

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



Civil Society and Religious Organizations Joint Statement Regarding Anti Discrimination Draft Law

We, the signatories to this statement express our dissatisfaction and criticism towards the Draft Law On The Elimination Of All forms of Discrimination submitted by the Government of Georgia to the Parliament of Georgia. We believe that the current version is a substantial step backwards from the model and the standards elaborated

by the Ministry of Justice, with active participation from the NGOs. The previous version was also positively evaluated by international organizations. However, the current version the Government initiated, absolutely lacks effective repressive and preventive mechanisms, which, previous version included by introducing financial sanctions towards those violating the Law.

The previous version, unlike the current one, also included instruments that enabled monitoring measures taken towards elimination of discrimination. Additionally, the procedural guarantees and competences given to the Public Defender in the process of examining discrimination facts and taking follow-up measures on them are weak and ineffective.

We can not agree with the argument of the Government of Georgia why repressive and effective mechanisms are not introduced. They claim it is because state bodies and the society are not ready at this stage. However, we must note that anti-discrimination process also includes educational and preventive measures, and imposition of fines can only be considered as last legal resort in this process.

The second and third points in Article 5 of the Draft are particularly questionable as they introduce unjustified restrictions in the event of misuse or abuse of the Law. These restrictions view “abuse of right” from the point of view of the dominant groups and their interests, which is a controversial and unjustified legal regulation, all the same time hinting about the actual spirit and values inscribed in the Draft at review. We find it exceptionally irrelevant that the Draft specifically mentions that none of the provisions of the Anti Discrimination Law can be interpreted so that it in any way contradicts constitutional agreement signed by the Georgian State and the Orthodox Church of Georgia. This is troubling because the Constitution itself recognizes the primacy of universal human rights norms and principles over constitutional agreements. The scope of constitutional agreement cannot transcend its immediate signatories. Should such an agreement be used for unequal treatment of third parties not signatory to the agreement in question, this will amount to discrimination.

Given the abovementioned circumstances, we consider, that adoption of the current version of the Draft, which only insignificantly broadens the authority of the public defender, will neither substantially change the legislative climate, nor will it be an effective tool to fight discrimination. Therefore we call on the government to make

sure its efforts and measures for achieving equality in the country are reflected in effective legislative and institutional guarantees. With this goal, we address the parliament and the government to ensure public and fair discussion of the draft law and to show their readiness for including comments and changes presented here. We request the following amendments to the draft law:

- Creating an independent specialized anti-discrimination task force under the public defenders mandate, which will have a repressive authority and adequate guarantees of independence. It is important that the task-force is made up by experienced experts in human rights field, which are known for their liberal values and solidarity.
- The Government must take responsibility to ensure institutional empowerment of the Public Defender's office, that includes allocation of additional budgetary and human resources.
- Remove the second and the third points of the Article 5 on misuse or abuse of the Law.
- Introduce effective mechanisms to enable effective guarantees to eliminate discrimination, including the shifting of burden-of-proof from the victim to the respondent. The defendant should be responsible to prove that discrimination didn't take place and also be legally bound to present information and documentation at the Public Defender's request.
- Grant competencies to the Public Defender to be able to represent the victims of discrimination in the court.
- For the purposes of eliminating discrimination and facilitate negotiation, increase effectiveness of monitoring mechanism.

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We believe the present Draft Law cannot serve as an effective mechanisms to eliminate discrimination, unless the law allows to fine the person responsible for discrimination. The existence of penalty mechanisms is a principle necessity that the signatories to this statement see as an absolute necessity. Without introduction of financial penalty mechanism adoption of the law betrays its true purpose.

Georgian Young Lawyers Association (GYLA);
Human Rights Education and Monitoring Center (EMC);
Georgian Democracy Initiative (GDI);
Identoba
Open Society Georgia Foundation (OSGF);
Transparency International Georgia (TI);
Tolerance and Diversity Institute. (TDI);
Constitution Article 42;
Media Development Foundation (MDF);
International Society For Fair Elections and Democracy (ISFED);
Women's Initiatives Supporting Group (WISG);
Women's Fund In Georgia (WFG);
Union "Safari";
Center For The Psychosocial And Medical Rehabilitation of The Victims of Torture (GCRT);
Youth Center For Independent Living;
"Vimegobrot";
Analytic Center for Interethnic Cooperation and Consultancy.
Multiethnic Georgia;
Kurdish National-Democratic Institute;
Georgian Reforms Association (GRASS);
Civil Development Agency (CIDA);
Partnership For Human Rights (PHR);
Evangelist-Baptist Church;
Pentecostal Church
Georgian Muslim Union;
Armenian Apostolic Saint Orthodox Church Georgian Branch;
Seventh Day Adventist Church;
Civil Journalists Club;

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Accessible Environment For Everyone;

“Consensus”;

Spiritual Council of the Yazidis in Georgia

Coalition for Independent Living

Civil Society Development Institute In Kvemo Kartli