



საქართველოს სახალხო
ტანამდებელი

PUBLIC DEFENDER
(OMBUDSMAN)
OF GEORGIA

PUBLIC DEFENDER (OMBUDSMAN) OF GEORGIA

Written submission on Georgia's Compliance with the International Covenant on
Civil and Political Rights

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Introduction

This written submission is compiled by the Public defender's office of Georgia (hereinafter PDO), and contains selected issues from priority areas of concern with regards to the implementation of International Covenant on Civil and Political Rights. In addition, hereby we present proposals regarding the questions to be put by the Committee in the List of issues in relation to the fifth periodic report of Georgia

The Public Defender of Georgia is an "A" status national human rights institution, which supervises the protection of human rights and freedoms within its jurisdiction on the territory of Georgia.

PDO publishes annual parliamentary reports concerning the human rights situation in Georgia along with periodic special reports on specific areas.

Relevant reports are available in English at: <https://bit.ly/2Umpb3J>

Domestic violence and corporal punishment of children - Paragraph 9 of the Committee Recommendations

1. It is commendable that the legislation on, and response mechanism to, violence against women and domestic violence have been improving year after year; however, it is important for the state to intensify effective steps for ensuring a coordinated activity of state entities and a complex fight against the problem. Concrete measures have not been implemented yet in the area of social work concerning the fight against violence towards women and domestic violence.
2. As the cases studied by the PDO have shown, obligations assigned to the social service in the area of violence against women and domestic violence have not been fulfilled. Response from social workers is largely of one-time, formal nature; their activity is not aimed at combatting domestic violence and analyzing incidents.
3. Scrutinized cases revealed a need to retrain social workers and develop social service guidelines in order to achieve success in the prevention and management of incidents of domestic violence. Despite repeated recommendations of the Public Defender, a common methodological standard for collecting and processing data has not been developed yet. A number of entities do not maintain a comprehensive data on incidents of violence against women and domestic violence.
4. In addition, it remains a problem to cause an abuser to undertake a mandatory training course designed to change a violent attitude and behavior. According to data of the Ministry of Internal Affairs and Prosecutor's Office of Georgia, the number of identified cases of domestic violence as well as the indicator of response to them has continued to increase.
5. Public Defender of Georgia considers especially problematic a selective approach applied in several cases by the state to instances of violence against women and domestic violence, involving influential persons as abusers. In these cases, the response was delayed, leaving an impression that in taking a decision on response, preference was given not to victim's rights but to abuser's interests. It is alarming that

a victim often has to go public to protect herself since only after that are certain measures undertaken by relevant entities.

6. As regards the protection of the rights of the child, the adoption by the parliament of the Code of the Rights of the Child in 2019 is commendable. However, it should be pointed out that Georgian legislation does not determine in express terms proportionate and effective measures of responsibility for corporal punishment of children imposed under administrative or criminal law.
7. It should be noted that according to the 2019 data, compared to the previous years, there is an increase in the number of suicides and attempted suicides committed by juveniles in Georgia. After continuous recommendations for many years, the Government of Georgia has approved the concept of a psychological-social service center for children victims of violence and from 2021 the two centers will start functioning, however, it is important to pay more attention to the training of professionals and to the effective operation of these centers. The child suicide prevention strategy has not been elaborated to this day.

Proposal about the questions to be posed by the Committee in the List of issues in relation to the fifth periodic report of Georgia:

- **Please indicate the measures taken to retrain social workers in issues of violence against women and domestic violence and to develop a post-training evaluation document enabling to measure progress achieved by retrained employees;**
- **Please indicate whether the State party plans to develop special guidelines for social workers on dealing with instances of violence against women and domestic violence as well as early marriage;**
- **Please provide information about the number of investigations launched into the alleged negligence of official duties on the part of police and prosecutor when investigation into femicide and attempted femicide reveals that a woman, before been killed, reported violence against her to law enforcement authorities;**
- **Please report on measures taken to ensure that corporal punishment has been eradicated in all settings, including the home.**

Judicial Safeguards of Juveniles - Paragraph 16 of Committee recommendations

8. The Code of Juvenile Justice that came into force in 2015 aims at protecting the best interests of the child and ensuring humane justice tailored to these interests. While the fact itself that such an act was adopted is commendable, its practical application has demonstrated that the state must make more efforts to ensure the best interests of the child in the administration of criminal justice.
9. The Public Defender's Office prepared a Special Report to identify the challenges in this regard and offer the state the ways for addressing them.¹ A juvenile defendant and

¹ The Special Report of the Public Defender of Georgia, Protection of Procedural Rights of Juvenile Defendants, Witnesses and Victims in Criminal Justice, prepared in co-operation with the Rehabilitation Initiative for Vulnerable Groups. Available at: <https://bit.ly/2FYB22W> [accessed 13.10.2020].

offender as well as an acquitted juvenile and a juvenile victim, all of them are provided with free legal aid at any stage of criminal proceedings unless there is a lawyer contracted by the juvenile involved in the case. The legislation in force does not envisage providing a juvenile witness with free legal aid, though it should be underlined as a positive step that on September 1, 2020, the Government of Georgia initiated amendments to the Juvenile Justice Code in the Parliament of Georgia. The amendment includes the provision of free legal aid to witness juveniles. The Public Defender hopes Parliament will adopt these positive changes in a timely manner. The Public Defender's research showed that the participation of a legal/procedural representative in a trial is nominal.

