

# CSO METER

A compass to conducive  
environment and  
CSO empowerment

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## GEORGIA 2021 COUNTRY REPORT

TBILISI





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## CSO Meter 2021: Georgia Country Report



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Civil Society Institute (CSI) is one of the leading CSOs in Georgia. Established in 1996, CSI facilitates the formation and development of civil society and democracy by promoting democratic values and the rule of law. CSI also educates social actors with the aim of increasing their civic activism and creating a more enabling environment for civil society. CSI has a strong capacity for advocacy, along with solid experience in facilitating government-CSO relations. CSI experts have advised the Municipalities, the Ministry of Justice, the Ministry of Finance, and the Parliament of Georgia in developing policies. CSI has monitored the implementation of several state policies and developed reports. Since 1996, CSI has trained several thousand national and local government officials, CSO representatives and community members.

European Center for Not-for-Profit Law (ECNL) Stichting is a leading European resource and research centre in the field of policies and laws affecting civil society. ECNL creates knowledge, empowers partners and helps set standards that create, protect and expand civic freedoms.

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# ABBREVIATIONS

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AI	Artificial intelligence
AML	Anti-money laundering
CEC	Advisory Group of the Central Election Commission
CSI	Civil Society Institute
CSO	Civil society organisation
CTF	Counter-terrorism financing
EaP	Eastern Partnership
ECNL	European Center for Not-for-Profit Law
EUR	Euro
FATF	Financial Action Task Force
GDP	Gross domestic product
GDPR	General Data Protection Regulation
GEL	Georgian Lari
GNCC	Georgian National Communications Commission
GYLA	Georgian Young Lawyers Association
HCOJ	High Council of Justice of Georgia
HPP	Hydroelectric power plant
IDFI	Institute for Development of Freedom of Information
ISFED	International Society for Fair Elections and Democracy
ISP	Internet service provider
ITU	International Telecommunication Union
LEPL	Legal entity of public law
LGBTQIA+	Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, Intersex, Asexual or Ally
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
NELE	Non-entrepreneurial legal entity
NPO	Non-profit organisation
OGP	Open Government Partnership
OTA	Operational-Technical Agency
TIG	Transparency International Georgia
UNDP	United Nations Development Programme
USD	US Dollar
VAT	Value Added Tax

# I. EXECUTIVE SUMMARY

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The complex social-economic developments, political tensions, and the Covid-19 pandemic have all significantly affected the civil society organisation (CSO) environment in Georgia. Coupled with this, the government has demonstrated some negative attitudes towards the civil society sector. Despite the overall political decay in Georgia, these ongoing developments have not been reflected in the legislative framework regulating the work of CSOs in Georgia and Georgian civil society remains vibrant and resistant towards the ongoing political fluctuations.

The 2020-2021 period in Georgia was rocked by a deepening political crisis and anti-democratic occurrences. The political crisis was further exacerbated by the arrest of the third president of Georgia, Mikheil Saakashvili, in October 2021. After years in exile, Saakashvili returned ahead of local elections and was arrested following convictions for a number of crimes committed while in office. However, he denies these allegations, asserting that his convictions were politically motivated.<sup>1</sup> The political rift between the opposition and the ruling party has grown wider and attempts by the President, Salome Zurbishvili, the EU, and other international institutions to resolve this political deadlock and achieve reconciliation in the country have proved unsuccessful.<sup>2</sup>

These political developments largely overshadowed a rampant socio-economic and health crisis in the country that was worsened by the Covid-19 pandemic and drastically shrank the potential for effective CSO advocacy on most policy-related issues. CSOs have had a difficult time bringing political attention to other issues and effectively engaging in policy-influencing, especially since the majority of the opposition is still not present in the everyday parliamentary activities and there are some questions about the legitimacy of the current composition of parliament without the full and active presence of opposition parties.

In addition to political upheavals, the CSO environment was taken aback by the surveillance scandal - leaked online documents indicating the alleged covert surveillance of citizens by the State Security Service, including the transcripts of

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<sup>1</sup> BBC, 'Mikheil Saakashvili: Georgian ex-president arrested returning from exile' (1 October 2021), <https://www.bbc.com/news/world-europe-58767420>.

<sup>2</sup> Agenda.ge, 'President Zurbishvili: national reconciliation initiative complicated to carry out, but process is transparent', (21 December 2021), <https://agenda.ge/en/news/2021/4005>; U.S. Embassy Statement on Georgian Dream's Withdrawal from April 19th Agreement (29 July 2021), <https://ge.usembassy.gov/u-s-embassy-statement-on-georgian-dreams-withdrawal-from-april-19th-agreement/>.

phone conversations of CSO representatives, journalists, diplomats, clergy representatives, and others. The State Inspector's Service was the first state authority to urge the Prosecutor's Office to investigate the alleged illegal surveillance and breaches of the right to privacy based on these leaked files.

Later, on 30 December 2021, the Parliament of Georgia made an unexpected decision to dissolve the State Inspector's Service and separate its mandates under two new entities. These legislative amendments were adopted in an expedited manner, without any consultations or deliberations with CSOs or even the State Inspector's Service itself.<sup>3</sup> Parliament claimed that these legal amendments were passed on the grounds of the incompatibility of investigative and personal data protection functions, and therefore the need to establish separate entities for those mandates. However, most stakeholders, including the State Inspector herself, assert that it was just a pretext for dismissing her and her deputies over recent decisions that the State Inspector had made regarding high-profile cases.<sup>4</sup> This decision was heavily criticized by Georgian CSOs<sup>5</sup> and international actors<sup>6</sup> for undermining democratic processes and government accountability by abolishing an independent state authority.

Limitations on rights and freedoms have been also imposed due to the Covid-19 pandemic, posing challenges to the timely and in-person participation of CSO representatives in decision-making, as well as the development of long-term plans and working schedules. The pandemic has motivated CSO representatives, civilians and volunteers to merge their resources and work on issues related to poverty and healthcare with their own power. However, these positive examples of CSOs' contributions have not been translated into policy or an attitude change from the state's perspective, since they have not resulted in any incentives for supporting volunteerism and philanthropy.

There has been no progress in state-CSO support, including ensuring transparency and accountability in the state funding system, and eliminating legislative obstacles

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<sup>3</sup> The State Inspector, Londa Toloraia, has heard about the proposed reform through media, while she was on maternity leave, neither her, nor general public had access to the draft law, until the later stages of deliberations, <https://personaldata.ge/en/press/post/7793>.

<sup>4</sup> Statement of Londa Toloraia, State Inspector on the abolition of the State Inspector's Service (30 December 2021), <https://personaldata.ge/en/press/post/7814>.

<sup>5</sup> Joint statement of non-governmental organisations on vetoing the legislative change on the abolition of the Office of the State Inspector, <https://socialjustice.org.ge/ka/products/sakhelmtsifo-inspektoris-apatatis-gaukmebis-sakanonmdeblo-tsvlilebaze-vetos-dadebis-shesakheb>.

<sup>6</sup> The Statement of the U.S Embassy in Georgia, [https://www.facebook.com/permalink.php?story\\_fbid=10159660050822954&id=55448127953](https://www.facebook.com/permalink.php?story_fbid=10159660050822954&id=55448127953); Statements by the representatives of international organizations and Ambassadors, [https://www.facebook.com/permalink.php?story\\_fbid=2687214558088039&id=295537447255774](https://www.facebook.com/permalink.php?story_fbid=2687214558088039&id=295537447255774); EU Delegation responds to expedited procedures in the Georgian Parliament relating to the State Inspector's Service and the Judiciary, [https://eeas.europa.eu/delegations/georgia/109365/eu-delegation-responds-expedited-procedures-georgian-parliament-relating-state-inspectors\\_en?fbclid=IwAR2P8ZTefy3eYkgAN\\_RjS-anJZ1Xje5ZcxV19300L6pLY7ru678m7l6DQtk](https://eeas.europa.eu/delegations/georgia/109365/eu-delegation-responds-expedited-procedures-georgian-parliament-relating-state-inspectors_en?fbclid=IwAR2P8ZTefy3eYkgAN_RjS-anJZ1Xje5ZcxV19300L6pLY7ru678m7l6DQtk).

that would enable local government authorities to issue state grants for CSOs. Freedom of speech, as well as the right to peaceful assembly, is still not effectively protected from arbitrary infringements in practice. In certain cases, the state still fails to ensure that CSOs and associated individuals, including the LGBTQIA+ community, are fully protected, including from physical harm. Though recent constitutional changes guarantee access to the internet and digital rights, actual mechanisms for the protection of such rights must be further developed.

Overall, the CSO environment has not deteriorated since the last reporting period, and it largely remains the same. The country still struggles with issues that were addressed in previous recommendations, such as the revision of the Code of Administrative Offences to eliminate unjustified interventions into the right to peaceful assembly, the adaptation of regulations which will make public participation obligatory during the process of elaboration of draft laws or strategic documents by the government, the addition of municipalities to the list of grant-issuing entities, the development of unified legislative standards for state funding, and improvement of the internet infrastructure, competition and quality to ensure that Georgian citizens equally exercise digital freedoms and use new technologies for meaningful engagement in development processes.

### The key recommendations of this current report are:

- The Government of Georgia should elaborate and adopt a systemic vision for state-CSO cooperation on all levels of the decision-making process and further institutionalize these standards;
- Government authorities should develop unified legislative standards for state funding, encompassing clear guidelines for the award process (participatory decision-making, preliminary identification of selection criteria, avoidance of conflicts of interest, transparency, etc.), preventing discriminatory and arbitrary decisions, and further institutionalizing transparency and accountability standards;
- The Government of Georgia should urgently introduce the necessary legal amendments to create comprehensive legal safeguards for personal data processing and covert investigative actions, including by reforming the State Security Service of Georgia and increasing its oversight. The Government should also ensure that CSOs are consulted and engaged in the reform process right from its initial stages;
- The Prosecutor's Office should prioritize and promptly investigate alleged illegal and arbitrary surveillance of CSO representatives, journalists, and others, and ensure that all relevant actors are granted victims status and have access to case files, at the same time updating the public on the progress of the investigation;



- The Government of Georgia should design and adopt unified standards/rules on public consultations of draft laws and policies at the national level, including by clearly setting participation as the obligatory stage in the elaboration of decrees, draft laws, strategic documents, and other instruments and establish redress mechanisms for their violation;
- The Government of Georgia should encourage state institutions to support local initiatives by adding municipalities to the list of grant-issuing entities by introducing relevant legislative amendments; and
- The Government of Georgia, in active collaboration with CSOs, should ensure compliance with MONEYVAL recommendations while avoiding unnecessary deterioration of the CSO environment.

## II. GEORGIA – IN NUMBERS

Population: 3,728,600 (2021)<sup>7</sup> | GDP per capita: 4,255.7 USD (2020)<sup>8</sup> | Number of CSOs: Registered organisations 29,040; active organisations 1,247<sup>9</sup> | CSOs per 10,000 inhabitants:78 | Registration fee for CSO: 100 GEL (approx. 30 EUR) or 200 GEL (approx. 60 EUR) for the accelerated procedure | Freedom in the World Ranking: Partly Free (58/100)<sup>10</sup> | World Press Freedom Index: 28.64 (60 out of 180 countries, 2021)<sup>11</sup>



Country score: 4.7  
Legislation: 5.2  
Practice: 4.3

*The scores range from 1 to 7, where 1 signifies the lowest possible score (extremely unfavourable – authoritarian - environment) and 7 signifies the highest possible score (extremely favourable environment).*

Areas	Overall	Legislation	Practice
Freedom of association	6.1	6.2	6.0
Equal treatment	5.6	5.8	5.4
Access to funding	5.6	6.0	5.3
Freedom of peaceful assembly	4.5	5.2	3.9
Right to participation in decision making	4.8	5.2	4.3
Freedom of expression	4.9	5.6	4.1
Right to privacy	3.9	4.6	3.1
State duty to protect	4.4	4.9	3.9
State support	4.2	4.4	4.0
State-CSO cooperation	4.0	4.2	3.9
Digital rights	4.2	4.6	3.9

<sup>7</sup> National Statistics Office of Georgia, <https://www.geostat.ge/en/modules/categories/316/population-and-demography>.

<sup>8</sup> National Statistics Office of Georgia, <https://www.geostat.ge/en/modules/categories/23/gross-domestic-product-gdp>.

<sup>9</sup> CSO Georgia, <https://csogeorgia.org/en/>.

<sup>10</sup> Freedom House 2022, <https://freedomhouse.org/country/georgia/freedom-world/2022>.

<sup>11</sup> Reporters Without Borders, <https://rsf.org/en/ranking#>.

# III. Findings

## 3.1 Freedom of Association

Overall score per area: **6.1 / 7**

Legislation: **6.2 / 7**

Practice: **6.0 / 7**

Freedom of association is guaranteed for everyone in Georgia and respected in practice. There are no developments or changes observed in legislation in this area. CSOs' operational scope includes a broad spectrum of activities, and they can use different forms of operation without territorial and geographical limits or excessive intervention from the state. Establishment procedures are easy and the legal consequences of a breach of the law are foreseeable. However, liquidation procedures are still reviewed as overly complicated. The state has also failed to improve statistical information and ensure that there is precise information about registered and active CSOs.

### Standard I. Everyone can freely establish, join, or participate in a CSO.

Freedom of Association is guaranteed by the Georgian Constitution<sup>12</sup> which imposes a positive obligation on the state to protect and enable freedom of association for everyone within or outside the country. The Constitution also implies that any infringement must be carried out in accordance with the principles of legality, proportionality and necessity.<sup>13</sup> The main legal act governing the establishment and operation of CSOs is the Civil Code of Georgia.<sup>14</sup> Meanwhile, the Organic Law of Georgia on the Suspension and Prohibition of Activities of Public Associations lists prohibited activities of non-entrepreneurial legal entities (NELEs).<sup>15</sup> The general rule implies that any local or foreign natural person with full legal capacity<sup>16</sup> or any local or foreign legal person<sup>17</sup> can establish a CSO, become a member of one, or serve on the body responsible for its management. Public servants<sup>18</sup> have certain limitations in this regard: they are not entitled to be a member of a representative body of a CSO or hold any position in it if it is associated with salary receipt.<sup>19</sup> Considering that prohibition is

<sup>12</sup> Georgian Constitution, Art. 22, <https://matsne.gov.ge/en/document/view/30346?publication=36>.

<sup>13</sup> 'Association may only be dissolved by its own or a court decision in cases defined by law and in accordance with the established procedure', Georgian Constitution, Art. 22(2).

<sup>14</sup> Civil Code of Georgia, <https://matsne.gov.ge/en/document/view/31702>.

<sup>15</sup> NELE is the only official organizational and legal form in which registered CSO's can operate in Georgia.

<sup>16</sup> In Georgia, full legal capacity is attained when a person reaches the age of 18.

<sup>17</sup> Legal entities that are either private or public, including government and municipal bodies.

<sup>18</sup> A qualified public officer, a person recruited on the basis of an agreement under public law, a person recruited on the basis of an employment agreement and persons working in an institution equivalent to a state institution.

<sup>19</sup> Law of Georgia on Conflict of Interest and Corruption in Public Service, Art. 13(2), 13(9), <https://matsne.gov.ge/en/document/view/33550?publication=72>.

intended to avoid conflicts of interest and corruption in public service, as well as limit opportunities for state manipulation of civil sector representatives, the rule is regarded as compliant with international standards. Children between the ages of 14 and 18 can also join CSOs but considering that the membership of an organisation leads to certain legal responsibilities it must be justified with their parents' permission.<sup>20</sup>

The number of founders is not determined, and an organisation can be founded by a single individual.<sup>21</sup> Because the law does not specify mandatory minimum capital requirements, registration does not necessitate a financial contribution from the founders. This can be regarded as a positive factor for the CSO environment since lack of prior financial or personal backing is not preventing motivated actors from establishing CSOs.

CSOs can operate both online and offline as registered private legal entities as well as unregistered unions and initiative groups.<sup>22</sup> If civic enthusiasts want to serve immaterial purposes without formalization of their unregistered union, they can form a group and create a common platform in the digital or real world to reach out for society's support and promote their activities. However, the majority exist in the legal form of a NELE, registered by the National Agency of Public Registry of Georgia's Ministry of Justice (hereafter, the Registering Body).

**Standard II. The procedure to register a CSO as a legal entity is clear, simple, quick, and inexpensive.**

CSO registration is carried out in accordance with the procedures outlined in Georgia's Civil Code, the Law on Entrepreneurship<sup>23</sup>, and the Order of the Minister of Justice on Approval of the Instruction on Registration of Entrepreneurs and Non-Entrepreneurial (Non-Commercial) Legal Entities.<sup>24</sup> The procedure is easy, cost-effective and time-efficient and only requires the submission of the necessary documentation to the Registering Body (an application for registration, the applicant's identification documents, the decision of members on establishing the NELE/Statute, appointment of a director (including consent from the director), official email and address information (including confirmation from the property owner) and a payment confirmation). The procedure can be completed in person or online;

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<sup>20</sup> Civil Code of Georgia, Art. 15 <https://www.matsne.gov.ge/en/document/view/31702?publication=115>.

<sup>21</sup> Some exceptions apply to membership-based organizations with specific goals. For example, at least 5 people are required to form a creative union, and the matter is governed by Georgia's Law on Creative Workers and Creative Unions. Art. 16, 17. <https://matsne.gov.ge/en/document/download/19222/6/en/pdf>.

<sup>22</sup> Unregistered unions have a legal capacity to engage in any civic relationship independently. Financial transactions and activities of such unions are also tracked under tax authorities' scrutiny according to the Georgian Tax Code. Georgia's Civil Code, Art. 39, Tax Code of Georgia, Art. 21 and 66, <https://matsne.gov.ge/en/document/view/1043717?publication=175>.

<sup>23</sup> Law of Georgia on Entrepreneurship, <https://matsne.gov.ge/ka/document/view/28408?publication=70>. As of 1 January 2022, the new law on entrepreneurship, as well as a new order from the Ministry, will enter into force.

<sup>24</sup> Order of the Minister of Justice on Approval of the Instruction on Registration of Entrepreneurs and Non-Entrepreneurial (Non-Commercial) Legal Entities, <https://matsne.gov.ge/ka/document/view/88696?publication=0>.

however, the Registering Body mostly directs people to come in person, therefore online registration is not frequently used.<sup>25</sup> In practice, the Registering Body follows the law and interested parties can find information about the necessary requirements for registration on the official webpages, available in both Georgian and English.<sup>26</sup> Furthermore, the Registering Body publishes information about the registration procedure's progress (including whether registration was successful, postponed, or refused) on a regular basis to make the process transparent.<sup>27</sup> The Registering Body collects data on NELEs without separating CSOs from other non-commercial legal entities. This makes it difficult to accurately track the number of active CSOs and gather information on their work (important for networking, planning policies for the CSO environment, monitoring etc.).

Rejection of applications for registration is allowed only with a justified decision if the application does not comply with the registration rules and the law.<sup>28</sup> The authorised body must act independently and impartially and is not entitled to set any additional registration requirements. In the decision-making process, the Registering Body has the obligation to process an application based on a full, accurate, and comprehensive investigation of the circumstances and their mutual reconciliation and publish the decision within one working day.<sup>29</sup> Any decision must include full argumentation,<sup>30</sup> so any deficiencies in the registration documents are communicated in a clear and timely manner to the applicant. When registration is rejected for reasons that can be rectified by submitting missing or modified documentation, the Registering Body gives the applicant one month to supply the necessary information and restart the procedure. A negative decision can be appealed by the applicant within one month to the higher administrative body (the Georgian Ministry of Justice). If this appeal is unsuccessful, the case can be taken to court, so that independent and impartial judicial review can be provided within a reasonable time.

Reasons for an application or registration being rejected that are frequently encountered in practice include: (i) when required documents are missing or the registration fee is not paid in full and on time;<sup>31</sup> (ii) the proposed entity name for registration is already in use by another organisation;<sup>32</sup> (iii) the statute does not

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<sup>25</sup> The procedure is carried out via the online platform My.gov.ge according to the Order of Minister of Georgia on Approval of the Instruction on Registration of Entrepreneurs and Non-Entrepreneurial (Non-Commercial) Legal Entities, Art. 10(4), <https://napr.gov.ge/p/1917>.

<sup>26</sup> [Webpage of Public service hall], <http://psh.gov.ge/main/page/2/84/88>.

