

Submission of the Public Defender (Ombudsman) of Georgia to the Universal Periodic Review
(UPR) 37th Session (January-February 2021)

INTRODUCTION

1. In fulfilment of its mandate as Georgia's National Human Rights Institution, the Public Defender's Office of Georgia (hereinafter PDO) submits its report to contribute to the UPR procedure regarding Georgia.
2. Public Defender of Georgia welcomes the Governments efforts aimed at improving the country's current human rights situation. At the same time, PDO deems it necessary to comment on the main issues of concern, which remain to be resolved, including ones which have not yet been mentioned in UPR recommendations to Georgia.
3. Most of the issues covered in this document are systematic and the information provided fully covers the UPR reporting period.
4. This report focuses on areas that PDO considers to be of particular importance. The report largely builds on recommendations from the second review cycle. In addition, new human rights-related challenges have been included.
5. In addition to the main submission, the contribution includes a table which provides an update on Georgia's progress since 2015 on the UPR recommendations that enjoyed the support of Georgia and fall under the mandate of the Public Defender of Georgia (Annex 1).

RIGHT TO LIFE

6. In the reporting period investigation conducted into incidents of deprivation of life failed 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.¹
7. In the 2018 Parliamentary Report² 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-files³ of cases involving ill-treatment and/or deprivation of life before the termination of investigations.⁴ Unfortunately, the parliament did not accept the Public Defender's proposal.
8. With regards to the right to life PDO notes that in the reporting period, the State Programme of Healthcare,⁵ similar to 2020,⁶ failed to incorporate monitoring and treatment of somatic (physical) health problems of psychiatric establishments' inpatients.

¹ Annual Parliamentary report of the Public Defender of Georgia – 2019.p.41. Available at: < <https://bit.ly/2B5qoFv> >

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

³ 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).

⁴ See the Parliamentary Committee's conclusion no. 2-6694/19 of 12 April 2019, available at: <http://bit.ly/2J9lyq1>,

⁵ 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).

⁶ Resolution no. 693 of the Government of Georgia of 31 December 2018 on Approving the 2019 State Healthcare Programmes.

9. 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.⁷
10. 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.⁸
11. 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.

PREVENTION AND INVESTIGATION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

12. Similar to the previous years, the fight against ill-treatment remains a challenge.⁹ In terms of treatment of arrested persons by police, compared to 2018, the situation did not change in 2019 and the trend of worsening of treatment of persons arrested in administrative proceedings continues. It is noteworthy that, in 2019, there were also cases of alleged ill-treatment of juveniles.
13. Under the current regulation a doctor in penitentiary system still reports a suspicious case of torture or other ill-treatment to the Investigative Department of the Ministry of Justice – an agency institutionally linked with the Special Preventive Service and not to the independent investigative body- State Inspector's Service, which undermines the effective investigation of alleged incidents of ill-treatment.
14. An effective investigation into the alleged ill-treatment by law enforcement remains a systemic problem. As part of the investigation launched on the basis of 107 proposals sent to the Prosecutor's Office by the Public Defender in 2013-2019, the responsible person was not identified in any of the cases.¹⁰
15. The following issues remain problematic in the penitentiary system: lack of procedural and institutional safeguards against ill-treatment; maintaining order and security in penitentiary establishments; ensuring adequate conditions of imprisonment; shortage of activities aimed at prisoners' rehabilitation and resocialization and lack of their contact with the outside world; shortcomings in medical care and preventive health care, and mental health care.
16. In 2019, the Public Defender was particularly concerned about the informal rule existing in penitentiary establishments and its influence on the protection of prisoners' rights.¹¹ The establishments, where the impact of informal governance is high, are characterized by physical and severe psychological violence among prisoners. PDO found that prisoners are not properly aware of their rights and responsibilities and refuse to

⁷ 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>

⁸ *Ibid.* p. 24.