10. In addition, persons who are the parties of the proceedings involving juveniles, despite having followed a specialized course, do not have the required skills or full competence on some occasions. As a tragic example of this, 15-year-old Luka Siradze jumped from the ninth floor of a residential house on December 11, 2019 and died at the clinic on December 17. The suicide was preceded by his questioning in a capacity of a witness at the police station over making graffiti at school walls. The suicide was committed as a result of pressure exerted by police officer over him during the questioning. Although other police officers were present, only investigator Mariana Choloyan's responsibility has been raised so far. She was charged with coercion to give a statement under Article 335 of the Criminal Code of Georgia and sentenced to three years of imprisonment. It should be noted that before this incident Choloyan had taken a "Specialized Course in Juvenile Psychology and Pedagogy" at the Academy of the Ministry of Internal Affairs.

Proposal on the questions to be posed by the Committee in the List of issues in relation to the fifth periodic report of Georgia:

- **Please indicate the measures taken to control/monitor the quality of questioning of children according to protocol of the National Institute of Child Health and Human Development (NICHHD);**
- **Please report on measures taken to ensure and develop an effective qualification (specialization in juvenile justice) for social workers (those acting as procedural representatives) and quality control mechanism for social workers, prosecutors, interpreters and judges.**

Internally Displaced Persons - Paragraph 17 of Committee recommendations

11. As of January 31, 2020, there were 286,367 internally displaced persons and 90,861 IDP families registered in Georgia. The state has resettled 41,263 families, 41,738 families have completed applications and are awaiting resettlement. It should be mentioned separately that there are 3,191 families registered who live under a heightened risk. Unfortunately, in 2019 the number of families resettled from the so-called demolishing buildings is less in comparison to the number of families resettled in previous years.
12. High indicator of applications of IDPs to the PDO of Georgia during the year of 2019 was related to the resettlement process – the PDO examined about 150 cases during the year. As a result of the examination of these cases it has been identified that there are no formalized procedures for the resettlement of IDPs from buildings that pose increased threat to life and health, including those for proving that an individual actually

lives in such a building, therefore, in some cases, it cannot be established whether an IDP family actually lives in the so-called demolishing building. It is important to stipulate the rule of resettlement of IDPs from the buildings that pose increased threat to life and health in the regulatory act governing IDP accommodation which would set forth all necessary procedures for monitoring the building and checking whether individuals actually live there. This will ensure that decision would be justified and based on the examination of all important circumstances for the case.

13. Similar to previous years, main challenge remains the rights of individuals living in the buildings posing increased threat to life or health. Notably, over the past years an authority responsible for IDPs was changed several times. Presently, the Agency for IDPs and eco-Migrants is in charge of IDP cases. The above-mentioned changes were accompanied by an extended reorganization process causing the delay in various activities.

Proposal on the questions to be posed by the Committee in the List of issues in relation to the fifth periodic report of Georgia:

- **Please provide information on the accurate number of the so-called demolishing buildings where IDPs are settled and please indicate the concrete measures the state party plans to take to ensure increase of resettlement of IDPs from collective settlement buildings that pose threat to life and health;**
- **Please indicate whether the State party plans to adopt the rule of resettlement of IDPs containing formalized procedures for the resettlement of IDPs from buildings that pose increased threat to life and health.**

Freedom of Religious Belief - Paragraph 18 of Committee recommendations

14. Similar to the previous years, the state did not take any measures to study and return the places of worship seized during the Soviet period to their historical owners. Communication with the Administration of the Government of Georgia has not revealed any specific activities in this regard.
15. It should be underlined that Georgian legislation is yet to be formulated in such a way as to defend the equality of religious associations. In order to overcome discriminatory treatment, the Council of Religions at the PDO has issued recommendations to state entities during many years.²
16. In terms of discriminatory legal frameworks towards religious organizations it should be noted that Tax Code of Georgia exempts only the Patriarchate of the Georgian Orthodox Church from a number of taxes (profit, property, VAT, import). Other religious associations do not enjoy similar tax breaks. With its decision of 3 July 2018, the Constitutional Court found that the provision in the Tax Code whereby exemption from VAT applies to only the construction, restoration and painting of churches that are commissioned by the Patriarchate of Georgia, was inconsistent with the right of equality guaranteed under the constitution.

² 2017 recommendations of the Council of Religions at the PDO. Available at: < <https://bit.ly/2WNXKRr> > [accessed 13.10.2020].

