



# ACCESS TO JUSTICE FOR THE WOMEN, RELIGIOUS AND ETHNIC MINORITIES

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**USAID**  
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*Promoting Rule of Law  
in Georgia (PROLoG)*

**ACCESS TO JUSTICE FOR THE  
WOMEN, RELIGIOUS AND  
ETHNIC MINORITIES**



2018

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Non-governmental organization the Human Rights Center, formerly Human Rights Information and Documentation Center (HRIDC) was founded on December 10, 1996 in Tbilisi, Georgia. The HRIDC aims to increase respect for human rights, fundamental freedoms and facilitate peacebuilding process in Georgia. To achieve this goal it is essential to ensure that authorities respect the rule of law and principles of transparency and separation of powers, to eliminate discrimination at all levels, increase awareness and respect for human rights among the people in Georgia.

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- Coalition for International Criminal Court; [www.coalitionfortheicc.org](http://www.coalitionfortheicc.org)

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## 1. INTRODUCTION

### About the project

From April 15, 2017 to November 10, 2018, Human Rights Center (HRC) implemented the project “Promote access to justice for women, religious and ethnic minorities in the regions of Georgia” with the support of the USAID funded EWMI-PROLoG.

The project aimed to promote access to justice for vulnerable groups, women, religious and ethnic minorities in the regions of Georgia, namely in Kvemo Kartli, Shida Kartli and in Kakheti.

In the frame of the project, the beneficiaries received legal assistance from the HRC lawyers in the regions. A hotline was set up in Tbilisi, Kakheti, Shida Kartli and Kvemo Kartli offices of the organizations so that lawyers could consult citizens via phones and in person.

Within the framework of the project, the organization represented: **women**, who were victims of domestic violence, denied to receive inheritance and/or property rights; who were subjected to forced or early marriage; whose right to education was breached; who could not receive adequate medical or social assistance.

Representatives of ethnic and religious minority communities – whose rights were breached by state institutions and/or private persons based on ethnic or religious grounds. In the frame of the project, the HRC lawyers defended the victims of discrimination in national courts, in the European Court of Human Rights and Convention on Elimination of All Forms of Discrimination against Women (CEDAW) Committee at the United Nations.

The organization worked on 84 cases related to gender-based violence, domestic violence and femicide and represented beneficiaries in domestic courts and different investigative bodies (prosecution, police). Based on the analysis of the cases processed by the organization the state authorities did not have adequate reaction to the facts of violence against women. When working on the cases of violence against women, domestic violence and femicide, the Ministry of Internal Affairs (MIA) and the Prosecutor’s Office of Georgia still face serious challenges, namely, problems related to granting of victim status to the applicants, ineffective investigation and the lack of professional qualification of law enforcement officers.

## **2. KHANUM JEYRANOVA VS GEORGIA**

With the support of the project, the HRC actively cooperated with the European Human Rights Advocacy Center (EHRAC) and conducted effective consultations on 3 cases, 2 of which concerned the rape of underage girls. HRC and EHRAC still continue intensive consultations over these cases. Apart from that, HRC and Georgian non-governmental organization Sapari in cooperation with EHRAC, already submitted one application to the CEDAW – *Khanum Jeyranova vs Georgia*.

The investigation on the national level has been underway for four years but without any legal consequences against harassers. In September of 2014, a 30 year old woman was physically assaulted by the neighbors in front of her underage children in the village of Lambalo, Sagarejo municipality that ended up with the suicide of the woman. The crime committed against the woman is still not investigated though she became subject of degrading and inhuman treatment in front of many witnesses. The investigation has not yet been launched into degrading and inhuman treatment. As for her death, the investigation is undergoing under Article 115 of the Criminal Code of Georgia (CCG), which refers to the pushing of a person to the point of suicide. No investigation started into degrading and inhuman treatment of Khanum Jeyranova. They did not investigate the possibility of the suicide to be staged although there were testimonies of witnesses, saying that the woman did not want to die and asked for help several hours prior to her death. There are photos, which clearly show injuries on her body. No gender motive was identified in the criminal proceedings either; the alleged perpetrators were not identified or charged. The state failed to protect Khanum Jeyranova from gender-based stereotypes and widely spread cultural norms that became the key triggers of her death.

## **3. CONSTITUTIONAL LAWSUITS TO THE CONSTITUTIONAL COURT OF GEORGIA**

In the frame of the project, HRC sent three constitutional lawsuits to the Constitutional Court of Georgia which aims to ensure a better access to justice for different vulnerable groups. In the course of the project implementation, several legislative gaps were identified. The organization appealed to the Constitutional Court and requested to declare those provisions unconstitutional. One application concerns the restriction of universally guaranteed rights and freedoms. It is important to form the legislation in compliance with those guideline principles, which ensure the defense of a person during the course of the implementation of justice. The state shall be bound to the

clearly formulated legislative norms, which will minimize subjectivity and will ensure the respect of values guaranteed by the international acts and the Constitution of Georgia. In the course of the project implementation, no decisions were made by the Constitutional Court on either of the applications.