⁹ Annual Parliamentary reports of the Public Defender of Georgia. Available at: < <https://bit.ly/2Vh0VzF> >

¹⁰ Special report of the Public Defender of Georgia on Effectiveness of investigation into criminal cases of ill-treatment < <https://bit.ly/3g0bAXb> >

¹¹ Public Defender's Report on the Monitoring Carried out in Four Penitentiary Establishments. Available at: < <https://bit.ly/31IPZok> >

exercise their right to complain due to the influence of criminal subculture and fear of repression.

17. Psychiatric institutions are still not required to develop an internal guideline document for the prevention of crisis cases, nor for to ensure the prevention of crisis cases. In addition, the Parliament of Georgia did not take into account the recommendation of the Public Defender on the use of various methods of de-escalation.

ECONOMIC AND SOCIAL RIGHTS

18. Similar to the previous years, along with the difficult socio-economic situation in the country, environmental issues remained one of the main challenges. The following issues are particularly relevant in this regard: ineffectiveness of the measures carried out for improving the quality of air and realisation of the right to fresh air; need for legislative amendments to ensure the safety of natural gas consumption and their effective implementation; faulty regulations related to constructions; failure to take into account human rights in the practical implementation of large-scale infrastructural projects; the persisting problem related to the absence of policy related to the construction of hydropower plants and an inadequate process of environmental impact assessment.¹²
19. The Public Defender maintains that, concerning the right to health, the effective implementation of universal, primary and anti-cancer health programmes remained challenging.
20. The monitoring conducted in 2019 by PDO revealed serious problems related to infrastructure (faulty buildings and communication systems, inadequate sanitation and hygiene systems) and lack of qualified support personnel (nurses) in 17 various municipalities of Georgia. Problems related to the accessibility of medicines, active and consistent policy regarding their quality are particularly serious; there is a considerable deficit in terms of healthcare professionals as well.¹³
21. In 2019, the Public Defender's Office supervised the protection of the right to social security. In this regard, despite positive changes in the methodology of surveying socio-economic situation in the reporting period, administering the terms of determining subsistence allowance and accessibility of the right to adequate food/free canteens remained problematic.¹⁴
22. Similar to the previous years, there is still no governmental strategy or a corresponding action plan for homeless persons; comprehensive legislative definition of a homeless person and regulatory framework necessary for the realisation of the right to adequate housing.¹⁵
23. In the reporting period the Public Defender scrutinised the legal status of internally displaced persons (IDPs) who are faced with various problems, for instance, living in dilapidating buildings. Unfortunately, the measures taken by the state in this regard were not sufficient and some IDPs continue to live in buildings and constructions that are dangerous to live in. In this regard, it is noteworthy that, in 2019, there were fewer

¹² Annual Parliamentary reports of the Public Defender of Georgia – 2019. Available at: < <https://bit.ly/2ZsOclB> >

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

families resettled from the so-called dilapidating facilities, which is evaluated negatively by the Public Defender.¹⁶

RIGHT TO A FAIR TRIAL

24. During the reporting period judges of the Supreme Court of Georgia were selected based on opaque procedures.¹⁷ The legislative framework in force was criticised by numerous local and international organisations. The existing regulations failed to ensure the selection of judges through duly transparent competition. The procedure allowed adopting arbitrary and unsubstantiated decisions.
25. 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
26. The Public Defender of Georgia challenged the legislation governing the selection of candidates for the positions of Supreme Court judges before the Constitutional Court.¹⁹

EQUALITY

27. The Public Defender commends the legislative changes made in February and May 2019 to the effect of extending the binding mechanism of enforcing the Public Defender's mandate of anti-discrimination mechanism to individuals, similar to subjects of public law.
28. Determining sexual harassment as an administrative violation is also commendable; The Law of Georgia on the Elimination of All Forms of Discrimination also determined harassment and sexual harassment as forms of discrimination. However, it should be pointed out that denial of reasonable accommodation, as a form of discrimination based on disability still has not become a part of Georgian legislation.
29. The state hardly takes any adequate measures to overcome stereotypes and wrong perceptions about vulnerable groups that exist in the public and cause discrimination. Women, PWDs and representatives of the LGBT+ community remain to be the most vulnerable groups. The situation in terms of equality of religious and ethnic minorities is also critical.²⁰
30. The absence of a state programme tailored to the physiological and psycho-emotional needs of female victims of sexual assault remains problematic; access to maternity, childbirth and childcare leave for those employed in the private sector remains to be a challenge. Equality of persons with disabilities remains also unsettled.²¹

GENDER EQUALITY

¹⁶ Ibid.

