

**Submission by Human Rights Watch
to the UN Human Rights Committee in Advance of its Adoption of the List of Issues for Georgia's
Fifth Reporting Cycle
September 2020**

This document provides an overview of Human Rights Watch's observations and questions to Georgia in advance of the Human Rights Committee's ("the Committee's") upcoming pre-sessional review of Georgia.

We hope that it will inform the Committee's consideration of the Georgian government's ("the government's") compliance with its obligations under the International Covenant on Civil and Political Rights ("the Covenant") and prove useful as the Committee draws up the "List of Issues" to seek further clarity from the government on outstanding issues with regard to its adherence to the Covenant.

The concerns described below derive from our ongoing research on Georgia since the last periodic review in 2014, and include lack of accountability for law enforcement abuses, unjustifiably harsh and disproportionately punitive drug laws, imposition of custodial administrative sentences without proper due process, and threats to media freedom.

Accountability for Abuses Committed by Law Enforcement Officials (Arts. 2, 6, 7, 9, 10 and 14)

1. Human Rights Watch is concerned about the lack of accountability for past abuses committed by law enforcement officials. Even though Georgia has made some progress since the last review period, implementing the Committee's recommendations to establish an independent and impartial body to investigate allegations of abuse by police and other law enforcement officers,¹ impunity for abuses carried out by law enforcement officials remains a persistent problem.
2. In 2018, the Georgian parliament adopted a law² creating a State Inspector's Office, an independent body with a mandate to investigate abuses by law enforcement. However, the law grants the Prosecutor's Office a supervisory role over State Inspector's Office investigations, including the right to give mandatory directives on any investigative procedure, or change investigative decisions, undermining the body's independence. The State Inspector's Office became operational on November 1, 2019.
3. Alleged abuses that took place before November 1, 2019 are still being investigated by the Prosecutor's Office, which lacks public trust to impartially and independently investigate allegations of abuse by police and other law enforcement officers in some high-profile cases.
4. The Prosecutor's Office has been pursuing largely one-sided accountability for the events of June 20-21, 2019, when riot police fired rubber bullets and used tear gas against thousands of protesters outside the parliament building in Tbilisi.³ The protest was sparked by the presence of

¹ Human Rights Committee, *Concluding Observations: Georgia*, para. 12, U.N. Doc. CCPR/C/GEO/CO/4 (2014).

² Law of Georgia on the State Inspector Service, <https://matsne.gov.ge/en/document/download/4276790/3/en/pdf> (accessed on September 14, 2020).

³ See Human Rights Watch, 'Georgia: Police Use Teargas, Rubber Bullets Against Protesters' (June 21, 2019), <https://www.hrw.org/news/2019/06/21/georgia-police-use-teargas-rubber-bullets-against-protesters>.

a delegation from the Russian Duma in the parliament's plenary chamber, as part of the Inter-Parliamentary Assembly on Orthodoxy.

