵ Uncovering the origin of *how* or *why* the perpetrator became prejudiced is not relevant to a hate crime case — only the degree which their prejudice motivated their attack on the victim.⁶ Other hate crime definitions follow this base offense plus prejudice formula with slight variations. For example, the Organization for Security and Cooperation in Europe’s Office for Democratic Institutions and Human Rights (OSCE-ODIHR), an intergovernmental body — among others —coordinating on

² Neil Chakraborti and Jon Garland. *Hate Crime: Impact, Causes & Responses*. 2nd ed., London: SAGE Publications Ltd, 2015. <https://dx.doi.org/10.4135/9781473918108>. p.9

³ David Brax. "Hate Crime Concepts and their Moral Foundations: A Universal Framework?" In *The Globalization of Hate: Internationalizing Hate Crime?*, edited by Jennifer Scheppe, and Mark Austin Walters. Oxford: Oxford University Press, 2016. Oxford Scholarship Online, 2016. doi: 10.1093/acprof:oso/9780198785668.003.0004. p. 62

⁴ Carolyn Turpin-Petrosino, “Understanding Hate Crimes: Acts, Motives, Offenders, Victims, and Justice,” Routledge, 2015 p. 2

⁵ Ibid.

⁶ Ibid.

hate crime issues, opts instead for the term “bias crime” to reflect recent literature suggesting that perpetrators operate with bias or prejudice (as opposed to the more extreme emotion of hate). Bias crimes defined by the ODIHR are criminal offenses where the victim was targeted “because of [their] ethnicity, race, religion, or other status.”⁷ Similarly, both Sweden’s National Council for Crime Prevention and the U.K. College of Policing de-emphasize hatred as a factor, including terms like “fear,” “hostility,” or “prejudice” as the *mens rea* of the crime.⁸ In contrast, Germany recognizes an incident to be a hate crime only if it can be proven that the perpetrator’s primary motive was “either hate or bias.”⁹

If one understands hate crimes to be an attack, committed with prejudice or biased motive — targeting the victim as a member of a particular social group — then hate crimes have more severe consequences compared to regular criminal offenses. Iganski and Swiery note that when compared to victims of regular crimes, hate crime victims are more likely to report a host of behavioral and psychological health issues, including post-traumatic stress disorder (PTSD), anxiety, depression, increased sleep difficulty, and reduced feelings of safety.¹⁰ Hate crimes attack the core of a person’s identity – characteristics that they cannot alter and are intrinsic to who they are, such as race, ethnicity, gender identity, sexual orientation, religion, disability, or national origin.¹¹ They also have cascading effects beyond the individual — attacking and intimidating the victim’s community, instilling collective fear and in some instances forcing members to take

⁷ Jon Garland, and Corinne Funnell. "Defining Hate Crime Internationally: Issues and Conundrums." In *The Globalization of Hate: Internationalizing Hate Crime?*, edited by Jennifer Scheppe, and Mark Austin Walters. Oxford: Oxford University Press, 2016. Oxford Scholarship Online, 2016. doi: 10.1093/acprof:oso/9780198785668.003.0002. p. 22

⁸ Ibid.

⁹ Ibid.

¹⁰ Paul Iganski and Abe Sweiry. "How 'Hate' Hurts Globally." In *The Globalization of Hate: Internationalizing Hate Crime?*, edited by Jennifer Scheppe, and Mark Austin Walters. Oxford: Oxford University Press, 2016. Oxford Scholarship Online, 2016. doi: 10.1093/acprof:oso/9780198785668.003.0007 p. 102

¹¹ Turpin-Petrosino, p. 2

“avoidance measures,” such as keeping away from specific neighborhoods or public spaces.¹² Hate crimes act as “message crimes,” communicating to those in the subordinated group that they do not belong, they are despised, and unwelcome a “discriminatory assault on dignity.”¹³ Ultimately, the motive and impacts of a hate crime differ compared to a regular crime, with the intended goal of controlling and inculcating fear into a specific group.

For LGBTI hate crimes in Georgia, victims are often targeted for failing to conform to societal norms regulating appropriate and inappropriate gender expression. Perpetrators communicate to their victims that they have transgressed social, moral, and religious boundaries, that their existence represents a threat to their worldview and in many cases to the nation.¹⁴ In their eyes, those who defy traditional norms through the performance of non-normative sexual and gender expression, whether as groups or as individuals, require violent suppression.

¹² Iganski and Sweiry, p. 97

¹³ Ibid.

¹⁴ Richard C. M. Mole, “Nationalism and Homophobia in Central and Eastern Europe,” in *The EU Enlargement and Gay Politics*, ed. Koen Sloopmaeckers, Heleen Touquet, and Peter Vermeersch (London: Palgrave Macmillan UK, 2016), 99–121, https://doi.org/10.1057/978-1-137-48093-4_5.

Chapter 2: Climate of Homophobia: Orthodoxy, and Far-Right Groups:

In 2019, Victor Madrigal-Borloz, the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, interviewed multiple stakeholders in civil society and government during his country visit to Georgia. He encountered pervasive homophobic attitudes that viewed LGBTI people as “sinful, shameful, or pathologic.”¹⁵ These societal convictions, rooted in “traditional family values,” are systemic — embedded in both individuals and state institutions — and are strengthened and disseminated by a confluence of the Georgian Orthodox Church, far-right groups, politicians, law enforcement officials, and media outlets.¹⁶ In 2020, a study found 83% of Georgian men would be “ashamed of having a homosexual child,” and women shared this sentiment by 74%.¹⁷ A 2018 Council of Europe (CoE) study found that respondents viewed LGBTI people worse compared to any other minority, while simultaneously acknowledging LGBTI people were more likely to be victims of hate crimes and hate speech.¹⁸ Only 33% believed that LGBTI rights were important enough to warrant protection.¹⁹

The Georgian Orthodox Church’s (GOC) role in perpetuating homophobic and transphobic attitudes facilitates the prevalence of LGBTI hate crimes in Georgian society. Since the fall of the Soviet Union, the GOC has re-emerged as one of the most powerful and influential

¹⁵ Victor Madrigal-Borloz, *Visit to Georgia : report of the Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity*, (Geneva: UN Human Rights Council, 2019) <https://digitallibrary.un.org/record/3812785?ln=en> para. 27.

¹⁶ Ibid.