17. The Court interpreted that a provision in the Constitution about an extraordinary historical role of the Orthodox Church does not imply the right to treat other religious associations unequally. For the enforcement of the judgment, the Constitutional Court set a reasonable time of six months (until 31 December 2018) to the Parliament to amend the disputed provision of the Tax Code in accordance with the Court decision so that it applied to all religious associations.
18. However, the Parliament did not make legislative changes and the unconstitutional provision was automatically invalidated on 31 December 2018.
19. In addition, at all three levels (early and preschool, general, higher) of the educational system, the freedom of religion and the issue of full religious neutrality continue to be a challenge.
20. In the early education system, the problem is the Law on Early and Preschool Education, which does not contain a provision requiring a religious neutrality and equality. According to representatives of the religious associations, kindergarten students often have to participate in religious rituals.
21. It is worth noting that the Early and Preschool Education Standard, adopted by the government of Georgia in 2017, which requires religious neutrality at this level of educational system, is not fulfilled, according to representatives of religious associations.
22. Nor are relevant prohibitions (of proselytism, indoctrination, display of religious symbols for nonacademic purposes) in the Law on General Education observed in public schools, according to representatives of religious associations. There are instances when for fears of being bullied and marginalized, students have to participate in Orthodox Christian religious rituals. Moreover, there are places of religious purpose arranged in a number of public schools.
23. According to information provided by representatives of religious associations, instances of humiliating treatment on the ground of religion by a segment of students and administrative personnel are also observed at the higher educational level, although the Law on Higher Education contains a provision prohibiting discrimination.

Proposal on the questions to be posed by the Committee in the List of issues in relation to the fifth periodic report of Georgia:

- **Please provide information on the measures taken/planned towards the restitution of religious buildings seized during the Soviet period to their historic owners;**
- **Comment on the funding and taxation system for religious associations, whether the existing system meets the requirements of equality and the neutrality of the state;**
- **Please indicate the measures taken to ensure the protection of religious neutrality and equality at an early and preschool education level.**

Rights of Minorities - Paragraph 19 of Committee recommendation

24. The rate of participation of national minorities in the decision-making process at the level of the national and local self-government is critically low. Moreover, engagement of population and participation in the decision-making process on the issues important directly for national minorities, as well as on the issues important for the whole country

remains to be problematic. Participation in the village assemblies or other activities is often formal and does not serve the goal of efficient engagement.

25. In addition, comprehensive fulfillment of the right of education at all levels of education remains to be a problem; scarcity of educational resources, quality of textbooks, problems with regards to re-training of teachers and other barriers cause reduction in the quality of education of national minorities and they need to exert special efforts to receive education at different levels of studies.
26. The issue of the teaching of the official language poses a particularly acute problem. Despite the operation of language learning program for years, from the perspective of outcomes, in view of the overall number of population, number of people, who know and use the official language is still low.
27. The issue of the civic integration and restoration of trust in Pankisi Gorge is still problematic. The situation of the Roma community is especially grave³ and no result-oriented steps are taken in this regard.
28. The Public Defender of Georgia considers it crucial that in the process of elaboration of the new strategy and action plan for the civic equality and integration all those challenges be taken into consideration that were revealed in the process of implementation of the present strategy and action plan. It is important that this process is planned and carried out with wide participation of the national minorities.

Proposal on the questions to be posed by the Committee in the List of issues in relation to the fifth periodic report of Georgia:

- **Please indicate the measures taken to enhance de facto participation and representation of national minorities in the decision-making process at the level of the national and local self-government.**
- **What measures are taken-planned to raise efficiency of operation and quality of education in the regions with compact settlements of national minorities.**

Gender equality – Article 3

29. Achieving gender equality also remains a challenge in Georgia. There is still a difference between average indicators of estimated earned income of sexes. The challenges existing in terms of reproductive health care and effective realization of rights are also negatively reflected on the legal status of women and the gender equality indicator.
30. Femicide also remains an alarming challenge in the country. This crime is a direct result of gender and social inequality in society. The use of gender stereotypes and incorrect legal assessment of the crime have been problematic for years, which impedes the prevention of femicide.⁴
31. There are shortcomings in terms of legislative regulation of crimes involving sexual violence and at the stage of investigation, criminal prosecution and court trial of such

³ Situation of Roma community is described in the Parliamentary Reports of 2006-2018 of the Public Defender

⁴ Femicide Monitoring Report 2014-2018 of the Public Defender of Georgia. Available at: <<https://bit.ly/2Za5Iny>> [accessed 13.10.2020].

cases. The low rate of identifying cases of human trafficking is another problem; more proactive efforts are necessary for identifying crime.⁵