5. Some protesters repeatedly tried to break through the police cordon, grabbing and damaging some police riot gear. Otherwise, the crowd was largely nonviolent. While riot police showed restraint initially, around midnight, without prior warning, they opened fire on the crowd with tear gas and rubber bullets, chasing and arresting people who tried to gather. According to official figures 275 people, including some 40 journalists⁴ sustained injuries and sought medical attention, two people each lost an eye. Police arrested hundreds, and courts sentenced 121 protesters to up to 15 days in jail on misdemeanor violations.
6. Authorities launched an investigation into mass rioting, charging at least 19 protesters, including opposition parliamentarian Nika Melia.
7. The Prosecutor's Office opened an investigation into police conduct and authorized the Public Defender to monitor it. According to the Public Defender, the investigation "only focused on the offenses committed by rank-and-file police officers, but failed to objectively or fully assess the command responsibility."⁵ As of June 2020, criminal prosecutions have been initiated against three officers.⁶ The Interior Ministry reprimanded an additional 11 law enforcement officers for misconduct and sent two cases to the Prosecutor's Office to pursue potential administrative or criminal charges. Beyond the ministerial reprimand there has yet to be any police officer sanctioned for conduct during the protests.
8. The Prosecutor's Office designated 68 police officers as victims and only after criticism from civil society, also designated eight protest participants as victims. Many injured protesters and journalists were not designated victim status, meaning that they will not have any right to review investigation files.
9. In December 2017, State Security Service (national intelligence agency) officers shot and killed Temirlan Machalikashvili, 18, an alleged terror suspect, during an operation in Pankisi Gorge. According to an official account, Machalikashvili tried to detonate a hand grenade to prevent being arrested, an allegation vehemently denied by his family, who claimed that he was sleeping when the officers entered his room and opened fire.
10. Authorities launched an investigation into Machalikashvili's killing, but refused to grant his family victim status, limiting their access to the investigation files. Eventually, in January 2020, the Prosecutor's Office terminated the investigation, saying no wrongdoing was identified as the members of the special forces acted within the limits of legitimate, reasonable self-defense;⁷
11. Machalikashvili's family and local human rights groups believe the investigation was a formality and not an effective one required by international law. They say it illustrates that there is impunity

⁴ მედიაჩეკერი, 38 დაშავებული მედიის წარმომადგენელი და ჟურნალისტების აქცია თბილისსა და საქართველოს 12 ქალაქში

<https://www.mediachecker.ge/ka/mediagaremo/article/73300-34-dashavebuli-mediis-tsarmomadgeneli-dazhurnalistebis-protesti-thbilissa-da-12-qalaqshi>.

⁵ Public Defender of Georgia, Interim Report on the Investigation of the June 20-21 Events, <http://www.ombudsman.ge/res/docs/2020062613524385612.pdf>

⁶ GYLA, THE EVENTS OF JUNE 20-21 ARE UNINVESTIGATED, <https://gyla.ge/en/post/20-21-ivnisis-movlenebi-gamoudziebelia#sthash.TdeAwhgd.dpbs>

⁷ EMC, Final Assessment of Machalikashvili's Murder, (Feb. 25, 2020),

<https://emc.org.ge/en/products/machalikashvilis-sitsotskhilis-khelqofis-sakmis-finaluri-shefaseba-emc>

for crimes committed by law enforcement agencies and have filed a case with the European Court of Human Rights.⁸

We encourage the Committee to ask the government:

- What measures are being taken to comply with the Covenant's requirements to promptly and effectively investigate all incidents of use of force by law enforcement officers, and attacks against peaceful protesters and journalists in June 2019?
- Does the government have plans to ensure the full independence of the State Inspector's Office, including eliminating possible interventions in the investigation process by the Prosecutor's Office?
- How will the government ensure that investigations into abuses committed by law enforcement officials before November 1, 2019 that are not being investigated by the State Inspector's Office are impartial, conclusive and all perpetrators are held to account?

Disproportionately Punitive Drug Policies (Arts. 2, 7, 9, 10, and 14)