¹⁷ Lika Jalagania, *Social Exclusion of LGBTQ Group in Georgia: Quantitative Research Analysis* (Tbilisi: Human Rights Education and Monitoring Center, 2020) Accessed 28.03.2022: https://socialjustice.org.ge/uploads/products/pdf/Social_Exclusion_of_LGBTQ_Group_1612128635.pdf p. 22

¹⁸ Council of Europe, *Hate Crime, Hate Speech, and Discrimination in Georgia: Attitudes and Awareness* (Strasbourg, Council of Europe, 2018). <https://rm.coe.int/hate-crime-hate-speech-and-discrimination-in-attitudes-and-awareness-e/16808ef62a> p.55

¹⁹ Ibid, p. 24.

religious institutions in the country —positioning itself as the defender of Georgia’s national identity and traditional values. In a 2022 public opinion survey the GOC was the most respected institution (81%) after the army (84%), while Patriarch Ilia II was viewed as the most respected figure in the country (92%).²⁰ Through a 2002 constitutional agreement, the state recognized a “special relationship” with the GOC, granting it privileged status in property rights, education, and cultural heritage, thereby elevating its political and cultural reach and influence.²¹ Ninety-three percent (93%) of Georgians identify as Orthodox, and while religious practices like service attendance, fasting, and prayer are low throughout the country, Orthodoxy has become “...directly associated with Georgian nationality and cultural identity; indeed, the two have been cast as synonymous by the Georgian Orthodox Church.”²² The GOC plays a powerful cultural and ideological role in defining the contours of Georgia’s national identity and social values — marking what constitutes “Georgian-ness” while identifying and resisting threats it deems hostile to the nation —with homosexuality representing a dire moral concern.

LGBTI rights are vehemently condemned and resisted by the church, particularly when queer activists demonstrate. Orthodox priests mobilize their followers from the pulpit to resist the “scourge” of homosexuality and hold counter-rallies, while some priests join and even lead far-right counter protesters in physical attacks on LGBTI demonstrators, as seen during the 2012 and 2013 observances of the International Day Against Homophobia and Transphobia

²⁰International Republican Institute, *Public Opinion Survey: Residents of Georgia – February 2022* (Tbilisi: Center for Insights in Survey Research, 2022) Accessed 21.05.2022. <https://www.iri.org/resources/public-opinion-survey-residents-of-georgia/>

²¹ Begadze, Mariam (2017) "Georgian Constitutional Agreement with the Georgian Orthodox Church: A Legal Analysis," Occasional Papers on Religion in Eastern Europe: Vol. 37 : Issue. 2 , Article 2. Available at: <https://digitalcommons.georgefox.edu/ree/vol37/iss2/2>

²² Maia Mestvirishvili et al., “Exploring Homophobia in Tbilisi, Georgia,” *Journal of Homosexuality* 64, no. 9 (July 29, 2017): 1253–82, <https://doi.org/10.1080/00918369.2016.1244445>.

(IDAHOT).²³ More recently in 2021, priests joined far-right counter-protestors in beating demonstrators during Tbilisi Pride, which resulted in multiple injuries, including on several journalists documenting the event.²⁴ Beforehand, clergyman Spiridon Tskifurishvili addressed the far-right protestors, stating they were “...obliged to commit violence for the motherland, for God, for purity.”²⁵ While the GOC officially condemned the hate violence, dismissing the priests’ involvement as the unfortunate actions of a few actors, they also condemned the LGBTI activists from demonstrating in the first place — citing the “immorality” of sexual and gender minority rights. A high-ranking Georgian cleric chastised U.S. and EU representatives critical of the violence, stating, “You want to force your profligate, obscene, and depraved ideals on Georgia.”²⁶ Later, Metropolitan Shio Mujiri, the “locum tenens” for Patriarch Ilia II, who serves as the de-facto leader of the GOC in his absence, called Tbilisi Pride, “part of a large campaign which aims to distance the nation from God, our traditions, church and degrade it.”²⁷

While a coalition with violent far-right vigilante groups might seem like a conflict of interest for GOC priests, both groups weaponize LGBTI issues through nationalist discourse to mobilize their adherents in a bid to protect the Georgian nation, constituted by traditional family values, from the threat of Western “debauchery.”²⁸ In a Georgian media analysis on sexuality

²³ Anna Rekhviashvili, “Tracing the LGBT Movement in the Republic of Georgia: Stories of Activists.” 205-2019 in *Gender in Georgia: Feminist Perspectives on Culture, Nation, and History in the South Caucasus* (edited by Maia Barkaia and Alisse Waterston) 2018. 216-219.

²⁴ Archil Gegeshidze and Mirziashvili Mikheil, “The Orthodox Church in Georgia’s Changing Society,” Carnegie Europe, accessed October 15, 2021, <https://carnegieeurope.eu/2021/07/23/orthodox-church-in-georgia-s-changing-society-pub-85021>.

²⁵The Social Justice Center (former EMC) and ILGA-Europe, *Rule 9(2) Submission to Committee of Ministers of the Council of Europe concerning Implementation of Identoba & Others v. Georgia for the CM meeting CM-DH 1419th (30 November – 2 December 2021)* para. 23. (Tbilisi: Social Justice Center and ILGA-Europe, 2021) https://socialjustice.org.ge/uploads/products/covers/rule_9.2_submission_26.10.2021_1635320738.pdf

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ani Giorgadze, *The Necessity and Distorting Influences of Identity Politics in the Contemporary Context of Georgian LGBT Activism : The Need of Queering Politics*, CEU Gender Studies Department Master Theses: 2012/13 (Central European University, n.d.), <https://ceuedu.sharepoint.com/sites/itservices/SitePages/vpn.aspx>.

and nationalism, Tamar Tsireteli organized homophobic discourses into three intersecting and mutually re-enforcing “threats”: 1) homosexuality is a threat to Georgian culture and religion, 2) homosexuality is an ailing fashion of the west, and 3) homosexuality is a threat to the nation’s demography.²⁹ With these categories, nationalist groups with pro-Russian sentiments, such as Georgian March and Georgian National Unity, instrumentalize their opposition to LGBTI rights to mobilize civil society toward a broader political goal —namely discouraging Georgia’s aspirations toward European Union (EU) membership.³⁰ In 2013, the EU required Georgia to enact non-discrimination legislation inclusive of sexual and gender minorities as a condition of moving forward with the country’s Visa Liberalization Action Plan, which Georgia passed one year later.³¹ Nationalist groups reacted to the EU’s requirements to enact human rights protections for LGBTI people, especially as a condition for closer association and potential accession to the EU, as evidence of the EU’s neo-colonial character. In their eyes, the EU is “exporting” the alien phenomenon of homosexuality, which is fundamentally incompatible with the nation and Georgian identity.³²

Levan Vasadze, a 2019 counter-rally organizer and “one of the chief ideologues of Georgian nativism,” reinforces the ailing fashion/Western-import frame, identifying homosexuality as foreign and completely at odds with Georgian sovereignty, culture, and

²⁹ Tamar Tsereteli, “Nationalism and Representation of Gays and Lesbians in Post-Soviet Georgia, CEU Gender Studies Department Maaster Theses: 2010 (Central European University, n.d.), <https://sierra.ceu.edu/search?XTamar&Da=&Db=&m=v&SORT=D/XTamar&Da=&Db=&m=v&SORT=D&SUBKEY=Tamar/1,8,8,B/frameset&FF=XTamar&Da=&Db=&m=v&SORT=D&6,6,?save=b1146762>

³⁰ Burkadze, Zarina. “Georgia’s Illiberal Forces: Political Polarization against Democracy.” *Journal of Illiberalism Studies* 3, no. 1 (2022): p.39-43, <https://doi.org/10.53483/WCJU3536>.