<sup>27</sup> [Webpage of national agency of public registry], [https://enreg.reestri.gov.ge/main.php?m=new\\_index](https://enreg.reestri.gov.ge/main.php?m=new_index).

<sup>28</sup> Order of the Minister of Justice on Approval of the Instruction on Registration of Entrepreneurs and Non-Entrepreneurial (Non-Commercial) Legal Entities, Art. 14 and 15, <https://napr.gov.ge/p/617>; <https://matsne.gov.ge/ka/document/view/88696?publication=0>.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid. Art. 16, 17 and 18.

<sup>31</sup> Civil Code of Georgia, Art. 28, 29; Order of the Minister of Justice on Approval of the Instruction on Registration of Entrepreneurs and Non-Entrepreneurial (Non-Commercial) Legal Entities, Art. 14, 15, 16.

<sup>32</sup> Civil Code of Georgia, Art. 27, <https://www.matsne.gov.ge/en/document/view/31702?publication=115>.

include all relevant information that must be visible in the extract; (iv) information in the founders' decision contradicts the information in the statute (for example, if in the decision of the establishment, the founders' aim that the CSO is not membership-based, but the statute includes procedural rules for admitting members to the organisation);<sup>33</sup> and (v) documents delivered from a foreign country are not properly notarized and/or apostilled.<sup>34</sup>

The registration period may differ depending on the service selected by the applicant. If the procedure is standard, it takes one working day to establish and register the CSO (this is the maximum registration period), and the registration fee is 100 GEL (approx. 30 EUR). For a faster procedure, registration can be completed on the same day that the application is made for a fee of 200 GEL (approx. 60 EUR). Any changes to the registered information (for instance the name or residential address of any of the CSO's directors and board members) must be officially changed (primarily with the board's approval) and newly registered. The method and fee for amending registered information are the same as for the first registration.

### **Standard III. CSOs are free to determine their objectives and activities and operate both within and outside the country in which they were established.**

CSOs are free to determine their own objectives, management and operational principles, organisation structure and serve a variety of goals simultaneously. Given that no legal restrictions apply to CSOs' management, operating principles, and structure, CSOs are free to make their own rules in this regard. CSOs are allowed to serve desired immaterial goals (even if they are not expressly stated in the statute)<sup>35</sup> unless they contradict applicable laws, recognised moral standards, or Georgia's constitutional and legal principles. If an activity requires licensing according to the Law of Georgia on Licences and Permits<sup>36</sup> (for example, if the activities are related to private or community broadcasting, electricity generation or transmission, etc.),<sup>37</sup> the activity can only be carried out after the license is obtained.<sup>38</sup> However, there is no evidence that licensing regulations impede the free establishment and operation of CSOs. Most activities that need prior licensing are connected to the use of public resources and these typically fall outside of the operating scope of CSOs. No practical obstacles have been observed for CSOs to engage in any of the legally allowed areas.

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<sup>33</sup> Information about the similar case was provided by the lawyer working on the case. For the purposes of confidentiality, identities of involved persons, including identification details of an applicant, are not available.

<sup>34</sup> Civil Code of Georgia, Art. 28(3). Recent cases of refusal on registration can be reviewed on the following website: [https://enreg.reestri.gov.ge/main.php?m=new\\_index&l=en](https://enreg.reestri.gov.ge/main.php?m=new_index&l=en).

<sup>35</sup> Georgian Civil Code Art. 25(2), <https://www.matsne.gov.ge/en/document/view/31702?publication=115>.

<sup>36</sup> [Law of Georgia on Licences and Permits], <https://matsne.gov.ge/en/document/view/26824?publication=62>.

<sup>37</sup> Law of Georgia on Licences and Permits, Art. 6, <https://matsne.gov.ge/en/document/view/26824?publication=62>.

<sup>38</sup> Georgian Civil Code Art. 25(3), <https://www.matsne.gov.ge/en/document/view/31702?publication=115>.

**Standard IV. Any sanctions imposed are clear and consistent with the principle of proportionality and are the least intrusive means to achieve the desired objective.**

The Organic Law of Georgia on the Suspension and Prohibition of Activities of Public Associations determines the authorised bodies and lists all types of sanctions relevant for public associations and the causes behind the sanctioning to guarantee that the legal consequences of a breach are foreseeable and clear and are assessed by the independent authority in compliance with the principle of proportionality.<sup>39</sup> Only the court is authorised to ban or temporarily suspend the activities of a CSO.<sup>40</sup> According to the law, a NELE may not engage in substantially commercial activities, while non-essential commercial activities that serve non-commercial goals are allowed, which means that its operations may not be used to generate profits that members or founders will later divide and distribute between themselves.<sup>41</sup> In such cases, the court has the authority to suspend the public association for up to three months. After the expiry of the term, the public association shall resume its activities on condition that essential commercial activities are ceased.<sup>42</sup> Political activity is not on the list of prohibited activities, however there are certain limitations. CSOs may help political parties for the goal of institutional development (for example, by organising or participating in educational programmes, seminars, public conferences, and so on), but they may not promote or support a specific political party.<sup>43</sup> Preconditions leading to the suspension or prohibition of activities for public associations are clear and legally determined. It is directly indicated by the Law<sup>44</sup> that aside from CSOs engaged in primarily commercial activities, the court has the authority to prohibit organisations that seek to overthrow or forcibly change the constitutional order of Georgia, to infringe on the independence and territorial integrity of the country, or to propagandize war or violence, to incite national, ethnic, religious, or social strife, or that are forming or have formed an armed group. A public association shall also be deprived of its right to carry out activities and liquidated on the basis of a judgment of conviction (in the context of a criminal trial) that has entered into legal force against it. This refers to a conviction for specified conduct that is expressly prohibited by the

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<sup>39</sup> Law of Georgia on the Suspension and Prohibition of Activities of Public Associations, <https://matsne.gov.ge/en/document/view/29950?publication=2>.

<sup>40</sup> Ibid.

<sup>41</sup> Only minor, non-commercial commercial activities that serve non-commercial goals are permitted (with no opportunity for members and founders to share income).

<sup>42</sup> Organic Law of Georgia on the Suspension and Prohibition of Activities of Public Associations, Art. 3, 4, <https://matsne.gov.ge/en/document/view/29950?publication=2>.

<sup>43</sup> Organic Law of Georgia on Political Unions of Citizens, Art. 25, 25<sup>1</sup>(5), 26(1), <https://matsne.gov.ge/en/document/view/28324?publication=32>.

<sup>44</sup> Organic Law of Georgia on The Suspension and Prohibition of Activities of Public Associations, <https://matsne.gov.ge/en/document/view/29950?publication=2>.



relevant article of Georgia's Criminal Code.<sup>45</sup> The decision of a court to suspend or ban public associations may be appealed in compliance with the procedures determined by Georgian legislation.<sup>46</sup> Although these mechanisms exist, there is no recent data showing that the activities of any CSO have been suspended or banned in practice.

#### **Standard V. The state does not interfere in internal affairs and operation of CSOs.**

According to the Civil Code of Georgia, CSOs are free to determine their internal governance and operations.<sup>47</sup> The law does not entitle the state to interfere in CSOs' internal activities, neither does it create any practical mechanisms for such intervention. Therefore, CSOs are not subject to strict control from the state and practice does not indicate otherwise. The state's rules on monitoring and inspecting, including allowing tax authorities to demand annual financial reports from charity organisations, are proportional to the legitimate purpose since they allow contributors to be entitled to tax benefits due to charity work. All CSOs are required to follow general tax regulations and report to the revenue services on a regular basis. All tax-related obligations are defined in Georgia's tax legislation and no practical incidents show that the related reporting processes are overly burdensome. CSOs can readily meet the reporting obligations online and/or offline. The only procedure deemed overly difficult due to tax authority intervention is the termination/liquidation of a CSO. Following the decision to liquidate, this decision must be verified by the tax authorities. According to the legislation, the maximum period for termination from the date of registration of the termination application is four months. Furthermore, at the request of the tax authorities, this time might be extended for one month. Because the procedure is lengthy and complex, CSOs typically opt to avoid it, resulting in thousands of non-functioning CSOs.

#### **Specific recommendations under Area 1:**

- The Ministry of Justice of Georgia should develop mechanisms for the Registering Body to identify and differentiate CSOs from other NELEs and therefore enable there to be precise statistical information about active CSOs;
- The Government of Georgia should initiate amendments in termination procedures to enable simplified and faster liquidation for CSOs; and
- The Registering Body should promote online registration procedures and the online resources of registration for CSOs.

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<sup>45</sup> Criminal Code of Georgia Art. 157, 186, 192(1), 195(1), 221, <https://matsne.gov.ge/en/document/view/16426?publication=235>.

<sup>46</sup> Law of Georgia on the Suspension and Prohibition of Activities of Public Associations, <https://matsne.gov.ge/en/document/view/29950?publication=2>.

<sup>47</sup> Georgian Civil Code Art. 25(2).



## 3.2 Equal Treatment

Overall score per area: **5.6 / 7**

Legislation: **5.8 / 7**

Practice: **5.4 / 7**

There have been no changes in the area of equal treatment. Registration and establishment procedures are simple, transparent, cost-effective, and time-efficient for all CSOs and business representatives. Though CSO representatives believe that CSOs who support the political party in power are preferred by public representatives, this has not resulted in the enforcement of different regulations for different CSOs. Timeframe differences in VAT refund procedures are visible depending on whether the entitled party is a CSO or a business entity, which puts business representatives in a more favourable position. On the other hand, CSOs have better opportunities to participate in grant awards. Other than that, the legal framework and contemporary practice do not provide specific evidence of inequality and injustice in treatment.

### **Standard I. The state treats all CSOs equitably with business entities.**

In most cases, regulations beneficial for the private sector are not specifically adopted for non-commercial entities, indicating that the taxation system and reforms related to its environment are initially motivated by the desire to support entrepreneurial activities and the business sector, rather than specifically CSOs. However, considering that CSOs are private sector actors, in practice, they still benefit from most of those regulations.

CSOs are not in a less favourable position than business entities in terms of other regulatory aspects, with the exception that, when authorised, business entities have a longer time period (three years) than CSOs to obtain a VAT refund (just three months). On the other hand, while CSOs are permitted to receive state grants, representatives of the business sector are not allowed to do so unless according to certain exceptions prescribed by law (for instance, if a grant for economic activities is issued within the project 'Enterprise Georgia' or in the field of technology and innovation).

CSOs have the same opportunities for participation in public procurement awards as representatives from the business sector, but in practice, considering that demand for services related to the operator scope of CSOs is not high and the awarding criteria are mostly related to service/product price, CSO participation in such procurement procedures is low in comparison to business entities.

### **Standard II. The state treats all CSOs equally with regard to their establishment, registration, and activities.**

The state treats all CSOs equally in terms of establishment, registration, and activities. Legislation does not support a discriminatory approach. Differences in procedure are more visible during the opening of a bank account, because foreign organisations are

subject to more stringent evaluation procedures from banks in terms of their internal policy developed in relation to anti-money laundering and terrorism funding prevention. Without elaborating on particular practical incidents, participants in the focus group raised the issue of state partiality toward CSOs working with the government versus CSOs challenging governmental choices. However, in practice this did not lead to any legislative reforms in favour of certain CSOs.

### Specific recommendations under Area 2:

- The Government of Georgia should initiate amendments to taxation procedures and enable CSOs to enjoy the same VAT refund timelines as corporations;
- The state should make sure that state procurement awarding criteria are suitable not just for business entities, but also for CSOs to encourage CSO engagement in procurement operations; and
- The state should adopt institutional regulations and control mechanisms in order to eliminate preferential treatment for particular government-affiliated CSOs.

## 3.3 Access to Funding

Overall score per area: **5.6 / 7**

Legislation: **6.0 / 7**

Practice: **5.3 / 7**

Access to funding remains available to CSOs from various sources (including from donations, grants, fundraising initiatives and charity incomes) without any developments since the last report from a legal or practical perspective. CSOs are free to seek, receive and use financial and material sources from international and national donors. International donors continue to be their primary source of income, while state support is insufficient and not transparent.

**Standard I. CSOs are free to seek, receive, and use financial and material resources for the pursuit of their objectives.**

CSOs are free to seek, receive and use a variety of financial and material sources from private, public, international and national donors while following the provisions stipulated in the Civil Code of Georgia, the Georgian Law on Grants,<sup>48</sup> the Georgian

<sup>48</sup> Law of Georgia on Grants, <https://www.lexadin.nl/wlg/legis/nofr/oeur/arch/geo/LAWONGRANTS.pdf>.

Law on Public Procurement,<sup>49</sup> and the Georgian Tax Code.<sup>50</sup> Grants, sub-grants, municipal programme funding, fundraising, private donations, and non-essential entrepreneurial activities are examples of funding instruments. Organisations that operate on a membership basis can also accept membership fees (which can be optional or mandatory). From those previously mentioned, grants from international donors continue to be the main source of income for many CSOs.<sup>51</sup> Contrary to in relation to private sources of funding, the legislation related to state grants is unsystematic and often unclear, creating room for arbitrary decisions.<sup>52</sup>

As emphasized by the focus group members, the relatively low interest in state grants among CSOs is associated with the low amount of funds available and the disproportionately high-performance standards applied to their receipt, as well as the perception that the reputation of CSOs that participate in state granting programmes is frequently questioned by society.

According to the focus group participants, the opinions of which are also supported by the data on published awards, starting from 2020, many of the announced funding programmes were solely aimed at providing new opportunities for organisations working on Covid-19-related issues.<sup>53</sup> Other topics raised by the participants in relation to the practical obstacles<sup>54</sup> while seeking to receive state and private donor funds are as follows:

- In most cases, well thought-out, relevant, and goal-oriented applications are insufficient to secure funding while the awarding criteria are ambiguous due to poor feedback mechanisms and general donor unresponsiveness. This is relevant to both state and private donor organisations. This primarily results in motivation loss and reasonable doubts about the objectivity of such programmes among CSOs;
- Depending on whether their funding comes from international donors or governmental agencies, CSOs may experience attacks and stigmatization from the state, society, or media; and
- According to unregistered unions, while it is not required by law, most donors require applicants to have the official legal form and at least one to three years of experience counting from the moment of registration, preventing even experienced associations and groups from accessing the main sources of

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<sup>49</sup> Law of Georgia on Public Procurement, <https://matsne.gov.ge/en/document/view/31252?publication=58>.

<sup>50</sup> Tax Code of Georgia, <https://matsne.gov.ge/en/document/view/1043717?publication=175>.

<sup>51</sup> This tendency remains unchanged since the last report and was once again confirmed by the focus group members during the discussions.

<sup>52</sup> See: Section 3.9 State Support.

<sup>53</sup> Such as supporting programmes for vulnerable groups, raising awareness of vaccination, etc. More detailed information about recent and expired programmes can be found at: <https://csogeorgia.org/en/vacancy?query=covid&type=16&date=>.

<sup>54</sup> Opinions were gathered through a focus group meeting.

funding, leaving them reliant on alternative sources such as philanthropy, social entrepreneurship, volunteering or crowdfunding.

Once financial resources are received, they ought to be used according to the law, provisions of the agreement and its objectives, whereas specific terms strongly depend on the circumstances of a case. Practice does not indicate existence of overly-restrictive rules in that regard. Obligations related to the usage of funds are mostly proportional to their aims: securing project budget compliance, ensuring transparent, clear, and fair procurement procedures, and preventing the use of funds acquired from an entrepreneurial activity for the enrichment of its members.

CSOs' duties to observe financial accounting regulations are limited to disclosing tax-related information to state taxation authorities and informing donors about expenses and transactions linked to funds received from those donors. These procedures are not unnecessarily burdensome and are covered by regular state or private auditing procedures. The state does not oblige CSOs to make information about their income public. Neither focus group participants nor interviewers raised any practical issues in relation to their financial accounting obligations.

**Standard II. There is no distinction in the treatment of financial and material resources from foreign and international sources compared to domestic ones.**

There are no special rules or procedures in place for CSOs to receive and use foreign and international funding or in-kind support, or for donors to provide funding to CSOs. CSOs can freely accept foreign funding and use foreign sources in practice. CSOs that receive foreign funding are not stigmatized or attacked by the state-controlled media or the government. Foreign and international grants, donations, and membership fees are taxed in the same way as domestic grants, donations, and membership fees.

### Specific recommendations under Area 3:

- The state should recognise and support diversification of funding sources for CSOs and unregistered unions, including by promoting philanthropy, social entrepreneurship, etc. and establish necessary legislative guarantees.

## 3.4 Freedom of Peaceful Assembly

Overall score per area: **4.5 / 7**

Legislation: **5.2 / 7**

Practice: **3.9 / 7**

Freedom of peaceful assembly is guaranteed by the Constitution of Georgia and other legislation. However, the relevant legal framework contains some shortcomings. For example, spontaneous assembly is not effectively regulated. During the reporting period, some problematic issues have been identified in practice, especially with regard to state interference in organising demonstrations, as well as disproportionate use of force and, where this has occurred, a lack of effective investigations. Moreover, despite the legal guarantees, LGBTQIA+ activists face significant problems in relation to freedom of assembly.

### **Standard I. Everyone can freely enjoy the right to freedom of peaceful assembly by organising and participating in assemblies.**

The Constitution of Georgia guarantees everyone's right to peacefully assemble in public.<sup>55</sup> The Law of Georgia on Assemblies and Demonstrations, as well as other normative acts, also guarantee freedom of assembly. The Constitution protects both planned and spontaneous assemblies and demonstrations, and the law specifies that it protects assemblies both indoors and outdoors.<sup>56</sup> There is also a restriction on demonstrating within a twenty-metre radius of certain government and military buildings, as well as railway stations, airports and ports.<sup>57</sup> The law does not specifically regulate spontaneous assemblies, and, as a result, general procedural rules are applied, including prior notice to be given if an assembly is held on a traffic roadway or hinders transport movement. Despite the recommendations of the Venice Commission,<sup>58</sup> amendments concerning notifications of spontaneous assemblies have not yet been introduced to the Law on Assemblies and Manifestations.

During the reporting period, online platforms, especially Facebook, were used extensively to organise mass protests on a number of issues.<sup>59</sup> Rallies and

<sup>55</sup> Article 21, the Constitution of Georgia.

<sup>56</sup> The Law on Assembly and Manifestations of Georgia, article 3(a), <https://matsne.gov.ge/en/document/view/31678?publication=10>.

<sup>57</sup> Ibid., article 9.

<sup>58</sup> Final Opinion on the Amendments to the Law On Assembly and Manifestations of Georgia, Venice Commission, Opinion no. 547/2009, 'the 5-day time limit within which a notification has to be submitted, provided by article 8, should be made more flexible: a modification of the provision regarding the deadline within which a notification may be submitted should be included in the sense that a notification shall be submitted 'as a rule' 'five working days before the assembly'. Also, notifications cannot be required for spontaneous assemblies,' available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2009\)153-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2009)153-e).

<sup>59</sup> Giorgi Lomsadze, 'Protests erupt in Georgia over Russian MP's visit,' Eurasianet, 20 June 2019, <https://eurasianet.org/protests-erupt-in-georgia-over-russian-mps-visit>.

demonstrations were mainly peaceful, but there have been grievous instances of interference with freedom of assembly by the active intervention of the state, including the arrest of demonstrators, and the use of disproportionate force against them, as well as the inaction of law enforcement to prevent clashes and manage violent gatherings. Police authorities used disproportionate force during the ‘Protect Your Voice’ protest rally which was held in front of the Election Administration building on 8 November 2020. Even though the majority of the participants were protesting peacefully and only a small group of demonstrators were violent, trying to break barriers and being aggressive, the police used water cannon against all the protesters in a disproportionate manner, resulting in injuries in several cases.<sup>60</sup> Another systemic challenge is related to the authorities restricting the forms of demonstrations. For instance, on 19 February 2021, the police did not allow protest participants to set up tents on the sidewalks in front of the Parliament building, arrested twenty activists who were attempting to set up tents<sup>61</sup> and restricted access to the protest site.<sup>62</sup> Furthermore, the state has used repressive methods to deal with peaceful protests against the construction of the Namakhvani hydroelectric power plant (HPP). There were several instances of police blocking the road leading to the protest site with metal barricades, making it impossible for other activists and citizens to join the assembly, as well as police deliberately denying access to the perimeters of the protest site to legal representatives of the Rioni Gorge Defenders.<sup>63</sup> In addition, on 11 April 2021, the police dismantled activists’ tents that were located on the construction site.<sup>64</sup>

The state still fails to ensure that LGBTQIA+ individuals and activists can equally enjoy the right to freedom of assembly. Despite the initial statements from the authorities that everyone’s right to organise an assembly is guaranteed in the country, LGBTQIA+ activists were forced to cancel Tbilisi Pride Week 2021, following direct threats from radical religious and political organisations and violent break-ins at the offices of the ‘Shame’ movement and Tbilisi Pride that the state failed to address.<sup>65</sup> Conversely, state officials further encouraged such violent behaviour by making discriminatory comments and suggesting that Pride participants should have taken

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<sup>60</sup> GYLA’s Assessment on the Human Rights Situation in Georgia in 2020, available at: <https://bit.ly/3aOFw8g>.

