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Access Now and Media Development Foundation: Joint Submission to the United Nations Human Rights Council on the Universal Periodic Review 37th Session Third Cycle for Georgia

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About Access Now

Access Now is an international organisation that works to defend and extend the digital rights of users at risk around the world. Through representation around the world, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the continued openness of the internet and the protection of fundamental rights. By combining direct technical support, comprehensive policy engagement, global advocacy, grassroots grantmaking, legal interventions and convenings such as RightsCon, we fight for human rights in the digital age. As an ECOSOC accredited organisation, Access Now routinely engages with the United Nations in support of our mission to extend and defend human rights in the digital age.¹

About Media Development Foundation (MDF)

Media Development Foundation (MDF) is a leading Georgian NGO aimed at supporting free and pluralistic media environment, open and inclusive society and contributes to resilience building by promotion of conscious media consumption. MDF examines Information influence activities by foreign countries and coordinated inauthentic behavior (CIB) of foreign and local actors. With its well-established media literacy programs and experienced fact-checkers, MDF aims to promote critical thinking in media consumers and to raise awareness on the importance of fighting fake news. MDF's fact-checking portal Myth Detector is a verified signature of the International Fact-Checking Network (IFCN) of the Poynter Institute. MDF has long established cooperating with EUvsDisinfo - the flagship project of the European External Action Service's East StratCom Task Force and is a member of the Open Information Partnership (OIP)².

Introduction

1. The Universal Periodic Review (UPR) is an important United Nations (UN) process aimed at addressing human rights issues all across the globe. Access Now and MDF welcome this opportunity to contribute to Georgia's third UPR review cycle. Georgia has participated in two UPR review cycles: 28 January 2011 and 10 November 2015 respectively.³

¹ Access Now, [Access Now About Us](#).

² MDF, <http://mdfgeorgia.ge/eng/page/17/>

³ UN Human Rights Council, [Universal Periodic Review - Georgia](#).

2. This submission addresses the state of digital rights including freedom of expression, access to information and the right to privacy. Freedom of expression, access to information and the right to privacy remain priority issues for Georgia.

Domestic and international human rights obligations

3. Georgia has ratified several international human rights instruments, including: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁴
4. In 2017, Georgia promoted significant changes to its constitutional system. The new constitution affirms several judicially enforceable fundamental rights, including the rights to privacy (Article 15), freedom of expression (Article 17), access to public information (Article 18) and freedom of assembly and association (Articles 21 and 22).⁵
5. The new constitutional text also brings a groundbreaking provision, which is the recognition of the access to the internet as a fundamental right (Article 17). Similarly to the right to freedom of expression, however, the right to access to the internet may be subject to restrictions "in accordance with law, insofar as is necessary in a democratic society for ensuring national security, public safety or territorial integrity, for the protection of the rights of others, for the prevention of the disclosure of information recognised as confidential, or for ensuring the independence and impartiality of the judiciary."⁶
6. Georgia has a personal data protection legislation dated 2011.⁷ Article 4 sets out various principles for the processing of personal data in Georgia, including the principles of purpose limitation, data accuracy, and data minimization. Article 5 establishes the grounds for the processing of personal data, requiring, for instance, prior consent from the data subject. Articles 9 and 10 allow for the processing of biometric data by public agencies, as well as legal entities and natural persons, under the terms defined by the law. Article 9(2) expressly authorizes the collection of biometric data for the purpose of issuing identity documents. Articles 11, 12 and 13, further provide the conditions under which public and private actors may deploy video surveillance. Worryingly, the law vaguely authorizes the use of video surveillance "to prevent crime, for human safety reasons, to protect property and public order, or to prevent minors from harmful influence."⁸ This wide permissibility may give space for mass and harmful surveillance over citizens in Georgia.
7. Chapter IV provides various data subjects rights, including the individual's right to request information on the processing of his/her personal data, or the deletion of such data. Additionally, Chapter V establishes a Personal Data Protection Inspector, which oversees the legality of data processing in Georgia.

⁴ OHCHR, [Status of Ratification Dashboard](#).

