

Georgia: State of Affairs Report

Part 1: Country Snapshot

Georgia, a country of 4.5 million people, is located in the South Caucasus and is flanked by the Black Sea to the west, Russia to the north, Turkey and Armenia on its southern border, and Azerbaijan to its southeast. It is an important transit route for oil and gas that connects the Caspian Sea to the West through the Baku-Tbilisi-Ceyhan line. Georgia is Western-leaning. In 2008 it dropped out of the Commonwealth of Independent States (CIS), the post-Soviet regional organization, as a consequence of deteriorating relations with Russia.

The immediate fall of the Soviet Union created a period of instability in Georgia. Two regions, South Ossetia and Abkhazia, broke away and a third, Adjara, acted more or less autonomously. Ethnic conflicts in South Ossetia and Abkhazia along with a coup d'état in Georgia from December 1991 to January 1992 contributed to a series of crises that culminated in a civil war. This was followed by a period of extreme instability that only began to subside when former Soviet Foreign Minister Eduard Shevardnadze assumed the presidency in 1995. Shevardnadze's position as the Head of State lasted until 2003 when he was ousted during the Rose Revolution, led by Mikheil Saakashvili. Current Prime minister is Giorgi Kvirikashvili from Georgian Dream party and current President of the country is Giorgi Margvelashvili.

Georgia stands out as the most Western-leaning of the former Soviet republics, with the exception of the Baltic States. Its regulatory environment has evolved to meet requirements set out by World Trade Organization membership and participation in the European Union's (EU) Eastern Partnership Program, as well as aspirations to join the EU and the North Atlantic Treaty Organization. Georgia's movement away from Russia under Saakashvili increased friction between the two countries. This eventually erupted in the short but important war in 2008, ostensibly over the breakaway regions of South Ossetia and Abkhazia which have been immediately recognized by Russia and in which Russian telcos are active¹ Georgia holds regular and pluralistic elections,² and its democratic trajectory has generally shown significant improvement in recent years. However,

¹ Georgia - Telecoms, Mobile and Broadband - Statistics and Analyses - Executive Summary, <https://www.budde.com.au/Research/Georgia-Telecoms-Mobile-and-Broadband-Statistics-and-Analyses>.

² See recent reports by OSCE/ODIHR EOM for Parliamentary Elections, 8 October 2016: "Statement of Preliminary Findings And Conclusions", October, 2016, <http://www.osce.org/odihr/elections/georgia/273221?download=true> and Local Elections, 21 October 2017: "Statement of Preliminary Findings And Conclusions", October, 2017, <http://www.osce.org/odihr/elections/georgia/351616?download=true> <http://www.osce.org/odihr/elections/georgia/351616?download=true>;

oligarchic actors hold outsized influence over policy and political choices, and judicial independence continues to be stymied by executive and legislative interests.³

As of October 2017, Georgia's diverse media environment included 92 TV channels (including 12 nationwide general digital broadcasters), 51 radio stations, over 300 print publications and numerous online media. The role of online media is steadily growing, especially in urban centres, while TV remains as the most important source of information in the regions.

Despite overall pluralism and freedom of the media, broadcast media are perceived to be split along political lines. Ongoing ownership disputes over one of the most popular private pro-opposition TV station, Rustavi 2, and recent changes in the Georgian Public Broadcaster give room for concern.⁴

In fact, Georgia is considered as of the most polarised democracies in Europe. The EU, the Council of Europe and the OSCE/ODIHR have all identified polarisation as a challenge to Georgia's democratic consolidation.⁵

On November 14, 2017 Freedom House published its [annual report](#) on Internet freedom around the world, where [Georgia](#) obtained a score of 24 out of 100 and was assessed as "Free", thereby improving the country's score from "partly free" by 1 point compared to 2016.⁶

Part 2: Access to Internet & Internet Services

Georgians are sophisticated Internet users, with the majority accessing the Internet on their mobile phones. Their demand for high-speed Internet has created a valuable market for service providers. They have made substantial investments in the development of information and communications technology (ICT). Ownership of significant portions of ICT infrastructure and service providers is hidden in opaque, offshore corporations.