<sup>61</sup> ‘GYLA calls on the Ministry of Internal Affairs to respect the right to hold a tent gathering on the sidewalk’, website of GYLA, 19 February 2021, available at: <https://bit.ly/31CkQiC>.

<sup>62</sup> Statement of the Public Defender, 19 February 2021, <https://www.facebook.com/photo?fbid=276778587150055&set=a.251767382984509>.

<sup>63</sup> ‘Tensions at Namakhvani HPP Site as Works Resume with Police Backing’, website of Civil.ge, 5 April 2021. Available at: <https://civil.ge/archives/410565>. ‘Public Defender Calls on Ministry of Internal Affairs not to Use Force against People Protesting against Namakhvani HPP’, website of the Public Defender of Georgia, 4 April 2021, available at: <https://bit.ly/3wEjEFE>.

<sup>64</sup> Submission to the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, GYLA, 30 May 2021, available at: <https://bit.ly/3AX4Jbl>.

<sup>65</sup> GYLA, ‘Chronology and Legal Assessment of the Events of July 5-6, 2021,’ [https://gyla.ge/files/CHRONOLOGY-AND-LEGAL-ASSESSMENT-OF-THE-EVENTS-OF-JULY-56.pdf?fbclid=IwARONLNL2jsDs2R5Ay2\\_zgmY4KvIktRcxAoHsNEcaxPIFG6t4HwV0tMSD6AI](https://gyla.ge/files/CHRONOLOGY-AND-LEGAL-ASSESSMENT-OF-THE-EVENTS-OF-JULY-56.pdf?fbclid=IwARONLNL2jsDs2R5Ay2_zgmY4KvIktRcxAoHsNEcaxPIFG6t4HwV0tMSD6AI).



into consideration the views of the majority and refrain from taking ‘provocative steps.’<sup>66</sup> Several prominent politicians, as well as the Ministry of Internal Affairs, urged march organisers and participants not to hold the march on Rustaveli Avenue in Tbilisi for security reasons.<sup>67</sup> The state has formally initiated an investigation into these matters. However, the Prosecutor’s Office has still not identified the organisers of the 5 July violent attacks and the person/persons who publicly incited the violence, despite overwhelming evidence.<sup>68</sup>

On 10 November 2021, opposition parties staged protests in front of various administrative buildings in Tbilisi. During the rallies, law enforcement officials arrested a total of forty-six citizens on the grounds of petty hooliganism and disobedience to a lawful request of a police officer. These events show signs of unjustified and disproportionate use of police coercive measures.<sup>69</sup>

Persecution of organisers and participants in peaceful assemblies has also been documented. On 20-21 June 2019, police detained 342 protesters under the administrative code during a large-scale protest.<sup>70</sup> In the aftermath, investigations were ineffective and the trials of the detainees were conducted with significant violations, and even access to lawyers was inadequate.<sup>71</sup> Additionally, during the demonstrations in Gumati against Namakhvani HPP, several participants were administratively detained.<sup>72</sup> These detentions and fines were mostly unjustified and aimed at dissuading people from gathering. The Ministry of Internal Affairs also launched an investigation into the case of damaging metal barricades set up by police in Gumati under Article 187 of the Georgian Criminal Code.<sup>73</sup>

#### **Standard II. The state facilitates and protects peaceful assemblies.**

In general, prior notification is not required to hold an assembly. In exceptional cases, the law requires the submission of advance notice to the local government if an assembly is held on a traffic roadway or hinders transport movement. Submitting the notice is free of charge.<sup>74</sup> The local municipality must be notified five days in

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<sup>66</sup> Ibid.

<sup>67</sup> Radio Liberty. ‘The Ministry of Internal Affairs calls on the Pride team to refuse to hold a march in public space’, 5 July 2021, available at: <https://www.radiotavisupleba.ge/a/31341473.html>.

<sup>68</sup> GYLA, ‘Chronology and Legal Assessment of the Events of July 5-6, 2021,’ [https://gyla.ge/files/CHRONOLOGY-AND-LEGAL-ASSESSMENT-OF-THE-EVENTS-OF-JULY-5-6.pdf?fbclid=IwARONLNL2jsDs2R5Ay2\\_zgmY4KvIktRcxAoHsNEcaxPIFG6t4HwV0tMSD6AI](https://gyla.ge/files/CHRONOLOGY-AND-LEGAL-ASSESSMENT-OF-THE-EVENTS-OF-JULY-5-6.pdf?fbclid=IwARONLNL2jsDs2R5Ay2_zgmY4KvIktRcxAoHsNEcaxPIFG6t4HwV0tMSD6AI).

<sup>69</sup> GYLA. ‘Police violated the rights of citizens detained on November 10’, 11 November 2021, available at: <https://bit.ly/3DAvnla>.

<sup>70</sup> GYLA. ‘The Events of June 20-21 are Uninvestigated,’ 19 June 2020, available at: <https://bit.ly/3GknxoH>.

<sup>71</sup> GYLA, EMC, Alternative Report on Georgia’s Compliance with the International Covenant on Civil and Political Rights, August 2020, available at: <https://bit.ly/3n6U1tZ>.

<sup>72</sup> Ministry of Internal Affairs. ‘Statement of the Ministry of Internal Affairs,’ 27 May 2021, available at: <https://bit.ly/3ftqcRv>.

<sup>73</sup> Ibid.

<sup>74</sup> Articles 2 and 5, the Law of Georgia on Assemblies and Manifestations, <https://matsne.gov.ge/en/document/view/31678?publication=10>.

advance.<sup>75</sup> The local self-government body is not authorised to issue or deny the right to hold an assembly without first receiving a notice. The law empowers the responsible persons to consider the feasibility of changing the location and time of the demonstration. The issue should be considered by the local self-government body within three days.<sup>76</sup>

Legislation does not specifically indicate the protection of the right to use any electronic means of communication to organise peaceful assemblies. However, the Constitution declares access to the internet as a fundamental right of Georgian citizens.<sup>77</sup> It should be noted that during the demonstrations in Gumati against the Namakhvani HPP, locals alleged that violations of this right were recorded by the installation of devices suppressing communication signals in the area, complicating and, in some cases, making it impossible to provide or obtain information about what was going on at the demonstration site.<sup>78</sup>

### **Standard III. The state does not impose unnecessary burdens on organisers or participants in peaceful assemblies.**

In general, organisers are not held liable for maintaining public order or for the actions of others during an assembly. However, according to the Code of Administrative Offences, a violation of the rules for organising and holding an assembly or demonstration will result in a fine of 500 GEL (approx. 141 EUR).<sup>79</sup> During the reporting period, such fines have not been imposed. Due to the Covid-19 pandemic, on 21 March 2020, a decree issued by the President of Georgia restricted freedom of assembly, in particular, any kind of gathering, demonstration, or assembly of individuals, apart from the exceptions determined by the ordinance of the Government of Georgia.<sup>80</sup> The right to an assembly under the Law of Georgia on Assemblies and Manifestations has led to a heterogeneous approach to the practice of individual protests.<sup>81</sup> There has been unpredictable enforcement of these rules, such as instances of fining organisers and participants for violating a curfew<sup>82</sup> or fining participants who left the protest area, but not fining those who stayed inside the protest area.<sup>83</sup>

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<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Article 17, the Constitution of Georgia.

<sup>78</sup> GYLA. 'Police Should Immediately Leave Rioni Gorge and Stop Construction of Namakhvani HPP', 3 April 2021, available at: <https://bit.ly/3unRjli>.

<sup>79</sup> Article 174<sup>1</sup>, Administrative Offences Code of Georgia, <https://matsne.gov.ge/en/document/view/28216?publication=381>.

<sup>80</sup> Decree of the President of Georgia №1, 'On the measures to be taken in connection with the declaration of a state of emergency on the entire territory of Georgia,' available at: <https://matsne.gov.ge/ka/document/view/4830372?publication=0>.

<sup>81</sup> GYLA's Assessment on the Human Rights Situation in Georgia in 2020, available at: <https://bit.ly/3aOFw8g>.

<sup>82</sup> Radio Tavisupleba, 'One of the organisers of the charity rally in Zugdidi was fined 15,000 GEL,' available (in Georgian) at: <https://www.radiotavisupleba.ge/a/30511490.html>.

<sup>83</sup> Human Rights Center. 2021. 'Right of Peaceful Assembly and Manifestation In Georgia,' available at: <https://bit.ly/3mN9yQD>.



The Constitution grants the state the authority to intervene in the exercise of the right to assemble and demonstrate if it has become illegal. The Law on Assemblies and Manifestations specifies the cases of mass violations that justify immediately stopping the assembly or demonstration at the request of the authorised representative,<sup>84</sup> but these specifications do not provide details of what is meant by ‘mass violations.’ The state has used this argumentation to arbitrarily obstruct peaceful assemblies while, on other occasions, when deemed necessary, ignored violent protestors. For example, this was the case during the demonstrations of 20-21 June 2019, when the police dispersed the rally in front of the Parliament using disproportionate and illegitimate means, which lead to injuries among many of the participants.<sup>85</sup> Furthermore, the investigations of these cases are ineffective and the amnesty law adopted by the Georgian Parliament covering crimes committed during the demonstrations of 20-21 June 2019<sup>86</sup> further decreased victims’ chances of being officially recognised, making it impossible for them to access the evidence that could be the basis for cases in domestic and international courts.<sup>87</sup> Furthermore, during the 5th July Pride event, the state largely ignored and ineffectively responded towards violent and aggressive protestors.<sup>88</sup>

#### **Standard IV. Law enforcement supports peaceful assemblies and is accountable for the actions of its representatives.**

The Law on Assemblies and Manifestations, as well as police law, govern the use of force during peaceful assemblies. Interference with the exercise of the right to assemblies and demonstrations must serve one of the Constitution's legitimate goals and be necessary in a democratic society. The police are required to follow the proportionality principle, which means that a police measure must be useful, necessary, and proportionate.<sup>89</sup> Nonetheless, legislation does not specify detailed regulations on the holding of various types of gatherings (including spontaneous and simultaneous ones), pre-warning/negotiation with demonstration organisers, separation of competencies between self-governing bodies and the police, and unified legal regulation of using special means.<sup>90</sup> Neither Georgian law nor established practice provides a specific coordination mechanism in this regard.

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<sup>84</sup> Article 11 and 13, the Law of Georgia on Assemblies and Manifestations.

<https://matsne.gov.ge/en/document/view/31678?publication=10>.

<sup>85</sup> GYLA, ‘Beyond the Lost Eye – legal assessment of the 20-21 June events’, available at: <https://bit.ly/2OR8OZW>.

<sup>86</sup> Georgian Law on Amnesty, available at: <https://www.matsne.gov.ge/ka/document/view/5199308?publication=0>.

<sup>87</sup> See ‘GYLA Calls On Political Parties Not To Initiate A Draft Law Aimed At Extending Amnesty For Crimes Committed By Law Enforcement on June 20-21st, 2019’, available at: <https://Bit.Ly/2zucwod>.

<sup>88</sup> Georgian Young Lawyers’ Association, ‘Chronology and legal assessment of the events of July 5-6’, 2021, 27-30, available at: <https://bit.ly/35kFXru>.

<sup>89</sup> Article 12 of the Law of Georgia on Police, <https://matsne.gov.ge/en/document/view/2047533?publication=28>.

<sup>90</sup> Special Report of the Public Defender of Georgia ‘Freedom of Peaceful Assembly (Sphere of Rights and the Standard of Assembly Management)’, 2020, 44, available (in Georgian) at: <https://ombudsman.ge/res/docs/2020061620213679437.pdf>.

Law enforcement does not always protect assembly participants from disruptors. Members of the press and LGBTQIA+ people were assaulted, abused, and injured during the 5th July Pride event as a result of the police's delayed and ineffective response,<sup>91</sup> following which the state provided ill-founded excuses.<sup>92</sup> The subsequent investigation and prosecution of these violent episodes has been ineffective.<sup>93</sup>

Objective and due investigation of crimes committed by law enforcement officials are also problematic. As a rule, where an investigation commences into alleged beatings or other violence by them, it does not finish with specific legal results. Many gross violations by law enforcement have still not been investigated, and the perpetrators are not held accountable (for example, the 2019 case when over 200 people were injured, and only four policemen were accused and not sentenced).<sup>94</sup>

#### Specific recommendations under Area 4:

- The state shall unwaveringly protect the right to peaceful assembly, and manage public protests peacefully, use the method of negotiating with the public, and minimize police response to rallies;
- All cases involving the abuse of power by law enforcement officers during demonstrations must be investigated promptly, impartially, and objectively by the Ministry of Internal Affairs and the Prosecutor's Office.
- The Parliament of Georgia shall amend national legislation in line with the recommendations of the Venice Commission and regulate issues related to spontaneous assembly. In particular, an exception should be made to the general rule of early warning to the local self-government body and participants in peaceful assemblies and demonstrations should be allowed to block the roadway when prior notice of the relevant authorities is not possible;
- Law enforcement officers shall not use administrative offences against peaceful demonstrators; and
- The Parliament of Georgia should fundamentally revise the Code of Administrative Offences to eliminate the unjustified intervention into the right to peaceful assembly and expression (e.g., detaining individuals to prevent them from participating and holding them for administrative imprisonment without proper safeguards).

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<sup>91</sup> Netgazeti, 'Hunting for cameramen and journalists in front of the police - 14 stories', 6 July 2021, available at: <https://netgazeti.ge/news/552394/>.

<sup>92</sup> Radio Liberty, 'The Ministry of Internal Affairs states that they have taken responsibility for the security of the Pride event only on July 1 and 3', available at: <https://www.radiotavisupleba.ge/a/31345510.htm>.

<sup>93</sup> GYLA, 'Chronology and legal assessment of the events of July 5-6', 2021, 31-40.

<sup>94</sup> GYLA, 'The Events of June 20-21 are Uninvestigated', 19 June 2020, available at: <https://bit.ly/3GknxoH>. GYLA, EMC, Alternative Report on Georgia's Compliance with the International Covenant on Civil and Political Rights, August 2020.

## 3.5 Right to Participation in Decision-Making

Overall score per area: **4.8** /7

Legislation: **5.2** /7

Practice: **4.3** /7

There has been slight progress in the legislative field and the institutional framework ensuring public consultations and participation in decision-making processes through the establishing of procedural guarantees for CSO participation in developing and monitoring policy documents and within the Open Government Partnership (OGP) framework. However, there is persistent poor implementation of these standards in practice, due to the restrictions in place due to the Covid-19 pandemic and a lack of political will to ensure meaningful engagement both at the national and local levels. Participation in decision-making is especially lacking when it comes to engaging on crucial public topics such as, for instance, reforming the judiciary and the intelligence services. The Government of Georgia has still not addressed most of the recommendations from previous years and, consequently, most of the issues identified in previous reports are still prevalent.

### **Standard I. Everyone has the right to participation in decision-making.**

Even though Georgian legislation envisages some mechanisms for CSO involvement in decision-making, for example regarding petitioning mechanisms (in-person and online), initiating and commenting on draft laws, access to sessions in Parliament, and the right to speak at committee sessions, public consultations are not mandatory for all types of legal and policy drafts. For instance, there is no legal requirement to organise public consultancy on all types of draft laws or government normative acts prior to them being sent to the parliament or being adopted. In some cases, when the government organises such consultancies, an announcement on a consultation is sent to a limited number of CSOs, something that does not ensure broad public participation.

The situation marginally improved after the Government of Georgia adopted the Rules of Developing, Monitoring and Evaluating Policy Documents<sup>95</sup> which establishes procedural guarantees that ensure the participation of different stakeholders, including CSOs, in the process of developing and approving policy documents by state agencies. In 2020, the Government also adopted a resolution on Approving the Methodology for Regulatory Impact Assessment, which establishes public consultations with different stakeholders as an obligatory stage of an impact assessment before introducing certain draft laws.<sup>96</sup>

<sup>95</sup> Government of Georgia, Ordinance No. 629, 20 December 2019, <https://matsne.gov.ge/ka/document/view/4747283?publication=0>.

<sup>96</sup> Government of Georgia, Ordinance No. 35, 17 January 2020, <https://www.matsne.gov.ge/ka/document/view/4776100?impose=translateEn&publication=0>.

Compared to the Government, Parliament has institutionalised more avenues for civil participation in decision-making. On 6 July 2021, after over a year of discussions, the Parliament of Georgia adopted the Open Parliament Georgia Action Plan for 2021-2022 which aims to facilitate parliamentary openness and transparency, increase citizen and CSO engagement in the activities of the Parliament of Georgia and improve access to information.<sup>97</sup>

The Parliament has also been active in using thematic inquiries and establishing Thematic Inquiry Groups on specific topics.<sup>98</sup> The Parliament openly invites interested parties, among them CSOs, to provide their inputs on specific issues within the thematic review. The suggestions provided by CSOs are publicly available on the Parliament webpage, but since it is still a novel tool CSOs are waiting to see how their contributions will be translated into policy decisions, if at all.

Despite some positive steps towards institutionalising public participation at a central level, the existing framework still does not guarantee meaningful public participation, especially for developing draft laws and normative acts. This is because, since there are no clearly prescribed mechanisms to redress and remedy any noncompliance with the rules governing civil participation, these rules are therefore often only declaratory in practice.<sup>99</sup>

In contrast to public participation at the central level, Georgian legislation establishes a more diverse basis for participation in decision-making at the local level. The Organic Law of Georgia - Local Self-Government Code sets out key guarantees for civic engagement at the local level, including through general assemblies in localities, petitions, councils of civil advisors, participation in the sessions of the city councils (*Sakrebulo*) and the sessions of its commissions, and hearing reports on the work performed by the Mayor of the municipality and by members of the municipality councils.<sup>100</sup> The list of participatory mechanisms is open-ended and therefore gives local governments an opportunity to design various participatory schemes such as participatory budgeting, gender equality and youth councils, among others. Nevertheless, there are some legislative obstacles that restrict the right to public participation at the local level. For instance, a general assembly of a locality is required to be attended by at least twenty per cent of registered constituents for it to be legitimate, but this is an unrealistically high number for mountainous and rural settlements, often with high migration rates, which essentially deprives locals and

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<sup>97</sup> Parliament of Georgia, Open Parliament Georgia Action Plan 2021-2022,

<https://idfi.ge/public/upload/EU/Open%20Parliament%20Action%20Plan%202021-2022.pdf>.

<sup>98</sup> Some examples include Thematic Inquiry Groups on 'Civic Engagement in the Municipal Activity', 'Women's Rights in the Informal Economy and the Effect of Covid-19' and many others.

<sup>99</sup> According to the General Administrative Code of Georgia, non-compliance with formal proceedings (including lack of public participation) can be a legal basis for annulling individual legal acts or a normative act. However, in practice, common courts or supervisory bodies hardly ever grant applications based solely on those grounds.

<sup>100</sup> Article 85, Organic Law of Georgia Local Self-Government Code, <https://matsne.gov.ge/en/document/view/2244429?publication=44>.

regional CSOs from convening a legitimate general assembly of a locality.<sup>101</sup> In addition to legislative impediments, public participation at the local level was also noticeably worsened due to the Covid-19 pandemic, as most local governments were not ready to ensure meaningful civic engagement could continue during the pandemic either online or via alternative offline means.<sup>102</sup>

In some cases, participation platforms at the central level such as advisory boards, working groups, etc. are created on an ad hoc basis, which often means that not every interested person receives information about these possibilities for participation. CSOs claim that state agencies tend to discriminate against CSOs when deciding on cooperation. In addition, regional CSOs usually get only limited access to participation possibilities pertaining to issues decided by the central government, compared to those which are based in Tbilisi.