32. Unfortunately, the practice of early marriage and engagement remains one of the most important challenges. There is no effective referral mechanism to identify and prevent incidents of early marriage and engagement.
33. Unfortunately, the analysis of information obtained by PDO in the reporting period makes it clear that women's participation on a decision-making level remains a challenge. The indicator of women in decision-making positions, including in executive, legislative and local self-government bodies, is critically low.
34. Lack of state funded projects and programmes directed at the empowerment of women remains a challenge. According to information requested by the Public Defender from self-government bodies, the majority of municipalities (70%) have not taken appropriate measures to empower women economically.⁶
35. There are numerous causes impeding women's economic empowerment in Georgia, but the most important factor of social and economic inequality is the indicator of property ownership, by which twice as many men are registered as owners of land than women. This indicator is a problem both on urban and rural levels.
36. Yet another important aspect of women's economic empowerment and exercise of labor rights is the situation regarding the rights of single and multi-children mothers. Although the ground for determining and terminating the status of a single mother has changed, assistance programs depend on the will of concrete municipalities and hence, cannot create relevant material guarantees countrywide. Also, social protection terms set as a result of determining the status of multi-children family do not cover the needs of multi-children families.
37. Moreover, access to contraceptives, related services and information remains a problem, largely due to stigma attached to contraceptives and women's sexuality, in general. Limited access to contraceptives, related services and information results in undesired pregnancies and abortions.
38. Another challenge is full integration of a comprehensive sexuality education into the formal education. According to PDO study, youngsters fully support the introduction of this educational component into schools and even more so, consider it to be their right. Nevertheless, school curricula contain only part of the comprehensive sexuality education, which mainly concerns early pregnancy, sexually transmitted diseases and sex-related physiological aspects.
39. Unfortunately, due to the increase in the number and influence of anti-gender groups, LGBT+ persons are still subjected to oppression, violence and discrimination. LGBT+ persons experience obstacles in terms of exercising their labour rights, right to health and social security and right to education.
40. According to the cases examined by the Public Defender of Georgia in recent years, the rate of violence against LGBT+ persons based on gender identity or sexual orientation remains high in the country. While private persons commit the majority of violations, the state stays inactive and does not fulfil its positive obligations.

⁵ Annual Parliamentary report of the Public Defender of Georgia – 2019.p.196. Available at: < <https://bit.ly/2B5qoFv> > [accessed 13.10.2020].

⁶ Assessment of Gender Policy of Local Self-Government Bodies with special emphasis on women's economic empowerment. Available at: <<https://bit.ly/3iljiKd>> [accessed 13.10.2020].

Proposal on the questions to be posed by the Committee in the List of issues in relation to the fifth periodic report of Georgia:

- **Please provide information on the measures taken to improve the legislation on crimes of sexual violence for the purpose of harmonization with international standards;**
- **Indicate the preventive measures taken to minimize/prevent forced marriage, illegal deprivation of liberty and sexual intercourse with minors;**
- **Provide Committee with the analysis of data on violence against women and domestic violence, in particular, analyze the data on violence against women and domestic violence between sexual partners, including same-sex partners, in order to study specific features of violence;**
- **What measures are being taken/planned to integrate a comprehensive sexuality education into the formal education.**
- **Indicate measures taken to ensure effective realization of the labour rights, right to health and social security and right to education by LGBT+ persons.**

Right to life - Article 6

41. Similar to previous years, investigation conducted into incidents of deprivation of life fails to meet the standard of an effective investigation. Questions posed in the high-profile cases of the previous years, unfortunately, remained unanswered to this date. In parallel, new problematic cases emerged raising the issue of state responsibility.⁷
42. In the 2018, Parliamentary Report⁸ Public Defender made proposal to the Parliament to amend the Organic Law of Georgia on the Public Defender of Georgia to the effect of vesting the Public Defender with the power to access case-files⁹ of pending investigation into cases involving ill-treatment and/or deprivation of life.¹⁰ Unfortunately, the parliament did not accept the Public Defender's proposal.
43. With regards to the right to life, PDO notes that the State Programme of Healthcare,¹¹ similar to 2019,¹² fails to incorporate monitoring and treatment of somatic (physical) health problems of psychiatric establishments' inpatients.
44. The need for the provision of adequate medical services to address somatic health problems of inpatients of psychiatric establishments is discussed in detail in the Special Report of the Public Defender of Georgia on Thematic Monitoring of the Academician B. Naneishvili National Centre for Mental Health.¹³

⁷ Annual Parliamentary report of the Public Defender of Georgia – 2019, p.41. Available at: < <https://bit.ly/2B5qoFv> > [accessed 13.10.2020].

⁸ Annual Parliamentary report of the Public Defender of Georgia – 2018. p. 33. Available at: < <https://bit.ly/2Zrsjwf> > [accessed 13.10.2020].

⁹ Under the legislation in force, the Public Defender does not have access to the case-files of ongoing investigations, the Organic Law of Georgia on the Public Defender of Georgia, Article 18.e).

¹⁰ See the Parliamentary Committee's conclusion no. 2-6694/19 of 12 April 2019, available at: <http://bit.ly/2J9lyq1>,

¹¹ Resolution no. 693 of the Government of Georgia of 31 December 2018 on Approving the 2019 State Healthcare Programmes, Annex no. 11 Mental Health (programme code 27 03 03 01).

¹² Resolution no. 693 of the Government of Georgia of 31 December 2018 on Approving the 2019 State Healthcare Programmes.