Internet penetration in Georgia is growing rapidly, reaching 50 percent in 2016, up from 10 percent in 2008 and 31.5 percent in 2011. The number of mobile Internet users has increased significantly to reach 129 percent penetration at the end of 2016. According to a countrywide survey conducted by the Caucasus Research Resource Center (CRRC), 46 percent of the population accessed the internet on a daily basis in 2016, and the most active internet users were located in the capital. Only 2 percent of Georgians are

³ Freedom in the World 2017, Freedom House

⁴ OSCE/ODIHR EOM Report for Georgia's Local Elections, 21 October 2017, <http://www.osce.org/odihr/elections/georgia/348216?download=true>, (pp.1, 6.)

⁵ DRI and GYLA: "Summary report: Extreme polarisation and its impact on democracy in Georgia", http://democracy-reporting.org/dri_publications/summary-report-extreme-polarisation-and-its-impact-on-democracy-in-georgia/

⁶ Freedom House: Georgia's Score in Internet Freedom Ranking has Improved https://idfi.ge/en/freedom_house_georgias_score_in_internet_freedom_ranking_has_improved

unfamiliar with the internet altogether. There is a slight gender gap, as over 51 percent of men use the internet compared to 47 percent of women.⁷

Since 2003, telecommunications has become one of the fastest growing sectors in the Georgian economy. In order to meet growing demand for broadband services, the private sector has made substantial infrastructural investments, particularly in Tbilisi. The biggest ISPs have installed fiber-optic cables to connect their network operation centers to residential buildings and increase their pool of potential subscribers. The current number of fiber optic subscribers is 507,611.⁸ Since 2015, 4G LTE internet access has been slowly made available for Georgian consumers.⁹

Decreasing tariffs have also played an important role in attracting new customers. The price for a 50Mbit fiber optic subscription is approximately 30 USD per month, while the cost for a 22mb/sec line amounts to 18 USD per month. Along with technical infrastructure and competitive pricing, ISPs have also started to offer attractive bundles with additional services such as VoIP (online telephony), and IPTV (online television services).

Part 3: ICT Actors & Infrastructure

Georgia's telecommunications sector is hidden behind opaque ownership structures. According to an investigation by Transparency International-Georgia, several major Georgian telecommunication companies are controlled by offshore entities, effectively masking their ownership structures. Most of these companies declined to reveal this information. The owners also have business interests in important sectors of the Georgian economy, including restaurant chains, gas stations, and major TV stations (e.g., Rustavi).

Transparency International-Georgia has compiled an online database detailing this information where possible.

There are no separate Internet exchange points in Georgia. Interconnection between telecommunication companies is based on individual agreements. Peering was first regulated by GNCC Directive on Peering (#6, 10.06.2001), with the Law on Electronic Communications later replacing this directive. VoIP services are regulated as a regular telephone services by the Law on Electronic Communications.

Fixed-Line Operators

⁷ Freedom of the Net 2017, Country Report Georgia:
https://freedomhouse.org/sites/default/files/FOTN%202017_Georgia.pdf

⁸ Georgian National Communication Commission – Analytics Portal

⁹ Freedom of the Net 2017, Country Report Georgia:
https://freedomhouse.org/sites/default/files/FOTN%202017_Georgia.pdf

Two operators dominate Georgia's fixed line market, Silknet and Magticom. Silknet is the most dominant actor in the Georgian telecommunication scene, especially after the acquisition of Geocell announced in January 2018. In 2010, United Telecom, a former government owned telephone operator, merged with Vanex Ltd. and Adjara Telecommunications to form Silknet, It claims half of the total subscriber base, with 277,576 subscribers as of November 2017, however it shows a slight tendency of losing its dominant position.¹⁰ The company is owned by the three local investors George Ramishvili, Alex Topuria and David Borger. Silknet is Georgia's largest fixed network operator with a 41 percent share of the internet market and 48 percent of the fixed phone market.