**Standard II. There is regular, open and effective participation of CSOs in developing, implementing and monitoring public policies.**

Georgian legislation envisages the creation of public and advisory councils, working groups, consultative bodies, thematic review groups, and other forums for participation on almost all levels of decision-making, both at the elaboration and implementation stages. Additionally, the law allows the prime minister as well as ministers to establish consultative bodies (e.g., commissions, advisory councils) on any issue within their mandate.<sup>103</sup> However, there are not always clear rules guiding their composition and these bodies do not always include CSO representatives in their membership and, even when they do, CSOs note that they have only incremental influence limited to non-essential decisions.

Despite these legislative guarantees, the law does not clearly set out procedures and timelines for public consultations, leaving this to the discretion of state bodies. The legislation also does not typically establish a clear and transparent mechanism for member composition for consultative bodies which creates room for arbitrary decisions. Implementation of meaningful participation also remains frail.

Even though there was a growing interest among municipalities to adopt and implement strategies and policy documents that ensure citizen participation and transparency of decision-making at the local level,<sup>104</sup> CSO focus group participants have noted that these initiatives were mostly not intrinsic to municipal authorities, and

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<sup>101</sup> Council of Europe, Institutionalised citizen participation: assessment of existing mechanisms, 2017, p. 19, <https://rm.coe.int/1680784817>.

<sup>102</sup> OSGF, CTC, et.al, Local Self Government Index 2021, [http://www.lsgindex.org/uploadimages/adm\\_folder/LSGIndex-Final-geo.pdf](http://www.lsgindex.org/uploadimages/adm_folder/LSGIndex-Final-geo.pdf).

<sup>103</sup> The Law of Georgia on the Structure, Authority and Rules of Operation of the Government of Georgia Art. 20 and Art. 29, <https://matsne.gov.ge/en/document/view/2062?publication=41>.

<sup>104</sup> Open Government Partnership, Independent Reporting Mechanism (IRM): Georgia Transitional Results Report 2018–2019, [https://www.opengovpartnership.org/wp-content/uploads/2021/05/Georgia\\_Transitional-Results\\_Report\\_2018-2019\\_EN\\_for-public-comment.pdf](https://www.opengovpartnership.org/wp-content/uploads/2021/05/Georgia_Transitional-Results_Report_2018-2019_EN_for-public-comment.pdf).

they were instead incentivised by the donor organisations within specific projects. Therefore, after specific donor-funded projects end, there is a lack of institutional continuity and political support for civic engagement schemes at the municipal level.

The above issues have been further exacerbated during the Covid-19 pandemic since in-person engagement was largely restricted due to the public health safety regulations and online tools were unsuccessful in filling the resulting gap. In the spring of 2020, based on the pandemic-related state of emergency, the Government officially restricted conducting public hearings for the issuance of an environmental decision which is an obligatory administrative stage for such decisions. During this period, the Ministry of the Environment started proceedings on several high-profile projects, which raised concerns from environmental CSOs who noted that ‘for most of the public concerned, the only way to get information about the project is through public hearing’ which was restricted for those projects.<sup>105</sup>

Using online platforms as the primary instrument of engagement totally disregarded certain groups, especially those with limited internet and device accessibility (especially among people living in the villages and the elderly) from participating. Unfortunately, the Government of Georgia has not made major steps to address these challenges.

The existing consultation formats do not always guarantee effective participation; CSOs are not always invited to provide input into the decision-making process at the earliest stages and are not given sufficient time in which to do so. For instance, two leading Georgian CSOs - Transparency International Georgia (TIG) and International Society for Fair Elections and Democracy (ISFED) - had to leave the process of forming the Advisory Group of the Central Election Commission (CEC), a consultative body that issues recommendations regarding the election dispute review process. According to the Election Code, the Advisory Group should be composed of a representative of the Public Defender's Office of Georgia and international and/or local experts selected by the election observer organisations, including CSOs. However, TIG and ISFED note that the decision-making procedure for selecting CSO representatives designed by the CEC did not ensure the selection of qualified and reliable candidates and made their presence in this group nominal.<sup>106</sup>

The existence of a consultative body does not limit CSOs’ ability to participate in the public consultation or public hearing at a later stage. Therefore, some CSOs have low interest in the membership of consultative bodies, mainly because these schemes do not require obligatory feedback on their initiatives and, consequently, CSOs do not perceive these instruments as tools to effectively influence policymaking.

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<sup>105</sup> Georgian Young Lawyers Associations, Sovereign - ‘Prime Minister’, 2021, p. 41, <https://bit.ly/33lqQgW>.

<sup>106</sup> TI Georgia and ISFED are leaving the process of staffing the CEC Advisory Group, <https://transparency.ge/en/post/ti-georgia-and-isfed-are-leaving-process-staffing-cec-advisory-group>.



Furthermore, during the focus group, CSOs have shared their observation that government authorities do not usually provide effective participatory opportunities when it comes to controversial decisions that could raise criticism from citizens and CSOs. Even within the strictly institutionalised CSO participatory instruments, where CSOs are officially considered part of the advisory body, their criticism is sometimes met with hostility. For instance, in January 2021, the Adjara Cultural Heritage Protection Agency terminated the membership of a local CSO representative from the Advisory Board due to his different, critical views on the policies of the Agency, which was assessed by the director of the Agency as a ‘deliberate discrediting’ of the Agency.<sup>107</sup>

The state authorities do not usually provide any feedback about the suggestions provided by CSOs either in person or publicly.

### **Standard III. CSOs have access to information necessary for their effective participation.**

Georgian legislation establishes necessary guarantees to ensure access to public information free of charge and within a reasonable timeframe (immediately, or within not later than ten days).<sup>108</sup>

The General Administrative Code of Georgia also stipulates the oversight mechanism and creates the obligation of public institutions to submit an annual ‘Freedom of Information Report’ to the Parliament of Georgia, which should include information about the number of decisions to refuse to provide public information, the number of violations of the Code, the imposition of disciplinary sanctions on those responsible, and information on appeals against the decision to refuse, etc.<sup>109</sup> The CSOs also have an opportunity to engage and contribute to this oversight process through parliamentary proceedings.<sup>110</sup> There are also a number of online governmental platforms and normative acts that ensure the proactive publication of relevant information.<sup>111</sup>

Notwithstanding these guarantees, the Government of Georgia remains fairly closed when it comes to publishing this information. Except for in rare cases, the

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<sup>107</sup> Social Justice Center, Non-Governmental Organisations Respond to the Termination of Adjara Cultural Heritage Protection Council Member, 28 January 2021, <https://socialjustice.org.ge/ka/products/arasamtavrobo-organizatsiebi-ekhmianebian-acharis-kulturuli-memkvidreobis-datsvis-sabchos-tsevrstvis-uflebamosilebis-shetsqvietis-fakts>.

<sup>108</sup> General Administrative Code of Georgia, Chapter III, <https://matsne.gov.ge/en/document/view/16270?publication=33>.

<sup>109</sup> Ibid., Art. 49.

<sup>110</sup> Parliament of Georgia, Human Rights And Civil Integration Committee Reviewing Reports On Public Information, 29 June 2021, <https://bit.ly/3A4x54o>.

<sup>111</sup> All normative acts including laws, government resolutions, international agreements, and Constitutional Court decisions are regularly published on the legislative herald [www.matsne.gov.ge](http://www.matsne.gov.ge). Information about all the draft laws, subsequent documents, and hearing schedules are usually available on the webpage of the Parliament of Georgia ([www.parliament.ge](http://www.parliament.ge)) and CSOs have a possibility to participate and comment on draft laws during the parliamentary committee hearings.

Government does not publish information about the draft laws/government decrees or the consequent proceedings and CSOs do not have the possibility to familiarise themselves with or engage in the elaboration procedures. Since September 2020, the Government has stopped publishing government ordinances on their webpage without any official reasoning.<sup>112</sup>

Despite some efforts to systemize and ensure accessibility of information, CSOs still experience difficulty effectively acquiring information pertaining to controversial projects or sensitive issues.<sup>113</sup> The government often uses a broad interpretation of commercial secrets as a pretext to restrict access to information on those infrastructure projects or public-private partnership deals over which CSOs have a heightened interest in carrying out a watchdog role. CSOs also have difficulty acquiring information from local authorities, especially considering that they only publish limited information proactively, which is partly due to a lack of necessary online infrastructure.

The Covid-19 pandemic has also negatively affected the ability to receive responses to information requests in due time. Access to public information was officially restricted for two months after 21 March 2020, when a state of emergency was declared on the entire territory of Georgia.<sup>114</sup> Even after the lifting of these restrictions, the public authorities have used the Covid-19 pandemic as a pretext to stall and avoid issuing public information.<sup>115</sup>

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<sup>112</sup> Monitor Studio, 'See what the government is hiding and why their decisions are hidden from the public (29 October 2021), <https://www.facebook.com/monitorstudio/posts/4645850238810977>.

<sup>113</sup> Some examples include:

- information about the construction of Namakhvani Dam - <https://socialjustice.org.ge/ka/products/uzenaesi-sasamartlo-kontrazvervit-sakmianobaze-statistikur-monatsemeps-ar-asajaroeps>; and  
- information about counterintelligence activities - <https://socialjustice.org.ge/ka/products/uzenaesi-sasamartlo-kontrazvervit-sakmianobaze-statistikur-monatsemeps-ar-asajaroeps>.

<sup>114</sup> Article 13, Ordinance of the Government of Georgia 'On the Approval of Measures to be Implemented in connection with the Prevention of the Spread of the Novel Coronavirus (Covid-19) in Georgia, <https://matsne.gov.ge/en/document/view/4830610?publication=41>.

<sup>115</sup> IDFI, Access to Public Information in Georgia 2020, [https://idfi.ge/en/access\\_to\\_public\\_information\\_in\\_georgia\\_2020](https://idfi.ge/en/access_to_public_information_in_georgia_2020).



#### Standard IV. Participation in decision-making is distinct from political activities and lobbying.

Georgia has a dedicated law on lobbying activities<sup>116</sup> which regulates lobbying, establishes registration procedures for lobbyists, and specifies consequent rights and obligations. Everyone has a right to register as a lobbyist except when the person's occupation is incompatible with lobbying activities (persons who hold certain public positions, for instance members of parliament) or the person has been convicted of a crime against the state or official misconduct<sup>117</sup>

After registration, lobbyists have certain benefits and reporting obligations. For instance, they can freely enter the administrative building for the legislative and executive branches, may participate in discussions on a draft law on both open and closed sessions (except for in certain cases, as defined by the law), have the right to speak at committee sessions, and meet in person with legislative and executive body representatives.<sup>118</sup>

Currently, there are thirty-five persons registered as lobbyists. Since 2018, only six persons have applied to the Parliament of Georgia to register as a lobbyist, and only three of those applications have been granted. CSO representatives are largely not registering as lobbyists, instead preferring traditional legislative advocacy. Information about the lobbyists and their activities is available online on the webpage of the Parliament of Georgia.<sup>119</sup>

Despite the legislative incentives, the status of lobbying and registering as a lobbyist remains largely inactive, since Georgian legislation provides other guarantees (e.g., participation in working groups, parliamentary hearings, access to information, etc.) that enables similar engagement without this status. Therefore, people prefer to directly engage in legislative advocacy without taking on the lobbyist status. Advocacy is clearly distinguished from lobbying and CSOs have the freedom to meaningfully engage in legislative advocacy without registering as lobbyists.

Georgian legislation does not define political activity and there is no regulation that restricts CSOs' involvement in political decision-making. CSOs are active participants in Georgian political processes, and they represent different political and philosophical frameworks. These ideological backgrounds and different political opinions are sometimes used to marginalize certain CSOs when their activities closely align with specific partisan policies. These attacks are however largely limited to political speeches. CSOs remain resilient towards these attempts and are not silenced or intimidated into abandoning their activities.

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<sup>116</sup> Law of Georgia on Lobbying, <https://matsne.gov.ge/ka/document/view/13552?publication=7>.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> List of registered lobbyists and reports about their activities, webpage of Parliament of Georgia, <https://parliament.ge/supervision/bills-reports/other-reports>.

### Specific recommendations under Area 5:

- The state institutions should respect the right of individuals to participate in the decision-making process and ensure their meaningful engagement in developing draft laws and policies, including on politically sensitive topics;
- The Government of Georgia should design and adopt unified legislative standards on public consultations of draft laws and policies at the national level, including by clearly setting participation as an obligatory stage in the elaboration of decrees, draft laws, strategic documents, and other instruments and establish a redress mechanism for their violation;
- The state should ensure that consultations with CSOs happen at the earliest stage of development of laws and policies and that they are provided with comprehensive feedback on their input;
- The government should eliminate legislative and practical hurdles restricting meaningful participation at the local level (e.g., decreasing the twenty per cent constituency threshold for a general assembly of a locality) and support local governments in advancing electronic tools for participation and publishing information;
- The Government of Georgia and other state agencies should affirm their obligations to guarantee access to public information and ensure that CSOs can receive comprehensive information in due time, especially on contentious topics with heightened public interest; and
- The Government of Georgia should publish draft laws and draft normative acts for public comment, before their introduction to the Parliament/their adoption. To this end, the Government should establish an online platform that will ensure transparent and open policy making procedures.

## 3.6 Freedom of Expression

Overall score per area: **4.9** /7

Legislation: **5.6** /7

Practice: **4.1** /7

Freedom of expression is guaranteed and is in line with international standards. The legislation in this area is considered the most progressive in the region. However, some

legal norms and legislative proposals, such as changes to the Protection of Minors from Harmful Information to Children in the Law of Georgia on Broadcasting and the Code of the Rights of the Child are broad, ambiguous, and risk restricting freedom of expression. The legal framework for the media provides a solid foundation for ensuring freedom of expression, albeit cases of interference with journalists' professional activities and a lack of appropriate investigations into these cases have been identified during the reporting period.

### **Standard I. Everyone has the right to freedom of opinion and expression.**

Freedom of expression is guaranteed by Georgian legislation. Therefore, individuals generally enjoy this fundamental right, including in their online communications.<sup>120</sup> The state's approach to protection of freedom of expression is considered to be the most progressive in the Caucasus.<sup>121</sup> Along with the relevant laws, the Constitutional Court of Georgia has significantly contributed to setting this high standard.<sup>122</sup> The Court repeatedly observed that a 'free society consists of free individuals who think freely, hold independent and different opinions and participate in democratic processes, which entails exchange of opinions and debates.'<sup>123</sup>

Article 17 of the Constitution of Georgia protects the right to freedom of opinion, information, mass media and the internet. The Law on Freedom of Speech and Expression states that other 'generally accepted rights' related to freedom of expression are also protected, even if they are not specifically mentioned in the law.<sup>124</sup> No one has the right to a monopoly of the mass media or the means of dissemination of information.<sup>125</sup> Censorship is prohibited.<sup>126</sup> Under the law, everyone, including CSOs, can enjoy freedom of expression both online and offline. However, marginalised communities such as LGBTQIA+ representatives have a particularly difficult time exercising their right to free expression, since these groups are often subject to oppression, violence, and discrimination.<sup>127</sup> The state does not fulfil its positive obligation to protect their constitutional right. This was especially apparent during the Tbilisi Pride Week 2021, when the organisers of the Pride March were forced to cancel the event, as the state de facto refused to protect the safety of participants in the march.<sup>128</sup>

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<sup>120</sup> Freedom House Report 2021, available at: <https://freedomhouse.org/country/georgia/freedom-world/2021>.

<sup>121</sup> Media Advocacy Coalition, 'Media Environment in Georgia', 2020, 23, available at: <https://bit.ly/3m6QPIC>.

<sup>122</sup> The judgment of 30 September 2016 of the Constitutional Court of Georgia on the case N1/6/561,568 Georgian citizen Yuri Vazagashvili vs. the Parliament of Georgia.

<sup>123</sup> The judgment of 26 October 2007 of the Constitutional Court of Georgia on the case N2/2/389 Maia Natadze and others vs. the Parliament of Georgia and the President of Georgia, II, 13.

<sup>124</sup> Paragraph 3 of Article 3, the Law of Georgia on Freedom of Speech and Expression, <https://matsne.gov.ge/en/document/view/33208?publication=5>.

<sup>125</sup> Paragraph 3 of Article 17 of the Constitution of Georgia.

<sup>126</sup> Ibid.

<sup>127</sup> Submission of the Public Defender (Ombudsman) of Georgia to the Universal Periodic Review (UPR) 37th Session, January-February 2021, para. 29, available at: <https://bit.ly/3c3RR9C>.

<sup>128</sup> GYLA, 'GYLA Statement on the Violent Actions that Took Place on July 5<sup>th</sup>', 5 July 2021, available at: <https://bit.ly/3CduhIZ>.

Advocacy of hatred that constitutes incitement to discrimination, hostility, or violence is prohibited. In 2015, amendments to the Criminal Code criminalised ‘public calls to violent actions’ aimed at ‘causing discord between religious, racial, ethnic, social, linguistic, or other groups.’<sup>129</sup> Violations of this article are punishable by fines and community service.<sup>130</sup> Repeated offences resulting in injury or death are punishable by up to five years in prison.<sup>131</sup>

Some legal norms and legislative proposals are broad, ambiguous, not clearly formulated, and risk restricting freedom of expression. In this regard, the regulation on the Protection of Minors from Harmful Information to Children in the Law of Georgia on Broadcasting<sup>132</sup> and the Code of the Rights of the Child<sup>133</sup> can be highlighted. These regulations are problematic, as they go beyond the frames of wide discretion and give the Communication Commission the authority to decide, according to its subjective viewpoint, what content may be disseminated by the broadcaster.<sup>134</sup> The legislative bill regarding the amendments to the Election Code of Georgia and the Law of Georgia on Broadcasting recently presented to the Parliament are also problematic. The draft law prohibits political advertisements during election campaigns that could entail creating ‘negative attitudes’ towards the other political party or candidate.<sup>135</sup> It also considers a media outlet administratively responsible for airing such an advertisement.<sup>136</sup> This regulation degrades the high standard of protecting the freedom of expression and media in the country. In particular, the term ‘negative attitude’ is broad and vague, creating the risk of unconstitutional interference with the right to freedom of expression.<sup>137</sup>

Georgia’s media environment is vibrant and pluralistic, but also polarised, mirroring the political situation.<sup>138</sup> This polarisation increases during significant social-political events, especially during elections.<sup>139</sup> In practice, the polarisation is derived from the various political influences on the leading media outlets.

Even though the legal framework for media provides a solid foundation for ensuring freedom of expression, cases of threats against journalists, ineffective and late

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<sup>129</sup> Article 239, Criminal Code of Georgia, <https://matsne.gov.ge/en/document/view/16426?publication=235>.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> Articles 561 and 562, the Law of Georgia on Broadcasting, <https://matsne.gov.ge/en/document/view/32866?publication=52>.

<sup>133</sup> Art. 66, the Code of the Rights of the Child, <https://matsne.gov.ge/en/document/view/4613854?publication=0>.

<sup>134</sup> GDI. ‘Legislative norms in force for broadcasters today are censorship and must be declared unconstitutional,’ 1 September 2020, available at: <https://bit.ly/3a0o4xE>.

<sup>135</sup> The Draft Law on amendments to the Organic law of Georgia Election Code of Georgia and the law of Georgia on Broadcasting, 18 October 2021, available at: <https://info.parliament.ge/#law-drafting/22919>.

<sup>136</sup> Ibid.

<sup>137</sup> GYLA, ‘The Coalition for Media Advocacy negatively assesses introducing a so-called new concept in the legislation ‘negative attitude,’ 20 October 2021, available at: <https://bit.ly/3E3yx0>.

<sup>138</sup> Freedom House Report 2021.