¹³ The Special Report of the Public Defender of Georgia on Thematic Monitoring of the Academician B. Naneishvili National Centre for Mental Health, available at: <https://bit.ly/3igh5Dc>

45. According to the Special Report mentioned above, several inpatients in the psychiatric establishment died from tuberculosis. However, medical cards maintained in the clinic did not contain any information about this diagnosis.¹⁴
46. It is, imperative for the state to take all necessary measures promptly to prevent deaths due to the failure to provide adequate care and treatment.
47. Regarding Temirlan Machalikashvili's case, it is a subject of the Public Defender's particular interest as a human life was taken through the use of force by state agents during a special operation planned and executed by the state.
48. The prosecutor's office instituted an investigation into Temirlan Machalikashvili's death under Article 333.3.b) of the Criminal Code of Georgia (exceeding official powers committed by use of force) and on 25 January 2020, by a final decision, discontinued the investigation due to the absence of a crime.
49. The Public Defender maintains that it is imperative to reopen an investigation into the deprivation of Temirlan Machalikashvili's life, as several important investigative actions have not been conducted.

Proposal on the questions to be posed by the Committee in the List of issues in relation to the fifth periodic report of Georgia:

- **Please provide information on what are the hindering factors to supply to the Office of the Public Defender of Georgia requested information regarding investigative and procedural actions within the framework of an ongoing investigations into deprivation of life;**
- **What measures are planned to amend the mental health programme to the effect of providing somatic healthcare services to the patients in mental establishments; and what steps have been taken to ensure accessibility to a general physician for inpatients of psychiatric establishments and their transportation to a medical clinic as a provisional measure.**

Rights to a fair trial – Article 14

50. In 2019, judges of the Supreme Court of Georgia were selected based on opaque procedures.¹⁵ The legislative framework in force was criticized by numerous local and international organizations.¹⁶ ¹⁷The existing regulations failed to ensure the selection of judges through duly transparent competition. The procedure allowed adopting arbitrary and unsubstantiated decisions.
51. Furthermore, there were persons among candidates, whose academic background gave rise to questions on whether the statutory requirement of the minimum academic degree was met.¹⁸

¹⁴ *Ibid.* p. 24.

¹⁵ Monitoring Report of the Public Defender of Georgia on the Selection of Supreme Court Judicial Candidates Available at: < <https://bit.ly/3eBJ8uJ> > [accessed 13.10.2020].

¹⁶ European Commission for Democracy through Law (Venice Commission), Urgent Opinion on the Selection and Appointment of Supreme Court Judges, available at: < <https://bit.ly/2wPtOoc> > [accessed 13.10.2020].

¹⁷ OSCE Office for Democratic Institutions and Human Rights (ODIHR), Opinion on Draft Amendments Relating to the Appointment of Supreme Court of Judges of Georgia. Available at: < <https://bit.ly/3nablaZ> > [accessed 13.10.2020].

¹⁸ Monitoring Report of the Public Defender of Georgia on the Selection of Supreme Court Judicial Candidates Available at: < <https://bit.ly/3eBJ8uJ> > [accessed 13.10.2020].

52. In the 2018 Parliamentary Report, the Public Defender paid particular attention to the importance of the procedure of electing common court judges. The Public Defender addressed the parliament with a proposal to reform the process of selection and appointment of judges so that the criteria are envisaged objectively; to ensure transparency and to abolish judicial appointments for a probationary period. Unfortunately, this proposal has not been fulfilled yet.
53. Another problematic issue identified by PDO is the difficulty to assess the legality of administrative arrests. Whenever a person challenges the legality of administrative arrest before a judge examining an administrative offence the judge does not examine the legality of the arrest and considers the issue in separate proceedings. The Public Defender of Georgia observes that the legality of administrative arrest should be assessed by a judge when examining an administrative offence, similar to criminal procedure.
54. PDO observed on numerous occasions that the Code of Administrative offences adopted during the Soviet period needs to be replaced and, to this end, it is necessary to draft a new code as the existing code fails to meet even the minimum standard of compliance with human rights and fundamental freedoms regarding due process rights.

Proposal on the questions to be posed by the Committee in the List of issues in relation to the fifth periodic report of Georgia:

- **Please provide information on the legislative framework of selection of Supreme Court judicial candidates indicating the guarantees for transparency and credibility of the selection process and its full compliance with Venice Commission and OSCE/ODIHR recommendations;**
- **What steps have been taken to carry out reform of the process of selection and appointment of judges so that criteria are envisaged objectively; and with regards to abolishing the judicial appointments for probationary period;**
- **Please indicate whether the State party plans to adopt a new Code of Administrative Offences.**

Freedom of Expression – Article 19

55. Georgia's media landscape is pluralist but rather polarized. According to the 2019 World Press Freedom Index of the Reporters Without Borders, Georgia ranks 60th among 180 countries worldwide. With regard to challenges to media environment, the organization named the interference of media owners into editorial policy and the investigation into the case of Azerbaijani journalist Afgan Mukhtarli's abduction in the Georgian capital in 2017, which has not shown convincing explanation or progress to date.¹⁹
56. Pressing questions have been arisen regarding the attempt to modify the free and impartial editorial policy of the Adjara TV and Radio of the Public Broadcaster (APB)

¹⁹ Reporters Without Borders' 2019 World Press Freedom Index, Georgia. Available at: < <https://rsf.org/en/georgia> > [accessed 13.10.2020].

as a result of the impeachment of its director, Natia Kapanadze in 2019.²⁰ In relation to the events developed in Adjara TV, the Public Defender of Georgia addressed Irene Khan, newly elected UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and Harlem Désir, OSCE Representative on Freedom of the Media.²¹