³¹ Kornely Kakachia, “Is Georgia’s Orthodox Church an Obstacle to European Values?,” Program on New Approaches to Research and Security in Eurasia (PONARS Eurasia), 06/06/2014 <https://www.ponarseurasia.org/is-georgia-s-orthodox-church-an-obstacle-to-european-values/> Accessed 24.05.2022

³² Civil Georgia, “Levan Vasadze’s Quest to Consolidate Georgia’s Extreme Right,” 02/06/2021 <https://civil.ge/archives/421791> Accessed 24.05.2022

religion.³³ Homosexuality represents the “culture of death” threatening the demographic future of the traditional family unit, the bedrock of Georgian society.³⁴ During a speech with the Christian Broadcasting Network (CBN), he criticized Georgia’s passage of the anti-discrimination law as acquiescing to the West’s moral bankruptcy: “if you [the West] think that radical sexual activities are what you want to do, this is your choice, but I think that it is a shameful sin, I want to preserve the society that is capable of saying this.”³⁵ In 2014, Patriarch Ilia II also condemned the anti-discrimination law, stating that it represented “...propaganda and legalization of this sin.”³⁶ Both the GOC and far-right groups view closer ties to the EU with skepticism given their construction of homosexuality as a Western import attacking the traditional family unit. To be truly Georgian means to be Orthodox, heterosexual, and cisgender – those who do not conform to these prescriptions cannot be part of the nation.

The power, influence, and nationalist discourses of the GOC and far-right vigilante groups cultivate and create the conditions for increased LGBTI hate crimes in Georgian society – targeting both individuals and LGBTI groups exercising their right to freedom of assembly. In a 2021 survey of LGBTI people conducted by the Women’s Initiatives Supporting Group (WISG), 73.5% of respondents (N=155) have been hate crime victims in the past two years.³⁷ One in every three victims (30.3%) experienced physical or sexual violence or harassment, while 68.7% have been subjected to psychological violence.³⁸ Because Georgian national identity is closely linked to Orthodoxy and the GOC’s social theology, individuals are more likely to internalize the

³³ Ibid.

³⁴ CBN News (2016). Levan Vasaadze on Georgia’s demographic time bomb. Retrieved 24/05/22 from <https://www.youtube.com/watch?v=UyYk1GotQYg>

³⁵ Ibid.

³⁶ Kakachia,

³⁷ Unpublished study: Agdgomelashvili and others, “Impact Assessment of COVID-19 Anti-Pandemic Restrictions and Anti-Crisis Measures on the LGBTQI Community”, WISG, 2021.

³⁸ Ibid.

church’s vocal condemnation of homosexuality and view it as a moral and existential threat to society — meriting retaliation and expulsion. Similarly, far-right discourses reinforce GOC teachings, emphasizing the “foreignness” of homosexuality and its incompatibility with the patriarchal family and “national stereotypes of masculinity and femininity.”³⁹ All these factors undergird an environment of violence and persecution for LGBTI people, who routinely experience hate violence, harassment, and hate speech.

³⁹ Mole, p.109-110

Chapter 3: Human Rights Violations and the European Court of Human Rights (ECtHR)

The endemic nature of LGBTI discrimination in Georgia, exacerbated by religious, nationalist, and political actors, is best illustrated by queer activists' claims brought before the European Court of Human Rights (ECtHR). The ECtHR has ruled on three Georgian cases involving LGBTI hate crimes in *Identoba and Others v. Georgia* (2015), *Aghdgomelashvili and Japaridze v. Georgia* (2020), and *Women's Initiatives Supporting Group and Others. v. Georgia* (2021). The key events in each case (2012, 2009, and 2013 respectively) transpired before Georgia began instituting most of its legal and policy reforms attempting to remedy LGBTI discrimination, most notably with the passage of its national anti-discrimination law in 2014. However in 2012, Article 53¹ of the Criminal Code was amended to include sexual orientation and gender identity as grounds for aggravating circumstances in the commission of a criminal offence.⁴⁰ Examining the violations in each case offers a template to subsequently analyze both the responsiveness and effectiveness of the state's subsequent reforms to LGBTI hate crimes.

In *Identoba and Others v. Georgia* (2015), LGBTI activists organized a rally in 2012 to commemorate the International Day Against Homophobia and Transphobia (IDAHOT). In advance, organizers requested the Ministry of the Interior to assign a police presence to protect demonstrators at the event from potential violence, citing prevalent and systemic homophobia.⁴¹ However, the police assigned to the event failed to protect the activists from violent religious and far-right groups who showed up to counter-protest, including the Orthodox Parent Union and Saint King Vakhtang Gorgasali Brotherhood.⁴² The attackers threatened physical violence and

⁴⁰ Criminal Code of Georgia, Article 53(1) LHG, 41(48), Law of Georgia, 13/08/1999

<https://matsne.gov.ge/en/document/view/16426?publication=235>

⁴¹ *Identoba and Others v. Georgia*, Application no. 73235/12, para.7, ECHR, 12 May 2015.

<https://hudoc.echr.coe.int/fre?i=001-154400>

⁴² *Ibid.* para. 11.

hurled slurs and death threats at the demonstrators, telling them that they “should be burned to death.”⁴³ Several demonstrators were beaten, kicked and sustained multiple injuries while police actively distanced themselves from the violence. When several demonstrators asked the police to actively intervene and protect them, they were driven away from the rally and detained, which the state later argued was a “short-term retention” for their own protection.⁴⁴

Despite ample video and forensic evidence, the police failed to conduct a thorough and effective investigation into the violence. Two counter-protestors were issued small fines for minor infractions (breach of public order), and two investigations were opened related to the applicants’ physical injuries that remain pending without resolution.⁴⁵ None of the applicants were granted victim status, despite the applicants repeated attempts for the authorities to consider homophobia and transphobia as aggravating circumstances under Article 53¹ of the Criminal Code.⁴⁶ The ECtHR found Georgia in violation of Article 3 (Prohibition of Torture), Article 11 (Freedom of Assembly and Association), and Article 14 (Prohibition of Discrimination) of the European Convention on Human Rights (ECHR). The Court particularly condemned Georgia’s failure to conduct the investigation with due diligence, particularly in narrowing down the pool of possible assailants and “unmasking the bias motive and identifying those responsible for committing homophobic violence.”⁴⁷

In *Aghdgomelashvili and Japaridze v. Georgia* (2020), plain-clothes police officers stormed the Inclusive Foundation, Georgia’s first formally established LGBTI NGO, without a

⁴³ Ibid. para. 15.

⁴⁴ Ibid. para. 18.

⁴⁵ Ibid. para. 28.

⁴⁶ Ibid. para. 20 -28.