<sup>139</sup> Media Advocacy Coalition, ‘Media Environment in Georgia’, 23. <https://osgf.ge/en/publication/media-environment-in-georgia-2020/>.

responses to such occurrences and lack of appropriate investigations into these cases raise serious concerns about the state of freedom of expression in the country.<sup>140</sup> Instead of facilitating a tolerant, conciliatory position, the authorities and high-ranking officials respond to the media with discriminatory treatment<sup>141</sup> and aggressive rhetoric.<sup>142</sup>

Numerous cases of assaults and illegal interference in the professional activities of representatives of the media have been reported.<sup>143</sup> One such instance occurred on 8 November 2020 during dispersal of a rally in front of the Election Administration building. The dispersal led to unlawful interference with the activities of journalists, the injury of several journalists and was deemed illegitimate and disproportionate by local CSOs.<sup>144</sup> To date, no investigation has been launched into the dispersal.<sup>145</sup>

On 5 July 2021, more than fifty journalists and media workers were attacked by violent groups that swarmed the streets to prevent an LGBTQIA+ Pride march in Tbilisi.<sup>146</sup> The state did not fulfil its positive obligations, as it did not provide an adequate number of police and did not ensure a timely response that could have prevented the violence. Lekso Lashkarava, a cameraman with TV Pirveli, who was attacked by the violent homophobic groups and had to undergo surgery, was found dead at his home several days later. Before establishing his official cause of death based on expert examination, the state authorities alleged that Lashkarava had died due to a 'drug overdose.'<sup>147</sup> The legitimacy and trustworthiness of this rushed assessment was questioned by the deceased's family and by CSOs. Later in 2021, UNESCO added

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<sup>140</sup> The Coalition for Equality, 'The Right to Non-Discrimination in Practice for Various Groups in Georgia', 2020 Report, 103, available at: <https://bit.ly/3m51wRm>.

<sup>141</sup> GYLA, 11 November 2021, 'Coalition for Media Advocacy Calls on Ministry of Justice to Stop Discrimination against Journalists,' available at: <https://bit.ly/3rKf5du>.

<sup>142</sup> See: Coalition for Media Advocacy, 17 July 2021, 'Coalition for Media Advocacy Partner Organizations expresses their concern over the discrediting of the Mtavari Channel, TV Pirveli and Formula by the Prime Minister and also against Nika Gvaramia in connection with the threat reported,' available at: <https://bit.ly/3dtG9Wb>; Coalition for Media Advocacy, 23 July 2021, 'We call on all public figures to stop stirring up hostile attitudes and discrediting media in society', available at: <https://bit.ly/3EKpoSo>; Radio Liberty, 22 July 2021, 'Tea Tsulukiani took away the microphone to the journalist of the' Mtavari Channel 'at the opening ceremony of the theatre rehabilitated by' Cartu', available at: <https://bit.ly/2Y5R7gc>; 'You are ordinary abusers - Gharibashvili to journalists', 'Reginfo' website, 23 July 2021, available at: <https://bit.ly/3kYbANO>.

<sup>143</sup> The Coalition for Equality, 'The Right to Non-Discrimination in Practice for Various Groups in Georgia', 2020 Report, 103; see also: GYLA's assessment of the human rights situation in Georgia in 2021, 2021, 14, available at: <https://bit.ly/3nS8cEg>.

<sup>144</sup> GYLA, 'The police force used during the rally of November 8 was unlawful and disproportionate', 10 November 2020, available at: <https://bit.ly/3gn7UAg>.

<sup>145</sup> The organisation 'Rights Georgia' addressed the General Prosecutor's Office for the facts of illegal interference in the activities of journalists at the November 8 rally. See. 'Rights Georgia calls on the Prosecutor's Office to launch an investigation under the article of illegal obstruction of journalistic activities', website of Rights Georgia, 9 November 2020, available at: <https://bit.ly/3wJBLE1>. The Prosecutor's Office did not launch an investigation and forwarded the statement to the General Inspection of the Ministry of Internal Affairs. According to the decision of the latter, there was no official misconduct while injuring the journalists.

<sup>146</sup> GYLA, 'GYLA Statement on the Violent Actions that Took Place on July 5<sup>th</sup>', 5 July 2021, available at: <https://bit.ly/3CduhIZ>; 'Over 40 journalists attacked while reporting on anti-Pride protests in Georgia', website of IFEX, 6 July 2021, available at: <https://bit.ly/3m6RgJM>.

<sup>147</sup> Georgian Young Lawyers' Association, 'Chronology and legal assessment of the events of July 5-6', 2021, 34.

Lashkarava to the list of journalists killed in 2021.<sup>148</sup> The state has initiated investigations into the violent events of 5-6 July,<sup>149</sup> as well as into the cases of journalists injured during the dispersal of the 20-21 June 2019 protest rally, but to date these have proved ineffective.<sup>150</sup>

Several media outlets that are critical of the government have complained of political pressure in the form of trumped-up charges and selective and unequal enforcement of tax laws.<sup>151</sup> Additionally, the public broadcaster has been accused of favouring the government.<sup>152</sup> Even though under the law the Communication Commission is formally independent of political or state influence, it has been consistently criticised for its actions. According to the opinion of media experts, for several years now the Commission has tried to influence independent and critical media outlets in favour of certain political interests.<sup>153</sup> A prominent example relates to the Commission's approach regarding obscenity.<sup>154</sup> The Commission urged media outlets not to broadcast 'obscene' programmes and warned that it would use its statutory powers to prevent them from doing so. The Commission asserts that it has the authority to regulate the content of any programme containing obscenity, but this view is not consistent with either the Broadcasting Law or the Constitutional Court's decision.<sup>155</sup> Nevertheless, the Commission has used this broad interpretation of its powers to censor an item aired on one of the media outlets that is critical of the government.<sup>156</sup>

It should also be noted that the State Security Service started an investigation against a broadcasting company on the grounds of 'sabotage' for allegedly providing citizens with false information on purpose. This is a disproportionate response and a dangerous precedent for attempting to interfere in the freedom of the media.<sup>157</sup>

## **Standard II. The state facilitates and protects freedom of opinion and expression.**

The Constitution declares access to the internet as a fundamental right of Georgian citizens.<sup>158</sup> Users do not face restrictions in accessing websites, uploading or downloading content, hosting their own websites, and communicating with other

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<sup>148</sup> UNESCO observatory of killed journalists – Georgia, <https://en.unesco.org/themes/safety-journalists/observatory/country/223712?fbclid=IwAR2Fkci-pUihBJ7gxKefVII3P-Od-I3FIhxB1YvvCwhAaFCzPYOIOVWkpsY>.

<sup>149</sup> GYLA, 'Chronology and legal assessment of the events of July 5-6', 2021, 31-40.

<sup>150</sup> The Coalition for Equality, 'The Right to Non-Discrimination in Practice for Various Groups in Georgia', 2020 Report, 104.

<sup>151</sup> Freedom House Report 2021.

<sup>152</sup> Ibid.

<sup>153</sup> Media Advocacy Coalition, 'Media Environment in Georgia', 2.

<sup>154</sup> Communications Commission. 'We call on broadcasters not to broadcast programs containing obscenity in order not to violate basic human rights and law', 7 December 2020, available at: <https://bit.ly/2R9KohM>.

<sup>155</sup> GYLA, 'Communications Commission seeks to regulate broadcasters and exceeds the authority envisaged by law', 8 December 2020, available at: <https://bit.ly/3rRfzuY>.

<sup>156</sup> GYLA, 'Communications commission violates the law by reviewing the content of the program', 28 January 2021, available at: <https://bit.ly/2PHfcpz>.

<sup>157</sup> The Coalition for Equality, 'The Right to Non-Discrimination in Practice for Various Groups in Georgia', 2020 Report, 105.

<sup>158</sup> Article 17, the Constitution of Georgia.



users via forums, social media platforms, and messaging apps.<sup>159</sup> In general, online content is not subject to deletion.<sup>160</sup> The online media environment in Georgia is increasingly diverse, and content on a wide range of topics is available.

The legislation protects the confidentiality of reporters' sources and contains other protections for journalists.<sup>161</sup> However, on several occasions, journalists have been questioned by investigative bodies and requested to name information about their sources.<sup>162</sup>

Journalists and activists can be sued for defamation. The Law on Freedom of Speech and Expression provides for civil penalties for those found guilty of making defamatory statements.<sup>163</sup> The same law provides for the most important legal guarantee for freedom of expression, namely the placing of the burden of proof on the initiator of the restriction. Any doubt that cannot be proven shall be resolved against the restriction on freedom of speech. Legal guarantees in Georgian legislation on freedom of expression and defamation are largely based on U.S. legislation and court practice.<sup>164</sup>

### Specific recommendations under Area 6:

- The Parliament of Georgia shall respect freedom of expression and avoid initiatives that aim to limit this right, including the initiative to prohibit political advertisements during election campaigns that could entail creating 'negative attitudes' towards a rival political party;
- The relevant authorities must prevent, respond and investigate the facts of unlawful interference in the professional activities of members of the media and the excessive use of force against them in a timely and effective manner; and
- The Communication Commission shall act within its mandate and according to the relevant legislation, no longer make unlawful interpretations of the legislation and respect the recognised standards of media freedom and public information.

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<sup>159</sup> Freedom House Report 2020, available at: <https://freedomhouse.org/country/georgia/freedom-net/2020>.

<sup>160</sup> Freedom House Report 2020, available at: <https://freedomhouse.org/country/georgia/freedom-net/2020>.

<sup>161</sup> Article 11, the Law of Georgia on Freedom of Speech and Expression, <https://matsne.gov.ge/en/document/view/33208?publication=5>.

<sup>162</sup> Freedom House Report 2021; Media Advocacy Coalition, 'Media Environment in Georgia', 22.

<sup>163</sup> Articles 13-19, the Law of Georgian on Freedom of Speech and Expression, <https://matsne.gov.ge/en/document/view/33208?publication=5>.

<sup>164</sup> 'Why Freedom of Expression Must Not Be Restricted', *website of Transparency International Georgia*, 06.06.2019. Available: <https://www.transparency.ge/en/blog/why-freedom-expression-must-not-be-restricted>.

## 3.7 Right to Privacy

Overall score per area: **3.9 /7**

Legislation: **4.6 /7**

Practice: **3.1 /7**

Georgian legislation encompasses basic guarantees against interference or attacks on privacy, regardless of whether they are committed by state bodies, physical persons or legal entities, or whether they are carried out online or offline. However, these guarantees are still fragile and the practical implementation of the state's duty to respect the right to privacy shows worrying trends, with leaked documents illustrating the illegal surveillance of CSOs and associated individuals. There has been no major progress during the current reporting period pertaining to the protection of the right to privacy for CSOs and associated individuals.

### **Standard I. Everyone enjoys the right to privacy and data protection.**

The Georgian Constitution and international treaties ratified by Georgia guarantee that everyone has the right to privacy and that there may be no arbitrary or unlawful interference with this right without court approval or legal necessity. The police are prohibited from searching a residence or conducting non-consensual electronic surveillance or monitoring operations without a warrant.

Georgia's Law on Personal Data Protection establishes the main legal framework for the state's positive obligation to protect the right to privacy.<sup>165</sup> Georgia also has an independent state authority, the State Inspector's Service, that is responsible for monitoring the lawfulness of personal data processing, covert investigative actions and activities performed within the central databank of electronic communications identification data.<sup>166</sup>

Even with these legislative and institutional safeguards, Georgia is still far from meeting the necessary legislative threshold that would firmly guarantee the right to privacy.

One of the key priorities is the harmonisation of the Georgian Law on Personal Data Protection and related legislation with EU standards, specifically with the General Data Protection Regulation (GDPR). For this purpose, in 2019, the State Inspector's

<sup>165</sup> Law of Georgia on Personal Data Protection, <https://matsne.gov.ge/en/document/view/1561437?publication=9>.

<sup>166</sup> The webpage of the State Inspector Service, <https://personaldata.ge/en/about-us>.



Service developed and initiated a legislative draft package to amend the Law on Personal Data Protection and related laws. Even though the principles of the draft law have broad support from different stakeholders, including international organisations and CSOs, the Parliament has still not made any progress on adopting it.<sup>167</sup>

Another area of concern is the new amendments to the Law on Information Security which were adopted in the summer of 2021, despite heavy criticism from CSOs that it granted the State Security Service sweeping powers to access information and that the lack of necessary oversight mechanisms creates a threat of illegal and disproportionate processing of personal data.<sup>168</sup>

There are also some concerning norms pertaining to the secret investigative actions permitted under the Criminal Procedure Code. However, these norms are being increasingly challenged at the Constitutional Court of Georgia. In December 2020, the Constitutional Court of Georgia made an important decision on the provisions of the Criminal Procedure Code which regulate operative-investigative activities, including the lawfulness of searches conducted in case of urgency, and ruled that even if law enforcement officers seize an illegal item, this fact alone should not be a ground for legalizing a search conducted without a court order.<sup>169</sup>

The Constitutional Court of Georgia is the primary platform for Georgian CSOs to challenge the constitutionality of legal provisions that could infringe the right to privacy. However, CSOs have reported that in recent years the Constitutional Court of Georgia has significantly delayed the delivery of decisions, including on cases pertaining to the right to privacy, including a class action by 326 citizens that challenges the constitutionality of unchecked state powers during covert surveillance.<sup>170</sup> Consequently, with the delay in decisions on these constitutional claims, persistent and systematic violations of the right to privacy still occur.<sup>171</sup> Concerns over longstanding impunity on alleged arbitrary or unlawful interference with the right to privacy remain and most high-profile cases from previous years have not been properly investigated or prosecuted.<sup>172</sup> Added to this, the secret surveillance

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<sup>167</sup> IDFI, Brief Overview of Recent Developments in the Field of Personal Data Protection, 2021, p. 5, [https://idfi.ge/en/brief\\_overview\\_of\\_recent\\_developments\\_in\\_the\\_field\\_of\\_personal\\_data\\_protection](https://idfi.ge/en/brief_overview_of_recent_developments_in_the_field_of_personal_data_protection).

<sup>168</sup> IDFI, The Parliament of the X Convocation adopted the problematic 'Law on Information Security' with the III reading, <https://bit.ly/3A85Kyl>.

<sup>169</sup> Social Justice Center, The Constitutional Court partially upheld EMC's constitutional claim (26 December 2020), <https://socialjustice.org.ge/en/products/sakonstitutsio-sasamartlom-emc-is-sarcheli-natsilobrivi-daakmaqofila>.

<sup>170</sup> Constitutional Court of Georgia, Applications N, N3/4/N885-924, 928-929, 931-1207, 1213, 1220-1224, 1231. <https://constcourt.ge/ka/judicial-acts?legal=1958>.

<sup>171</sup> Social Justice Center, The problem of procrastination by the Constitutional Court of Georgia (6 October 2021), <https://socialjustice.org.ge/ka/products/sakartvelos-sakonstitutsio-sasamartlos-mier-sakmeta-gachianurebis-problema>.

<sup>172</sup> Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia 2020, p. 118, <https://www.ombudsman.ge/res/docs/2021070814020446986.pdf>.

system of the State Security Service of Georgia and the lack of associated political oversight has raised concerns both from Georgian CSOs and international actors.<sup>173</sup>

In September 2021, a huge stream of information was leaked through the media and internet resources, indicating the alleged covert surveillance of citizens by the State Security Service, including the transcripts of phone conversations of CSO representatives, journalists, diplomats, clergy representatives, and others. CSOs report that these data leaks included privileged telephone conversations between attorneys and clients as well as personal communications. Based on the leaked data, in addition to their telephone conversations, CSOs also believe that their movements might have been monitored.<sup>174</sup> The CSO representatives whose conversations were leaked officially applied to the Prosecutor's Office requesting an investigation into alleged illegal activities by State Security Service representatives.<sup>175</sup> The State Inspector's Service also urged the Prosecutor's Office to investigate alleged illegal surveillance and breaches of the right to privacy based on the leaked files.<sup>176</sup>

#### **Standard II. The state protects the right to privacy of CSOs and associated individuals**

The law protects CSOs from state authorities entering their offices or accessing CSO documents without court approval or legal necessity and prohibits the conducting of non-consensual electronic surveillance or monitoring operations without a warrant.<sup>177</sup> There have been no recorded cases of unlawful searching of CSO offices or the seizing documents. However, surveillance and unauthorised monitoring of CSO representatives is still a prevalent issue that is a cause for concern.

The relevant legislation does not mandate intrusive CSO reporting procedures, financial oversight or other accountability instruments to obtain confidential information from CSOs. In this respect, the law respects the privacy of CSO members, donors and employees, and the confidentiality of their personal data and assets.

The leaked data from the September 2021 surveillance scandal supports the allegation that personal communications and the movements of some CSO representatives and journalists are systematically monitored by the state authorities. The State Inspector's Service, the state agency that is responsible for monitoring the lawfulness of covert investigative actions, has confirmed that the surveillance of the CSO representatives

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<sup>173</sup> UN Human Rights Committee, List of issues in relation to the fifth periodic report of Georgia, 19 January 2021, <https://bit.ly/3rwR73Y>.

<sup>174</sup> Social Justice Center, The Social Justice Center responds to allegations of illegal activities by the SSSG (14 September 2021), <https://socialjustice.org.ge/en/products/sotsialuri-samartlianobis-tsentri-ekhmianeba-susis-ukanono-mushaobis-savaraudo-faktebs>.

<sup>175</sup> Social Justice Center, We appeal to the prosecutor's office on the fact of alleged illegal activities of SSSG (12 August 2021), <https://socialjustice.org.ge/ka/products/susi-s-savaraudo-ukanono-sakmianobis-faktze-prokuraturas-mivmartavi>.

<sup>176</sup> State Inspector's Service Statement (13 September 2021), <https://www.facebook.com/DPAGeorgiaOfficial/photos/a.299919413484244/2570248546451308>.

<sup>177</sup> Article 15, the Constitution of Georgia; The Criminal Procedure Code of Georgia.

was not officially authorised and therefore was illegal.<sup>178</sup> The Prosecutor’s Office has officially initiated an investigation into these allegations, but CSO representatives and journalists have still not been granted the status of ‘victim’ in line with the Criminal Procedure Code, and this deprives them of access to case files and information about the ongoing investigation.

### Specific recommendations under Area 7:

- The Parliament of Georgia should adopt proposed amendments to the Law on Personal Data Protection and ensure its harmonization with EU standards, specifically with the GDPR;
- The Government of Georgia should urgently introduce necessary legal amendments to create comprehensive legal safeguards for personal data processing and covert investigative actions, including by reforming and increasing oversight of the State Security Service of Georgia. The Government should also ensure that CSOs are consulted and engaged in the reform process from the initial stages; and
- The Prosecutor’s Office should prioritise and promptly investigate alleged illegal and arbitrary surveillance of CSO representatives, journalists, and others and ensure that all relevant actors are granted victims status and have access to case files, at the same time updating the public on the progress of the investigation.

## 3.8 State Duty to Protect

Overall score per area: **4.4 /7**

Legislation: **4.9 /7**

Practice: **3.9 /7**

The relevant legislation mandates the state to defend the rights of CSOs and those affiliated with them. In the event of a violation, CSOs have the constitutional right to file an

<sup>178</sup> GDI, The State Inspector confirms that secret interception / surveillance of 6 journalists and MPs SSSG files did not take place under her supervision (15 October 2021), <https://bit.ly/3I9v0ak>.

appeal with the competent administrative authorities or the court and seek adequate remedies. However, recent occurrences involving violations of CSO rights, especially the physical well-being of affiliated persons, demonstrate that the state fails to fulfil its obligation to safeguard them. As a response to the Covid-19 pandemic, the Government is introducing and changing emergency measures quickly and unpredictably. Though the current regulations are not viewed as disproportionate, some measures used by the state were neither necessary nor justifiable.

### **Standard I. The state protects CSOs and individuals associated with CSOs from interference and attacks.**

The main legislative source imposing the duty to protect is the Constitution of Georgia. Those obligations and rights are further augmented by the organic and regular laws<sup>179</sup> and strengthened and guaranteed by international treaties.<sup>180</sup> Theoretically, Georgia is a democratic republic and a legal and social state<sup>181</sup> which acknowledges and protects universally recognised human rights and freedoms. Accordingly, every individual or CSO is entitled to be protected. In case of a violation or infringement in rights, CSOs are entitled to a fair hearing of their case by an administrative body or a court within a reasonable timeframe<sup>182</sup> and to full compensation for damages unlawfully inflicted. However, the country's political context often produces different outcomes. The state often fails to protect CSOs and there is the risk of unpredictable harm to civil society representatives, activists, journalists, and other stakeholders who attempt to protect the interests of vulnerable groups and values that are not fully accepted by other segments of society.