In one of its lawsuits to the Constitutional Court (N 864), HRC appealed the discretion of the law enforcement officers to issue restraining orders against harassers. There were cases in Georgia, when police officers only warned the harassers and family conflicts ended up with fatal results. HRC appealed against the Article 10 Part I of the Law of Georgia on the Elimination of domestic violence, Protection and Support of Victims of Domestic Violence, according to which, an authorized body may issue a restraining or protective order as a temporary measure. HRC believes that the law allows a police officer to warn the harasser instead of issuing a restraining order against him that creates risk for the victim.<sup>1</sup>

Constitutional lawsuits N 1350<sup>2</sup> and N 821<sup>3</sup> refer to the violation of the Right to Fair Trial guaranteed under the Article 42 of the Constitution of Georgia in the process of execution of justice. In the constitutional lawsuit N 821, appeals against the Article 219 Part IV “a” of the Criminal Code of Georgia, according to which the court reviews admissibility of evidence only during pretrial hearing. Consequently, during substantial hearing the court is deprived of the possibility to consider admissibility of already accepted evidence. This norm contradicts the Article 42 Part 7 of the Constitution of Georgia. During the pretrial hearing, the judge reviews the evidences in relevance of high standard of probability and cannot substantially examine the evidence in terms of their relevance, validity and admissibility. In this light, the admitted evidence cannot become basis of guilty charge against defendant without its critical assessment. As for the constitutional lawsuit N 1350, it relies on the following legal ground- the court is not authorized to review the judgment of justice. If the appointed sentence is sanctioned in the frames of newly revealed circumstances, the court is not authorized to reduce its decision. It contradicts the Right to Fair Trial guaranteed under the Article 42 of the Constitution of Georgia.

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<sup>1</sup> [http://constcourt.ge/ge/ajax/downloadFile/2735;](http://constcourt.ge/ge/ajax/downloadFile/2735)

<sup>2</sup> [http://constcourt.ge/ge/ajax/downloadFile/3965;](http://constcourt.ge/ge/ajax/downloadFile/3965)

<sup>3</sup> [http://constcourt.ge/ge/ajax/downloadFile/2465;](http://constcourt.ge/ge/ajax/downloadFile/2465)

#### 4. IMPLEMENTED LEGISLATIVE AMENDMENTS AND MAIN FINDINGS

In 2017, Georgia ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). Its ratification is a significant guarantee to improve the way the state approaches the fight against gender-based crimes. The ratification of the Istanbul Convention entitles the State Party to ensure the protection of women from violence and to prevent facts of violence, to raise public awareness and to create a safe environment. In order to make the Georgian legislation compatible with the Istanbul Convention, in 2017, significant amendments were introduced in the Criminal Code of Georgia. Namely, the CCG now has new provisions: **Article 133<sup>1</sup> – sterilization without consent; Article 133<sup>2</sup> –women’s genital mutilation; Article 151<sup>1</sup> – stalking.**

In the frame of the project, the HRC’s Kvemo Kartli regional office processed a case, where signs of stalking were observed. Namely, the alleged harasser systematically abused the victim psychologically by sending threatening messages from an anonymous website, and by threatening her and her family members with assassination.

The investigation into the case started under Article 151 of the CCG, which punishes intimidation but the police did not start an investigation into alleged stalking under the Article 151<sup>1</sup>. HRC lawyer addressed the police unit # 2 of the Rustavi department of the MIA and the Kvemo Kartli regional police department and requested information about the implemented investigative activities in the case; in her letter, the lawyer also requested the police to continue the investigation under the Article 151<sup>1</sup> (stalking).

Upon the request of the HRC lawyer, the victim was questioned in accordance to the Article 151<sup>1</sup> (stalking) but the investigation never imposed relevant charge on the alleged perpetrator.

Considering the fact that Georgian law enforcement bodies do not have experience of working on crimes of this character, it is essential to intensively monitor their activities and ensure the readiness of the law enforcement officers to start effective investigations and prosecution over similar crimes.

On May 4, 2017, the amendments were introduced to the Criminal Code of Georgia, according to which, committing a crime against a family member has become an aggravating circumstance of the offence; however, it is not effectively applied in practice. That is proven by the analysis of the cases processed by the HRC. In none of the cases litigated in the frame of the project, criminal liability was imposed on the harasser considering the aggravating circumstances of his action.

Creation of the Human Rights Department in the MIA in 2018 is particularly important among those recommendations which were fulfilled by the authority. The main purpose of the department is to ensure the effective investigation of facts of domestic violence, violence against women and crimes committed based on discrimination and hate. It is also important to note that in 2018, as a result of the reform, the institute of the officer of public order was created in the MIA. One of his/her functions will be to react to the facts of domestic violence, and plan the activities aiming at the prevention of these crimes. The changes aim to increase operativeness and effectiveness of the work.