⁴⁷ Ibid. para. 78.

search warrant or judicial order in December 2009.⁴⁸ Upon realizing they entered an LGBTI organization, the officers berated staff as “not Georgians,” “sick people,” and “perverts who need medical treatment.”⁴⁹ They threatened to reveal the sexual orientation of staff to their relatives and harm their family members, and that if the staff present had been men, they would not have refrained from using physical violence. One officer threatened to burn the office down if he had matches.⁵⁰ After tearing up the office, the police subjected the staff to arbitrary and humiliating strip-searches while making homophobic remarks.⁵¹ In January 2010, the applicants filed a complaint with the Chief Public Prosecutor’s Office (CPPO), requesting an investigation into the abuse of police power, and later requested that SOGI be considered as an aggravating circumstance.⁵² In April, the applicants asked to be questioned and granted victim status, but received no response from CPPO. One year later in response to yet another inquiry from the applicants, CPPO alluded to an “ongoing” investigation, without information as to its progress. At the time of the ECtHR case in 2020, no further progress was made and none of the applicants received victim status.⁵³ The ECtHR found that the homophobic slurs, threats of violence, and forced strip-searches met the threshold of cruel and degrading treatment under Article 3 in tandem with Article 14.⁵⁴ Furthermore, the state’s failure to conduct any meaningful investigation amounted to an Article 3 violation in and of itself, illustrating the authorities’ inability and unwillingness to seek justice for the applicants.⁵⁵

⁴⁸ Aghdgomelashvili and Japaridze v. Georgia, Application no. 7224/11, para.4, ECHR, 8 October 2020.

<https://hudoc.echr.coe.int/eng?i=001-204815>

⁴⁹ Ibid. para. 8

⁵⁰ Ibid. para. 9.

⁵¹ Ibid. para. 11.

⁵² Ibid. para. 18-26.

⁵³ Ibid.

⁵⁴ Ibid. para. 45-50.

⁵⁵ Ibid. para. 39-41.

Women’s Initiatives Supporting Group and others v. Georgia (2021) closely mirrors the key events of *Identoba and others* a year later in 2013, but on a larger scale with more violent pushback. WISG and Identoba informed the Ministry of the Interior they would hold a rally marking IDAHOT. Considering last year’s violence, they requested more effective planning by the state to protect them from counter-protestors.⁵⁶ Far-right groups discovered their plans and issued threats and hate speech to the activists online to dissuade them from assembling. Media outlets reported conservative actors from the Georgian Orthodox church, the Georgian National Front party, and a civil society organization were planning to host a parallel “prayer rally” with the primary goal of preventing the IDAHOT event from taking place.⁵⁷ In planning meetings with the IDAHOT organizers, the Ministry of the Interior expected more than 10,000 people to attend the counter-protest, yet ensured that all IDAHOT participants’ safety would be guaranteed.

On the day of the rally, the Ministry deployed 2,000 police officers to create cordons protecting the 12 IDAHOT participants from 35,000 – 45,000 counter-protestors.⁵⁸ Orthodox clergymen passed through the cordons, telling Ministry officials that “people might get killed,” threatening civil disobedience if they protected the LGBTI activists. After returning to their side of the barricade, the same clergymen began dismantling the cordons, assisted by several police officers complying with an order from the State Security Agency, a department reporting to the Ministry of the Interior.⁵⁹ Hundreds of counter-protestors led by Orthodox priests brandishing wooden clubs charged the 12 activists in Pushkin Square, issuing death threats, insults, and slurs.

⁵⁶ *Women’s Initiatives Supporting Group and others v. Georgia*, Application nos. 73204/13 and 74959/13, para. 8-14. ECHR, 16 December 2021. <https://hudoc.echr.coe.int/eng?i=001-214040>

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid. 15-24.

As this occurred, the activists were herded by police, who also made homophobic insults, onto busses to evacuate them from Pushkin square.⁶⁰

Other LGBTI demonstrators, trapped on the counter-protestors' side of the barricades, were identified and surrounded by the mob. Police had to sneak the activists into a house until a minibus arrived to escort them to safety. Even when they boarded the bus, the counter-protestors surrounded it and bashed the windows in attempting to pull them out, shouting "Stone them! Kill them all!"⁶¹ One activist suffered a concussion from a stone hurled by the mob. Yet another LGBTI activist was identified and surrounded by the mob as he attempted to take shelter in a supermarket. He was only able to escape after 10 police officers arrived at the scene and shaved his beard and dressed him in a police uniform to avoid detection.⁶² Even then, the police directed homophobic remarks toward him and videoed the beard shaving on a mobile phone.⁶³

The applicants filed a request to the Ministry of the Interior to identify and prosecute the individuals who attacked them, as well as investigate the state officials who collaborated with the far-right groups to remove the barricades.⁶⁴ They also enclosed video footage of the attack in their request. Investigators from the same police unit in charge of security at the rally who put in charge of the investigation and interviewed two of the applicants, who were not granted victim status.⁶⁵ The state fined four counter-protestors 45 EUR under breach of public order, and charges were brought against a separate group of counter-protestors under Article 166 of the Georgian Criminal Code – "unlawful interference with the exercise of the right to freedom of

⁶⁰ Ibid.

⁶¹ Ibid. para.25-30.

⁶² Ibid. para. 28-30.

⁶³ Ibid. para. 77.

⁶⁴ Ibid. para. 33-43.

⁶⁵ Ibid. para. 36.

assembly using violence, threat of violence or abusing official capacity.”⁶⁶ However, the Tbilisi City Court acquitted those accused under Article 166, including one GOC clergyman, citing the failure of investigators to pursue a meaningful investigation, including examining video footage of the violence or conduct a forensic examination of the buses used to evacuate the LGBTI activists.⁶⁷

Like in *Identoba*, the Court found violations of Articles 3, 11, and 14. While noting one applicant out of twenty-seven *was* granted victim status, the Court noted authorities failed to identify his alleged assailant, despite receiving his name and a detailed account of the encounter from the victim.⁶⁸ Generally, the prohibitive delay in narrowing the pool of suspects, given the ample video footage of the violence, together with the notoriety of the organizers behind the counter-protest, demonstrated the state’s “unwillingness” to examine SOGI-motivated discrimination. The Court condemned Georgia more strongly compared to *Identoba*, accusing the state’s failure to conduct any effective investigation as “official acquiescence or connivance in hate crimes.”⁶⁹ The ECtHR also noted the heightened scale of the violence in 2013 was in part facilitated by the state’s failure in 2012 to investigate and prosecute members of far-right groups who attacked LGBTI activists as described in *Identoba*.⁷⁰ In essence, the state’s passivity and unwillingness to protect the demonstrators or conduct meaningful investigations amounted to collaboration with far-right groups, permitting them to inflict cruel and degrading treatment on LGBTI demonstrators without fear of reprisal. In fact, the case notes that LGBTI hate crimes increased and intensified directly after the events of May 2013 and continued unabated.⁷¹

⁶⁶ Ibid. para. 39.

⁶⁷ Ibid. para 42.

⁶⁸ Ibid. para. 65.

⁶⁹ Ibid. para. 76.

⁷⁰ Ibid.

⁷¹ Ibid. para. 44.