2021 is not the first year in which the state has failed to follow through on its positive obligation to protect CSOs and associated individuals from physical harm and pogroms. As in previous years, the main targets of violent radical anti-liberal groups were members of the LGBTQIA+ community during Pride Week. Starting on 5 July and continuing for two days, violent groups marched against the LGBTQIA+ community, leading to riots, mass violence, and physical confrontation. Approximately fifty-five people were physically injured, including fifty-three representatives from various media outlets.<sup>183</sup> Violent mobs also attacked the offices of the Tbilisi Pride Union, the Pride Week organisers, and the 'Shame' movement. The

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<sup>179</sup> Civil Code of Georgia, mainly stipulating rights associated with freedom of operation, freedom in civic relationship building, protection of personal rights (including ones effective for legal persons, such as reputation).

<sup>180</sup> International Pact on Civil and Political Rights, International Pact on Economic Social and Cultural Rights.

<sup>181</sup> The Constitution of Georgia, Arts 3, 4, 5. <https://matsne.gov.ge/en/document/view/30346?publication=36>.

<sup>182</sup> Claims related to criminal activities, such as physical harm and damage are not framed in time and can be raised at any point. Timeframes of other legal proceedings vary from 1 month to 3 and 10 years according to specifics, however generally are considered as reasonable.

<sup>183</sup> Ministry of Internal Affairs, Information Of The Ministry Of Internal Affairs On Violations Exposed By The Police On July 5 And Response Measures (5 July 2021), <https://police.ge/en/shinagan-saqmeta-saministros-informatsia-5-ivliss-politsiis-mier-gamovlenili-kanondarghvevis-faqtebis-da-matze-momkhdari-reagirebis-shesakheb/14763>.

events were followed by the death of Lekso Lashkarava,<sup>184</sup> a media representative who was severely beaten and injured during a Pride march. The offices of five CSOs were also attacked, damaging their office infrastructure and causing physical harm to civic activists.<sup>185</sup> The state allowed hate groups to freely move, march, and commit violent acts against anyone in their path and a critical lack of police was observed during the incident. This incident evidence that the state failed to protect its citizens and civil society representatives from physical and emotional harm.

Besides this incident, in Georgia, no other specific cases of hate speech or stigmatization of CSOs were identified. However, the issue often becomes relevant when government representatives or public figures with significant influence are dissatisfied with the conclusions reached by certain CSOs during election periods.<sup>186</sup> For example, Bidzina Ivanishvili, one of Georgia's most well-known public figures (the founder and former head of the ruling political party 'Georgian Dream', former Prime Minister and, as of January 2021, retired de facto leader of the party in power), made several public announcements in 2019 about how certain CSOs, International Republican Institute and National Democratic Institute, are 'liars and satellites' of the opposition.<sup>187</sup> Similar opinions were repeated by several media platforms and other political parties and persons in an attempt to protect the interests of government representatives.<sup>188</sup>

The Government changed emergency measures significantly throughout the year, depending on the intensity of the spread of coronavirus. One of the measures considered to be excessive and unnecessary was related to the curfew introduced by the government in November 2020 (lasting until 30 June 2021), prohibiting anyone from leaving private spaces unless permitted in advance from 11.00 p.m. until 5.00 a.m. across the whole country.<sup>189</sup> Public transport was also shutdown in spring and summer of 2021 and was not resumed until September.<sup>190</sup> Most of the restrictions were lifted by September 2021, leaving only the obligation for participants of gatherings and in-person meetings/conferences to either proof of full vaccination or a negative

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<sup>184</sup> Jam News, TV Pirveli cameraman dies after being attacked by far-right groups during July 5 anti-LGBT rally in Tbilisi (11 July 2021), <https://jam-news.net/tv-pirveli-cameraman-dies-after-being-attacked-by-far-right-groups-during-july-5-anti-lgbt-rally-in-tbilisi/>; UNESCO has added Lekso Lashkarava to the list of journalists killed in 2021, <https://www.radiotavisupleba.ge/a/31643651.html>.

<sup>185</sup> Social Justice Center, Legal assessment of the events of July 5-6 - initial analysis (September 2021), <https://socialjustice.org.ge/ka/products/5-ivlisis-movlenebis-samartlebrivi-shefaseba-pirveladi-analizi>.

<sup>186</sup> Survey of Residents of Georgia prepared by Center of insights in survey research, [https://www.iri.org/sites/default/files/wysiwyg/georgia\\_poll\\_11.18.2019\\_final.pdf](https://www.iri.org/sites/default/files/wysiwyg/georgia_poll_11.18.2019_final.pdf); <https://www.mythdetector.ge/ka/myth/vis-eshinia-arasamtavrobo-organizatsiebis>.

<sup>187</sup> Myth Detector, Who is Afraid of Non-Governmental Organizations? (3 December 2019), <https://www.mythdetector.ge/ka/myth/vis-eshinia-arasamtavrobo-organizatsiebis>.

<sup>188</sup> Ibid.

<sup>189</sup> Business Media Georgia, From 23:00 Today The 'Curfew' Will No Longer Be Valid (30 June 2021), <https://bm.ge/ka/article/dges-2300-saatidan-quotkomendantis-saatiquot-agar-imoqmedebs/86114/>.

<sup>190</sup> 1tv.ge, Public transport has resumed operations (13 September 2021), <https://1tv.ge/news/sazogadoebrivma-transportma-mushaoba-ganaakhla/>.

test result obtained not later than 24 hours before the meeting. The recommendations to switch to remote working, follow strict rules regarding social distancing, safety, and hygiene also remain relevant for organisations and companies. Though regulations related to the Covid-19 were intended to only be temporary in nature<sup>191</sup> and the current measures in force are not viewed as an impediment to the proper performance and operation of CSOs, the long-term curfew was never seen as a necessary or proportionate measure. This raised legitimate concerns among CSOs that the real reason behind the measure was to counter increased protest movements in the country.<sup>192</sup> The unpredictability of future regulations and the practice of sudden alterations to emergency measures are also considered to be a negative factor for the social and CSO environment, that justify the demands made by private sector representatives that the state make prior announcements and engage in public discussions before deciding on measures.

**Standard II. Measures used to fight extremism, terrorism, money laundering or corruption are targeted and proportionate, in line with the risk-based approach, and respect human rights standards on association, assembly, and expression.**

Measures used to fight extremism, terrorism, money laundering and corruption are stipulated by the Law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism,<sup>193</sup> which entered into force on 30 October 2019 with the latest amendments being made on 30 March 2021.<sup>194</sup> The LEPL Financial Monitoring Service of Georgia has been in place since 2004 and is in charge of promoting anti-money laundering (AML), counter-terrorism financing (CTF) and corruption according to legislative and sub-legislative normative acts.

The latest detailed report related to this topic, assessing the existing situation in Georgia, was presented in 2020 by MONEYVAL as the Fifth Round Mutual Evaluation Report 2020 (hereafter, the 'Report').<sup>195</sup> The Report concludes that Georgia has achieved a moderate level of effectiveness in implementing all FATF Standards, with the exception of (i) international cooperation; (ii) investigation and prosecution of terrorism financing offences; and (iii) prevention of terrorists, terrorist organisations, and financiers from raising, moving, and using funds and abusing the Non-Profit Organisation (NPO) sector, where the level of effectiveness was evaluated as low.<sup>196</sup>

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<sup>191</sup> The restrictions that were in place during the state of emergency have been lifted as of August 2020. However, the rules governing isolation and/or quarantine remain in effect.

<sup>192</sup> HRC, Covid-19, Emergency Measures and Civic Freedoms in Georgia, 2021, p. 5, <http://www.hrc.ge/files/9covid-analitic-eng.pdf>.

<sup>193</sup> Law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism, <https://matsne.gov.ge/en/document/view/4690334?publication=0>.

<sup>194</sup> Content-wise amendments do not have an impact on the operation and existing environment of CSOs.

<sup>195</sup> Council of Europe, Anti-money laundering and counter-terrorist financing measures Georgia, Fifth Round Mutual Evaluation Report, 2021, <https://rm.coe.int/moneyval-2020-20-5th-round-mer-georgia/1680a03271>.

<sup>196</sup> IDFI, MONEYVAL assessment of Georgia on money laundering (ML) and terrorism financing (TF), 2020, [https://idfi.ge/en/moneyval\\_assessment\\_of\\_georgia\\_on\\_money\\_laundering\\_and\\_terrorism\\_financing](https://idfi.ge/en/moneyval_assessment_of_georgia_on_money_laundering_and_terrorism_financing).



One of the Report's key findings was that Georgian authorities failed to fully assess all types of potential terrorist funding risks, the volume, origin, and destination of financial flows, and the potential for NPO abuse. The Report emphasizes that there has been proven abuse of legal persons in Georgia, including the use of 'fictitious' companies against which criminal measures have not been applied, and thus the risks of such abuse have not been adequately mitigated.<sup>197</sup> However, according to the Report, the government has not created restrictive measures or needless barriers for CSOs at the establishment or operation stage, or imposed risks to their proper and undisrupted functioning.

There are specific measures for the financial accountability of NELEs with the status of charity organisation, which are registered and listed by the revenue authorities and fall under the scope of special tax regulations. These NELEs are required to report financial information to the government on an annual basis and to make this information public. However, this cannot be regarded as an excessively stringent regulation.

No problematic cases were specifically identified. However, in an interview with bank representatives it was confirmed that banks do have inner regulations requiring foreign companies or organisations (including CSOs) to provide detailed information about their establishment and beneficiary owners. Although CSOs' fundamental freedoms are not restricted by law or practice developed in relation to AML and CTF, this does not imply that standards in this regard are met. According to the Report, Georgia fails to comply with Recommendation 8<sup>198</sup> on CSOs. It has been concluded that there is a 'serious gap with respect to core requirements on taking [a risk-based approach], conducting sustained outreach and applying risk-based monitoring of NPOs [which includes CSOs].'<sup>199</sup>

### Specific recommendations under Area 8:

- The State should use all the necessary measures to protect CSO representatives, journalists and vulnerable groups in need from violence and physical harm;
- The State should assess how emergency measures might affect human rights and ensure that they are temporary, necessary and proportionate;
- The State should announce planned measures in advance and create an opportunity for open discussion, as well as enable society to be more prepared for upcoming changes; and

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<sup>197</sup> Ibid.

<sup>198</sup> Council of Europe, Anti-money laundering and counter-terrorist financing measures Georgia, Fifth Round Mutual Evaluation Report, 2021, <https://rm.coe.int/moneyval-2020-20-5th-round-mer-georgia/1680a03271>.

<sup>199</sup> Ibid, p. 198.



- The Government of Georgia, in active collaboration with CSOs, should ensure compliance with MONEYVAL recommendations while avoiding unnecessary degradation of the CSO environment.

## 3.9 State Support

Overall score per area: **4.2 /7**

Legislation: <b>4.4 /7</b>	Practice: <b>4.0 /7</b>
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Georgia's state funding model remains decentralised and state support mechanisms are diverse. Public entities defined by effective legislation make budgetary grants based on their areas of expertise. Yet, the state municipalities (self-governing entities) are not able to issue grants. No progress has been shown in making granting procedures clearer and more transparent. CSOs working at the local level have only programme financing, a voucher system and public procurement as options when it comes to direct support from municipalities. The state bodies authorised to issue grants are changing. While Youth Agency was added to the list of authorised bodies, Electoral Systems of Development, Reforms and Training Centre ceased its granting programme, causing legitimate concerns among CSOs who had hoped to benefit from its support during the election period.<sup>200</sup> While temporary changes aimed at financially supporting the private sector during the Covid-19 pandemic have occurred in the tax environment, there was only minimal support for CSOs. No developments have been observed in the fields of volunteerism and philanthropy.

### **Standard I. There are a number of different and effective mechanisms for financial and in-kind state support to CSOs**

**There are various state-funding mechanisms available to CSOs such as grants, subsidies, state procurement, a voucher system and so-called 'programme financing'.<sup>201</sup> While mechanisms such as the voucher system and programme financing are available for use by municipalities, they are unable to issue state grants. Despite overwhelming efforts both from local CSOs and local authorities to grant municipal bodies the mandate to issue funding, the central government has not made**

<sup>200</sup> Association of Young Economists of Georgia, Monitoring Report of State Grants Issued in 2019, p. 40, <https://csogeorgia.org/storage/app/uploads/public/601/92b/03c/60192b03c4daf041569703.pdf>.

<sup>201</sup> CSOs are eligible to receive state funding through grants, subsidies, state procurement and so-called 'programme financing'.

any specific steps to address this impediment for funding local CSOs.<sup>202</sup> Considering that CSOs are often key partners for municipal authorities in addressing local issues, because of the abovementioned legislative impediments, they must rely on less transparent, purely regulated and unsystematic methods of financing (for example, programme financing). In-kind support is not prohibited, but there are no recent examples of such support in practice, making it clear that it is rarely available for CSOs.

There have been minor changes to the governmental bodies that are authorised to issue grants. Starting from September 2019, Youth Agency<sup>203</sup> received the authority to become a grantor within the field of their competence. Conversely, according to the legislative amendments in 2020, Electoral Systems Development, Reforms and Training Centre ceased its CSO granting programme, with no grants being announced in 2021. No official explanation is available on the cause of this sudden decision, but it has raised legitimate concerns for CSOs who often benefit from their financial support and were hoping for a continuation of that support during future elections as well.<sup>204</sup> The total amount of funding distributed by state entities to CSOs changes somewhat year by year. While the overall amount reached its peak in 2017 at around 1,776,130 EUR, the awards from total budget funds in 2019 (around 1,705,760 EUR) were roughly eight per cent higher than in 2018 (around 1,629,210 EUR) and 2020 (around 1,582,980 EUR), but one per cent lower than in 2017.<sup>205</sup> According to current statistics, state authorities have already awarded budget funding in the amount of about 738,527 EUR to grant-winning CSOs in 2021.

According to the public information sought from the appropriate authorities, the aggregate statistics connected to the funds received by CSOs from state grantors between 2016 and 2021 were as follows (figures in GEL converted into EUR):

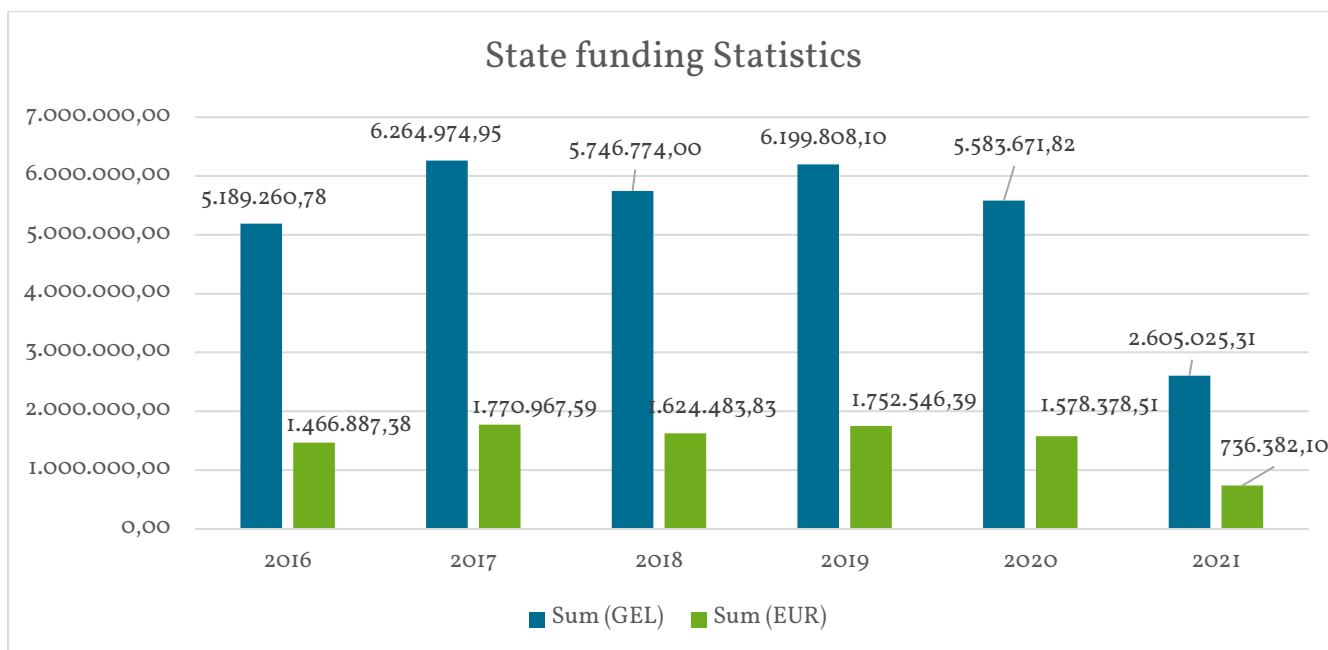
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<sup>202</sup> Under the objective 2.1 of the Decentralisation Strategy for 2020-2025, the government undertook a commitment to simplify the legislative framework related to issuing municipal grants, however this objective has not been translated into specific activities yet.

<sup>203</sup> Resolution of Georgian Government N411, 26 August 2019, <https://matsne.gov.ge/ka/document/view/4642829?publication=0>.

<sup>204</sup> Last granting program took place in July-September 2020, to the result of which 44 CSOs from different regions received the grant. <https://cesko.ge/ge/siakhleebi/pres-relizebi/singleview/4120312-informatsia-sagranto-konkursis-shedegebtan-dakavshirebit>.

<sup>205</sup> Association of Young Economists of Georgia, Monitoring Report of State Grants Issued in 2019, p.40, <https://csogeorgia.org/storage/app/uploads/public/601/92b/03c/60192b03c4daf041569703.pdf>.



**Standard II. State support for CSOs is governed by clear and objective criteria and allocated through a transparent and competitive procedure.**

In previous years, CSI developed a policy paper on state funding reform for CSOs. The report was prepared through a highly participatory process and relied on arguments and recommendations provided by participant CSOs. One of the components of the initiative implied regulatory establishment of basic legislative standards and principles (participatory decision-making, preliminary identification of selection criteria, avoidance of conflict of interest, transparency, etc.) in issuing grants. The initiative also envisaged the authorisation of local self-government as grant-issuing entities with the aim to facilitate better fulfilment of functions, to encourage inter-municipal initiatives and to increase CSO-state cooperation at the local level. The initiative was also included in the OGP Action Plan and presented to the government.<sup>206</sup> Notwithstanding these efforts, legislative standards to ensure transparency and accountability in state funding procedures have not been developed. The provisions relating to the granting process are general, allowing the procedures to be specified in each case, based on the grantor's needs and interests. According to current procedures in force, government ministries are required to agree on the purpose and the amount of the grant with the government (if the grant volume exceeds 50,000 GEL, approx. 13,700 EUR) or with the Prime Minister of Georgia (if the amount of the grant does not exceed 50,000 GEL, approx. 13,700 EUR)<sup>207</sup> and demonstrate its necessity.<sup>208</sup> If the amount of the grant exceeds 50,000 GEL (approx. 13,700 EUR), the ministries must obtain an additional approval from the Ministry of

<sup>206</sup> This initiative was also reflected in 2018-2019 OGP Action Plan that was adopted by the 12 November 2018, N537 Government Decree.

<sup>207</sup> This process is regulated by Resolution/Ordinance 126 of 14 March 2011.

<sup>208</sup> This process is regulated by Resolution/Ordinance 126 of 14 March 2011.

Finance. However, there are no clear and uniform legislative standards, which means that the grant-issuing ministries are setting their own rules.