Mitigation of domestic violence and violence against women is still a serious challenge in the state. The main triggers of violence in the society are: existing gender stereotypes in the society, direct or indirect discrimination of women, patriarchal approaches, early marriages, women's awareness about their rights and legal mechanisms, low competence of law enforcement officers, their professional negligence and the so-called "solidarity of policemen" towards male harassers.

Financial dependency of the victim on the harasser is another main trigger of domestic violence. HRC provided legal assistance to the women, who were victims of violence. In one case, the husband physically abused the woman in the presence of their underage child. The victim was financially depended on the harasser; consequently, she was compelled to obey the demands of the harasser. However, after the woman received legal consultations in the organization, she started litigation against the harasser. Considering the fact that in most cases, the family members are the harassers, the victims are under particular influence and rarely apply to the respective bodies for help. Considering the abovementioned circumstances, it is essential to raise awareness and to increase trust towards state bodies. If the perpetrator is the spouse, financial dependency discourages the victim to file for divorce or to request a share in the common property. As the women do not have their individual income, they cannot apply to the court to claim their share of the property. They cannot pay the court's fee for the property disputes albeit the law enables applicants to postpone the payment of the fee until the completion of the proceedings. Judges often do not use this provision in practice and that in turn, negatively impacts the final decision of the victims and undermines their future wellbeing.

## 5. STATISTICS ON THE CASES OF VIOLENCE AGAINST WOMEN/DOMESTIC VIOLENCE - LEGISLATIVE MISCARRIAGES

For the past few years, the statistics on the facts of violence against women have significantly increased. According to the Public Defender of Georgia, with regard to the murder facts of women, it is estimated that 14 out of 26 femicide cases in 2017 were committed as a result of domestic violence and 12 out of 15 attempted femicide cases were also related to domestic violence<sup>4</sup>.

Regardless of the significant legislative amendments, the state fails to ensure the safety and the defense of the right to life of women. It is proven by the 2017-2018 statistics on registered crimes published on the website of the Ministry of Internal Affairs<sup>5</sup>. According to this information, in 2017, 647 out of registered 827 crimes related to domestic violence were solved; in 2018, the number of the registered domestic violence crimes has significantly increased and accumulated to 2939 cases; 1809 of them were solved. As for the rape crimes, in 2017, 28 similar crimes were registered but only 6 of them were solved; in 2018, 50 facts of rape were registered and 12 of them were solved. Years on, the number of registered crimes is increasing but the investigation is still ineffective.

As for femicide, the number of murders, where women are murdered based on gender motives, is still very alarming. The Parliament of Georgia still fails to add the definition of femicide into the Criminal Code of Georgia, which is the intentional murder of women based solely on their gender<sup>6</sup>. According to the World Health Organization (WHO), femicide is usually perpetrated by men, but sometimes female family members may also be involved. Femicide differs from male homicide in specific ways. For example, most cases of femicide are committed by partners or ex-partners, and involve ongoing abuse at home, threats or intimidation, sexual violence or situations where women have less power or fewer resources than their partner. The statistics provided by MIA does not include information about the registered crimes related to femicide. According to the Public Defender of Georgia, in 2017, 22 facts of femicide occurred in

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<sup>4</sup> Statement of the Public Defender of Georgia 16.04.2018

<sup>5</sup><http://police.ge/files/pdf/statistika%20da%20kvlevebi/2018/%E1%83%98%E1%83%90%E1%83%9C%E1%83%95%E1%83%90%E1%83%A0%E1%83%98-%E1%83%98%E1%83%95%E1%83%9A%E1%83%98%E1%83%A1%E1%83%98-2018.pdf>

<sup>6</sup> See the publication of the World Health Organization "Understanding and addressing violence against women at [http://apps.who.int/iris/bitstream/handle/10665/77421/WHO\\_RHR\\_12.38\\_eng.pdf?sequence=1](http://apps.who.int/iris/bitstream/handle/10665/77421/WHO_RHR_12.38_eng.pdf?sequence=1)

Georgia<sup>7</sup>. In the frame of the project, HRC worked on a femicide case where the former husband suffocated his 39-year-old ex-wife with an electric wire. The court sentenced the man to 10-years imprisonment, though the sentence did not include aggravating circumstances.