These three cases illustrate the deeply entrenched homophobic attitudes in civil society, and the ability of religious and nationalist actors to quickly mobilize thousands of people to assault LGBTI people taking up public space. Homophobia is equally embedded within state institutions, demonstrated by police officer's harassment and infliction of cruel and degrading treatment on LGBTI activists, as seen in *Aghdgomelashvili and Japaridze* and *WISG and others*. Furthermore, the failure of both the Ministry of the Interior and the police to protect and effectively bring perpetrators of LGBTI hate crimes to justice offers a message of acquiescence to society that SOGI-based violence is normal, permissible, and will not be prosecuted with due diligence. Georgia's failure to guarantee its positive obligations under ECHR Article 3, 11, and 14 amounts to a capitulation, if not a full-fledged endorsement, of LGBTI hate crimes. In the next chapter, I will evaluate Georgia's subsequent SOGI-related reforms from 2012-2020 and assess whether they effectively responded to and addressed the human rights violations that transpired from 2009-2013 in each of the ECHR cases. Have Georgia's reforms decreased the prevalence or improved the prosecution of LGBTI hate crimes?

Chapter 4: Timeline of Legal and Policy Reforms 2012 – 2020:

LGBTI people experience pervasive discrimination against the backdrop of Georgia’s incredibly progressive anti-discrimination legal framework. Georgia is one of the few countries in Central and Eastern Europe and Central Asia (CEECA) to incorporate both sexual orientation and gender identity (SOGI) protections in its national non-discrimination law and criminal code.⁷² In 2012, SOGI was included as discriminatory grounds under Article 53¹ of Georgia’s Criminal Code, meaning that they could be considered as aggravating circumstances for a criminal offence.⁷³ In 2014, SOGI was also included as a protected category in Article 1 of the Law On the Elimination of All Forms of Discrimination, which applies to both public entities like government institutions as well as private individuals and actors.⁷⁴ The state also designated the Public Defender’s Office (PDO) as the monitoring body for the law’s implementation, and established an Equality Department under it to evaluate claims of discrimination and conduct educational and training activities.⁷⁵ Applicants have the ability to approach the court directly or go through the PDO.⁷⁶ In 2019, Georgia’s anti-discrimination law was amended, giving more powers to the PDO, allowing it to file complaints against legal entities or government agencies, while obligating them to provide the PDO with any relevant information it might request.⁷⁷

⁷² ECOM and Equality Movement, *Human Rights Violations Based on Sexual Orientation and Gender Identity in Georgia: An Alternative Report as a commentary on the fifth periodic report CCPR/C/GEO/5 by Georgia*, (Tbilisi: ECOM and Equality Movement, 2020) para. 5 <http://www.equality.ge/wp-content/uploads/2020/08/ECOM-Equality-Movement-HRCtee-Georgia.pdf>

⁷³ Madrigal-Borloz, para. 13(c)

⁷⁴ Public Defender (Ombudsman) of Georgia, *Special Report: On the Fight Against Discrimination, Its Prevention, and the Situation of Equality*, (Tbilisi: Public Defender’s Office, 2018) p.5 <https://www.ombudsman.ge/res/docs/2019042317142950340.pdf>

⁷⁵ Ibid.

⁷⁶ Public Defender (Ombudsman) of Georgia, *Special Report: On the Fight Against Discrimination, Its Prevention, and the Situation of Equality*, (Tbilisi: Public Defender’s Office, 2019) p.4 <https://www.ombudsman.ge/res/docs/2020031712325453928.pdf>

⁷⁷ Public Defender (Ombudsman) of Georgia, 2019 p. 4

However, the public defender notes that government agencies infrequently implement its calls for compliance with the national anti-discrimination law.

In 2014, SOGI was also incorporated into Article 142 of the Criminal Code, which criminalizes violations of human dignity with a maximum sentence of two years imprisonment.⁷⁸ 2014 also saw the establishment of the Human Right Secretariat of the Administration of the Government of Georgia meant “to ensure coordination among the executive branch when elaborating and implementing human rights policies.”⁷⁹ The Inter-Agency Human Rights Council, which is chaired by the Prime Minister, was created the same year to implement, monitor, and evaluate Georgia’s national human rights plans.⁸⁰ It also receives recommendations from the Human Rights Secretariat, which serves as a member of the council.⁸¹

In 2014, the Georgian Parliament adopted the National Human Rights Strategy 2014-2020, which focuses on freedom of religion, and equal rights protection for national minorities. However, combatting SOGI discrimination is mentioned only once as a sub-bullet under general goal no. 12 titled, “Guarantee equal rights and the protection of the rights of minorities.” This contrasts to more substantive objectives to protect specific rights-holders (e.g. IDPs, migrants or children) throughout the strategy.⁸² Nonetheless, it represents the first policy document explicitly identifying the need to combat discrimination and protect the rights of LGBTI people. Action plans for 2014-2015, 2016-2017, and 2018-2020 stemmed from the National Human Rights Strategy, which included concrete objectives to protect LGBTI rights in education, combatting

⁷⁸ Parliament of Georgia, Criminal Code of Georgia, Doc No. 2287, LHG 41 (48), 13/08/1999, Accessed 28.03.2022: <https://matsne.gov.ge/en/document/view/16426?publication=235>

⁷⁹ Madrigal-Borloz, para. 15(a)

⁸⁰ Ibid.

⁸¹ Ibid, para. 15(c)

⁸² Inter-Agency Human Rights Council of Georgia, *National Human Rights Strategy for 2014-2020*, (Tbilisi: Inter-Agency Human Rights Council, 2014) p.18 http://myrights.gov.ge/uploads/file-manager/HR_STRATEGYENG.pdf

hate crimes and sensitizing law enforcement and government officials, improving data collection and hate crime statistics, and ensuring effective and timely investigations.⁸³ As part of the 2018-2020 Action Plan, the Human Rights Secretariat devoted a separate SOGI chapter with three goals to combat hate crimes, raise awareness of sexual orientation and gender identity in civil society, and improve health care services for LGBTI people.⁸⁴ However, LGBTI activists have noted in submissions to the Committee of Ministers that the state has not implemented most of these objectives.⁸⁵

In 2018, Georgia instituted a Human Rights and Quality Monitoring Department within the Ministry of Internal Affairs (MIA), which, “oversees the investigation of hate crimes committed on discriminatory grounds,” as well as develop guidelines, coordinate with international organizations, and provide human rights training to police officers.⁸⁶ It is important to note this department is a central agency responsible for inter-governmental coordination, with a large scope of issues apart from hate crimes, including violence against women, human trafficking, and domestic violence. Furthermore, its primary function is to review investigations as opposed to carrying them out.⁸⁷ Because this department is neither a specialized body on hate crimes, nor is it embedded at the local level of law enforcement, LGBTI activists have raised

⁸³ Ibid.