Caucasus Online was the result of a merger between Sanet, Georgia Online, and Caucasus Telecom and was the second largest ISP, which in addition to being the second biggest IPTV service provider, controlled a considerable part of the Georgian Internet Service Providers market. In September 2016 Caucasus Online was merged with Magticom – one of the two current dominant ISPs by subscribers as of August 2017¹¹ As part of its efforts to support economic inclusion in the country by helping to make internet accessible to end users in rural areas, the EBRD allocated USD 100 million loan for [Magticom](#), to finance acquisition of fixed-line broadband internet network platform from [Caucasus Online](#). Magticom bought assets including infrastructure, equipment and network necessary to provide internet, telephony and IPTV services to end customers, although the deal did not include 1,200 kilometer undersea fiber-optic cable that runs across the Black Sea which the company still possesses ¹²As of November 2017, Magticom retains about 289,540 Internet subscribers. Prior to the merger with Caucasus Online, Magticom held a very small portion of the Internet market in Georgia. Georgia's ISP market is completely privatized, with about 166 registered smaller ISPs. Magticom and Silknet control more than 80 percent of the Georgian Internet market. The third largest Internet provider in Georgia is New Net, with just over 6 percent of the market.

Mobile Operators

There are three major mobile service providers in Georgia – Geocell, Magticom, and Veon Georgia. Magticom was the first company licensed in 1995 to offer mobile services in Georgia. Geocell followed shortly after in 1997¹³. Magticom is owned by two companies registered in U.S. state Delaware; among its main beneficial owners are Giorgi Jokhtaberidze, son-in-law of Georgia's late former president Eduard Shevardnadze, and family of late tycoon Badri Patarkatsishvili.¹⁴ In January 2018, local fixed operator Silknet announced successful agreement over acquisition of Geocell, the second-largest mobile

¹⁰ Georgian National Communication Commission – Analytics Portal

¹¹ Ibid

¹² EBRD funds Magticom, (15 July, 2016), <http://civil.ge/eng/article.php?id=29305>

¹³ www.geocell.ge

¹⁴ *ibid.*

operator, after striking a deal with Geocell's shareholders, Telia Company (STO:TELIA) and Turkcell (NYSE: TKC, IST: TCELL) for USD 153 million, thereby raising the question of possible monopolization of the market. When discussing possible threats of market concentration, co-founder of Silknet, Giorgi Ramishvili explained the potential effects of creating a major convergent telecom operator on the market as contribution to balancing forces of the actors through evening out the effects of Magticom's earlier acquisition of Caucasus Online and Delta. According to him, Silknet is further planning to invest USD 100 million to upgrade Geocell's technical capacities. In late January 2018, Silknet and Geocell have addressed the responsible local regulatory authority (GNCC) seeking pre-approval of merger. Subject to approval of the regulatory body, purchase deal is expected to be completed in the second quarter of 2018¹⁵ Mobile subscriptions have reached more than 5 million or 129 percent penetration, which is close to the regional average of 135 percent. Since the introduction of 3G services, mobile broadband service has grown rapidly reaching to 2.1 million or nearly 50 percent of the population. The introduction of flexible data packets by cellular providers – such as 6 USD/m for 500MB, 10 USD/m for 1GB, 18 USD/m for 5GB – has contributed to overall growth.

Part 4: Regulatory ICT Policy

The Georgian National Communication Commission (GNCC) is the main electronic media and communications regulatory body. The GNCC mostly deals with mobile operators, as well as television and radio broadcasting licenses. There is no significant difference between GNCC procedures for handling traditional media and those pertinent to telecommunications and internet issues.