It is important to underline that one of the major challenges in the practice is to identify a gender motive in femicide cases. In 2012, amendments were introduced into the Criminal Code of Georgia<sup>8</sup>, according to which, gender motive of the crime is aggravating circumstance for the liability. However, it is still difficult for the investigative and prosecution bodies to apply this norm in practice<sup>9</sup>. This norm is not implemented in practice. In case of femicide, gender motive is aggravating circumstance for the criminal responsibility. If we review the number of femicide facts and analyze the punishments imposed on the perpetrators, we will see the discrepancy between the committed crimes and imposed liabilities. It convinces us that the state fails to use adequate punishment measures against the gender-motivated crimes. Apart from that, the law does not allow the judge to change the qualification of the action from a less grave into a more grave charge. It significantly reduces the trust of the society towards the prosecutor's office.

To increase the transparency and to adequately evaluate the threat, it is essential that the prosecutor's office ensures publicity of the statistics. The 2018 Report of the Public Defender reads that public defender's recommendation with regard to processing and analyzing the statistics on the facts related to the violence against women and domestic violence was only partly fulfilled.

HRC petitioned the Prosecutor's Office and requested information about the processed statistics on gender-based violence cases in 2017-2018. Namely, since 2017 until present, based on how many applications the prosecutor's office started criminal prosecution over the cases of gender-based violence and how many applicants were women/men; since 2017 until present, how many women were declared victim of gender-based crimes; since 2017 until present, in which violence cases the women were mostly declared victims.

The prosecutor's office of Georgia responded that they started criminal prosecution against 25 persons based on gender-discrimination in 2017 and 25 women were

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<sup>7</sup> Women killed in 2017 – statistics and rejected draft law 24/11/2017

<http://netgazeti.ge/news/236199/>

<sup>8</sup> Article 53<sup>1</sup> of the Criminal Code of Georgia <https://matsne.gov.ge/ka/document/view/16426>

<sup>9</sup> "Domestic Violence, Domestic Crimes and Violence against Women," GYLA , 2017 <https://gyla.ge/en/post/qalta-mimart-dzaladobis-saqmeebi#sthash.XStCQd18.dpbs>

declared victim; in 2018, criminal prosecution started against 72 persons and 71 women and 1 man were declared victim.

The received statistical information proves that the number of gender-based discrimination facts has drastically increased. In order to ensure effective prevention, it is essential that the Chief Prosecutor's Office of Georgia conducts comprehensive investigation into gender-based discrimination cases, where the motives of the crimes will be identified as key pre-condition for fair judgment.

## **6. LIMITED PROCEDURAL RIGHTS OF THE VICTIM/SUFFERER AND SYSTEMIC MISCARRIAGES**

### Problem in relation to the access of case files for the victim at any stage of the court proceedings

The analysis of the cases processed by HRC revealed that the solution of the problems related to the rights of the victims is still a challenge. Victim's engagement in the process of criminal litigation contradicts the Article 42 Part I of the Constitution of Georgia: any person has right to appeal to the court to defend his/her right. International law respects the rights of the victim in the judiciary process.

The fact that the victim does not have the right to get acquainted with the case files after the pre-trial hearing, contradicts the international standards. The victims do not have any local legal mechanisms to defend their rights. HRC lawyers got involved in 3 cases, whose proceedings had already started in the court. Consequently, the lawyers were deprived of the right to study the case files in that stage of the investigation.

### Problems in granting the victim's status

In 3 cases processed by the HRC, the lawyers encountered problems related to the granting of victim status. These cases referred to the rape of underage girls. The lawyers appealed several times to the prosecutor's offices and requested victim status for the victims of domestic violence. The status is significant since it allows the victim and his/her lawyer to have access to case files. It is particularly problematic for the victims who are representatives of ethnic minorities, therefore they face language barrier in addition and cannot get information about their case files and criminal proceedings.

The analysis of the cases processed by HRC revealed that a charge is not imposed on the alleged harasser in a timely manner. There are cases where the victims request the

interrogation of the witnesses but the investigation does not react. In most cases, the investigation into domestic violence cases is ineffective and is dragged-out.

### Rehabilitation of victims

In order to eliminate violence against women and domestic violence, the state shall elaborate on an effective strategy and modern mechanism of prevention, which will minimize the possible chance of re-victimization of the victim and will aim to rehabilitate them. In the current environment, rehabilitation of the victims is not ensured. Violence against women/domestic violence is a grave violation of human rights, which is one of the key problems in the society. HRC lawyers, who worked on the cases of the female victims, named the lack of rehabilitation programs of their beneficiaries as a key problem. It is the main obstacle for the female victims to be properly integrated into society. In concrete cases, the state fails to ensure the prevention of violence. Psychological rehabilitation is not available for the female victims. Juveniles, who were victims of violence stop going to school due to severe stress. Their right to education is challenged. The state cannot provide the victim with adequate service of social-workers and psychologists. The victims cannot receive adequate social and psychological rehabilitation in the shelters. Domestic violence is not only violence against a particular victim. Often the children living in the family remain traumatized and the state does not take care of them. It is essential that the state ensures the access to rehabilitation programs for the victims, not only in the shelter but also outside the shelter.