⁸⁴ European Human Rights Advocacy Centre and Women’s Initiatives Support Group, *Rule 9(2) submission to the Committee of Ministers of the Council of Europe concerning the implementation of Aghdgomelashvili and Japaridze v. Georgia (Application no. 7224/11)*. (Tbilisi: EHRAC and WISG, 2021) p.3 [https://hudoc.exec.coe.int/eng/?i=DH-DD\(2021\)1152E](https://hudoc.exec.coe.int/eng/?i=DH-DD(2021)1152E)

⁸⁵ Social Justice Center and ILGA Europe, p. 3

⁸⁶ Public Defender (Ombudsman) of Georgia, *Special Report: On the Fight Against Discrimination, Its Prevention, and the Situation of Equality*, (Tbilisi: Public Defender’s Office, 2021) p.8

⁸⁷ European Commission against Racism and Intolerance (ECRI), *ECRI Conclusions on the Implementation of Recommendations in Respect of Georgia Subject to Interim Follow-Up*, (Strasbourg: Council of Europe, 2019) p.5 https://rm.coe.int/ecri-conclusions-on-the-implementation-of-the-recommendations-in-respe/1680934a7e?fbclid=IwAR3LpX9rD6dS9J8MZwZ-ZGq_eS0LDaRrVYO8kxPFR6gnTKU7D04r_czH3yA

concerns whether it can adequately prevent hate crimes or ensure effective investigations that account for homophobic bias.⁸⁸

In 2020, Georgia's Prosecutor's Office, MIA, Supreme Court, and its national statistics office (GeoStat) signed a memorandum of cooperation to unify their hate crime data collection system to more accurately measure the prevalence of hate-motivated violence.⁸⁹ Implementing this reform had been suggested by the Council of Europe and the European Commission against Racism and Intolerance after multiple assessments.⁹⁰ Previously each government body used its own internal statistical methods, which led to differing and confusing data sets that failed to capture the scope of hate-motivated violence. While the statistics capture sexual orientation and gender identity to some extent, the Public Defender's Office has recommended it to capture more aggregated data, such as risk factors or circumstances that could hinder the detection of hate crimes.⁹¹

The state has also made numerous efforts to train law enforcement and administrative staff in a bid to improve effective hate crime investigations. For example, from 2016-2019 the PDO trained staff from the Prosecutor's Office and MIA on elements of hate crimes and key elements to unmasking alleged hate motives.⁹² In 2018, the MIA and PDO trained 40 police officers to assume specialized roles in charge of investigating alleged hate crimes.⁹³ In 2019, the MIA and ODIHR signed a memorandum, launching a hate crime investigation program based on

⁸⁸ ECOM and Equality Movement, para. 8

⁸⁹ Public Defender (Ombudsman) of Georgia, 2021 p.16

⁹⁰ ECRI, p.5

⁹¹ Ibid. p. 4

⁹² Public Defender (Ombudsman) of Georgia, *On Combatting and Preventing Discrimination and the State of Equality* (Tbilisi: Public Defender's Office, 2021) p.8 <https://ombudsman.ge/res/docs/2021070212492324785.pdf>

⁹³ ECRI, p. 5

ODIHR’s “Training Against Hate Crime for Law Enforcement (TAHCLE)” program.⁹⁴

Additionally, 71 prosecutors and investigators of the prosecution service underwent an intensive capacity building program by the end of 2019 to deal with hate crimes.⁹⁵ In 2020, a total of 136 specialized employees, including “77 prosecutors, 4 investigators, 36 managers, and 19 witness and victim coordinators were trained on hate crimes.”⁹⁶ Georgia also established a Witness and Victim Coordinator Service within the Prosecutor’s Office, which attempts to protect victims of hate crimes, provide support services, and prevent risks of re-victimization. In tandem with the ODIHR and Council of Europe, it launched a training module entitled “Police measures to prevent hate crimes against LGBT persons.”⁹⁷

⁹⁴ Equality Movement, “ODIHR Publishes 2019 Hate Crime Data.” 11 November 2020, <http://www.equality.ge/en/6519>

⁹⁵ Ibid.

⁹⁶ Organization for Security and Cooperation in Europe (OSCE), “ODIHR Hate Crime Reporting – Georgia,” 2020, <https://hatecrime.osce.org/georgia>

⁹⁷ Public Defender (Ombudsman) of Georgia, *Positive Obligations of Law Enforcement Officials to Protect the Equality of Vulnerable Groups*, (Tbilisi: Public Defender’s Office, 2021) p.29 <https://ombudsman.ge/res/docs/2021070212492324785.pdf>

Chapter 5: Lack of Implementation: Under-Reporting of Hate Crimes:

Georgia's legal and policy reforms from 2012-2020 appear very robust and progressive, and many of its initiatives ought to be commended. From incorporating SOGI into its anti-discrimination law, criminal code, and national human rights strategy and action plans, to creating a human rights monitoring department, to improving data collection and training law enforcement in conducting effective investigations, Georgia seems to have taken the necessary steps to combat LGBTI hate crimes. Despite these advancements however, huge gaps exist between the state's anti-discrimination framework and the lived experiences of LGBTI communities. Statistics from LGBTI rights NGOs and community organizations working on LGBTI issues paint a depressing scale and scope of hate crime incidents in comparison with state data collection. For example, in 2017 the state registered hate-motivated bias for 49 cases (12 criminal cases regarding sexual orientation and 37 related to gender identity). In comparison, the Women's Initiative Supporting Group (WISG), a human-rights NGO, documented 105 hate crimes related to SOGI, double the number of incidents recorded by the state. Additionally, in 2018 WISG conducted a study where 88.3% (n=226) of respondents had been victims of hate crimes from 2015-2018, while only 16.8% reported them to police.⁹⁸

According to Georgia's first unified hate crime statistics report from October – December 2020, 13 investigations (7 under gender identity and 6 under sexual orientation) were initiated related to intolerance on the grounds of SOGI.⁹⁹ Article 53¹ of the Georgian Criminal Code registering SOGI as an aggravating circumstance was applied 6 times (3 under gender identity

⁹⁸ Women's Initiatives Supporting Group (WISG), *Submission to the UN Independent Expert* (Tbilisi: WISG, 2018) p.4 https://women.ge/data/docs/publications/WISG_Submission_INDEPENDENT-EXPERT_2018.pdf

⁹⁹ Joint Report of Data on Crimes Committed on Grounds of Intolerance with Discrimination Basis October – December 2020 https://www.geostat.ge/media/36776/Hate-crimes_2020_IV.pdf

and 3 under sexual orientation).¹⁰⁰ The state registered 9 total hate crime convictions related to SOGI (3 under gender identity and 6 under sexual orientation).¹⁰¹ In contrast, the Social Justice Center issued a major quantitative survey in 2020 devoted to LGBTI discrimination, which noted that 52% (N=320) of respondents experienced hate violence at least once in their lives on account of their sexual orientation or gender identity, with the highest rates among gay (65.5%) and transgender (61.8%) respondents.¹⁰² Ninety-one percent (91%) experienced verbal abuse, 75% experienced threats of physical violence, 67% experienced physical violence, 50% received death threats, while 73% experienced physical or online bullying during their lifetimes.¹⁰³

Despite the institutional reforms, 56% (n=153) experienced physical/psychological/sexual violence *in the past two years*, while 29.4% (n = 91) experienced physical violence during the same period. Forty percent (40%) of those who experienced physical violence received death threats, while 87% of all respondents experienced psychological violence (defined as verbal abuse/humiliation/ridicule).¹⁰⁴

However, only 30.4% of respondents approached the police to intervene in instances of violence, while 69.6% refused to contact the police. Approximately 57.1% of those who approached the police viewed the experience negatively, while only 25% viewed it positively. Of the respondents who did not approach the police after experiencing a violent act, 25.8% thought they would not act at all, 22% mentioned fear of discriminatory treatment, while 21% mentioned negative encounters with police in the past.¹⁰⁵ Overall, most respondents did not trust law

¹⁰⁰ Ibid. p. 19.