⁵ [Constitution of Georgia](#) (as amended in 2018)

⁶ *Id.* at article 17(5).

⁷ [Law of Georgia on Personal Data Protection](#) (28 December 2011)

⁸ *Id.* at article 11(1).

Developments of digital rights in Georgia

8. In recent years, Georgia has made efforts to advance digital rights in the country and strengthen its democracy. Access Now and MDF commend the country for these improvements. Yet, there has been some stagnation in this process,⁹ and concerns have been raised regarding intimidation and harassment of high-profile figures¹⁰ (especially women activists and politicians), government surveillance and transparency and independence of government policies and institutions, including those committed to internet governance.¹¹
9. Freedom of expression, for instance, was threatened by different attempts to limit criticism of judges and impose liability on individuals for insulting religious feelings, as well as demands for a strict regulatory framework for defamation.¹² While these attempts have failed, they illustrate certain tendencies in Georgia leaning towards overbroad, vague, and unlawful restrictions on digital rights and democracy.
10. In 2017, Parliament passed new regulations to enhance government surveillance, despite strong criticism by various stakeholders, including civil society organizations, the public defender and political parties.¹³ The regulations were adopted after the Constitutional Court struck down the previous regulations in 2016 for allowing unlimited monitoring of communication, comprehensive data collection and retention of users' metadata for two years.¹⁴
11. The new regulations create the Operative Technical Agency (OTA), which operates under the State Security Service and is charged with sweeping surveillance activities over computer and telecommunications networks.¹⁵ For instance, OTA is even authorized to "install clandestine programs on individual's devices" in certain situations.¹⁶
12. Furthermore, in 2019, two high-profile women were subjected to online threats and harassment online. A Georgian lawmaker had a secretly recorded sex tape of her leaked on social media, supposedly in response to her political activities. A month later, a Georgian sex education activist was raped and suffered death threats online.¹⁷
13. The protection of digital rights in Georgia has been threatened by the persistent lack of the independence of the judicial branch. A survey conducted by the Caucasus Research Resource Center revealed that nearly 1 in 2 Georgians believe that the judicial branch is under strong political influence of a group of judges. 45% of the respondents also declared believing that the judiciary branch is controlled by the ruling Dream party.¹⁸
14. In a democratic society, the judicial branch plays a fundamental role in checking the powers of other branches and upholding individual rights. Therefore, the lack of judicial independence not only impairs the enactment of impartial and neutral judgements, but also makes the court serve the interests of certain political groups. Where authoritarian trends take over political

⁹ Freedom House, [Freedom on the net 2019: Georgia](#).

¹⁰ *Id.*

¹¹ *Id.*

¹² Institute for Development to Freedom of Expression in Georgia (IDFI), [The importance of freedom of expression in a democratic society](#) (13 May 2019)

¹³ *Supra* note 6; See also IDFI, [Regulating Secrete Surveillance in Georgia](#) (14 September 2017)

¹⁴ Freedom House, [Freedom on the net 2019: Georgia](#); IDFI, [Regulating Secrete Surveillance in Georgia](#) (14 September 2017)

¹⁵ For more details, see IDFI, [Regulating Secrete Surveillance in Georgia](#) (14 September 2017)

¹⁶ Freedom House, [Freedom on the net 2019: Georgia](#)

¹⁷ *Id.*

¹⁸ Civil.ge, [Survey: Georgians Concerned about Political Influence on Courts](#) (23 June 2020)

agendas, including within the courts, the latter will certainly fail to uphold individuals' digital rights.