57. After the judgment of the European Court of Human rights on 18 July 2019,²² the most popular opposition TV Company, Rustavi 2, was returned to its former owner. Consequently, the general director, head of the news service and journalists of talk shows were dismissed, while several employees quit the broadcaster on their own initiative.²³ Such changes reflected on the broadcaster's editorial policy and jeopardized pluralistic media environment in the Country. However, shortly afterwards, two new critical media outlets, Mtavari Arkhi and Formula, started broadcasting, employing many former Rustavi 2 staff.²⁴
58. It is noteworthy that since 2012, the prosecutor's Office of Georgia has been investigating the fact of forced transfer of property rights of Rustavi 2 by its founders.²⁵ Hence, questions about the ownership of the media outlet has not been fully answered yet. In 2020, the founders of Rustavi 2 also launched a civil dispute regarding the ownership of the broadcasting company.
59. Moreover, 2019 was punctuated with multiple criminal cases conducted directly or indirectly against owners of independent TV companies. This gives rise to questions about the attempts to persecute independent and critical media in the country.²⁶
60. Even though 2019 was not marked with frequent attacks on journalists, the dispersal of assembly with tear gas and rubber bullets on 20-21 June resulted in injuring of up to 40 media representatives. Some of them claimed that police deliberately shot rubber bullets at them even though law enforcers could identify their status.²⁷
61. Yet another noteworthy matter in the context of media freedom is the absence of proper data on every kind of alleged offences committed against journalists because of their professional activity. This makes it difficult to obtain comprehensive information about such facts and to assess the quality and effectiveness of responses to them.²⁸
62. It should be noted that PDO expressed its concern regarding legislative initiative envisaging to restrict freedom of expression and endanger significant guarantees of this right in the country. According to proposed changes, a number of self-regulated

²⁰ Public Defender Addressed Adjara TV Director with Recommendations on Restoration of Former and Current Employees' Rights. Available at: < <https://bit.ly/2VIYyLU> > [accessed 13.10.2020]., < <https://bit.ly/2G8kAxx> > [accessed 13.10.2020].

²¹ Statement of Public Defender is available at: < <https://bit.ly/3cDBWxZ> > [accessed 13.10.2020].

²² Statement of Public Defender is available at: < <https://bit.ly/3cF4uHj> > [accessed 13.10.2020].

²³ Annual Parliamentary report of the Public Defender of Georgia – 2019, pp.175-176. Available at: < <https://bit.ly/3kWcmqL> > [accessed 13.10.2020].

²⁴ Ibid.

²⁵ Public Defender's statement on the Investigation is available at: < <https://bit.ly/3l2Duoh> > [accessed 13.10.2020].

²⁶ Annual Parliamentary report of the Public Defender of Georgia – 2019, pp. 177-179. Available at: < <https://bit.ly/3kWcmqL> > [accessed 13.10.2020].

²⁷ Annual Parliamentary report of the Public Defender of Georgia – 2019, p.185. Available at: < <https://bit.ly/2G1kDLv> > [accessed 13.10.2020].

²⁸ Annual Parliamentary report of the Public Defender of Georgia – 2019, p.174. Available at: < <https://bit.ly/2G1kDLv> > [accessed 13.10.2020].

issues²⁹ will fall within the remit of the Georgian National Communications Commission (GNCC) or court.³⁰

63. In Public Defender's assessment, the proposed legislative amendments create a possibility of interfering in the content of media programs, which will adversely affect the country's high standard of freedom of expression.

Proposal on the questions to be posed by the Committee in the List of issues in relation to the fifth periodic report of Georgia:

Please provide information on the measures taken to ensure non-interference by the state in the editorial independence of Broadcasting so as to guarantee the free and impartial editorial policy of the Adjara TV and Radio of the Public Broadcaster (APB) and to safeguard the freedom of expression of its journalists.

Freedom of Assembly – Article 21

64. In recent years, the failure to adopt measures to avoid confrontations among groups with different opinions and to prevent unlawful actions from demonstrators was identified as a particular problem; in some cases, disproportionate and unjustified force was used against peaceful demonstrators.
65. In the reporting period, there were numerous incidents involving radical groups who interfered with the right of freedom of expression and assembly of members of the LGBT+ community and their supporters. On such occasions, difference in state's response to violent groups, who under the guise of exercising the right to assembly tried to grossly and violently infringe the rights of others, was obvious.³¹
66. In November 2019, incidents took place during attempts to disrupt the screening of a queer film "And then We Danced" in Tbilisi and Batumi. Although the radical groups announced their violent intentions several days before the premiere, no effective measures were taken in order to prevent demonstrators' illegal actions. In Public Defender's assessment, the main problem lied in the government viewing ultra-right groups as persons with different opinion exercising their right and applying those legal standards to threats emanating from them, which guarantees the right to assembly and expression of people protecting their rights and promoting equality in a peaceful manner.³²
67. The right to assembly was unfairly restricted in the process of organizing the "March of Dignity" planned by the movement, Tbilisi Pride, in June 2019. Although organizers of the "March of Dignity" started negotiations on safety issues with the government