### Miscarriages in the work of the Samkharauli National Bureau of Forensic Expertise

HRC worked on the case of a young woman, who was victim of attempted sexual harassment and physical violence. During the complex expertise in the Samkharauli National Bureau of Forensic Expertise, the questions of the psychologists were stereotypical and degraded the victim. As a result of the asked questions and filling the form in Russian language, the woman was victimized twice.

It is essential that the respective state bodies conduct research based on which criteria and guidelines the Russian-language questionnaires are used by the psychologists when interviewing the violence victims. It is important that psychologists and experts revised and evaluated the relevance of the questionnaire with the aim of the interview. Also, the qualification of the psychologists at the Samkharauli National Bureau of Forensic Expertise shall be examined. Periodically they shall attend professional and qualification trainings.

Often, victims become the subjects of repeated victimization in different state institutions as their representatives lack empathy towards victims. The women often feel shame when representatives of state bodies blame them in the violence facts that further stress the victims and hinder their psychological rehabilitation.

### Changed testimonies of the victims

Domestic violence is different from other crimes; often the victim does not dare to report to the police against her family member or if she applies to the police, she is under influence of the harasser and then changes her mind. She refuses to testify against a family member. The testimony of the victim is essential for the continuation of the case proceeding. In the frame of the project, the Kakheti office lawyer studied the files in one case, where a 24-year-old woman, who according to the testimonies of the neighbors was the victim of multiple physical violence from family members and called police several times. When the police officers arrived at the family's home, protocols with different information were filled out, which means that the woman had changed her position. At the end, we received the news that the woman was found hung in her house. The investigation launched into bringing a person to the point of suicide, though the investigation never asked what could be the reason of the suicide. There are no legal results into this case yet. Respective state bodies do not ensure a complex approaches to similar facts.

For the prevention of the altered testimonies, it is necessary that female victims of violence receive legal and psychological support. According to the MIA, based on the pending amendments to the Law against Domestic Violence of Georgia, the harasser will be charged under the criminal law for the very first violation of the requirements of the restraining order. The Legal Committee of the Parliament has already started the consideration of the draft amendments<sup>10</sup>. HRC positively evaluates the initiative, however it is important to note that only strict regulations cannot insecure environment as domestic violence, violence against women are the crimes of larger scope. Thus, it is necessary that the state creates a program oriented on the correction of the conduct of harassers, which is important to ensure long-term effective prevention.

### Rehabilitation of the harassers

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<sup>10</sup> see information about the draft amendments on Rustavi 2  
<http://rustavi2.ge/ka/news/113996>

The organization negatively evaluated the absence of state programs which aim to change the behavior of harasser. Considering the fact that the violence against women and domestic violence is a particularly grave crime, it requires special measures to be taken from the side of the state. One of those measures will be behavior modification programs, the absence of which negatively impacts the public awareness. The state cannot ensure the correction of the harassers' behavior. There are risks that the harassers will not change their behavior if there are no rehabilitation programs for them.

## **7. RESULTS OF INEFFECTIVE RESPONSE OF THE LAW ENFORCEMENT BODIES FOR THE VIOLENCE AGAINST WOMEN/DOMESTIC VIOLENCE FACTS**

Low qualification of law enforcement officers is one of the key problems; they inadequately reacted to the facts of violence. They were not sensitive towards the victims and that underlines the ineffectiveness of the police officers and significantly decreases public trust towards them. Human Rights Center worked on two cases where indifference from the side of police officers was evident. On October 18, 2017, a 24-year-old woman was found hung in the shed of her house in the village of Shilda in Kakheti. The woman was half naked and had multiple scars on the body. The neighbors claim that before the death, the woman had called the police multiple times due to the physical abuse she was subjected to in her family. One week before her death, the woman had scars on her hand. Police did not adequately respond to the previous incidents in the family; at the end, the woman died. The investigation is still underway; law enforcement bodies could not establish whether the woman was killed and the scene of the suicide was staged or she was brought to the point of suicide<sup>11</sup>.

The second case occurred in 2017; the former husband suffocated the mother of 4 children with an electric wire. The legal representative of the victim reports that the woman and her children were systematically harassed, physically and psychologically; the woman and her children had several times petitioned to the police. They had called 112 multiple times and reported about physical and psychological harassment, however patrol police never reacted to their problem adequately and effectively; police never issued a restraining order against the harasser and did not take any other protective measures. The perpetrator was sentenced to 11-years-imprisonment but the

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<sup>11</sup> Women killed in 2017 – statistics and rejected draft law 24/11/2017  
<http://netgazeti.ge/news/236199/>

children of the killed woman still live under grave psychological stress and fear; they feel insecure and no psychological rehabilitation was provided for them.

HRC lawyers got interested whether or not the service 112 analyzed the reports they receive about domestic violence cases. The organization requested public information from the service 112 but by the preparation of the report, according to their initial response, the emergency service could not provide HRC with the requested information timely due to the volume of the requested data.