One of the requirements of the CSO representatives which aims to make the granting process easier is the existence of a unified electronic web portal for the management of state grants, through which information can be disseminated and applications can be received. Electronic platforms are used, for example, by the Agency for Innovation and Technology ([grants.gov.ge](http://grants.gov.ge)) and the Ministry of Justice (portal of the Procurement Agency), although, in general, a unified system for managing state grants has not been developed.<sup>209</sup> As for the appeal mechanisms, decisions can be appealed to the higher administrative body or the court, but practice is not promising for potential claimants.<sup>210</sup> In the majority of cases, courts or administrative bodies refer to the argument that the assessment made by the Grant Competition Commission members is based on subjective criteria beyond legal evaluation<sup>211</sup> and will most likely refuse the change in outcome in favour of the claimant.<sup>212</sup> Practice also shows that the degree of a transparency and objectivity in the grant awarding process should be further developed. According to statements from CSO representatives, authorised bodies are not making sure that grant objectives are clear and proper argumentation and feedback is not always given to the applicants after decisions are made.<sup>215</sup>

### Standard III. CSOs enjoy a favourable tax environment.

After switching to the so-called ‘Estonian Model’ of taxation, CSOs are eligible to develop non-essential economical activities and invest incomes in idealistic (immaterial) purposes (stipulated in their statutes), without being obliged to pay profit taxes.<sup>214</sup> The availability of VAT exemptions and the mechanism for VAT refunds under grant programmes is beneficial to CSOs. Existing legislation allows for the refund of VAT while implementing projects under grants, or exempts CSOs from paying VAT when projects are carried out under grant agreements with donors listed on the Revenue Services website as ‘beneficiaries of tax exemptions.’ International donors, are eligible for such benefits under international agreements between the Georgian government and the country of the donor's residence (for example, such agreements exist between Georgia and the EU and between Georgia and the U.S.)<sup>215</sup> In all other cases, when an organisation implements a project using sources other than

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<sup>209</sup> Association of Young Economists of Georgia, Monitoring Report of State Grants Issued in 2019, p.40, <https://csogeorgia.org/storage/app/uploads/public/601/92b/03c/60192b03c4daf041569703.pdf>.

<sup>210</sup> Ibid. Court decision N3/8587-15, 18 May.

<sup>211</sup> Court Interim decision 8b-300-291(3-13), 26 September 2013.

<sup>212</sup> Association of Young Economists of Georgia, Monitoring Report of State Grants Issued in 2019, p.40, <https://csogeorgia.org/storage/app/uploads/public/601/92b/03c/60192b03c4daf041569703.pdf>.

<sup>213</sup> Association of Young Economists of Georgia, Monitoring Report of State Grants Issued in 2019, p.40-41 <https://csogeorgia.org/storage/app/uploads/public/601/92b/03c/60192b03c4daf041569703.pdf>.

<sup>214</sup> Tax Code of Georgia a.97(2).

<sup>215</sup> The list of privileged beneficiaries is provided on the website: <https://www.rs.ge/TaxPrivileges>.

grants, VAT must be paid.<sup>216</sup> In the case of co-financing, VAT shall be deducted only for activities performed outside of the sources received through co-financing.

During the Covid-19 pandemic, the government implemented a temporary tax regimen that benefited all private legal entities, including CSOs. According to Georgian Tax Code amendments, when an employee's (service provider's) salary was equal to or less than 1,500 GEL (approx. 430 EUR), CSOs could keep income tax from this salary (the maximum amount from which the income could have been deducted was 750 GEL (approx. 210 EUR); thus, the maximum amount of kept income tax consisted of 150 GEL (approx. 45 EUR) to be used for their own purposes.<sup>217</sup> The pandemic prompted this temporary amendment which lasted only for one year (from May 2020 to May 2021).<sup>218</sup>

#### **Standard IV. Businesses and individuals enjoy tax benefits for their donations to CSOs.**

While no benefits exist for individuals, businesses can receive tax benefits for charity only while providing donations to registered charities.<sup>219</sup> Companies supporting charity organisations are allowed to exclude the amount given for charity purposes from their net profit and keep it from taxation. The maximum amount which might be deducted from the net income for that reason is ten per cent of the joint net income. The cost of donated goods and services (except the cost of real estate and/or services)<sup>220</sup> are also deductible together with the donations.<sup>221</sup> The goal of the regulation is to support charitable organisations; however, no practical data shows positive results. According to the tenth edition of the World Giving Index 2019, Georgia is ranked among the lowest ten countries by participation in donating money.<sup>222</sup> However, internal and precise data about the amounts given for charity purposes, especially in recent periods, are not available. Practice does not indicate recent endowments as well. Although the law requires information about the finances of charity organisations to be made available, it does not specify the form in which this should be done.<sup>223</sup>

#### **Standard V. Legislation and policies stimulate volunteering**

Since the adoption of a special law on volunteerism in 2015, the field of volunteering has seen no further progress. Despite the fact that volunteerism is legal and defined,

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<sup>216</sup> If the project of the organization is financed by membership fees, donations, profits from ancillary economic activities.

<sup>217</sup> Tax Code of Georgia Art. 309 (112,113).

<sup>218</sup> Ibid. <https://matsne.gov.ge/ka/document/view/5078530?publication=0>.

<sup>219</sup> Tax code of Georgia, Art. 10, 32; List of registered charities can be found on the following web-page: <https://www.rs.ge/CharityOrganization>.

<sup>220</sup> This rule has an exception. Once real estate is granted to the charity organisation where people with special needs are employed (according to the stipulations of law), the amount of real estate also falls within the scope of an incentive.

<sup>221</sup> Tax code of Georgia, Art. 32.

<sup>222</sup> CAF, World Giving Index 2019, p. 17, [https://www.cafonline.org/docs/default-source/about-us-publications/caf\\_wgi\\_10th\\_edition\\_report\\_2712a\\_web\\_101019.pdf](https://www.cafonline.org/docs/default-source/about-us-publications/caf_wgi_10th_edition_report_2712a_web_101019.pdf).

<sup>223</sup> Tax Code of Georgia, Art. 32, 10, 30.

no state support mechanisms exist to develop the environment, ensure proper conditions for volunteers, and motivate people to engage in volunteering. Though tax exemption initiatives for volunteer expenses were initiated concurrently with the law, they were not considered at the outset, nor were they later discussed. Georgia's Tax Code does not define volunteerism and treats volunteers in the same way as any other natural person in terms of tax obligations. Though the importance of volunteering has been acknowledged by various institutions such as universities and by employers, and especially highlighted in response to the pandemic's challenges<sup>224</sup> during which many CSOs relied on volunteers for assistance,<sup>225</sup> no real incentives are available for volunteers.

### Specific recommendations under Area 9:

- The government authorities should develop unified legislative standards for state funding, encompassing clear guidelines for the awarding process (participatory decision-making, preliminary identification of selection criteria, avoidance of conflict of interest, transparency, etc.), preventing discriminatory and arbitrary decisions, and further institutionalising transparency and accountability standards;
- The state institutions should develop a unified e-system for managing state grants, enabling the participants to receive the information and submit the application online;
- The Government of Georgia should encourage state institutions to support local initiatives by adding municipalities to the list of grant-issuing entities by introducing relevant legislative amendments;
- The tax authorities should process and proactively publish general data about donations and charity activities within the country to comply with the transparency standards applicable for charity work;
- The Government of Georgia should encourage philanthropy by providing tax benefits to individual donors, and not just to businesses; and
- The Government of Georgia should adopt a strategy on the development of volunteerism in the country to enable the development of relevant terms and potential benefits related to the field.

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<sup>224</sup> Web-page of the Helping Hand <https://www.helpinghand.ge>.

<sup>225</sup> Web-Page of the Red Cross <https://redcross.ge/en>.

## 3.10 State-CSO Cooperation

Overall score per area: **4.0** /7

Legislation: **4.2** /7 | Practice: **3.9** /7

Georgia still lacks uniform platforms and a systemic vision for supporting cooperation with CSOs. The State Concept on Supporting CSOs' Development that has been developed since 2014 through government-CSO collaboration still has not been adopted and the OGP remains the main framework for government-CSO collaboration, yet state institutions are poor at implementing the action plans.

### Standard I. State policies facilitate cooperation with CSOs and promote their development.

Georgia does not have uniform policy documents that lay out a clear basis for collaboration and facilitate ongoing dialogue and understanding between CSOs and public authorities. However, since 2013 there have been some attempts to develop state policies on state-CSO collaboration and/or support CSO development.

A Memorandum for Cooperation that was signed in 2013 by the Parliament of Georgia and more than 145 CSOs still remains the backbone for state-CSO cooperation. The document consists of ten articles and encompasses sets of principles for successful state-CSO cooperation and calls upon the Parliament and CSOs to elaborate a State Concept for Supporting the Development of CSOs.<sup>226</sup> The development of the Concept started in 2014, and its adoption was planned as part of the Parliament's OGP Action Plan 2015-2016.<sup>227</sup> A broad range of CSOs were involved in developing this document. The Concept envisions state support to CSOs and the establishing of policy dialogue between Parliament and CSOs. In February 2021, the new convocation of the Parliament of Georgia decided to extend the consideration of the Concept.<sup>228</sup> However, the Concept is still pending review and the Parliament has not adopted it yet.

Notwithstanding the growing interest among state agencies to cooperate with CSOs on a variety of topics and some successful examples of state-CSO cooperation, such initiatives are not generally institutionalised by state policies and are mostly created on an ad hoc basis, based on the willingness of individual authorities.

<sup>226</sup> MOU between the Parliament of Georgia and CSOs, 2013,

<https://csogeorgia.org/storage/app/uploads/public/5d6/92c/744/5d692c7445d4e962122596.pdf>.

<sup>227</sup> Open Parliament Georgia Action Plan 2015-2016,

[https://idfi.ge/public/upload/Open%20Parliament%20Georgia%20Action%20Plan%20\(2015-2016\).pdf](https://idfi.ge/public/upload/Open%20Parliament%20Georgia%20Action%20Plan%20(2015-2016).pdf).

<sup>228</sup> Draft 'On Approval of the State Concept for Supporting the Development of Public Organisations,'

<https://parliament.ge/legislation/20546>.



The Covid-19 pandemic has been used as an argument for a setback in the development of the fifth action plan for the OGP which should have proposed an implementation plan on open government principles following the 2018-2019 Action Plan.<sup>229</sup> In the summer of 2021, the Secretariat of the Open Government Partnership (an administration of the Georgian Government) launched a call for initiatives from the CSO sector regarding commitments under the new action plan. This call was preceded by similar proceedings in 2020. However, neither call has resulted in specific outputs from the government.<sup>230</sup> One of the key recommendations in the OGP's new action plan consulting period, coming from the CSI, was advancing state support towards CSOs through increasing state grants, which remain underutilised.

Conversely, local governments are more actively committing to OGP frameworks and establishing more systemised policies on state-CSO cooperation, in line with the OGP commitments. For instance, in collaboration with CSOs, the municipalities of Akhaltsikhe, Ozurgeti, and Khoni have adopted the 2021 OGP Local Action Plans.<sup>231</sup> By engaging in the OGP Georgia process, these municipalities have established active cooperation with CSOs to ensure that the OGP principles are fully implemented in practice. In cooperation with CSOs, the 2021 OGP Action Plan was also adopted by the Supreme Council of the Autonomous Republic of Adjara.

#### **Standard II. The state has special mechanisms in place for supporting cooperation with CSOs.**

Georgian legislation envisages different instruments to support state cooperation with CSOs, in the forms of their engagement in advisory bodies, committees, and working groups. These consultative bodies are usually created on specific issues and invite the collaboration of CSOs for their expertise in specific fields. However, these instruments are not systematically codified and the selection criteria for participation of CSOs in consultative bodies are not always clear which allows for arbitrary decisions.

The OGP framework remains the key mechanism for dialogue and cooperation between the state and CSOs. In 2019, the Secretariat of the OGP was transferred from the Ministry of Justice to the administration of the Government of Georgia which created an expectation that this system would have greater legitimacy and a more coordinated level of state support. Furthermore, in 2020, the Government of Georgia established the Open Governance Inter-Agency Coordination Council in which CSOs

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<sup>229</sup> Open Government Partnership, Independent Reporting Mechanism (IRM): Georgia Transitional Results Report 2018–2019, [https://www.opengovpartnership.org/wp-content/uploads/2021/05/Georgia\\_Transitional-Results\\_Report\\_2018-2019\\_EN\\_for-public-comment.pdf](https://www.opengovpartnership.org/wp-content/uploads/2021/05/Georgia_Transitional-Results_Report_2018-2019_EN_for-public-comment.pdf).

<sup>230</sup> IDFI, Regress of the Government of Georgia towards Implementation of OGP Principles, 6 October 2021, <https://idfi.ge/en/regress-of-the-government-of-georgia-towards-implementation-of-ogp-principles>.

<sup>231</sup> IDFI, Overview of the Plans of OGP Local Member Georgian Municipalities (17 September 2021), <https://idfi.ge/en/an-overview-of-action-plans-of-georgian-municipalities-involved-in-open-government-partnership-local-program>.

are represented with a voting right.<sup>232</sup> Although a relatively effective tool has been created in the form of the Council, it largely remains nominal and does not provide structural state-CSO cooperation in practice, since it has not conducted any meetings during the reporting period. Some local governments have also established local OGP implementation working groups that have local CSOs as members.<sup>233</sup> Contrary to the central government OGP Coordination Council that practically remains ineffective, local governments are actively utilising collaboration with CSOs to effectively implement OGP action plans.

The Local Self-Government Code also establishes important guarantees for supporting cooperation with CSOs. The local governments, in addition to traditional instruments such as advisory councils and gender equality councils, have started setting up consultative bodies more consistently (thematic councils, commissions and working groups) to study certain issues within their competence and invite CSO representatives to be members of these bodies.<sup>234</sup>

CSOs note that even though there are some formal platforms facilitating cooperation with CSOs such as working groups, advisory councils and others, they still struggle to effectively influence policy-making. According to focus group participants, the effectiveness of engagement and policy impact of CSOs is largely dependent on how contentious a specific issue might be. They usually attend the decision-making hearings or provide written submissions without any feedback from the state authorities, which further reduces the possibilities for them to consolidate their positions. Some CSOs have remarked that some examples of state-CSO cooperation are bestowed by the donor organisations and do not have long-term viability outside of specific projects. Therefore, CSOs have noted their decreasing interest to engage in some of these schemes, which prove ineffective from a policy-influencing perspective.

Watchdog organisations who are more critical of certain government policies find it especially difficult to build meaningful cooperation with state authorities, especially on topics of public contention<sup>235</sup> such as judicial reform and reform of the intelligence services. One of the most negative examples of the former is the activities of the High Council of Justice (HCOJ). The HCOJ, which is the main policy-making body in the judiciary system, despite systemic criticism from Georgian CSOs and international actors, remains closed for meaningful public engagement. For instance, on 31 October 2021, when all public attention was focused on Georgia's local government election, the Conference of Judges elected two judges to replace the two current members

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<sup>232</sup> IDFI, The Open Governance Inter-agency Coordination Council has been established (13 February 2020), [https://idfi.ge/en/ogp\\_coordination\\_council](https://idfi.ge/en/ogp_coordination_council).

<sup>233</sup> Web-page of the Ozurgeti municipality <http://ozurgeti.mun.gov.ge/?p=7394>.

<sup>234</sup> L. Gogidze, Peculiarities Of Open Governance Practices At The Local Level In Georgia, 2021.

<sup>235</sup> EWMI ACCESS, Assessment of the Civil Society Sector in Georgia, 2019, [http://ewmi-access.org/wp-content/uploads/2020/01/CSO-ASSESSMENT\\_ENG\\_Final.pdf](http://ewmi-access.org/wp-content/uploads/2020/01/CSO-ASSESSMENT_ENG_Final.pdf).

whose early resignations were not made known in advance to the public. There was no opportunity for consultation or participation for CSOs, or even time to assess the candidates. Only one candidate was nominated for each vacancy, without any further elaboration or consultations. Therefore, this process has received overwhelming criticism from Georgian CSOs and international stakeholders for its distinct lack of transparency and inclusiveness.<sup>236</sup>

Despite these concerns, there are some successful examples of CSO-state collaboration, such as when state authorities have positively reflecting CSO recommendations in state policies. For instance, the CSI successfully cooperated with the Batumi City Hall to establish and effectively implement a participatory budgeting platform in Batumi, which ensured a more open and citizen-friendly budgeting process.<sup>237</sup>

Since the formation of most consultative bodies is not clearly institutionalised, not every CSO gets the opportunity to participate in the work of consultative bodies and member CSOs are often selected in a non-transparent and non-inclusive manner, by individual invitations from the state authorities.

#### Specific recommendations under Area 10:

- The Government of Georgia should develop and adopt the systemic vision for state-CSO cooperation on all levels of the decision-making process and further institutionalize these standards;
- The Parliament of Georgia should adopt the State Concept of CSO Development and ensure its effective implementation;
- The state institutions, especially the Government of Georgia, should respect and affirm its obligations within the OGP framework and allocate sufficient financial and administrative resources for implementing necessary policy steps for efficient CSO-state cooperation; and
- The state agencies should be open for cooperation and establish public councils and/or other consultative bodies for dialogue and cooperation in a transparent and accountable manner.

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<sup>236</sup> The Coalition for an Independent and Transparent Judiciary Reacts to the Planned Judicial Conference, available at: [http://coalition.ge/index.php?article\\_id=260&clang=1](http://coalition.ge/index.php?article_id=260&clang=1); Statement on the Conference of Judges, US Embassy Georgia, 2 November 2021, available at: <https://bit.ly/3EOPy6s>; Remarks by EU Ambassador Carl Hartzell following the appointment of two members of the High Council of Justice, 2 November 2021, available at: <https://bit.ly/3k9FDAa>.

<sup>237</sup> <https://idea.batumi.ge/about>.

## 3.11 Digital rights

Overall score per area: **4.2 /7**

Legislation: **4.6 /7**

Practice: **3.9 /7**

In the digital sphere in Georgia, online users can freely express themselves and use online platforms to campaign on various public policy issues. However, this achievement has been overshadowed by the recent incident in which files leaked from the State Security Service exposed unlawful surveillance that had occurred by the alleged tracking of mobile phones of journalists, opposition leaders, CSO representatives, activists, priests, and diplomats. In addition, artificial intelligence (AI) systems, including facial recognition systems are utilised by law enforcement agencies without any legal framework, or ethical and accountability standards for their use. At the same time, the government is progressing slowly in terms of the development of the internet infrastructure in remote areas of the country.

### Standard 1. Digital rights are protected, and digital technologies are compliant with human rights standards

Digital Rights are all fundamental human rights applicable in the digital sphere. According to the Constitution, Georgian citizens have the right to access and freely use the internet.<sup>238</sup> Digital rights are also protected by the Law of Georgia on Freedom of Speech and Expression, as legal provisions protecting freedom of expression are also applicable to the internet by law.<sup>239</sup> The restriction of these rights may be allowed only in accordance with the law, insofar as is necessary for 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.<sup>240</sup> In addition, government control might be imposed over the domestic internet during a period of martial law or a state of emergency.<sup>241</sup>

Another relevant legal development in the sphere of digital rights is the recent amendments to the Law of Georgia on Information Security. These changes will fundamentally change the existing cybersecurity architecture of Georgia by

<sup>238</sup> Article 17 of the Georgian Constitution, amended in 2018, regulating 'Rights to freedom of opinion, information, mass media and the internet, The Constitution of Georgia, available at: <https://matsne.gov.ge/en/document/view/30346?publication=36>.

<sup>239</sup> The law defines media 'as print or electronic means of mass communication, including the Internet'. Law of Georgia on Freedom of Speech and Expression, available at: <https://matsne.gov.ge/en/document/view/33208?publication=5>.

<sup>240</sup> 'Constitution of Georgia,' Legislative Herald of Georgia, <https://matsne.gov.ge/en/document/view/30346?publication=35>.

<sup>241</sup> 'On Martial Law,' Legislative Herald of Georgia, Available at: <https://matsne.gov.ge/document/view/28336?publication=3>.

expanding the mandate of the Operational-Technical Agency (OTA) of the State Security Service to become the main coordinating and supervisory body of information and cybersecurity. This means that the OTA will have authority for direct access to the information systems of the executive, legislative, and judicial authorities, as well as the telecommunications sectors, and indirect access to personal and commercial information.<sup>242</sup> The law enforcement agency will be given the opportunity to have access to personal data, and the ambiguity around the established norms in its processing poses a real danger of illegal and disproportionate processing of personal data. This step has raised concerns that mechanisms and decisions on online surveillance are at the hands of State Security Service. Despite harsh criticism from civil society, the private sector, as well as experts in the field, only some provisions, challenged by the financial sector, were revised. Eventually, amendments were adopted with the third reading in June 2021 and will come into force at the end of the year 2021.

