



## საქართველოს სახალხო დამცველი

### Public Defender of Georgia

#### Submission to Human Rights Council Universal Periodic Review

#### Second Cycle

#### NHRI – Public Defender (Ombudsman) of Georgia

#### Introduction

1. The Public Defender (Ombudsman) of Georgia (hereinafter, the PD) is mandated by the Constitution and Organic Law of Georgia to oversee the observance of human rights and fundamental freedoms on the territory of Georgia, identify the cases of infringement of human rights and assist individuals in redressing of violations of their rights. It is an independent constitutional body, which acts to promote human rights and protect individuals from maladministration of State administrative organs.
2. The PD exercises functions of the National Preventive Mechanism (NPM), envisaged by the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment (OPCAT); as of 2014, Office of Public Defender (hereinafter, the PDO) is designated as an Equality Body under the Law of Georgia on Elimination of All Forms of Discrimination and a Monitoring Body on the implementation of the 2006 UN Convention on Rights of Persons with Disabilities. The PD submits to the Parliament of Georgia annual reports, which includes general assessment of human rights situation in the country, a summary of findings and recommendations on how to address problems identified. The PD also prepares special reports concerning human rights issues in various fields and presents main findings and recommendations to the public and relevant state institutions.

## **Executive Summary**

3. The PD welcomes this opportunity to contribute to the Human Rights Council's Universal Periodic Review. The following submission is based upon the periodic reports of the PD issued in the period of 2011-2014 and reflects the state of implementation of recommendations issued to the government of Georgia in the first cycle of UPR. The PD would like to highlight seven major issues for the submission, which he believes are the most problematic in Georgia. These issues are the following:
  1. Situation in the Penitentiary Institutions;
  2. Investigation of Crimes Allegedly Committed by the Law Enforcement Officials;
  3. Economic, Social and Cultural Rights: Right to Adequate Housing, Labor rights and Right to Health;
  4. Rights of Internally Displaced Persons and Meskhetian Turks (Repatriates);
  5. Rights of Persons with Disabilities;
  6. Women's Rights and Gender Equality;
  7. Rights of Religious and Ethnic Minorities.
4. On a number of occasions, the PD addressed the relevant authorities with the recommendations to improve the human rights situation in the above mentioned spheres. While some of the recommendations were followed, others were disregarded. Therefore, the PD would like to draw your attention to the issues that still remain problematic.
  1. **Situation in Penitentiary Institutions (Recommendations: 105.28-105.37, 106.138)**
5. In order to minimize the risks of human rights violations at the detention places the PD puts much emphasis on strengthening of preventive measures. The NPM has exclusive role in this regard. However, while exercising its functions, the NPM faces number of obstacles: they are not allowed to use camera and/or audio recording device in prisons and temporary detention isolators; they have no access to the classified data containing information on treatment of detained persons; and they have no permission to review the CCTV recordings made in places of deprivation of liberty. In this respect, the PD particularly welcomes draft amendments recently introduced into legislation according to which NPM will be given a right to take photos on the conditions of detention and bodily injuries of inmates from September 2016; however, no agreement has been reached yet on video recordings and access to CCTV recordings.
6. Detention conditions are still problematic. In most of the cases, 4 m<sup>2</sup> of living space per detainee in multi-occupancy cells or access to shower over 24 hours are not ensured; number of temporary detention centers has no access to natural light, artificial lighting and ventilation; not all cells are equipped with cupboards and seating means. Lack of outdoor exercise at temporary detention isolators and shortage in equipped outdoor exercise yards are of particular concern.