¹⁰¹ Ibid. p. 16.

¹⁰² Jalagania, "Social Exclusion of LGBTQ Group in Georgia," p. 10

¹⁰³ Ibid. p. 75

¹⁰⁴ Ibid. p. 76

¹⁰⁵ Ibid. p. 80

enforcement at all, at 74.1%.¹⁰⁶ In contrast, the majority of Georgia’s civil society overwhelmingly trusts the police.¹⁰⁷

Systemic homophobic attitudes in law enforcement persist, which makes the LGBTI community’s lack of trust in the police and other state institutions unsurprising. Despite progressive anti-discrimination policies on paper, officials’ engrained homophobia renders them merely symbolic and devoid of meaning given the lack of proper implementation. Despite non-discrimination provisions protecting SOGI in the criminal code and police trainings conducted by the Equality Department, law enforcement officials routinely express homophobic attitudes and fail to effectively investigate LGBTI hate crimes. The Public Defender’s Office has even gone on record recognizing the prevalence of homophobia in law enforcement, stating in 2020 that,

The sensitivity of law enforcement officials towards the LGBT+ community is still low. Representatives of the LGBT+ community, when addressing the Office of the Public Defender of Georgia, indicate in some cases that when they turn to the police about the violence committed against them, they become victims of degrading treatment, homophobic attitude, abuse and/or indifference. As a result, there are cases where LGBT+ individuals refrain from cooperating with law enforcement agencies on specific violence.¹⁰⁸

One example of police mistreatment is that of Z.A., a queer non-binary person, who was physically beaten and called a “faggot” in Tbilisi on account of their gender expression in 2018. When police arrived, they treated them indifferently and refused to let Z.A. file an incident report. Later when an investigator began filing a report, Z.A. requested that he identify the offender’s homophobic motive. The investigator denied the request. Counterintuitively the

¹⁰⁶ Ibid. p. 56

¹⁰⁷ Ibid. p. 56

¹⁰⁸ Public Defender (Ombudsman) of Georgia, *Special Report: On the Fight Against Discrimination, Its Prevention, and the Situation of Equality*, (Tbilisi: Public Defender’s Office, 2020) p. 162
<https://ombudsman.ge/res/docs/2021070814020446986.pdf>

incident received positive media attention, which led to a re-evaluation of the incident. Subsequently, the hate motive was identified and assigned, the offender was prosecuted, and a warning was issued to the police officers in question. While this case uniquely stands out in the Georgian context for its positive outcome, the initial lack of willingness to file a report or assign hate-motivated bias is too often the norm, which illustrates law enforcement's discriminatory treatment toward the LGBTI community.¹⁰⁹

Given the aforementioned 2020 Social Justice Center survey data, LGBTI victims of hate crimes significantly under-report hate incidents to law enforcement officers despite the recent introduction of reforms. Victims fear discriminatory treatment, risk of re-victimization, and hold a lack of confidence that their claims will be evaluated seriously and investigated with due diligence. In the same way that perpetrators of LGBTI hate crimes were granted impunity to commit violence through the state's inability and lack of willingness to pursue justice, LGBTI hate crime victims recognize they lack access to justice not only from lived experience, but multiple high-profile examples of police misconduct in recent history. The levels of under-reporting pose substantial barriers to documenting the accurate scope of current hate-crime prevalence. While the introduction of specialized investigators, training modules and data collection improvements denote some degree of progress, time will tell whether these interventions will create a substantive impact on LGBTI hate crimes in Georgia.

¹⁰⁹ ECOM and Equality Movement, para. 12

Chapter 6: Lack of Implementation: Effective Investigations

Another reason explaining the underreporting of LGBTI hate crimes to law enforcement, apart from fear of identity disclosure, discrimination, or indifference, is the lack of confidence in an effective investigation. While Georgia's recent reforms, particularly specialized law enforcement trainings, have generally resulted in higher rates of granting victim status and identifying perpetrators for general criminal investigations, issues related to the promptness of investigations and identifying alleged SOGI bias remain concerning.¹¹⁰ In 2021, activists from Tbilisi Pride scheduled a March for Dignity on Rustaveli Avenue that received intense pushback from far-right groups, reminiscent of the 2012 and 2013 IDAHO rallies.¹¹¹ Far-right groups mobilized online, calling for violence, with one reporter from the extremist media outlet "Alt-info" threatening physical force "to defend his values."¹¹² Additionally Guram Palavandishvili, a prominent far-right activist, erected tents on Rustaveli in an attempt to thwart the demonstration from taking place.¹¹³ After counter-protestors assembled at the Georgian parliament on July 5th, the MIA requested that LGBTI demonstrators cancel the march, while Prime Minister Irakli Garibashvili stated that the march should not take place because it conflicted with the majority of Georgians' beliefs.¹¹⁴ This time, far-right counter protestors not only pursued and assaulted LGBTI demonstrators, throwing Molotov cocktails into buildings they took refuge in, but also ransacked the offices of Tbilisi Pride and verbally and physically assaulted 53 journalists.¹¹⁵

¹¹⁰Council of Europe Committee of Ministers, 1419th meeting (DH) (30 November – 2 December 2021) - H46-14 Identoba and Others group v. Georgia (Application No. 73235/12), CM/Notes/1419/H46-14, 2 December 2021 <https://hudoc.exec.coe.int/eng#%7B%22EXECIdentifier%22:%5B%22CM/Notes/1419/H46-14E%22%5D%7D>

¹¹¹ Social Justice Center and ILGA Europe, para 22.

¹¹² Ibid. para. 23.

¹¹³ Ibid. para.23.

¹¹⁴ Ibid. para. 22.

¹¹⁵ European Human Rights Advocacy Centre and Women's Initiatives Supporting Group, para. 12.

