

PERMANENT MISSION OF GEORGIA  
TO THE UNITED NATIONS OFFICE AND OTHER  
INTERNATIONAL ORGANIZATIONS AT GENEVA

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The Permanent Mission of Georgia to the UN Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honor to submit the Joint Information of the Georgian Public Defender's Office and the Government of Georgia on National Preventive Mechanism concerning the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPTAC).

The Permanent Mission of Georgia to the UN Office and other International Organizations at Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights assurances of its highest consideration.

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Geneva, October 28, 2009

Office of the United Nations  
High Commissioner for  
Human Rights  
UNHCHR

GENEVA

Encl.: 5 p.

## JOINT INFORMATION BY THE OFFICE OF THE PUBLIC DEFENDER OF GEORGIA AND THE GOVERNMENT OF GEORGIA ON NATIONAL PREVENTIVE MECHANISM

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*hereinafter* OPCAT) entered in force in respect of Georgia in August 2005. Since that time Georgia took specific steps in order to fulfill requirements set forth in the OPCAT. In particular, the Government made a step forward for the creation of the national preventive mechanism (*hereinafter* NPM) that fully meets requirements envisaged by OPCAT as an independent and effective mechanism for the prevention of torture, inhuman and degrading treatment.

### I. Inter-agency Coordinating Council against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other forums for discussion of the NPM Model

In 2007, in order to enhance the fight against torture, inhuman and degrading treatment as well as improve and coordinate monitoring of the relevant reforms, an Inter-agency Coordinating Council against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*hereinafter* the Council) *via* Presidential Decree No. 769<sup>1</sup>.

The Council has set out several important objectives that included preventive measures, protection and rehabilitation of the victims of torture and enhancement of the capacity among law enforcement officials in investigation of ill-treatment allegations. In addition to that, the Council envisaged two other objectives, such as close cooperation among governmental agencies, international and non-governmental sector as well as support of creation of the National Preventive Mechanism.

With respect to the NPM, in December 2008, the Ministry of Justice of Georgia presented a draft proposal designating Public Defender of Georgia as NPM before the Council. The members of the Council had been asked to present their views regarding the aforementioned draft (among them being the Office of the Public Defender of Georgia).

The Ministry of Justice received several draft proposals/recommendations from the Office of the Public Defender of Georgia, the Office of the High Commissioner for Human Rights (*via* UN Human Rights Office in Tbilisi) and Prison Reform International. Based on the aforementioned proposals a new draft has been prepared and discussed by the Council. Upon the agreement from all relevant stakeholders, the proposal has been presented to the Parliament of Georgia in late spring 2009.

Apart from the Council, the civil society sector has organized various discussions regarding the national preventive mechanisms, its role and mandate with the participation of the civil sector (by Prison Reform International).

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<sup>1</sup> Members of the aforementioned Council are high level governmental officials as well as representatives of international organizations, NGOs and independent experts.

## II. Office of the Public Defender as the independent body designated as a National Preventive Mechanism

Office of the Public Defender (*hereinafter* PD) is the independent body from the State institutions whose main functions and duties are determined by the Constitution and Organic Law on "Public Defender" of Georgia.<sup>2</sup>

By the amendments to the Organic Law on "Public Defender" of Georgia dated on 16 July 2009, the Office of the Public Defender of Georgia has been designated as a NPM.<sup>3</sup>

Before these amendments the Office of the Public Defender of Georgia constituted national institution for the observance of human rights in Georgia which has been operating since 1997. According to the Organic Law the PD was always entrusted with a function to monitor and prevent human rights violations in places of deprivation of liberty. Since the functioning of the Office of Public Defender, the PD always served as a supervisor on observance of human rights and fundamental freedoms within the territory of Georgia. The PD was authorized to reveal facts of violation of human rights and freedoms and to report to the corresponding bodies and officials. Pursuant to previous functions of the PD and discussion process it was unanimously agreed that the role of NPM should be fully transferred to the PD. Existing functions and extensive expertise of the PD constituted the main reason of designation of the Office of Public Defender as a national preventive mechanism, as already experienced institution in the field of human rights protection in Georgia.

Respective amendments have been drafted in line with guidelines for the national preventive mechanisms presented in the first annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/40/2 14 May 2008).

Based on the objectives of the NPM, the Special Preventive Group shall be established within the Office of the Public Defender of Georgia. Members of this Group shall hold relevant professional knowledge and expertise for realization of the objectives of the NPM. As a result, the Special Preventive Group shall verify the situation regarding the protection of human rights and freedoms in detention and pre-trial detention facilities, as well as in any places of deprivation of liberty; meet/s and talk/s with detainees, administrative and pre-trial detainees and convicts; checks documentation confirming the legality of holding such persons in detention and pre-trial facilities or other type of documentation and in case of the request shall immediately receive the copies of the documents. The control visits may be performed without a witness, personally by members of the Special Preventive Group with the participation of an interpreter (if it is needed) and etc.<sup>4</sup> Members of the Special Preventive Group perform these activities on the behalf of the Public Defender of Georgia through the authorization issued by the letter.

<sup>2</sup> Article 43 of the Constitution of Georgia (adopted on 24 August 1995) and Articles 3, 4 and 5 of the Organic Law on "Public Defender" of Georgia.

<sup>3</sup> Article 3<sup>1</sup> of the Organic Law on "Public Defender" of Georgia.

<sup>4</sup> Articles 19 and 19<sup>1</sup> of the Organic Law on "Public Defender" of Georgia.