12. Human Rights Watch is concerned that Georgia's drug laws and their aggressive enforcement are causing severe and unjustifiable harm. During the Committee's previous review, Georgia received direct recommendations to curb its abusive drug laws and policies.⁹ Even though there has been some progress, and Georgia has partially liberalized drug policies since 2012, the authorities still prioritize harsh criminal justice over a public health approach. Drug prosecutions for consumption and possession often lead to long prison sentences and prohibitive fines against people who have not harmed others, but who acquired small amounts of drugs for personal, recreational use. In its 2018 report "Harsh Punishment, The Human Toll of Georgia's Abusive Drug Policies,"¹⁰ Human Rights Watch documented the human cost of harsh drug laws in Georgia.
13. Although the overall numbers of drug-related prosecutions declined in recent years, Georgia maintains harsh drug laws that can be used to prosecute people for mere consumption (except for marijuana) or possession of drugs for personal use. Drug-related felonies often result in long sentences, prohibitive fines, and interference with other rights, including by banning a convicted person from driving a vehicle or from working in an array of professions for up to 20 years.
14. In Georgia, first-time illegal drug consumption or possession of a small quantity of drugs for personal use is a misdemeanor. A repeat offense within a year results in criminal liability. However, approximately 75% of the substances classified as illicit drugs do not have a clearly defined threshold for what constitutes a "small quantity" under Georgian law, including those commonly used in Georgia such as amphetamine, methamphetamine, and desomorphine. Possession of more than one gram is considered a "particularly large amount" and could result in life imprisonment.
15. Existing laws allow police to randomly detain people for coerced drug testing. Although the numbers of random tests have declined, police use positive test results as evidence for pressing

⁸ EMC, EMC assesses the restricted materials containing state secrets in Machalikashvili's case, (Jan. 15, 2020), <https://emc.org.ge/en/products/emc-machalikashvilis-sakmeze-sakhelmtsifo-saidumloebis-shemtsvel-masalebs-afasebs>

⁹ Human Rights Committee, *Concluding Observations: Georgia*, para. 15, U.N. Doc. CCPR/C/GEO/CO/4 (2014).

¹⁰ Human Rights Watch, *Harsh Punishment, The Human Toll of Georgia's Abusive Drug Policies*, (Aug. 13, 2018), <https://www.hrw.org/report/2018/08/13/harsh-punishment/human-toll-georgias-abusive-drug-policies>

administrative or criminal sanctions. If the person refuses to undergo testing, police can detain them for up to 12 hours in a forensics lab. Georgian law does not give people held for testing the same rights as detainees, such as the right to make a phone call, leaving them vulnerable to ill-treatment by the police.

16. In recent years, Georgia has taken steps to partially liberalize its drug policies. It reduced criminal penalties for drug possession and consumption. It also adopted a National Strategy and Action Plan to fight drug addiction, which emphasized the importance of public health and prevention of drug use. In 2018, the Constitutional Court abolished all sanctions for marijuana consumption and in 2020, the Court deemed unconstitutional imprisonment for possession of drugs in quantities that are too small to cause any intoxication. However, a draft legislative reform that would have introduced public health approaches to drug use and largely overhaul punitive practices is stalled in the parliament.

We encourage the Committee to ask the government:

If and how it intends to liberalize drug policies and adopt a stronger public health approach to drug use to support harm reduction around drug use, reduce drug dependency, and increase access to emergency care? In particular, does the government have plans to:

- Introduce or support legislative amendments decriminalizing personal drug use and purchase and possession of small quantities of drugs for personal use.
- Revise thresholds for criminal drug possession in such a way that the thresholds are meaningful and serve as a guidance, rather than a strict dividing line between what is not criminal and what leads to criminal liability.
- End the practice of forced drug testing, and in cases where a person is arrested on suspicion of an offense such as driving under the influence of drugs, require the person to undergo a drug test while availing of the full due process rights of a criminal suspect.
- Abolish additional penalties imposed on convicted drug offenders that deprive them of driver's licenses and affect their ability to work in certain professions. Any such penalties, if imposed, should be directly related and proportionate to an offense committed, such as driving under the influence of drugs.

Lack of Due Process in Administrative (Misdemeanor) Detentions (Arts. 2, 9, 10 and 14)

17. Human Rights Watch is concerned about Georgia's poor administrative offenses and imprisonment system. In its 2012 report, "Administrative Error: Georgia's Flawed System for Administrative Detention"¹¹, Human Rights Watch documented the lack of due process protections under Georgia's Administrative Offenses code. Although there has been some progress since then, including a decrease in the number of days a person can be imprisoned for an administrative offense, and the introduction of certain due process rights, much still needs to be done.