Freedom of expression and access to information

15. In general, individuals' right to freedom of expression is usually protected and respected in Georgia. However, as previously mentioned, there have been attempts to curtail the exercise of this right.
16. Georgia is ranked in 60th on the Reporters Without Borders' 2020 World Press Freedom Index.¹⁹ Although the online media in Georgia is increasingly diverse, it is still significantly polarized. In 2019, for instance, the main national opposition TV broadcast, Rustavi 2, was restored to its previous owner, Kibar Khalvashi, a government ally.²⁰ In response to the new management, two new pro-opposition TV channels emerged.²¹
17. In addition, the government of Georgia allocates public funds for advertisement and dissemination of information through media outlets, including the online media.²² Through these financial resources, the government interferes in the agenda of media outlets and the content that is disseminated to the public.
18. Threats to freedom of press are also framed by other indirect interferences on freedom of expression. In 2018, for instance, some online journalists were pressured to voice the position taken by the media outlet they worked for when covering election-related events.²³ In June 2020, activists and journalists from Adjara TV and Radio Company, a publicly-funded broadcaster, protested against the pressure put on journalists and the government interference in their independent work. They demanded protection of their labor rights, as well as changes in the election system of the broadcaster's Board of Advisors, which is composed of individuals nominated by political parties in Georgia.²⁴
19. Government interference in media outlets, including online media, prevents the development of a free and independent media in Georgia. It impairs the exercise of freedom of expression, as well as people's access to information, to the extent that disseminated content is filtered, as to tell one-sided stories and meet governmental interests and agenda.
20. The World Press Freedom Index also raised the kidnapping of Afgan Mukhtarly, an Azerbaijani dissident journalist, as a red flag in the enjoyment of freedom of expression and freedom of press in Georgia.²⁵ While in exile in Tbilisi, Mukhtarly was abducted in the city in 2017 and appeared in police custody Azerbaijan, where he was prosecuted. Mukhtarly had been reporting on corruption in Azerbaijan and Georgia and his defense alleges that Georgian police were involved in his kidnapping.²⁶

¹⁹ Reporters Without Borders, [Georgia](#) (2020)

²⁰ Margarita Antidze, [Europe's human rights court rules against owners of Georgian pro-opposition channel in ownership row](#), Reuters (18 July 2019)

²¹ Reporters Without Borders, [Georgia](#) (2020)

²² MDF, [Financial Transparency of Media 2017. Final Report](#), at p. 11-12, 19-20.

²³ Freedom House, [Freedom on the net 2019: Georgia](#); IREX, [2019 Media Sustainability Index](#), at p. 8

²⁴ Civil.ge, [Journalists, Activists Rally outside Adjara TV](#) (27 June 2020)

²⁵ Reporters Without Borders, [Georgia](#) (2020)

²⁶ Freedom House, [Freedom on the net 2019: Georgia](#)

21. Any such event represents threats to journalists' physical and mental integrity and therefore triggers a chilling effect in the country. Under fear of reprisals, journalists, and other activists, refrain from speaking up and reporting governmental conduct.

Connectivity and internet shutdowns

22. It is imperative that everyone, especially those in at-risk or under-served communities, such as low-income people, have access to a high-quality internet connection. In light of the COVID-19 pandemic, the internet is an essential tool for employment, education, health, communication, political engagement, and accessing other important resources. Moreover, those without a connection are cut off from exercising a broad range of human rights, including the right to access information.²⁷
23. Data released by the International Telecommunication Union (ITU) show that the percentage of Georgians that have access to the internet has been growing in the past years. In 2018, 62.72% of the individuals in the country were online.²⁸
24. Despite this increase in connectivity, Georgia still faces infrastructural obstacles that prevent the expansion of access to the internet even further. For instance, in 2018, the Georgian National Communications Commission (GNCC) received 113 complaints about poor telecommunication services. Additionally, the average download speed for fixed internet connection in Georgia is lower than in other countries in the region, such as Russia and Ukraine. Until recently, users in Georgia were often disconnected from the international internet due to cable damages.²⁹
25. Although Georgia experiences virtually no digital divide between genders, it does have a considerable regional gap. Rural areas in the country count on a lower percentage of internet users (84.5%) in comparison to urban areas (92.2%) and lower-quality connectivity, since fiber-optic infrastructure is underdeveloped in these areas.³⁰
26. While access to the internet itself is of high importance to facilitate the exercise of various human rights, such as freedom of expression and access to information, it does not stand alone. It is fundamental that the government provides the infrastructure necessary to allow for a high-speed and high-quality connectivity. Without satisfactory connectivity – which includes robust digital education and literacy, updated software, devices and hardware, affordable and stable service, secure and trustworthy cybersecurity, and software and content relevant to language and cultural needs – simply having mobile coverage or high internet penetration rates may be meaningless.
27. Enhancing infrastructure also encompasses safeguarding security online. In this sense, the government must foster the implementation of the necessary security infrastructure to protect users from hackers and cyber attacks, as well as from the unauthorized and harmful disclosure of users' data. Governance structures must also be put in place as to allow timely and effective responses to these incidents.