Digital freedoms are generally protected in Georgia, as online users do not encounter obstacles in expressing themselves online or using online communication tools and platforms for disseminating information and launching campaigns on various public policy issues.<sup>243</sup> Over the past year, there have been no reported cases of the government limiting or shutting down access to the internet, blocking social media platforms or websites of opposition parties, activists or CSOs. In an isolated case, during the protests against the Namakhvani HPP on 3 April 2021, the protesters alleged that the government had interrupted the internet connection in order to ease the demonstration.<sup>244</sup>

Alleged violations of the right to privacy by the security services remain a major challenge for Georgia in recent years. The most recent alleged leaked files from the State Security Service<sup>245</sup> demonstrated that journalists, opposition leaders, CSO representatives, activists, clergy, and even diplomats have had their communications monitored.<sup>246</sup> CSOs have consistently voiced their view that the regulatory and institutional framework governing covert surveillance fails to ensure adequate protection of privacy. Despite the fact that the leaked data mostly concerned mobile communications, these leaks demonstrated that violations of the right to privacy is a

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<sup>242</sup> IDFI. 'The Parliament of the X Convocation adopted the problematic 'Law on Information Security' with the III reading,' available at: [https://idfi.ge/en/the\\_parliament\\_of\\_the\\_10\\_convocation\\_adopted\\_the\\_problematic\\_draft\\_law\\_on\\_information\\_security](https://idfi.ge/en/the_parliament_of_the_10_convocation_adopted_the_problematic_draft_law_on_information_security).

<sup>243</sup> Freedom House, Freedom on the Net, Georgia, 2021, available at: <https://freedomhouse.org/country/georgia/freedom-net/2021>.

<sup>244</sup> Civil.Ge. Tensions at Namakhvani HPP Site as Works Resume with Police Backing, 5 April 2021, available at: <https://civil.ge/archives/410565>.

<sup>245</sup> IDFI, IDFI responds to the Leak of surveillance files (17 September 2021), [https://idfi.ge/en/idfi\\_responds\\_to\\_the\\_leak\\_of\\_secret\\_surveillance\\_documents](https://idfi.ge/en/idfi_responds_to_the_leak_of_secret_surveillance_documents).

<sup>246</sup> Civil.Ge, Alleged Security Service Files on Clergy Leaked (13 September 2021), <https://civil.ge/archives/440008> <https://civil.ge/archives/440783>.

significant challenge for the country.<sup>247</sup> In addition, it demonstrated that there is no effective system of supervision and control over law enforcement bodies, which potentially could negatively affect the protection of digital rights.<sup>248</sup>

The Georgian National Communications Commission (GNCC), the main telecommunications regulatory body, has also been criticised for a lack of transparency and accountability.<sup>249</sup> The GNCC has been assessed as making decisions which are ‘selective’ and ‘inconsistent’, especially with regard to several broadcasters and online news media regarding procedures for publicising opinion polls.<sup>250</sup> In September 2020, the GNCC enacted amendments to the Law on Broadcasting and the Code on the Rights of Children, which entitles the GNCC to regulate media ‘in the best interest of minors.’ In relation to this, GNCC created a list of websites considered dangerous for children, with the indication of an appropriate age mark, for Internet Service Providers (ISPs) and parents in September 2020.<sup>251</sup>

The online media environment in Georgia is increasingly diverse, and content on a wide range of topics is available. Digital mobilisation is a regular feature of political life. Political and civil society groups frequently post calls to action on social media platforms and use them to communicate with their supporters. As far as other challenges for online users are concerned, hackers increasingly carry out cyberattacks on the websites of public institutions and TV channels. In addition, various groups have engaged in online manipulation and the dissemination of fake news.<sup>252</sup> Also, in certain cases, women politicians, journalists and political candidates have experienced online harassment through abusive comments in response to posts on Facebook pages and profiles of majoritarian candidates during the recent parliamentary and local elections.<sup>253</sup>

With regard to the use of digital technologies, especially of AI by public institutions, this report has found that different state institutions use at least six AI systems, including the facial recognition used by law enforcement agencies.<sup>254</sup> Despite this, the

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<sup>247</sup> IDFI, Violation of the Right to Privacy - a Systemic Challenge for Georgia,

[https://idfi.ge/en/violation\\_of\\_the\\_right\\_to\\_privacy\\_a\\_systemic\\_challenge\\_for\\_georgia](https://idfi.ge/en/violation_of_the_right_to_privacy_a_systemic_challenge_for_georgia).

<sup>248</sup> IDFI, Secret Surveillance in Georgia - Analysis of the Legislation and Practice (September 2020),

[https://idfi.ge/en/secret\\_surveillance\\_in\\_georgia](https://idfi.ge/en/secret_surveillance_in_georgia).

<sup>249</sup> IDFI, Shortcomings in the Transparency of the Activities of the Georgian National Communications Commission, available at: [https://idfi.ge/en/communication\\_commission-transparency\\_gaps](https://idfi.ge/en/communication_commission-transparency_gaps).

<sup>250</sup> GYLA, Georgian Presidential Election Observation Mission 2018, available at: <https://bit.ly/3qziWtg>.

<sup>251</sup> The list is available on the GNCC website: <https://registry.comcom.ge/ChildCodes.aspx>.

<sup>252</sup> Tamar Kintsurashvili, ‘Anti-Western Propaganda,’ available at: <http://mythdetector.ge/en/research/anti-western-propaganda-2020>.

<sup>253</sup> CRRC, ‘Violence against women in politics on Facebook,’ December 2020, available at: <https://bit.ly/3fLFth8>.

<sup>254</sup> IDFI, Artificial Intelligence: International Tendencies and Georgia - Legislation and Practice, available at: [https://idfi.ge/en/artificial%20intelligence\\_international\\_tendencies\\_and\\_georgia](https://idfi.ge/en/artificial%20intelligence_international_tendencies_and_georgia).

The following AI systems used by particular public institutions were reported:

- a. Facial recognition system of the expert – Ministry of Internal Affairs
- b. License plate and facial recognition system – Public Safety Command Center 112 – Ministry of Internal Affairs



country lacks normative acts regulating AI systems and documents that define its ethical norms in relevant agencies. This means that the impact of these digital technologies over the citizens is unknown, and it is unclear if these technologies are compatible with human rights standards.

## **Standard 2. The state creates conditions for the enjoyment of digital rights**

The government's efforts to expand the internet infrastructure have progressed slowly. In January 2020, a five-year strategy for the development of broadband networks was adopted which aims to 'develop infrastructure and transform the country into a digital and information hub in the region.' According to the strategy, 4G networks should cover 99 per cent of the country's territory by 2025. Also, since 2017, the Telecom Operators Association of Georgia, with the financial support of international organisations, public and private sector representatives, has been implementing two community network projects, which provided internet access for several mountainous regions of Georgia (Tusheti, Pshav-Khevsureti, and Gudamakhari).<sup>255</sup>

A high majority (83.8 per cent) of Georgian households have internet access and it is estimated that 72.5 per cent of individuals have Internet access in the country.<sup>256</sup> There is no gender gap among Georgians who use the internet regularly, but there are differences regarding age and geographic location.<sup>257</sup> The internet is not equally accessible in all regions of the country, especially the rural or underdeveloped areas. Of these, Racha-Lechkhumi and Kvemo Svaneti is by far the most underdeveloped region, with a broadband internet penetration rate of only 13 per cent.<sup>258</sup> Also, Georgia's internet market is concentrated among two to three ISPs, which results in a minimal level of competition. There are concerns regarding the quality of the provided service (especially, regarding internet speed) as well.<sup>259</sup> As far as ISPs are concerned, the recent contentious legislative amendments to the Law on Electronic

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c. IBM 12 artificial intelligence analytical software – Prosecutor's Office of Georgia

d. Automatic Analysis of Sentiments ('Emotions are Georgia') – Georgian National Tourism Administration

e. Associative Data Analysis – Education Management Information System

f. DLP and Translation Memory Module – National Center for Educational Quality Enhancement.

<sup>255</sup> More details about the project could be found here: <http://toa.ge/en/project/georgian-highlands-community-internet-projects/>.

<sup>256</sup> International Telecommunication Union (ITU), available at: <https://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>.

<sup>257</sup> To demonstrate this gap, according to the data as of July 2021, around 40 per cent of people aged 60 and more had used the internet within the last three months, while the same measures for other age groups fluctuated between 75 and 91 per cent.

At the same time, 67.6 per cent of the rural population had used the internet within the last three months, while the same measures for urban population amounted to 83.8 per cent.

GeoStat. Information and Communication Technologies Usage in Households, available at:

<https://www.geostat.ge/en/modules/categories/106/information-and-communication-technologies-usage-in-households>.

<sup>258</sup> Data from the Communications Commission as of August 2021, available at:

<https://analytics.comcom.ge/ka/statistics/?c=internet&f=subscribers&exp=penetrationbyregion&sid=953942>.

<sup>259</sup> Freedom House, Freedom on the Net, Georgia, 2021, available at: <https://freedomhouse.org/country/georgia/freedom-net/2021>.



Communications, initiated by the GNCC in July 2020, entitled the GNCC to appoint ‘special managers’ at telecommunications companies to effectively enforce its decisions.<sup>260</sup>

Based on the experience of this and another controversial legislative amendment to the law on information security, the government and relevant public institutions have not consulted with CSOs and other relevant stakeholders before initiating changes. Even though civil society, media and business representatives have been active in voicing their concerns after draft amendments were initiated, their efforts remain limited and have had a negligible impact, as decision-makers lacked the political will to consider their concerns.<sup>261</sup>

Several agencies have protection mechanisms in place when it comes to digital rights. For instance, the Public Defender of Georgia supervises the protection of human rights and freedoms in the country,<sup>262</sup> the State Inspector’s Service is responsible for monitoring the lawfulness of personal data processing,<sup>263</sup> while the Public Defender of Consumers’ Interests under the GNCC is entitled to protect the rights and legitimate interests of consumers in the field of electronic communications and broadcasting.<sup>264</sup> However, these protection mechanisms are seldom used by users, as they lack information about their rights and existing protection mechanisms.

There are several examples of the state using digital tools to further human rights. For instance, with the support of international donors, new domestic violence features were added to the Georgian emergency hotline (112) mobile app, which among other things enables potential victims to use the silent alert or chat options while seeking help.<sup>265</sup> In addition, hundreds of public and private services are accessible for Georgia’s citizens through the Unified Portal of Electronic Services (my.gov.ge). There have not been any reported cases stating that the deployment of these digital tools endangered the exercise of human rights, the safety of activists, CSOs, or the protection of their sensitive data.

Raising digital literacy among the general public plays a vital role in improving digital privacy and protections. The Ministry of Economy and Sustainable Development is currently drafting the Digital Transformation/Economy Strategy of Georgia with the

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<sup>260</sup> Civil.Ge. GNCC Appoints ‘Special Manager’ to Major Telecommunications Company, available at: <https://civil.ge/archives/372395>.

<sup>261</sup> Several announcements of CSOs and other stakeholders on the mentioned amendments can be found here: [https://idfi.ge/en/joint\\_statement\\_on\\_information\\_security\\_law](https://idfi.ge/en/joint_statement_on_information_security_law)  
<https://idfi.ge/en/law-on-information-security>

<sup>262</sup> More details about the mandate of the Public Defender of Georgia can be found here: <https://www.ombudsman.ge/eng/mandati>.

<sup>263</sup> More details about the State Inspector’s Service can be found here: <https://personaldata.ge/en/about-us>.

<sup>264</sup> More information about the GNCC Public Defender can be found here: <https://comcom.ge/en/momxmareblis-uflebebi>.

<sup>265</sup> More details about the app and its new features: <https://georgia.unwomen.org/en/news/stories/2019/03/new-domestic-violence-features-added-to-112-mobile-app>.

financial assistance of the United Nations Development Programme (UNDP) in Georgia. Since 2020, the Ministry of Economy and Sustainable Development, with the support of the World Bank, has been working to elaborate a national strategy called 'Digital Georgia' which, among other issues, will cover digital literacy and awareness of issues around the use of AI.<sup>266</sup> However, CSOs have not yet been involved in the preparation of the strategy. Mainly, CSOs are providing digital skills to citizens through preparing guidebooks, awareness raising campaigns and offering training on digital and media literacy and cyber hygiene, yet these activities are sporadic, and it is therefore difficult to assess their impact.

### Specific recommendations under Area 11:

- The Government and the Parliament have to ensure that newly adopted and implemented provisions regarding information security are in line with European Union standards and directives;
- The Government should design and implement effective oversight mechanisms to ensure proper accountability and transparency of law enforcement agencies in regard to digital rights and privacy;
- The Government of Georgia should elaborate a legislative framework, ethical and transparency standards, and guidelines on AI design, deployment, and use. When elaborating these guiding principles and laws, the process should be open, inclusive and diverse stakeholders should be engaged;
- To ensure accountability, the Government of Georgia should also outline procedures for auditing the operations of AI systems, and publish the results of such inspections;
- The Government should continue and accelerate its efforts to improve internet infrastructure, competition, and quality in the sector to enable Georgian citizens to equally exercise digital freedoms and use new technologies;
- The Government of Georgia should also prioritise increasing digital resilience and awareness of the general public which can be better achieved through public-private collaboration and joint efforts; and
- The Government should create a regulatory framework that will reduce AI-related threats, risks and challenges.

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<sup>266</sup> Details of the government plans are available here:

<https://documents1.worldbank.org/curated/en/902091595517787639/pdf/Project-Information-Document-Log-In-Georgia-P169698.pdf>.

## IV. KEY PRIORITIES

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Civil society has a generally enabling ecosystem in Georgia. CSOs are a vibrant part of political processes and actively shape Georgia's path towards a more democratic society by advancing good governance, respect for human rights, social inclusion, and public growth.

Even though CSOs largely have the freedom to operate without any interference, the state does not proactively support further development and strengthening of the civil society sector and CSOs are mostly dependent on the support of international donor organisations as their main partners.

Georgia has only made incremental steps in transforming the legislative framework and related practice since the last reporting period and most issues raised in the 2019 report have not yet been resolved. Therefore, the past recommendations are still relevant to ensure a truly enabling environment for Georgian CSOs.

The ten priority actions for the improvement of the civil society environment (key recommendations) for the Georgian authorities are:

- The Government of Georgia should elaborate and adopt a systemic vision for state-CSO cooperation on all levels of the decision-making process and further institutionalise these standards;
- Government authorities should develop unified legislative standards for state funding, encompassing clear guidelines for the award process (participatory decision-making, preliminary identification of selection criteria, avoidance of conflicts of interest, transparency etc.), preventing discriminatory and arbitrary decisions, and further institutionalising transparency and accountability standards;
- The Government of Georgia should urgently introduce the necessary legal amendments to create comprehensive legal safeguards for the processing of personal data and covert investigative actions, including by reforming the State Security Service of Georgia and increasing its oversight. The Government should also ensure that CSOs are consulted and engaged in the reform process right from its initial stages;

- The Prosecutor’s Office should prioritise and promptly investigate alleged illegal and arbitrary surveillance of CSO representatives, journalists, and others, and ensure that all relevant actors are granted victims status and have access to case files, at the same time updating the public on the progress of the investigations;
- The relevant authorities must investigate the facts of unlawful interference in the professional activities of members of the media and the excessive use of force against them in a timely and effective manner;
- All cases involving abuse of power by law enforcement officers during demonstrations must be investigated promptly, impartially, and objectively by the Ministry of Internal affairs and the Prosecutor’s office;
- The Government of Georgia should design and adopt unified standards/rules on public consultations of draft laws and policies at the national level, including by clearly setting participation as the obligatory stage in the development of decrees, draft laws, strategic documents, and other instruments and establish redress mechanisms for their violation;
- The Government should continue and accelerate its efforts to improve internet infrastructure, competition and quality in the sector to ensure that Georgian citizens are equally able to exercise digital freedoms and use new technologies;
- Municipalities, grants; The Government of Georgia should encourage state institutions to support local initiatives by adding municipalities to the list of grant-issuing entities by introducing relevant legislative amendments;
- The Government of Georgia, in active collaboration with CSOs, should ensure compliance with MONEYVAL recommendations while avoiding any unnecessary deterioration of the CSO environment.

## V. METHODOLOGY

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The CSO Meter supports regular and consistent monitoring of the environment in which CSOs operate in the Eastern Partnership (EaP) countries. It consists of a set of standards and indicators in 11 different areas to measure both law and practice. It is based on international standards and best practices. The CSO Meter was developed by a core group of experts from ECNL and local partners from the six EaP countries.

Since 2020, ECNL has worked with the methodology experts RESIS on adapting the CSO Meter methodology package to enable for both qualitative and quantitative

comparison of the different areas of the enabling environment across the EaP countries and years. The proposal for this model was consulted on and tested with the extended regional CSO Meter Hub via email and an online event. With the updated comparison model, we aim to (i) assess the environment for civil society in each of the 11 areas; (ii) enable tracking of developments/progress throughout the years per country; and (iii) compare the environments regionally.

The country partners, together with other CSOs, part of the CSO Meter Hub conducted the monitoring process and drafted the narrative country report. They also established Advisory Boards in each country, composed of expert representatives of key local stakeholders. The members of the boards have two main tasks: to review the narrative reports and to assign scores for every standard based on the narrative reports.

The current report covers the period of September 2020 – December 2021.

## Monitoring process

The report was prepared by the leading local CSOs: the Civil Society Institute (CSI), the Georgian Young Lawyers Association (GYLA) and the Institute for Development of Freedom of Information (IDFI), following a joint methodology for all six EaP countries.

The report assesses the key developments and overviews progress and the main challenges both in terms of the legislative framework and in practice.

The report was developed through an inclusive process including active consultancies with CSOs. The working group has incorporated various research methods to collect and comprehensively analyse relevant data.

At the initial stage, the project team thoroughly reviewed the existing legislative framework, including the implemented and pending reforms that affect the civil society ecosystem. To fully assess how certain standards and policies are implemented in practice, the project team requested public information from various governmental agencies, the Parliament of Georgia, the National Agency for Public Registry and others.

The project team also analysed secondary sources, including surveys, reports and assessments published by local and international organisations and the Public Defender, which helped to converge and outline the main trends and challenges.

As part of the qualitative research, the project team organised one focus group and nine in-depth interviews. Due to the Covid-19 regulations, the focus groups were held through the Zoom platform in October 2021. Twenty CSOs participated from 13

different municipalities in the focus groups. The participants had various backgrounds and represented different experiences, fields of work, and legal statuses.

In addition to the focus group, the research team also organised in-depths interviews with the leading human rights organisations, field experts and state agencies. Namely, interviews were held with the CSI experts specialising in taxation and legal matters - Davit Tivishvili and Levan Paniashvili; online organisation establishment, practical obstacles for newly-established CSOs, and cybersecurity were assessed through interviews with Nikoloz Gagnidze (former head of Data Exchange Agency (LEPL DEA), former deputy head of Digital Governance Agency (LELP DGA), and chief representative of the National Cyber Security Association); procurement-related issues were discussed in an interview with Irakli Goletiani (Head of Department at the State Procurement Agency); TBC bank representatives answered questions about the requirements to open bank accounts for regional and foreign CSOs; and an additional interview was held with a representative from Social Justice Center, Guram Imnadze, to discuss the right to participation, right to privacy and state-CSO cooperation. Lasha Gogidze, an independent expert in open governance and anti-corruption issues, was interviewed on issues related to the OGP framework.

The report reviews the sets of standards that are part of the CSO Meter and provides recommendations for improvement in each of the 11 areas covered. These recommendations could serve as a basis for future reforms that the relevant state authorities can undertake to improve the environment for civil society in Georgia.

The current report covers the period from September 2020 to November 2021. Important developments for civil society that occurred between the period of data collection and finalisation of the report have been included in the executive summary of the report but have not been considered when assigning scores.

The draft country narrative report was reviewed by the Advisory Board (AB) members in Georgia via online communications on 24 December 2021. Based on the recommendations of the AB members, the findings and recommendations were further revised and finalised.

## Scoring process

The AB members in Georgia assessed each **Standard of the 11 areas of the CSO Meter tool in Legislation and Practice**. For the scoring procedure a 7-point scale is used. The extreme values of the scale are conceived as the extreme or ideal situation/environment. For example, (1) is an extremely unfavourable (authoritarian) environment, while (7) is the extremely favourable (ideal democratic) environment for CSOs. For more information on the CSO Meter tool, the scoring process and calculation

please visit <https://csometer.info/>. The scores given in this 2021 report will serve as baseline scores and in the coming years progress will be measured against them.

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