Criticism surrounds the commission's alleged lack of transparency and independence. However, civil society representatives have confirmed that the agency is gradually becoming more open to engagement with and monitoring by various civil society stakeholders.¹⁶

In February 2018 Transparency International made an official statement alleging that GNCC public tender (NAT170014992) aimed at purchasing the [Internet quality measurement system](#) with an estimate value of GEL 267 857 was rigged. Earlier in December, 2017, Commission announced its plans to purchase the Internet quality measurement system, including a license for stationary server supporting software, a software license for a portable device automatically measuring the quality of Internet, consulting services, processing of testing results, analysis and so on.

Following the study of the documents uploaded by the GNCC, including the draft of the procurement [contract](#), TI had the impression that the tender was tailor-made for one particular company - [Visualware, Inc](#) - registered in [the United States](#) with a tender offer

¹⁵ GNCC News, February 06, 2018 16:09, <http://gncc.ge/ge/news/press-releases/komisiyam-shps-djeoselshi-100-iani-wilis-gasxvisebis-da-am-wilis-ss-silqnetis-mier-shedzenis-gamokvlevis-taobaze-sadjaro-administraciuli-warmoeba-daiwyo.page>; see also: Silknet will get 120 million loan to buy Geocell, 29.01.2018, <http://netgazeti.ge/news/248371/>

¹⁶ Freedom House: Freedom of the Net 2016 – Country Report Georgia

of up to GEL 265 179. The latter company was the sole bidder; moreover, identification information pertinent to Visualware was accidentally published together with the procurement contract draft. Leaning to NGO pressure, GNCC promptly discontinued the tender on technical grounds.¹⁷

Part 5: Information Security, Data Protection and Privacy

Cyberattacks against opposition websites have not been a significant issue in Georgia, with the latest major attacks occurring in 2008 and 2009 in relation to political tensions with Russia. In June, 2012 Law on Information Security was adopted taking effect from July, 2012. Within the same year, the Data Exchange Agency started monitoring Georgian websites for the presence of malicious code, hacking, or other suspicious activities, publishing the results regularly on their website, and on their Facebook page. The Agency's "Safe Internet - Check My IP" service examines the security of the IP address on users' computers, informing them of the nature of any viruses detected.¹⁸

According to Freedom House's Internet Freedom Index, Georgia is considered a free country since 2012, where online censorship is rare and online content is not subject to systemic manipulations. Despite this, temporary blocking of YouTube, WordPress and Vimeo demonstrates how fragile such achievements can be.¹⁹ With these cases, the lack of accountability mechanism of law enforcement agencies in such circumstances was revealed. The media and civil society have not received answers about the means and grounds for restricting access to international platforms to this day. Apart from this, it was evident that the GNCC, which presumably is the main regulating body of communications in Georgia, was not informed of such decisions in advance. Such circumstances once again show the fragility of legal guarantees for freedom of Internet in Georgia.²⁰

On September 14, 2017, in a precedential judgment, Supreme Court of Georgia declared official email correspondence as public information subject to disclosure. In this move, the Court fully upheld IDFI's appeal requesting disclosure of official email correspondence on urgent procurements conducted by the head or by a relevant public official of the Ministry of Justice via official email account.²¹ The judgment is in line with recent case-

¹⁷ Rigged Public Tender of GNCC Worth of GEL 267 857, 01, February, 2018, <http://www.transparency.ge/en/blog/rigged-public-tender-gncc-worth-gel-267-857>
see also <http://netgazeti.ge/news/249981/>

¹⁸ Freedom House: Freedom of the Net 2016 – Country Report Georgia

¹⁹ Freedom House: Freedom of the Net 2016 – Country Report Georgia

²⁰ "Regulating Inadmissible Internet Content – Georgia in Need of Legal Changes, Institute for Development of Freedom of Information, 2017