7. State lacks uniform approach to imposition of disciplinary sanctions: in the majority of cases disciplinary sanctions are disproportionate, for one and the same misconduct inmates might face different sanctions. Increasing number of suicide cases and widespread practice of substance abuse at prisons is particularly alarming.
8. Keeping CCTV recordings for reasonable period of time has been identified as one of the major challenges by NPM. Draft Decree of the Minister of Corrections determines 24 hour statutory time limit for storing CCTV recordings. 24 hour period cannot be considered reasonable because this period is usually elapsed, when prisoner complains about inhuman or degrading treatment.
9. The mechanism of early conditional release, applied by the Ministry of Corrections, needs modification: criteria and methods of examination of prisoners' individual cases lack coherence; work of the early release councils at the Ministry is not transparent and their decisions are not well-substantiated.
10. The PD is concerned with lack of adequate and timely health services, shortage in medical personnel and affordability of certain types of medicine. Problems remain in the provision of adequate mental healthcare to inmates. Principle of equivalence of care is not respected and standards of quality control are not established.
11. There is a lack of comprehensive and effective approach toward rehabilitation and resocialisation programs in penitentiary institutions. The range of programs of activities for both sentenced and remand prisoners is scarce.
12. The PD recommends:
  - To grant NPM access to classified data containing information on the treatment of prisoners deprived of liberty and possibility to review CCTV recordings made in places of deprivation of liberty;
  - To provide 4 m<sup>2</sup> of living space per detainee in all multi-occupancy cells, access to natural light, artificial lighting, ventilation, shower for 24 hours;
  - To elaborate comprehensive approach towards rehabilitation and resocialisation programs for both sentenced and remand prisoners.

## **2. Investigation of Crimes Allegedly Committed by Law Enforcement Officials (Recommendations: 105.10, 105.56, 105.57, 106.41-106.44)**

13. Despite of the fact that in 2013-2014 there were no reported cases of torture neither at police stations nor at penitentiary institutions, the problem of ill-treatment persisted. In 2014 the PD submitted 28 proposals to the Office of Chief Prosecutor of Georgia, to open criminal investigation on facts of inhuman and/or degrading treatment allegedly committed by police or prison staff. While monitoring the progress of investigation in those cases, the PD identified following systemic shortcomings:
  - In most occasions, the representatives of those institutions where persons were allegedly ill-treated are the ones who conduct the very first investigative measures. Usually, these are General Inspection of the Ministry of Interior and the Investigative Unit of the Ministry of Corrections and Penitentiary;
  - Except from isolated examples, persons who suffered damage as a result of the inhuman or degrading treatment, are not granted the victim status;

- During the year of 2013-2014 investigation of the complaints of alleged torture and/or ill-treatment by the representatives of the law enforcement bodies was never qualified as torture or quite rarely were considered as inhuman or degrading treatment and are usually examined under Article 333 of the Criminal Code of Georgia (Abuse of Power);
- Investigation of cases of alleged inhumane and/or degrading treatment are usually unreasonably prolonged;
- There has been no criminal prosecution launched nor the criminal case sent to the court against individual representatives of police or prison staff with regard to inhuman and/or degrading treatment allegedly committed in 2013 and 2014.

14. The PD recommends:

- To establish independent investigative body, which will be the only authorized institution to conduct investigation on crimes related to death, torture, inhuman and degrading treatment allegedly committed by the representatives of the law enforcement bodies (Ministry of Justice, Ministry of Internal Affairs, the Prosecutor's Office, the Ministry of Penitentiary and Corrections of Georgia).

**3. Economic, Social and Cultural Rights - Right to Adequate Housing, Labour Rights and Right to Health (Recommendations: 105.12, 105.71-105.74, 106.54)**