²⁷ Access Now, [Access Now releases "Expanding connectivity to fight COVID-19: recommendations for governments and telcos"](#) 30 April 2020.

²⁸ ITU, [Statistics](#)

²⁹ *Supra* note 21 - FH

³⁰ *Id.*

28. In July 2018, the TBC Bank, one of the main banks in Georgia, suffered a cyberattack, which was claimed to have been carried out as retaliation against members of the opposition.³¹ In October 2019, Georgia experienced a major cyber attack that took down thousands of websites, affecting the presidential website, the courts, non-governmental organizations, and others.³²
29. Regardless of the motives behind such attacks, these events illustrate that online networks in Georgia are vulnerable and lack proper security protections. Therefore, the improvement of internet infrastructure with regard to safety must join the government's agenda.
30. With regard to internet shutdowns,³³ no incidents have been reported in Georgia since 2016, when social media platforms were blocked by the authorities, as an attempt to restrict access to certain content. YouTube, for instance, was blocked twice that year, after sex tapes of Georgian opposition-politicians were posted in the platform³⁴ - the measure was extended only to specific subscribers. Vimeo was also blocked for several hours after the same videos surfaced on the platform.³⁵
31. Even though Georgia does not have a history of systematic restrictions on access to the internet, Access Now and MDF take the opportunity to highlight that internet shutdowns are absolutely impermissible under international human rights law, as it has been declared by UN and international experts.³⁶

Protection of activists, journalists, human rights defenders

32. In 2019, the UNDP and UNFPA launched a joint report on public perceptions on gender roles and relations in Georgia.³⁷ The study demonstrates that Georgians are increasingly becoming more sensitive toward the importance of gender equality. Nevertheless, it also illustrates the remainder of a patriarchal and conservative society. These perspectives on gender also manifest themselves in the online environment in Georgia. For example, the study reveals that 4 in 10 men believe that women cannot do the same work as men when they are equally qualified. When it comes to politics, although there is wide support for greater engagement of women, 1 in 2 respondents think that men are better political leaders than women.
33. While the gender divide seems to be decreasing in certain aspects, the study reveals that Georgia remains a very homophobic society, as the great majority of both men and women strongly presented homophobic perspectives. For instance, 83% of men and 74% of women said that they would be embarrassed for having a homosexual child. Similarly, 81% of men and 54% of women said that they would never have a homosexual friend.
34. These perspectives on gender identity and sexual orientation also manifest themselves in the online environment in Georgia. In recent years, LGBTQI+ and women activists have been using online platforms to coordinate, disseminate information and protest against discrimination in

³¹ Freedom House, [Freedom on the net 2019: Georgia](#)

³² Phil Muncaster, [Thousands of Websites Offline as Georgia Suffers Major Cyber-Attack](#), Infosecurity Magazine (29 October 2019)

³³ Access Now (n.d.) Retrieved February 17, 2020, from <https://www.accessnow.org/keepiton/>; See also Access Now, [#KeepItOn 2019 Report](#), 2020.

³⁴ Techcrunch, [YouTube block comes and goes in Georgia amid government sex tape allegations](#) (14 March 2016)

³⁵ *Supra* note 25 - FH

³⁶ Access Now, [Internet kill switches are a violation of human rights law, declare major UN and rights experts](#) (4 May 2020)

³⁷ UNDP, UNFPA, [Men, Women, Gender Relations in Georgia: Public Perceptions and Attitudes](#) (2020)

the public spheres.³⁸ As they occupy these spaces, these individuals also become targets of attacks carried out by conservative sexist and anti-LGBTQI+ groups.