²¹ News : Practice - IDFI Case Law, 7 December 2017, <https://idfi.ge/en/supreme-court-declares-official-email-correspondence-as-public-information-legislative-assessment-by-idfi>

law of the European Court of Human Rights („Magyar Helsinki v.Hungary) which seeks to strike the balance between freedom of information and protection of personal data.²² The issue of secret state surveillance has been pressing in the country over the past six years. It was revealed in 2012 that the hundreds of recordings were collected illegally by various law enforcement agencies mainly in 2003-2012. According to media reports, a total of 29,000 video and audio recordings were made. The leak resulted in a large scale public outcry. Regulation of illegal surveillance became one of the main promises of the new government of coalition Georgian Dream. Following the April 2016 decision of the Constitutional Court declaring direct access of the State Security Service to mobile operators unconstitutional, the Court set March 2017 as the deadline for Parliament to harmonize legislation with the latter decision. Despite the fact that after surpassing the presidential veto, the package of legislative amendments on regulating illegal surveillance was finally adopted by April 2017, problematic issues remained to be addressed. In particular, State Security Service still retained one ‘key’ - direct access to communication data, by creating a new LEPL – Operative-Technical Agency within its structure, yet giving the other ‘key’ to the Personal Data Protection Inspector (but only in relation to secret telephone wiretapping). As a response, in April 2017 NGOs continued a campaign titled This Affects You – They Are Still Listening to protest the mentioned power of the law enforcement agencies. Campaign filed constitutional complaints of initially 283 citizens subsequently totaling 326 constitutional lawsuits versus the Parliament of Georgia, requesting the Constitutional Court to declare the legislative amendments unconstitutional as it contradicts the decision that the Court itself made on 14 April 2016. It has to be mentioned, that Administration of the President of Georgia, for the first time, presented an amicus curiae coinciding with the petitioners’ position.

With the decision of 29 December 2017, the Constitutional Court did not uphold the petitioners’ claim, and proceeded with accepting the lawsuits for definitive hearing, stating that the regulations they have challenged create a qualitatively different reality and have to be considered separately from the previous decision of the Court. 3 Judges presented joined dissenting opinions upholding petitioners’ claims. Final position of Constitutional Court is yet to be seen.

Part 6: Legal Overview

The primary document regulating the telecommunications sector is the Law on Electronic Communications (2005) The text has undergone several waves of amendments with most recent changes being introduced in December 2017 and some provisions taking effect as of 1 March, 2018. The law which has become subject of heated debate

²² ECtHR’s Precedential Ruling: Freedom of Information v. Protection of Personal Data, 11 November, 2016, <https://idfi.ge/ge/european-court-of-human-rights-decision-on-magyar-helsinki-v-hungary>

establishes the principles for development of a competitive environment in the communications sector. It specifies the rights and obligations of persons owning, using, or providing services by means of electronic communications networks and facilities; and defines the scope of competence of the national regulatory authority in the sector—the Georgian National Communications Commission.

The main policy-maker in the ICT sector is the Ministry for Economy and Sustainable Development, which is responsible for formulating the national frequency plan and establishing spectrum policy. There is a sufficient separation of functions between the policy-maker and the GNCC, the independent regulator, to provide for free and fair competition. The GNCC is responsible for monitoring operators' compliance with existing legislation, as well as frequency allocation and assignment, licensing, and dispute resolution between operators when a settlement cannot be reached on such issues as interconnection fees and tariffs. It is also authorized to deal with consumer complaints.

There are two main enforcement mechanisms at GNCC's disposal: the revocation of operating licenses and the imposition of fines for non-compliance, of up to 3 percent of an operator's revenue for the third infraction. Fines and licenses do not need to be sanctioned by a judge, but appeals can be made to a court during which time the penalty remains in effect.

The Law on Electronic Communications must be read in conjunction with a variety of legislation with cross sector implications. Other statutes providing for the Commission's regulatory authority are the Georgian Law on Broadcasting and the Law on Independent Regulating Authorities.