¹¹ Human Rights Watch, Administrative Error: Georgia's Flawed System of Administrative Justice, (Jan. 2012), <https://www.hrw.org/sites/default/files/reports/georgia0112ForUpload.pdf>

18. The Georgian administrative offenses system still operates on the 1984 Soviet Code of Administrative Offenses and contains provisions that are outdated and incompatible with Georgia's international commitments.
19. The Committee previously recommended that Georgia reform its system of administrative detention.¹² In 2014, the country amended its Code of Administrative Offenses and reduced the maximum term of imprisonment for an administrative offense from 90 days to 15 days, however the code largely remains unamended and procedural safeguards are flawed.
20. One key problem is that, despite the risk of imprisonment, albeit for no more than 15 days, there is a significant disparity in rights enjoyed by persons imprisoned for administrative offenses, and those enjoyed by criminal defendants. People imprisoned for administrative offenses do not fully enjoy due process rights. Rights guaranteed in Georgia's Code of Administrative Offenses are either weaker or vaguer than similar safeguards for criminal defendants. For instance, detainees do not enjoy a presumption of innocence and the code does not clearly determine what legal standard of proof judges should use before finding a person guilty of an administrative offense for which they can be imprisoned.
21. The Code envisages that a person detained for an administrative offense, has to be brought in front of a judge within 12 hours of arrest. However, if the person is detained outside working hours, they may remain in detention for up to 48 hours before seeing a judge.¹³ In some cases, persons are detained for administrative offenses that do not have imprisonment as a sanction.
22. Administrative detainees also face obstacles in appealing the court's decision to impose imprisonment, which has to be done within 48 hours of the decision being rendered. The Code of Administrative Offenses states that a decision can be appealed by a person found liable for an administrative offense or by his or her lawyer, with the client's consent.¹⁴ Appeal courts have interpreted that the "consent" should be written and therefore require defendants to sign appeal documents as proof of their consent. This creates a barrier, especially in cases where detainees are held in other municipalities, making it very hard for their attorneys to acquire their signatures within 48 hours.¹⁵

We encourage the Committee to ask the government:

What steps it plans to take to reform administrative offenses legislation to:

- Ensure full due process protections for anyone charged with an offense where they may face a custodial sentence or a significant fine?
- Remove the practical barriers to the exercise of the right to appeal judicial decisions regarding administrative imprisonment?
- Abolish imprisonment as a penalty for administrative offenses?

Freedom of Expression in the Media (Art. 19)

¹² Human Rights Committee, *Concluding Observations: Georgia*, para. 13, U.N. Doc. CCPR/C/GEO/CO/4 (2014).

¹³ Code of Administrative Offenses, article 246 (a).

¹⁴ Code of Administrative Offenses, article 281

¹⁵ Human Rights Watch, *Administrative Error: Georgia's Flawed System of Administrative Justice*, p.24, (Jan. 2012), <https://www.hrw.org/sites/default/files/reports/georgia0112ForUpload.pdf>