According to the State’s submission to the Committee of Ministers, 31 individuals were arrested according to Georgian Criminal Code Article 154(2) (interference with journalistic activities), Article 156 (2)(a), (persecution related to professional activities with threats of violence), Article 160 (2)(a) and (3)(a) (unlawful entry of a group onto property using threats of violence), and Article 225(a) (participation in group violence).¹¹⁶ The state also granted victim status to 59 individuals total, including 45 journalists, and the NGO Tbilisi Pride due to property damage.¹¹⁷ While the Social Justice Center and WISG commend these improvements compared to past investigations, they note that the main far-right organizers were not detained or charged, despite ample video evidence of their hate speech and incitement to violence before and during the July 5th events.¹¹⁸

Additionally, none of the provisions used to charge the perpetrators include SOGI as a protected ground, and neither Article 53¹ nor Article 142 were invoked —obfuscating the homophobic nature of the assaults.¹¹⁹ Therefore while the police’s general investigatory capacities have improved pertaining to the assignment of victim status and identifying and charging perpetrators, in this instance they charged the perpetrators under general criminal provisions at the expense of pursuing a line of investigation that would uncover LGBTI hate motivated bias.

In a similar example, the state re-opened its investigation into the police hate crimes committed in *Aghdgomelashvili and Japaridze v. Georgia* after being subjected to enhanced

¹¹⁶ Ministry of Justice of Georgia, “Rule 8.2a – Communication from authorities (16/11/2021) concerning the case of Identoba and Others v. Georgia (Application No. 73235/12),” Council of Europe, Committee of Ministers, 16.11.2021 [https://hudoc.exec.coe.int/eng#%7B%22EXEIdentifier%22:%5B%22DH-DD\(2021\)1202E%22%5D%7D](https://hudoc.exec.coe.int/eng#%7B%22EXEIdentifier%22:%5B%22DH-DD(2021)1202E%22%5D%7D)

¹¹⁷ Ibid, Ministry of Justice of Georgia

¹¹⁸ Social Justice Center and WISG, para. 28

¹¹⁹ Criminal Code of Georgia, Law of Georgia, 13/08/1999 (No. 2287 of 22 July 1999) <https://matsne.gov.ge/en/document/view/16426?publication=235>

monitoring procedures by the Council of Europe’s Committee of Ministers.¹²⁰ Remarkably, despite ten years since the initial stalled investigation in 2009, each of the applicants were interviewed and all but one were recently granted victim status in 2021.¹²¹ However investigators have been unable to identify the police who raided the Inclusive Foundation, other than the two officers who signed the search report, and no one has been charged with a criminal offense.¹²² Overall, the scope of the ongoing investigation is still limited to Article 333 of the criminal code (abuse of official police powers), which once again does not account for SOGI-motivated hate bias.¹²³ Despite the victims’ attempts to encourage the authorities to account for SOGI as an aggravating circumstance in the initial 2009 investigation, it would seem that the state is either unable or reluctant to examine the bias and discriminatory components of the incident.¹²⁴ The legal representative of the applicants submitted a letter requesting that the scope of the investigation be expanded to more accurately capture the nature of the hate crimes, however the request has not received a response, and the applicants have not been notified of the investigations’ procedural steps.¹²⁵

Undoubtedly, Georgia’s reforms and training initiatives have produced incremental improvements at the local law enforcement level, as evidenced by the granting of victim status and charging of perpetrators. In contrast, after the 2012 and 2013 IDAHOT rallies, investigators only fined counter-protestors for minor charges such as hooliganism, and rarely granted victim

¹²⁰ European Human Rights Advocacy Center and the Women’s Initiatives Supporting Group, para. 5

¹²¹ Ibid.

¹²² Ministry of Justice of Georgia, “Action Report (08/10/2021) – Communication from Georgia concerning the case of Identoba and Others v. Georgia (Application No. 73235/12),” 1419th meeting (December 2021), Council of Europe, Committee of Ministers. [https://hudoc.exec.coe.int/eng#f1%22EXECIdentifier%22:%22DH-DD\(2021\)1008E%22](https://hudoc.exec.coe.int/eng#f1%22EXECIdentifier%22:%22DH-DD(2021)1008E%22)] para. 4-7.

¹²³ European Human Rights Advocacy Center and the Women’s Initiatives Supporting Group, para. 6.

¹²⁴ Aghdgomelashvili and Japaridze v. Georgia, para. 18-26.

¹²⁵ European Human Rights Advocacy Center and the Women’s Initiatives Supporting Group, para.6-7.

status.¹²⁶ Nonetheless the examples of 2021 Tbilisi Pride and individual compliance measures in *Aghdgomelashvili* illustrate that comprehensive and thorough hate crime investigations that successfully uncover SOGI bias or prejudice have yet to be fully realized.

¹²⁶ *Identoba and Others*, para. 28

Conclusion:

In comparison with other post-Soviet states, Georgia has a robust and progressive anti-discrimination legal framework, influenced by its partnership agreement with the European Union. In the last ten years, the state has launched hate crime education modules and trainings, as well as legal, institutional, and policy reforms to curb LGBTI hate crimes, often in tandem with capacity-building assistance from the Council of Europe and ODIHR.¹²⁷ From the standpoint of NGOs however, many of these reforms have yet to be fully actualized and remain largely symbolic. Despite these interventions, homophobic social attitudes are still endemic in civil society, the state, and law enforcement. The GOC and far-right groups reinforce prevailing cultural homophobia through nationalist discourses while mobilizing highly responsive and violent attacks on LGBTI demonstrators that police do little to deter. LGBTI people still routinely under-report hate crimes and report overwhelming distrust in law enforcement officials, given their reputation for discriminatory treatment, collaboration and acquiescence with far-right counter protestors, and lack of effective investigations. At the same time, Georgia's reforms have brought some incremental progress that merits recognition. Law enforcement officials are beginning to challenge the impunity of perpetrators by charging them under general provisions of the criminal code and granting survivors victim status, which is a recent improvement compared to past practice. However, a truly effective hate crime investigation requires the unmasking of bias or prejudice on the grounds of SOGI, which was lacking in the 2021 Tbilisi Pride and re-opened Aghdgomelashvili investigations. Time will tell whether the state's more recent activities, including the creation of unified hate crime statistics and training of specialized investigators, will improve the identification of SOGI as an aggravating circumstance.

¹²⁷ Ministry of Justice Georgia, para. 25-51.

Fundamentally, training interventions focused on improving police investigations and implementing anti-discrimination law will falter unless they also seek to combat homophobic bias of individual officers. Therefore, future training initiatives should also seek to sensitize officers in LGBTI cultural competency in an attempt to humanize these marginalized communities while rebuking prevalent narratives that sexual and gender diversity is an import from the West. Trainings should ideally be conducted in partnership with LGBTI NGOs, who are best equipped to highlight the current vulnerabilities of LGBTI Georgians and their lack of access to justice, and the necessity of unmasking SOGI-motivated prejudice or bias as a means to combatting hate crimes overall. Other interventions like the creation of an integrated hate crimes unit at the level of law enforcement, as recommended by LGBTI NGOs and the Council of Europe, could improve the quality of hate crime investigations to ensure best practices.¹²⁸

¹²⁸ Council of Europe Committee of Ministers, “H46-14 Identoba and Others group v. Georgia (Application No. 73235/12): Supervision of the execution of the European Court’s judgements” CM/Notes/1419/H46-14, December 2021. <https://hudoc.exec.coe.int/eng?i=CM/Notes/1419/H46-14E>

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