¹⁷ Monitoring Report of the Public Defender of Georgia on the Selection of Supreme Court Judicial Candidates Available at: < <https://bit.ly/3eBJ8uJ> >

¹⁸ Ibid.

¹⁹ Constitutional Lawsuit of the Public Defender relating to the Rule of Selection of Supreme Court Judges. Available at: < <https://bit.ly/3eBFKQh> >

²⁰ Special Report of the Public Defender of Georgia on Combating and Preventing Discrimination and the State of Equality. Available at: < <https://bit.ly/3i1yAXX> >

²¹ Ibid.

31. 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 realisation of rights are also negatively reflected on the legal status of women and the gender equality indicator.
32. 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 5 years, which impedes the prevention of femicide.²²
33. Moreover, prevention of murder/attempted murder as a result of domestic violence as well as serious harm to health remains problematic. There have been no concrete measures taken to fight violence against women and domestic violence in terms of social work.
34. 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 cases. The low rate of identifying cases of human trafficking is another problem; more proactive efforts are necessary for identifying crime.²³
35. 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.
36. Lack of projects and programmes directed at the empowerment of women remains a challenge
37. Due to the increase in the number and influence of homophobic and 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.
38. 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.

FREEDOM OF EXPRESSION

39. In terms of the realisation of freedom of expression it was particularly problematic to ensure free and pluralist media environment in the reporting period. There were pressing questions regarding the attempt to modify the editorial policy, which was critical of the government, of the Adjara TV.²⁴ The reporting period was also punctuated with multiple

²² Femicide Monitoring Report 2014-2018 of the Public Defender of Georgia. Available at: <<https://bit.ly/2Za5Iny>>

²³ Annual Parliamentary report of the Public Defender of Georgia – 2019.p.196. Available at: < <https://bit.ly/2B5qoFv> >

²⁴ Public Defender Addresses Adjara TV Director with Recommendation on Restoration of Former and Current Employees' Labour Rights. Available at: < <https://bit.ly/2VIYyLU> >

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.²⁵

40. 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 issues²⁶ will fall within the remit of the Georgian National Communications Commission (GNCC) or court.²⁷
41. 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.

RIGHTS OF THE CHILD

42. 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 a commendable step forward. Nonetheless, full and efficient implementation of children's right still faces number of unsolved problems in the country.²⁸
43. Deficiencies in the system of social protection of children – scarcity of children's programs and lack of efficiency of available programs, as well as the lack of sufficient numbers of social workers and psychologists negatively affect the level of protection from poverty and abuse, including sexual abuse of children, particularly of minors in the state care.
44. It should be also pointed Georgian legislation still has not determined in express terms proportionate and effective measures of responsibility for corporal punishment of children imposed under administrative or criminal law.
45. There are no psychosocial protection and support systems for children; the child suicide prevention strategy has not been elaborated to this day.
46. Protection from violence and rehabilitation of children placed in state care remain problematic in the country. Protection of beneficiaries placed in small family-type homes from sexual violence is also critical; the indicator of leaving schools is high; children living and working in streets, marrying at a young age and involved in manual labour are particularly vulnerable.
47. The issue of qualification of professionals working with children, especially those employed in secondary education establishments remains problematic in terms of timely

²⁵ Annual Parliamentary report of the Public Defender of Georgia – 2019.p.228. Available at: < <https://bit.ly/2B5qoFv> >

²⁶ 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.