23. While Georgia has a vibrant media landscape, threats to media pluralism in the country have been a growing concern. Georgia currently ranks 60th out of 180 countries in Reporters Without Borders' 2019 World Press Freedom Index.¹⁶
24. The European Court of Human Rights' decision released in July 2019 that found no breach of fair trial guarantees in the ownership dispute over Rustavi 2, Georgia's most-watched television station, shook Georgia's media landscape.¹⁷ As a result, ownership of the station reverted to a former owner, Kibar Khalvashi, who claimed that he had been forced to sell the station in 2006 below market value. Rustavi 2's general director, Nika Gvaramia, alleged the lawsuit was orchestrated by the government to take over the station because it was seen as aligned with the opposition.
25. Khalvashi appointed a new director general, Paata Salia, who pledged not to interfere with the station's editorial policy. However, Salia soon dismissed the newsroom head and producers and hosts of political and entertainment talk shows, claiming they had conflicts of interest because of their public statements against the new owner. The move prompted almost the entire newsroom to quit, resulting in temporary suspension of news broadcasts.
26. In August 2019, the Prosecutor's Office brought "abuse of power" charges against Gvaramia, claiming he had struck a sham deal in 2015 on commercial ad placement on the station, allegedly resulting in the loss of 7.2 million GEL (approximately US\$ 2.5 million). A court ordered Gvaramia to post 40,000 GEL (US\$ 13,500) bail. Some civil society organizations saw the "accelerated manner of the investigation" as politically motivated, likely "aimed at persecuting opponents and critical media." In September, Gvaramia founded a new pro-opposition broadcaster "Mtavari Arkhi" (Main Channel) and hired many of former Rustavi 2 anchors and journalists.
27. Authorities also brought charges against Avtandil Tsereteli, father of the founder of TV Pirveli, another independent and critical broadcaster. The Prosecutor's Office alleged that Tsereteli assisted former TBC Bank Board Chair Mamuka Khazaradze and his deputy in the "legalization of illicit income" of US \$17 million in 2008. Civil society groups criticized the move as another attempt at "exert[ing] pressure on the independent and critical broadcaster."
28. On July 2, 2020, the State Security Service of Georgia published a statement that it had initiated an investigation into an alleged act of sabotage in connection with a TV story aired by Mtavari Arkhi.¹⁸ The TV story was about the alleged falsification of statistical data on Covid-19 by local officials and alleged official misconduct. The local nongovernmental organizations (NGOs) expressed their concerns regarding this criminal investigation as constituting a dangerous precedent of illegitimate interference into the freedom of expressions, especially that the state officials have a demonstrated negative attitude towards Mtavari Arkhi's editorial policies.¹⁹
29. In April 2019, the board of advisors of Adjara TV and Radio company, a publicly funded broadcaster based in Batumi, impeached the TV's director, Natia Kapanadze, triggering strong criticism from local NGOs. The ruling party members have openly expressed discontent with Adjara TV's editorial policy on various occasions. In February 2020, dozens of employees of Adjara

¹⁶ Reporters Without Borders 'Ranking 2019', <https://rsf.org/en/ranking>.

¹⁷ *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, App. No. 16812/17, European Court of Human Rights (18 July, 2019).

¹⁸ "Statement of the State Security Service of Georgia", State Security Service of Georgia (2 July 2020), <https://ssg.gov.ge/en/news/610/saxelmtsifo-usaftrxoebis-samsaxuris-gancxadeba>

¹⁹ "Statement of the Media Advocacy Coalition", Media Advocacy Coalition, (26 June 2020)

TV held a silent protest in the channel's newsroom,²⁰ expressing their protest against alleged interference by new management in the broadcaster's editorial policy. In March, the new management dismissed one of the organizers of the silent protest, Teona Bakuridze, anchor of the broadcaster's main news program, allegedly for "gravely violating" the broadcaster's internal regulations. Reporters without Borders (RSF) condemned Bakuridze's dismissal and called on the Georgian authorities to "stop political pressure" on Adjara TV.²¹ Later in May 2020, Adjara TV's director Giorgi Kokhreidze fired Malkhaz Rekhviashvili, host of a talk show and head of Alternative Trade Union of Adjara TV. Rekhviashvili said that he was dismissed for his Facebook posts deemed by the management as discrediting the TV channel.²² The OSCE Representative on Freedom of the Media, Harlem Désir expressed concerns about the developments at Adjara TV, and "about reported management's interference in its editorial policy."²³