²⁹ This implies program restrictions envisaged in Article 56 of the Law of Georgia on Broadcasting: war propaganda; Broadcasting of programs containing the apparent and direct threat of inciting racial, ethnic, religious or other hatred in any form and the threat of encouraging discrimination or violence toward any group; Broadcasting of programs intended to abuse or discriminate against any person or group on the basis of disability, ethnic origin, religion, opinion, gender, sexual orientation or on the basis of any other feature or status, or which are intended to highlight this feature or status, except when this is necessary due to the content of a program and when it is targeted to illustrate existing hatred; Broadcasting of programs having harmful influence on the physical, intellectual and moral development of children and adolescents at times when they are most likely to be viewed or listened to, are prohibited.

³⁰ Draft Law on amendments to the Law of Georgia on Broadcasting, part 25, available at: < <https://bit.ly/2RQuVzL> > [accessed 13.10.2020].

³¹ Annual Parliamentary report of the Public Defender of Georgia – 2019.p.187. Available at: < <https://bit.ly/2G1kDLv> > [accessed 13.10.2020].

³² Annual Parliamentary report of the Public Defender of Georgia – 2019.pp.187-190. Available at: < <https://bit.ly/2G1kDLv> > [accessed 13.10.2020].

several months earlier, they were not able to hold the march in a planned format. Representatives of the Ministry of Internal Affairs informed members of Tbilisi Pride that considering safety risks to participants it would be impossible to hold the event in the form as planned by the organizers and offered them to conduct “March of Dignity” indoors. In this particular case a properly substantiated decision on restricting the right to assembly was not made, which cannot be replaced by general explanation of the Ministry.³³

68. Problems concerning the exercise of the right to freedom of assembly were especially apparent on 20-21 June 2019, when the assembly was dispersed with the use of force in response to violent acts carried out by a segment of protesters. The use of tear gas, rubber bullets and water cannons by law enforcement officers resulted in injuring more than 200 people.
69. According to Public Defender, the force used for the dispersal of the rally on 20-21 June, especially the use of non-lethal bullets, absence of decree in accordance with the legislation, the number of bullets (several hundreds) and shooters (several dozens), the size of location (outside the parliament as well as other sections of Rustaveli Avenue), duration (a span of several hours), the number of injured protesters and the degree of injuries, cannot be considered proportionate.
70. Furthermore, the monitoring showed that before resorting to force, the authorities failed to carry out their statutory duties, which include warning the demonstrators in a clear and understandable manner about the use of special means.³⁴
71. Considering the problems in the exercise of freedom of assembly, the Public Defender published a special report assessing the legal system regulating the exercise of this right and its enforcement mechanisms. The special report highlighted a number of shortcomings on legislative level, including, absence of provisions regulating different forms of assemblies (e.g. spontaneous and simultaneous assemblies), insufficient regulation of the prior warning standard, blanket legislative provisions that ban assemblies in particular locations, and rather general character of legislative framework ensuring the protection of journalists during assemblies.

Proposal on the questions to be posed by the Committee in the List of issues in relation to the fifth periodic report of Georgia:

- **Please provide information on the measures taken to avoid violent actions for ensuring a peaceful conduct of spontaneous or preplanned rallies and counter-rallies.**
- **What measures are being taken/planned to ensure realization of the right to freedom of assembly of LGBT plus community;**
- **Please provide information on the investigation into the alleged excessive use of force by law enforcement officers against journalists and peaceful demonstrators during the 20-21 June 2019 demonstration, on the sanctions imposed on perpetrators; and on the remedies provided to victims.**

³³ Annual Parliamentary report of the Public Defender of Georgia – 2019, p. 190. Available at: < <https://bit.ly/2G1kDLv> > [accessed 13.10.2020].

³⁴ Annual Parliamentary report of the Public Defender of Georgia – 2019, p. 184. Available at: < <https://bit.ly/2G1kDLv> > [accessed 13.10.2020].

Prohibition and Investigation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