15. In spite of introduced changes in the assessment methodology of social-economic conditions of family (objective criteria of assessment replaced subjective ones), homeless families still have no access to the assessment program for socially vulnerable families.
16. Right to housing constitutes major challenge in Georgia. Problems are pertinent on the legislative level as well as in practice. The definition of homeless person envisaged in the Law of Georgia on Social Allowance is vague. Lack of methodology to register an individual without shelter is another important issue. The PD is particularly concerned with the lack of relevant data on number of homeless individuals, scarce financial resources for provision of housing and lack of relevant infrastructure. In spite of the fact that local municipalities are obliged to provide individuals with shelter in accordance with the Law of Georgia on Social Allowance, there is no instrument to realize this right in practice.
17. Labor Inspectorate to monitor safety at work and other labor related issues does not operate in Georgia since 2006. The State Program on Monitoring Labor Conditions introduced in March 2015 cannot be considered as an effective mechanism substituting labor inspectorate. Participation of employers in this program is voluntary. Besides, there is no sanction mechanism envisaged by this Program in case violations of labor rights are detected. Meanwhile the rate of fatal accidents and work related injuries has dramatically increased over the recent years. In particular, during 2012, 289 individuals were injured and 48 - dead; 111 injuries and 23 deaths were registered in 2013 respectively.<sup>1</sup>
18. Problems persist in protection of healthcare for socially vulnerable individuals, where the risk of dangerous and contagious diseases (TB, C Hepatitis, contagious diseases) is high. Problem of geographical access to the health services for the mountainous regions of the country is still acute: low number of local hospitals and ambulatories equipped with adequate medical facilities, shortage of qualified medical personnel and material

<sup>1</sup>Letter #623950 of the Ministry of Internal Affairs of Georgia of April 1, 2014.

resources cannot ensure equal access to health services for the residents of mountainous districts.

19. The PD recommends:

- To enable vulnerable persons without shelter to enjoy social benefits;
- To specify definition of a homeless person;
- To establish methodology for registering homeless persons and keep relevant data;
- To introduce state strategy and action plan aiming to gradually provide homeless persons with adequate housing;
- To establish labour inspectorate equipped with sanctioning authority;
- To ensure adequate access to healthcare for mountainous regions.

#### **4. Rights of Internally Displaced Persons and Meskhetian Turks (Repatriates) (Recommendations: 105.11, 105.82, 105.84-105.96, 106.55-106.58, 106.61)**

20. The PD welcomes adoption of the new Law on IDPs which is more compliant with international standards than the preceding one. Nevertheless, gaps remain in terms of definition of IDPs and IDP allowances. Also provisions on the recognition of those displaced due to the natural or men-made disasters as IDPs are lacking. Large numbers of IDPs still live in grave conditions and collapsing “collective centers”. Health and safety of IDPs residing in such premises is under threat.

21. The PD underlined importance of replacement of the status based approach towards IDPs’ social problems with the needs based one. The budget of the Ministry of IDPs even though tripled during the last 3 years, is still insufficient to address issues of the entire IDP population.

22. Situation is complex in the villages adjacent to so called ABL (administrative border line), with the lack of employment opportunities, access to primary healthcare facilities, poor quality roads, inability to generate income due to the borderization carried out by Russian forces. Safety of the ABL population is also alarming. Frequent detentions of the residents living across the ABL and restriction of freedom to movement still persist.

23. Newly established Strategy for Repatriation of Meskhetians 2014 includes only general provisions and lacks the action plan, which defines specific mechanisms and actions regarding integration of Meskhetians. Meskhetian population faces challenges to access education and learn state language. The fact that majority of repatriates do not have Georgian citizenship is further hampering their integration and full participation in the society.

24. The PD recommends:

- To amend the law on IDPs and to renew the work on the draft law on IDPs as a result of natural or men-made disasters;
- To replace status based assistance of IDPs with the needs based approach;
- To provide prioritized durable housing solutions for the IDPs living in dangerous conditions;
- To implement integration measures for repatriates.