30. In July 2020, the parliament amended the law on Electronic Communications, giving the Communications Commission, a regulatory body in the broadcasting and electronic communications field, power to appoint a "special manager" as a head of entities in the electronic communications field if the entity fails to enforce the decisions made by the commission. A "special manager" has a power to make any managerial decision, except selling the shares. Media Advocacy Coalition²⁴ and Reporters without Borders²⁵ have criticized the law as restricting the freedom of the broadcast media. The commission dismissed the criticism, stating that these provisions only regulate mobile and internet providers.²⁶ However, the law is vague and leaves room for interpretation.
31. Online media in Georgia is the second most popular source of information (following television) thanks to social media channels, Facebook in particular. In December 2019, Facebook announced the removal of 39 Facebook accounts, 344 pages, 13 groups, and 22 Instagram accounts of Georgian government-linked pages for "coordinated inauthentic behavior."²⁷ Additionally, in May 2020 Facebook removed over 500 pages, more than 100 accounts as well as groups and Instagram profiles engaged in "coordinated inauthentic behavior" via sharing misinformation about Georgia's domestic politics and the COVID-19 outbreak.²⁸ Some of the pages "posed as independent news outlets."²⁹ According to the Facebook investigation, the inauthentic pages

²⁰ 'Adjara TV Journalists Protest Dismissal of Key Newsroom Figures' Civil.ge (29 February 2020), <https://civil.ge/archives/340559>.

²¹ https://twitter.com/RSF_en/status/1238511796362903555.

²² "'Timeline of Georgian Dream's Efforts to Seize Adjara TV,'" Transparency International-Georgia (23 June, 2020) <https://transparency.ge/en/blog/timeline-georgian-dreams-efforts-seize-adjara-tv>

²³ https://twitter.com/OSCE_RFoM/status/1237299019354984448?s=20

²⁴ მედიაკოალიცია, შემოთავაზებული ცვლილებები გამოხატვის თავისუფლების გაუმართლებლად შეზღუდვის რისკებს მოიცავს (ივლ.7, 2020) <https://gyla.ge/ge/post/mediakoalicia-shemotavazebuli-cvllilebebi-gamokhatvis-tavisuflebis-gaumartleblad-shezghudvis-riskebs-moicavs#sthash.oxRyxRev.tYJ1kulm.dpbs>

²⁵ Reporters Without Borders, Mounting pressure on Georgia's media in run-up to elections, (July 20, 2020)

²⁶ Agenda.ge, Communication Commission: gov't proposed changes for electronic communications 'no threat' to media freedom, (Jul. 7, 2020), <https://agenda.ge/en/news/2020/2146>

²⁷ Nathaniel Gleicher, Head of Security Policy, "Removing Coordinated Inauthentic Behavior from Georgia, Vietnam and the US," (Dec. 20, 2019) <https://about.fb.com/news/2019/12/removing-coordinated-inauthentic-behavior-from-georgia-vietnam-and-the-us/>

²⁸ Agenda.ge, Facebook removes hundreds of Georgian-based political pages for "inauthentic behaviour", (May 6, 2020) <https://agenda.ge/en/news/2020/1417>

²⁹ Ibid.

were linked to Espersona, a media firm in Georgia, allegedly associated with the ruling party³⁰ and individuals associated with United National Movement, an opposition party.³¹

We encourage the Committee to ask the government:

- What steps will it take to ensure media pluralism and space for open debate, and an environment respecting dissenting voices?
- What is the status and content of the amendments to the law on Electronic Communications and what will be their impact on regional broadcasters which are Internet, mobile-based (multiflex operators)?
- To respond to reports of continued political pressure against independent and critical media outlets and interference in Adjara TV and Radio company and its editorial policy?
- To address alleged connections to the spread of misinformation on social media platforms?

³⁰ On.ge, როგორ მოქმედებდა კოკა ყანდიაშვილთან დაკავშირებული გვერდებისა და ჯგუფების ქსელი, (May 5, 2020) bit.ly/3fp7wPF

³¹ Facebook, April 2020 Coordinated Inauthentic Behavior Report, <https://about.fb.com/wp-content/uploads/2020/05/April-2020-CIB-Report.pdf>