35. As mentioned above, Georgian female activists and political figures have been subject to intimidation and harassment online for raising their voices and expressing their views. As a response to their engagement, they have been suffering violations that are clearly gender-motivated, such as the unauthorized release of sex tapes. Other threats and offenses have also been experienced by these individuals.
36. Similarly, LGBTQI+ individuals are suffering online attacks as well. After a country visit to Georgia, the UN Independent Expert on Violence and Discrimination based on Sexual Orientation and Gender Identity issued a report stating: "since 2016, members of ultra-nationalists and far-right groups have emerged forcefully in the public sphere using hate speech towards members of minorities, including LGBT people. These groups are actively using social media to spread the hate propaganda against LGBT persons or launching violent online attacks against individuals. There is little evidence of a comprehensive Government strategy to address cyberbullying, hate speech and online threats against minorities."³⁹
37. In 2019, as the LGBTQI+ community in Georgia prepared for the first Pride Parade in Georgia, organizers of the event were suffering serious threats on social media, disseminated by far-right groups.⁴⁰ The Pride Parade happened amid tensions and security concerns.
38. In addition to the hostilities against these groups, government-related groups have also been using the internet and online platforms, especially social media, to disseminate misinformation and discredit voices that are critical of the government, such as opposition groups, journalists, activists and NGOs.
39. Online activists report that, during demonstrations against the government in June 2019, bot accounts and state-sponsored posts were deployed as tools to undermine the social movement and disseminate government propaganda.⁴¹ Similar strategies were used against presidential candidates during the 2018 elections.⁴²
40. It should be noted that, although defamation was decriminalized in 2004 in Georgia, online journalists and activists may still be subject to civil penalties for defamation, pursuant to the Law on Freedom of Speech and Expression and the Law on Electronic Communication.⁴³

The right to privacy and data protection

41. The right to privacy is guaranteed by the constitution of Georgia and reaffirmed by a comprehensive personal data protection framework. Nonetheless, the deployment of surveillance practices and technologies by the Georgian government are putting these protections at risk.

³⁸ Freedom House, [Freedom on the net 2019: Georgia](#)

³⁹ Independent Expert on Violence and Discrimination based on Sexual Orientation and Gender Identity, [Country visit to Georgia – 25 September to 5 October 2018 - End of mission statement](#) (2018)

⁴⁰ Washington Blade, [Organizers of Georgia's first Pride defiant amid threats of violence](#) (19 June 2019)

⁴¹ Medium, ["Gavrilov's Night": Multiple Facebook Pages Target Protests in Georgia](#) (23 July 2019)

⁴² Freedom House, [Freedom on the net 2019: Georgia](#)

⁴³ *Id.*

Surveillance

42. Governments, policymakers, and law enforcement across the world are showing increased interest in pushing for proactive monitoring, surveilling, censoring, or otherwise modifying certain types of online content, under the broad rubric of “preventing” or “countering” crime.⁴⁴
43. While the Georgian Personal Data Protection Law establishes various conditions on the processing of personal data and empowers individuals with a set of rights, it also curtails these same protections by expressly authorizing the use of surveillance by government and private actors over citizens.
44. The respective provisions allow the use of surveillance to ensure public order and human safety, as well as to prevent crimes. The broad language used by the legislator gives space for the government to arbitrarily deploy surveillance in its ordinary practices and policies, and thereby monitor citizens through a system of true mass surveillance.
45. The Personal Data Protection Law also enables the enactment of complementary legislation that further hinders the right to privacy and data protection. In this context, Parliament adopted, in 2017, the new legislative amendments provided above, aimed at regulating surveillance activities.
46. Pursuant to this new regulatory framework, the OTA was given broad powers to carry out secret wiretapping, recording of telephone conversations and secret investigation and counterintelligence practices.⁴⁵ Moreover, it may inspect e-communications companies and require them to acquire technologies and equipment that facilitate government surveillance. Under judicial order, the OTA may compel internet service providers to cooperate with its investigations, under penalty of fine for non-compliance.⁴⁶
47. The amendments also ensure that the State Security Service keeps direct access to electronic communication and continues processing personal data in large scale.⁴⁷
48. The provisions of these new regulations pose serious threats to the right to privacy and therefore conflict with protections afforded in the Georgian constitution. These provisions are also contrary to the principles and protections provided by the Personal Data Protection Law, such as the principle of data limitation and the need for prior consent from the data subjects.
49. Another surveillance tool deployed by the government of Georgia concerns the use of user identification mechanisms. For instance, when acquiring a SIM card, individuals are required to register with identification certificates, such as passport, national identification card and driver licence.⁴⁸ Thereby, the government interferes with the anonymity of mobile communications and undermines the individual's right to privacy, producing chilling effects on the freedoms of expression and peaceful assembly and association.