It should be noted that the places of deprivation of liberty reflected in the Organic Law on "Public Defender" of Georgia, is broad as it includes all potential and actual places of deprivation of liberty (i.e. police stations, psychiatric institutions, homes for juveniles, penitentiary facilities, military barracks and etc).

Apart from the amendments in the Organic Law on "Public Defender" of Georgia, the relevant addition was made to the Criminal Procedure Code of Georgia in order to release the representatives of the Special Preventive Group from the obligation to give testimony as a witness regarding facts that become known during a fulfillment of the function of the NPM.<sup>5</sup>

Pursuant to the Organic Law on "Public Defender" of Georgia, based on the outcomes of the inspection, the Public Defender of Georgia shall have the right to submit proposals concerning the improvement of legislation to the Parliament of Georgia or other respective institution, in order to secure human rights and fundamental freedoms and also to improve the conditions of arrested or detained persons, convicts or other persons who are deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, the bi-annual report that is published by the Public Defender will contain information/report concerning the NPM.

As for the financial allocation, the Office of the Public Defender of Georgia has requested additional budgetary allocations (131 000 GEL) on the top of the annual budget for the proper implementation of the NPM mechanism. According to the information available to the Office of the Public Defender of Georgia the budgetary allocation for the Office will increase respectively.

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<sup>5</sup> Article 95, paragraph 1, sub-paragraph "g" of the Criminal Procedure Code of Georgia.

**Relevant Amendments of 16.07.2009 to Organic Law on "Public Defender" of Georgia****"Article 3" (16.07.2009 N 1462)**

1. The Public Defender of Georgia performs functions of the National Preventive Mechanism, established by Optional Protocol of United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
2. The Public Defender of Georgia shall be provided with the appropriate material, technical and financial resources necessary for the accomplishment of the functions prescribed in the first paragraph of the present Article.
3. Based on the objectives of the National Preventive Mechanism, the Public Defender of Georgia is under obligation to collaborate with the corresponding United Nations organs and mechanisms, as well as with international, regional and national institutions or organizations whose field of activities relate to preservation of observance of persons being in places of detention, pre-trial detention and deprivation of liberty against torture and other cruel, inhuman or degrading treatment or punishment.

**"Article 19" (16.07.2009 N 1462)**

1. The Public Defender of Georgia or a member of the Special Preventive Group shall verify the condition regarding the observance of human rights and freedoms in places of detention, pre-trial detention and in other places of the deprivation of liberty.
2. The Public Defender of Georgia/a member of the Special Preventive Group for the purpose of regular verification of activities against persons being in places of detention, pre-trial detention in other places of detention, as well as for the preservation of their observance against torture and other cruel, inhuman or degrading treatment or punishment, shall:
  - a) without a witness, personally or with an interpreter meet and talk with detainees, persons being in pre-trial detention and arrested, as well as persons who may provide information regarding human rights violation against the mentioned persons;
  - b) verify the documentation of the legality of holding persons being in places of detention, pre-trial detention and other places of deprivation of liberty.
3. The meeting of the Public Defender of Georgia/members of the Special Preventive Group with detainees, persons being in pre-trial detention or other places of deprivation of liberty and arrested is confidential. Any type of intercepting or oversight is not allowed.

**"Article 19" (16.07.2009 N 1462)**

1. Based on the objective of performance of the National Preventive Mechanism function, the Special Preventive Group shall be established in the Office of Public Defender of Georgia, who regularly verifies conditions and treatment of detainees, persons being in pre-trial detention or in other places of deprivation of liberty and arrested for the purpose of their protection against torture and other cruel, inhuman or degrading treatment or punishment.

2. A member of the Special Preventive Group shall be a person who holds relevant professional knowledge, professional and working experience and morals to fulfill functions of the National Preventive Mechanism.
3. A member of the Special Preventive Group shall not be a member of a political party or participate in political activities.
4. During the performance of the National Preventive Mechanism, members of the Special Preventive Group are authorized to act based on authorization letter of the Public Defender of Georgia and are accountable only towards the Public Defender.
5. Members of the Special Preventive Group have a right to withhold giving testimony regarding facts that were provided to them during the performance of the National Preventive Mechanism function. This right shall be guaranteed also after the termination of their authorities as the members of the Special Preventive Group.
6. The sequestration, verification and taking of a postal correspondence, parcel sent by post of members of the Special Preventive Group is not allowed."

"Article 20 paragraph 2 (16.07.2009 N 1462)

2. The Public Defender of Georgia and a member of the Special Preventive Group are under obligation not to disclose secret and confidential recognized information, as well as without his distinctly expressed consent information concerning torture and other cruel, inhuman or degrading treatment."

"Article 21 "a" sub-paragraph (16.07.2009 N 1462)

"Based on the outcomes of the inspection, the Public Defender of Georgia shall have the right to:

- a) Submit proposals concerning the improvement of legislation to the Parliament of Georgia or other respective institution, in order to secure human rights and fundamental freedoms and also to improve the conditions of arrested or detained persons, convicts or other persons who are deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment."

"Article 22 paragraph 1 (16.07.2009 N 1462)

1. The Public Defender of Georgia shall submit reports twice a year (in March and October) - to the Parliament of Georgia regarding conditions of observance of human rights and freedoms that also covers a report of activities of the Special Preventive Group."

"Article 27 paragraph 1 (16.07.2009 N 1462)

1. The Deputy of the Public Defender of Georgia and staff of the Office of the Public Defender, as well as members of the Special Preventive Group shall carry out authority or its part prescribed in Articles 18 and 19 of the present Law based on the letter of authorization of the Public Defender of Georgia."

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