²⁷ Draft Law on amendments to the Law of Georgia on Broadcasting, part 25, available at:< <https://bit.ly/2RQuVzL> >

²⁸ Annual Parliamentary report of the Public Defender of Georgia – 2019 P. 321. Available at: <<https://bit.ly/2B5qoFv>>

identification of incidents of violence and responses that are oriented to the best interests of a child.

48. State still does not have a uniform policy – strategy and action plan – to overcome violence, in particular, bullying.

PROTECTION OF THE RIGHTS OF PERSONS WITH DISABILITIES

49. Similar to the previous years, there are still numerous challenges in terms of equal and effective realisation of the rights of persons with disabilities (PWDs). No significant steps have been made towards the implementation of the United Nations Convention on the Rights of Persons with Disabilities (CRPD); no agency has been designated to be responsible for the coordination of this process, and the Optional Protocol to the CRPD has not been ratified to this day.
50. It is particularly problematic that the state is unable to ensure the accessibility of rehabilitation services for adult PWDs; measures taken in the field of mental healthcare for protecting the rights of persons with psychiatric problems are not sufficient; the number of community services is low, and their geographical coverage is not sufficient. Furthermore, during last years, there was no improvement in terms of the realisation of the right of PWDs to be involved in the country's political and social life.
51. Public Defender expresses concern over state's failure to provide equal and proper engagement platform for all organizations working on PWDs rights and PWDs themselves in the process of drafting law on the Rights of Persons with Disabilities and making relevant amendments.
52. Furthermore, in June 2020, the draft Law on amending the Law of Georgia on Psychiatric Care was adopted by the Parliament of Georgia.

HUMAN RIGHTS DEFENDERS

53. During reporting period NGOs and activists working in Georgia continued to face numerous challenges including discreditation attempts, verbal and physical assaults, and intimidation. These challenges particularly affected defenders of women's and LGBT+ rights since the line of work that they pursue aim to deconstruct stereotypes deeply rooted in the society.²⁹
54. Sadly, the reporting period saw statements made by representatives of the ruling political party against local and international NGOs with the intention to discredit the work of the latter.³⁰ The Public Defender stresses that this pattern contradicts the obligation of public officials to refrain from running a campaign against human rights defenders and their work, publicly acknowledge the urgency of their protection and

²⁹ Annual Parliamentary report of the Public Defender of Georgia – 2019 Available at: <<https://bit.ly/2B5qoFv>>

³⁰ One of these statements were made by one of the leaders of the parliamentary majority on 9 January 2019 accusing NGOs of pursuing their political agenda. The statement is available in Georgian at: <<https://bit.ly/37MFNp3>>, <<https://bit.ly/2S9GBxN>> ; On 22 March 2019, Speaker of the Parliament of Georgia labelled NGOs "GONGOs" of the National Movement" and slammed them for being "biased". On the same day the Minister of Justice criticized the work of the NGOs for lacking impartiality and professionalism. These statements are available at: <<https://bit.ly/2UdDQOH>>, <<https://bit.ly/2UdEawT>>, <<https://bit.ly/2Scs30u>> ; On 27 November 2019, the chair of the ruling party made a statement discrediting reputable international organizations as lapdogs of the National Movement. Available at: <<https://bit.ly/2S3Om8k>>

highlight the importance of their work even when the former do not approve the work of the incumbent authorities.³¹

FREEDOM OF ASSEMBLY

55. In recent years the failure to adopt measures to prevent confrontations among groups with different opinions was identified as a particular problem; in some cases, disproportionate and unjustified force was used against peaceful demonstrators.
56. 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. There were no adequate measures taken to stop demonstrators' illegal actions;
57. Problems concerning the exercise of the right to freedom of assembly assumed particularly serious nature during the events unfolded on 20-21 June 2019. 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. Disproportionate and unjustified force was used against peaceful demonstrators.

³¹Annual Parliamentary report of the Public Defender of Georgia – 2019. P.256. Available at: <<https://bit.ly/2B5qoFv>>