Identification and reaction to the facts of violence against woman and domestic violence is the obligation of law enforcement bodies. If we see facts of violence against woman and the police officer only warns the harasser, it is clear that the state fails to protect the right to life of the woman.

The scope of violence against women and domestic violence is so wide that even a restraining order cannot ensure full protection of the victim. Consequently, it is unclear why police officers are indifferent and ineffective when responding to these crimes.

A restraining order shall serve to better protect the victim. HRC was a member of the working group, which was created with the initiative of the Human Rights Department of the MIA. The organization positively evaluates the reforms implemented by the department, which introduced new special questionnaires as the new instrument for the risk-assessment<sup>12</sup>. It is noteworthy that a police officer, having arrived at the site of domestic violence, was asking questions to the victim according to his personal views. Consequently, he could not get adequate information about the fact of violence; sometimes the police officers were indifferent towards the victim. It is important to improve qualification of the police officers so that they can effectively apply the new instrument. It is essential to conduct monitoring in the regions, on how effectively the police officers use the questionnaire, as the officers often used the so-called “written explanations” there, based on which the harassers promised that they will no longer abuse their wives. Of course it did not envisage any legal results and sometimes we received fatal result.

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<sup>12</sup> <http://georgia.unwomen.org/ka/news/stories/2018/08/ministry-of-internal-affairs-enacts-important-policy-shift-in-the-fight-against-domestic-violence>

## 8. INEFFECTIVENESS OF THE INVESTIGATION/UNPUNISHED HARASSERS

The cases processed by HRC show that in grave cases of violence against women, like femicide and rape, the investigation was ineffective and prolonged in an untimely manner. The HRC lawyers appealed to the MIA and Chief Prosecutor's Office and requested information about the ongoing investigation process but they received standard answers stating that the investigation was underway. Those cases show that although the female victims identified the harassers, the perpetrators are still unpunished and they still pose a threat to the women.

Two cases of rape are of particular interest, which happened in the Marneuli municipality. In one of the cases, the victim was a pregnant underage ethnic Azerbaijani girl, who was raped by the relative of her husband; after the incident, the family of the husband refused to accept the child. Based on their traditions and stereotypic attitude, they concluded that the child was profaned and they gave up the child for adoption. An Investigation was commenced under the Article 137 Part III – "d" of the Criminal Code of Georgia. Although complex expertise was conducted and according to the expertise conclusion, the person who raped the girl was identified, he is still unpunished. HRC lawyer appealed to the Marneuli district prosecutor's office and requested information about the progress of the investigation; they answered that there was no ground to bring charges against the harasser. Consequently, the HRC plans to appeal the dragged out investigation process into those cases at the European Court of Human Rights.

As for the case in the Sagarejo municipality; an investigation started in December 2015 into illegal restriction of freedom of a juvenile under the Article 143 Part III – "a" of the CCG. The harasser and other persons kidnapped an underage girl from the village. It was proven, by medical expertise, that the man raped her. . On June 15, 2016, the charge for the sexual intercourse with an underage girl was brought against him in absentia under the Article 140 of the CCG. However, the perpetrator is still unpunished. Although the underage girl named all persons who participated in her kidnapping, the police did not carry out effective investigation procedures. HRC addressed the Signagi municipal prosecutor's office with regard to the ongoing investigation and they responded that as a result of comprehensive investigation into the case, the participation of the persons named by the victim was not proven. Substantial discussion of the case is still pending in the Signagi district court.

We observe the tendency that the MIA and Chief Prosecutor's Office of Georgia fail to ensure prompt and effective investigation into the cases where underage girls are being raped. In addition to that, the victims belong to ethnic minority groups, who do

not have information about legal procedures. Considering the fact that the men in this community have dominant power, the women are oppressed and they cannot dare to appeal to the police about cases of violence. Even if they appealed to the police, the state failed to defend their rights and punish the violators in accordance to the law, which further scared the women and increased the sense of injustice in this community. The state fails to identify the problem of violence and to raise public awareness in these regions, where the number of gender-based violence facts is significantly higher. The state is unable to conduct a prompt and effective investigation either and this, in turn encourages the sense of impunity among harassers and it increases the scope of violence.

## 9. EARLY MARRIAGE

In accordance to the Civil Code of Georgia, a marriage shall be permitted from the age of 18. In accordance to the previous edition of the Law, a 16-year-old person could enter into a marriage upon the consent of his/her parents. This norm has been abolished since January 1, 2016. Regardless of the positive legislative changes, the early marriage is still an acute problem in the society. The facts of early marriages and forced engagements still frequently happen. Leaving the public school is particular problem.