#### **5. Rights of Persons with Disabilities (Recommendations: 105.2-105.5, 105.16-105.17, 106.4-106.8)**

25. The PD welcomes ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2013; however, government failed to take effective steps in terms of harmonization of the national legislation with the CRPD. Also the Optional Protocol to CRPD has not been ratified yet.
26. Integration of persons with disabilities in the society is still problematic. The lack of equal opportunities for persons with disabilities, absence of statistics, public prejudices, inadequate education and social protection, poor healthcare services, problems existing in freedom of and access to information, infrastructural barriers are pertinent. Participation level of persons with disabilities in the decision-making process and social-economic development of the country is still very low.
27. The PD is particularly concerned with the lack of state rehabilitation centers in the country. Habilitation and rehabilitation services are mainly offered by NGOs and only for children with disabilities.
28. The PD recommends:
  - To ratify Optional Protocol to the CRPD;
  - To establish state rehabilitation centers;
  - To ensure access to social infrastructure and medical facilities for PwDs.
  - To ensure elaboration of a state strategy aiming to increase the employment prospective for the persons with disabilities and to promote their participation in the political and social-economic life of the country.

**6. Women’s Rights and Gender Equality (Recommendations: 105.23-105.24, 105.26, 105.38-105.43, 106.27-106.29, 106.30, 106.32-106.34)**

29. The PD welcomes signing of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) of 2011 and urges the government to ratify it on time.
30. Despite the fact that methods to identify cases of domestic violence were strengthened, the growing number of cases of femicide is particularly alarming. In 2014 the PD identified 19 cases of femicide. Problem persist in the low rate of reporting of cases of sexual and domestic violence against women owing to stigma and fear of the perpetrator, in addition to lack of trust in law enforcement agencies, which sometimes refuses to register complaints of domestic violence. Lack of state-funded crisis centers and shelters for women who are victims of domestic violence, especially in rural areas was emphasized by the PD in his reports for several times.
31. Early marriage of girls is a well-established practice in certain regions of Georgia. Compelled marriages as a result of abduction or deal between the parents represent particular concern.
32. Key challenge for gender equality is a low rate of women’s participation in political life of the country. Women’s participation in local self-government has been decreasing during the last decade.<sup>2</sup>

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<sup>2</sup>According to the “Global Gender Gap” Report, Georgia holds 49th position from 125 countries in representation of women on legislators, senior officials and managerial positions. According to the Global Gender Gap Report for 2014, Georgia holds 94th position among 142 countries in rating of women’s engagement in politics. According to same

33. The PD recommends:

- To ratify Istanbul Convention 2011;
- To develop risk assessment methodology that would allow police to use effective protection measures; to strengthen the role/involvement of social workers in combating violence against women;
- To elaborate temporary measures to accelerate the equal participation of women in political sphere;
- To raise public awareness on issues of early marriage.

**7. Rights of Religious and Ethnic Minorities (Recommendations: 105.11, 105.27, 105.60-105.63, 105.75-105.80, 106.49-106.50, 106.59)**

34. The PD encourages the State Agency of Religious Affairs to intensify its efforts in the resolution of any confrontation religious minorities may experience. Acts of violence committed between the period 2012-2014 against Muslim communities in the villages of Nigvziani, Tsintskaro, Samtatskaro, Kobuleti and Mokhe, also the fact of demolishment of a minaret in the village Chela, lack effective investigation.

35. National minorities are represented in the Parliament of Georgia (7 minority MPs) and at managerial positions of local self-government only in minority-populated regions. However, minorities are underrepresented at central government level.

36. Knowledge of state language is still a challenge faced by national minorities. In all public institutions official language is Georgian; however, this is not the practice in minority-populated regions. In those regions where the State implements State language teaching programs, very small number of national minorities (approximately 5 to 10%) speak Georgian.

37. The PD recommends:

- To carry out effective and prompt investigation of the alleged crimes committed against religious minorities;
- To ensure a decent integration of ethnic minorities into the society.

38. The PD avails itself of the opportunity to renew to the Human Rights Council assurances of its highest consideration and expresses his readiness to contribute to the work of international human rights system in the protection of human rights.

Respectfully,

Ucha Nanuashvili

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source, women's share in parliament of Georgia holds 107th position. Women's share in the parliament is 11 %, 16 % - in the Cabinet of Ministers and 10 % - in local self-government bodies.