A range of legal provisions also pertains to online content, and the protection of user privacy and data integrity. According to Article 20 of Georgia's Constitution, "[e]veryone's private life, place of personal activity, personal records, correspondence, communication by telephone or other technical means, as well as messages received through technical means shall be inviolable." Furthermore, Article 24 of Georgia's Constitution protects every citizen's right to receive and disseminate information in writing or any other form. Media restrictions and censorship are prohibited. Article 8 of the Law on Electronic Communications protects the transmission of personal data.

The rights provided for in Article 20 and 24 of the Constitution and Article 8 of the Law on Electronic Communications may be restricted by law only to the extent needed to ensure the state's security and territorial integrity, prevent crimes, protect the rights and dignity of individuals, prevent the dissemination of information that has been considered confidential, or ensure the independence and impartiality of justice.

Being a member of the UN and Council of Europe, Georgia is also party to major international human rights instruments, such as the ICCPR and European Convention on Human Rights (1950) which by force of constitutional provisions take precedence over domestic laws to guarantee respect for privacy and freedom of expression. E.g. articles 8

and 10 of the Convention pertain to state positive and negative obligations vis-à-vis persons under its jurisdiction to ensure respect to private and family life and freedom of expression; articles 18 and 19 of ICCPR provide similar guarantees.

Intellectual rights in Georgia are partially secured. The Law on Intellectual Rights is more effective for cultural content, such as music, television programs, and publishing. It is ineffectual in virtual cases like software piracy, pirated movies, mp3, and software repositories. On the other hand, collective rights organizations use this law to pressure small cafés and restaurants into paying fees for playing popular music or music channels that feature popular singers.

Georgia does not have a separate legislation on blocking, filtering or take-down of Internet content. Instead, other legislative acts are used: criminal Code of Georgia, Law on Electronic Communications, Law on Personal Data Protection and Law on Copyright and Related Rights.

Furthermore, the GNCC adopted the Regulation on the Rules of Provision of Services and Protection of Consumer Rights in the Area of Electronic Communication, which defines the concept of “inadmissible content”. Importantly, the Regulation covers protection of consumers’ rights specifically and cannot be invoked in cases of crimes falling under the Criminal Code of Georgia.²³

Part 7: Information Campaigns and Internet Activism

Georgians actively use online spaces to discuss and debate political issues. In many respects, the online world has become the new ‘town hall.’ Contacts in Georgia note that politicians often articulate their platforms and post news on Facebook even before they offer up press releases. This has several benefits for politicians. News is spread far and wide by networks of supporters. They receive reliable feedback quickly and cheaply, and do not have to worry about partisan journalists misinterpreting their message.

In election period, both the government and the opposition use social networks and online media to disseminate their messages. The Free Democrats, a small party, have officially called Facebook their campaign tool to mobilize supporters and publicize their platform. Throughout the campaign, traditional media frequently cited the official Facebook pages belonging to political figures, thereby expanding social media’s influence to a broader population.

This has continued past the election. Director of the Research Institute of Voting and Political Technologies, Kakha Kakhishvili, regularly uses Facebook to update his 5,000 ‘friends’ and 2,500 followers on events that concern Georgian democracy. Political

²³ “Regulating Inadmissible Internet Content – Georgia in Need of Legal Changes, Institute for Development of Freedom of Information, 2017

leaders actively use their official Facebook accounts and they are updated several times a day with political developments and events pertinent to the state.

Some observers suspect that political leaders have purchased 'likes' to bolster their popularity. Web 2.0 tools are also used in ways to promote justice and expose crimes. A prison guard, who has since flown the country to Belgium, released an incriminating video of prison guards torturing and abusing inmates, including minors. Georgians widely disseminated the video through platforms such as YouTube and MyVideo.ge, resulting in protests in Tbilisi and across the country. Despite the video's potentially damaging effect to the ruling United National Movement Party, which eventually lost to the Georgian Dream Party, there was no evidence of blocking.