⁴⁴ For more information see: Access Now, [Access Now Position Paper: A Digital Rights Approach to Proposals for Preventing or Countering Violent Extremism Online](#), November 2016.

⁴⁵ IDFI, [New legislation Regulating Secret Surveillance Violates Georgia Constitution](#) (2 March 2017)

⁴⁶ *Supra* note 36.

⁴⁷ *Supra* note 38.

⁴⁸ Freedom House, [Freedom on the net 2019: Georgia](#)

50. Data released by the Supreme Court show that the number of wiretap requests has nearly doubled between the years of 2017 and 2018, which illustrates a tendency of resorting to surveillance in Georgia in detriment of the citizens' right to privacy.⁴⁹
51. It should be noted that the surveillance practices used by the government of Georgia have been mainly targeting journalists, opposition figures, and exiles from other countries living in Georgia.⁵⁰

Recommendations

52. We urge that freedom of expression, access to information and the right to privacy are prominent issues in the upcoming UPR review cycle. We therefore recommend that the government of Georgia:
53. Repeal or amend the provisions of the Personal Data Protection Law concerning surveillance, as well as the 2017 legislative regulations on surveillance, in order to bring Georgia's legal framework in line with international human rights law obligations.
54. Refrain from politically interfering in the work of local media, as to ensure the existence of free and independent media, online and offline, in Georgia.
55. Ensure the independence of the judicial branch in Georgia as to safeguard the unbiased and fair application of human rights in the country.
56. Expand access to the internet in Georgia, especially the rural areas of the country, as well as enhance internet infrastructure, in order to enable people's access to high-speed and high-quality connectivity.
57. Take the necessary measures to improve internet security in Georgia, and develop appropriate responses to the cyberattacks, in accordance with international human rights standards.
58. Make a state pledge to refrain from restricting internet access in the future, including during periods of elections and assemblies.
59. Review national legislation and policies to fully guarantee the safety of journalists, human rights defenders, and activists so that these important actors can pursue their activities freely without undue interference, attacks or intimidation.
60. Fulfill its human rights obligations to respect the equal rights of all persons without distinctions made on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
61. Work to address discrimination based on gender identity and sexual orientation, and develop a legislative and/or policy framework aimed to prevent and effectively remedy online threats and offenses based on perceived gender identity or sexual orientation, including those targeted at women and LGBTQI+ people.
62. Refrain from deploying mass surveillance techniques over individuals and legal entities.
63. Minimise the amount of and type of data the government and associated service providers collect through surveillance practices. Further, restrict lawful interception and monitoring of communications and online activities, as well as implement measures for accountability.

⁴⁹ *Id.*

⁵⁰ Freedom House, [Freedom on the net 2019: Georgia](#)

64. Ensure that all surveillance of digital communications is consistent with international human rights obligations and is conducted on the basis of a legal framework which is publicly accessible, clear, precise, comprehensive and non-discriminatory.

Conclusion

65. The UPR is an important UN process aimed at addressing human rights issues worldwide. It is a rare mechanism through which citizens around the world get to work with the government to improve human rights and hold them accountable to international law. Access Now and MDF are grateful to make this submission.

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