In the frame of the project, HRC worked on two cases of forced engagement. In one of those cases, which referred to the alleged forced engagement of a 16-year-old girl in Marneuli, the HRC Kvemo Kartli regional office lawyer closely observed the situation<sup>13</sup>. The school director immediately reported to the Marneuli district social service agency about the fact and requested them to respond to it. According to the statement of the school director, the head teacher of the class visited the family, where the parents confirmed the information about the engagement. However, they said the girl was missing classes due to health problems. The Marneuli Social Agency is studying the case of the forced engagement; based on the Agency's petition, the Marneuli district police department started an inquiry of the fact. It is noteworthy that the underage girl did not receive psychological consultation; neither psychological expertise was conducted to find out whether she was the victim of psychological oppression from the side of her parents or not. Apart from that, the parents neglected their duty of the parent. Marneuli district police did not conduct any effective activities to ensure the identification and prevention of alleged psychological violence on the girl. Engagement

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<sup>13</sup> <http://reginfo.ge/people/item/5256-marneulshi16-xlis-gogona,-romeliz-zota-xnis-xin-dainishna,-mshoblebs-skolidan-gabybavt>

of the school director in this case is of particular importance, who noted that the investigator questioned her in the presence of the underage girl and demanded to separate the Georgian legislation from the school regulation, though the school director indeed acted in accordance to her professional duties.

HRC Kvemo Kartli regional office monitored the case of forced engagement of a 17-year-old girl in the Sabirkendi village, Marneuli municipality. The girl studies in the Sabirkendi village public school; according to the information provided by the teacher, the boy, with whom the girl was engaged, brought presents to her in school. The girl got very worried about the situation; she started crying because, as the girl stated, she did not want to marry him.

HRC Kvemo Kartli office representatives met the director and teachers of the Sabirkendi School and questioned them about the fact. They denied the fact of engagement and said they had met the girl's parents and according to their statement the girl is not engaged.

HRC representatives met the Kvemo Kartli regional office of the Public Defender of Georgia (PDO) to discuss the case with them; based on the HRC petition, the PDO office started to study the case. Police started an investigation but soon stopped because the girl did not confirm the fact of being engaged.

It is essential that the MIA and prosecutor's office were particularly cautious with similar cases because early marriage violates human rights, namely the children's rights and it is caused by gender inequality. The number of boys, who got married at an early age, is significantly lower than the number of the girls. The girls, who got married at an early age, are under the risk of domestic violence and sexual harassment.

Early marriage negatively impact the psychological state of an adult and it causes various health problems. It deprives the underage girl from the possibility to make reasonable choices in favor of her future, as her right to education is restricted. It is essential to conduct awareness raising campaigns about the negative aspects of early marriages throughout the country, and particularly in the regions where the rate of early marriages is particularly high. In order to ensure the implementation of the international and national legislation on the elimination of early marriages and the defense of women's rights, it is necessary to more effectively integrate these issues in national polices and action plans.

## 10. RIGHTS OF RELIGIOUS MINORITIES

HRC provides Muslim communities with legal assistance in three different regions in Georgia -in Beitrapchi, Marneuli municipality in Kvemo Kartli region, Tivi village in Kvareli municipality, Kakheti region and Mikeltskaro village, Kaspi municipality in Shida Kartli region.

In all three regions, the local municipality administrations demonstrated a faulty approach to the issue and the following legal shortcomings were identified: the decision-making administrative body, regardless of the petition made by the village population, did not get interested in the issuance of the permission to construct a mosque, did not provide them with the information regarding what procedures and documents the locals need to obtain the permission of the construction.

Thus, it is estimated that the local self-government bodies react to the petitions of the religious minorities after concrete organizations got involved in the process; otherwise they do not pay attention to the issue and do not clarify the legislation, procedures and list of documents to the religious minority representatives. Consequently, the decision making process is prolonged in all three cases.

In 2018, the State Agency for Religious Issues existing in the form of the public law legal entity under the auspices of the Government of Georgia, was abolished and was integrated into the State Office of the Minister for Reconciliation and Civic Equality<sup>14</sup>.

In all three cases HRC addressed the local municipality with the request to construct the mosque as the community needs to obtain the permission but no decision has been made yet.

In the Tivi village of Kvareli municipality, where 300 Muslim families live, the community requested the construction of a mosque. The women living in the village are not allowed to pray in the mosque located in the village cemetery. According to Muslim traditions, before prayers, women conduct religious rituals separated from the men. There is only one mosque in the village, which has only one room and it can place only 25 worshipers. Thus, constitutional rights of the locals are substantially breached; at the same time, the women are subjected to double discrimination due to the fact that they cannot pray together with the men. The state fails to allocate relevant space to the local inhabitants to respect the right to freedom of religion of the Muslim women.

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<sup>14</sup> <http://www.tabula.ge/ge/story/134134-baxtadzis-iniciativit-religiis-saagento-ugmdeba-da-is-sherigebis-saministroshi-sheva>

It is essential that the state elaborates a respective policy for the effective integration of ethnic and religious minorities in accordance to the principle of equality in front of the law. It is important that the Government of Georgia ensures the adoption of easy procedures for the issuance of permission for various places of worship.