72. An effective investigation into incidents of alleged ill-treatment by law enforcement officers has been a systemic problem for the country. Before the State Inspector's Service became operational on 1st November 2019 the trend of instituting investigations into incidents of alleged ill-treatment had been maintained especially where such crimes were reported by the Office of the Public Defender or NGOs.
73. In 2019 PDO reviewed 38 completed criminal law cases in total investigated by the Prosecutor's Office of Georgia. The main findings are that: the problem of conducting investigation in a timely manner has remained problematic, investigation often starts late and investigative actions are conducted in unreasonably long intervals. Investigations initiated by investigative authorities are usually protracted without an outcome for years. The review of these cases revealed the delays in carrying out such main investigative actions, that may significantly and negatively affect the results of case investigation, and legitimate purpose or reason for such delay was impossible to identify from the case files. There were also cases where the investigation was already initiated, however, in practice, investigative actions were carried out only after the Public Defender addressed the Prosecutor's Office with a proposal to conduct investigative actions, such as, questioning of the victim, witnesses and alleged perpetrators.
74. It should be noted that in 11 cases out of 38, the investigation started with several days of delay and in certain cases, even months. Namely, this concerns cases, where the investigation body was aware of the alleged fact of ill-treatment against the person, however, the Prosecutor's Office delayed institution of investigation for an unreasonable period of time.
75. PDO welcomes the creation of the State Inspector's Service and it becoming operational. Public Defender hopes that with the active efforts of the State Inspector's Service the problem of an effective investigation of ill-treatment will be solved. In addition, Public Defender commends active communication maintained by the State Inspector's Service with the Public Defender's Office from the first day of its creation and supplying detailed information about investigative actions conducted.
76. However, problematic issues provided above remain and it is crucial that Prosecutor's Office has effective response to them, since these deficiencies are addressed to it.
77. The events developed in front of the parliament building on the night of June 20-21, 2019 became the most important episode in the recent history of Georgia. The use of special equipment against people gathered on Rustaveli Avenue became an accompanying part of the country's political life and led to many months of continuous protests.
78. On June 21, the Public Defender publicly demanded an investigation into the disproportionate use of force against protesters, use of excessive force against detainees, violence against journalists and interference with their activities.
79. The Office of the Prosecutor General of Georgia initiated an investigation into abuse of official powers by certain officers of the Ministry of Internal Affairs of Georgia when dispersing the demonstration on 20-21 June. The investigation is still pending. Representatives of the Public Defender have been studying the case-files periodically.

80. The main trend of the investigation is that it is focused on identifying criminal actions of individual law enforcement officers and assessing their individual roles; the investigation is not aimed at establishing the scope of responsibility of superior officials in charge.
81. Besides, it is problematic that many investigative actions, which in the Public Defender's opinion, are necessary to ensure the effectiveness of the investigation, have not been conducted (for instance, various portable radio recordings have not been obtained or there has been no forensic examination of certain recordings, etc. The Public Defender's proposal about instituting criminal responsibility has not been fulfilled to this day.
82. It is noteworthy that in the Report of the United Nations High Commissioner for Human Rights on cooperation with Georgia, OHCHR recommended the Government of Georgia to implement the recommendations of the Public Defender concerning the investigations into the events of 20–21 June 2019 in Tbilisi.
83. The prisoners face obstacles in establishments when exercising their right to a request/complaint. Confidentiality of requests/complaints is not secured in prison establishments.³⁵
84. According to prisoners, complaints are not recommended as they run counter to the informal rule (sub-culture). The representatives of Public Defender's Office witnessed an incident when a prisoner was going to discuss health problems and other prisoners silenced him. Unfortunately, along with the strengthening of the influence of the informal rules, the number of applications lodged from semi-open prison facilities with the Public Defender is reduced.
85. It should be noted that on 21 January 2020, the Public Defender (Ombudsman) presented its special report to the Georgian Parliament's Committee on Human Rights and Civil Integration to raise its concerns that some prison administrations were allowing systems of "informal governance" by inmates, resulting in risk of violence and ill-treatment. During this parliamentary hearing, and as a response to these findings, the Minister of Justice discredited the report and questioned the professionalism of the Public Defender's Office. The Minister of Justice also exposed several video recordings of meetings between the Georgian Public Defender's representatives and prisoners, and the same videos were published on the social media of the Ministry of Justice, without any regard to privacy or confidentiality safeguards. Days later, penitentiary staff notified the media and announced online and on social media the names of prisoners with whom the Ombudsperson had met. The identities of persons met by the Public Defender or his/her representatives shall be confidential and its disclosure represents interference with the Public Defender's activities for the purpose of influencing him/her and hampering his/her work. These unfortunate developments clearly demonstrate attempted Interference with and influence on the Public Defender's Activities.
86. As for the identification and documentation of the injuries found on the body of a prisoner in a penitentiary institution, under the existing regulations, a medical professional employed in a penitentiary establishment has the duty to report an injury found on a prisoner's body to the General Inspection of the Ministry of Justice of

³⁵ The Special Report of the Public Defender of Georgia The National Preventive Mechanism The Report on Monitoring Visits to Penitentiary Establishments nos. 2, 8, 14 and 15. Available at: < <https://bit.ly/33ZF7Mn> > [accessed 13.10.2020].

Georgia. The latter is a structural unit of the Ministry of Justice and is not independent or impartial institutionally.

Proposal on the questions to be posed by the Committee in the List of issues in relation to the fifth periodic report of Georgia:

- **Please respond to reports that investigations into allegations of torture and inhuman or degrading treatment which allegedly have taken place before November 1st, 2019, are often delayed and ineffective;**
- **Please indicate whether the State party plans to adopt normative changes to the effect of determining the duty of a doctor employed in a penitentiary establishment to report to the independent investigative agency – the State Inspector’s Service of Georgia – alleged incidents of ill-treatment;**
- **Please provide information on the steps taken to overcome the criminal underworld and its informal rule in penitentiary establishments;**
- **Please provide evidence that the implementation of the National Preventive Mechanism mandate (Public Defender of Georgia) is not hindered, confidentiality is maintained and an effective response is made to each alleged violation.**