## **11. RIGHTS OF ETHNIC OSSETIAN PEOPLE AND ACCESS TO JUSTICE**

In the framework of the project, HRC provided ethnic Ossetian citizens with free legal aid. Restriction of the property rights of ethnic Ossetians, starting from early 1990s, is a significant problem. The state failed to restore property rights of ethnic Ossetian citizens even after the repressions were over.

In May of 2017, HRC Tbilisi and Shida Kartli office representatives visited the villages of ethnic Ossetian people in the Kareli municipality where 35-45% of the local population are ethnic Ossetians. In the villages, Ossetian citizens spoke about the alleged violation of their property rights from the side of the Orthodox Church. Tens of abandoned villages may become new sites of conflict because of illegal activities of the clergies. HRC took photos of several abandoned houses, where monasteries are housed now and clergies misappropriate the properties of ethnic Ossetian citizens. State officials do not pay attention to the breached property rights. Part of the local population spoke about violations; they mentioned evidence to prove the illegal misappropriation of the ethnic Ossetians' houses by clergies. It is important that the state bodies study these cases of alleged violation of property rights and ensure adequate protection of property rights of the ethnic minorities.

In September 2018, HRC started working on the case of ethnic Ossetian citizen, who became victim of ethno-conflict and violence in early 1990s. Her family was forced to abandon their house and flee to the Russian Federation, Vladikavkaz (former Autonomous Republic of North Ossetia). With the legal advocacy of HRC, the victim woman will claim compensation from the State of Georgia.

## 12. RECOMMENDATIONS

### To the Ministry of Internal Affairs

To ensure effective response and increased public trust, it is essential:

- To increase qualification and to train law enforcement officers, so that they can correctly assess the risks and threats of violence against women and domestic violence;
- To monitor the practical use of the special questionnaire on new instruments of domestic violence risk assessment;
- To analyze the calls made to 112 about the violence facts against women and domestic violence cases;
- To adequately respond to the facts of psychological violence against women and to involve psychologists with respective qualification in this process;
- It is essential that the MIA ensures additional training of police officers in the regions on problematic issues, like forced and early marriages of underage girls to ensure proper evaluation of expected threats and adequate response to similar facts from the side of police officers;
- to process and periodically publicize statistic data on domestic violence and violence against women;

### To the Chief Prosecutor's Office

In order to ensure the fight and prevention of the crime as well as safety of potential victims it is essential:

- That prosecutors are well-informed about the essence of violent crimes committed based on gender motive and are aware of the gravity of gender-motivated crimes;
- to ensure identification of gender motive in the violence facts against women/domestic violence cases;
- To increase effectiveness of legal leverages to ensure an honorable defense of the victims;
- To evaluate and identify risks and to prescribe respective instructions;

- To ensure the use of adequate punishment for the gender-motivated crimes;
- To timely grant victim status;
- It is essential that the Prosecutor's Office, together with the state bodies, create an effective preventive policy which will aim to overcome current challenges, to expose the triggers of the crime and criminalize them accordingly;
- It is essential to elaborate a complex strategy for the effective reaction to the crime in the direction of capacity building of prosecutors and representatives of other state bodies.
- In order to overcome the current challenges, the prosecutor's office shall continue an active cooperation with the international organizations, Public Defender's Office and local NGOs.
- It is important to conduct public awareness campaigns and to engage media in it;

#### **To the Parliament of Georgia**

- Increased statistics of the violence against women, domestic violence and hate-crimes prove that it is essential to determine the respective definitions of the crimes, to identify legislative and practical miscarriages in the criminal justice system;
- To add femicide to the Criminal Code of Georgia as intentional murder of women because they are women;

#### **To the Ministry of Labor, Healthcare and Social Protection,**

- To create rehabilitation programs for the victims and offer behavior modification programs for the harassers;
- To offer free psychological consultations for the victims;

#### **To the Ministry of Education and Science:**

- It is important to include awareness-raising materials in the curricula of public schools which will inform schoolgirls about the negative outcomes of early and/or forced marriages and engagements;
- To provide the educational institutions, where ethnic minority children study, with the information about legal defense mechanisms;

- To establish an educational program on juvenile rights and; to conduct trainings for the teachers, which will aim to provide them with the information about gender equality, girls rights to education and family planning;

### **Government of Georgia**

- To take adequate measures to simplify the procedures of issuing permission for the construction of places of worship for religious minority groups and to regulate it by a separate act;
- To elaborate on effective initiatives and activities in order to ensure the integration of ethnic minorities in the society;
- To integrate international and national legislation on early marriages and women's rights, related to gender equality and development of the youth, into the national policy and action plans and to ensure their effective implementation.