

NPM Georgian Experience

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General Context

The whole population living in Georgia is amount 4, 5 million.

Georgia is low income Country with developing economy and reforms of democratization.

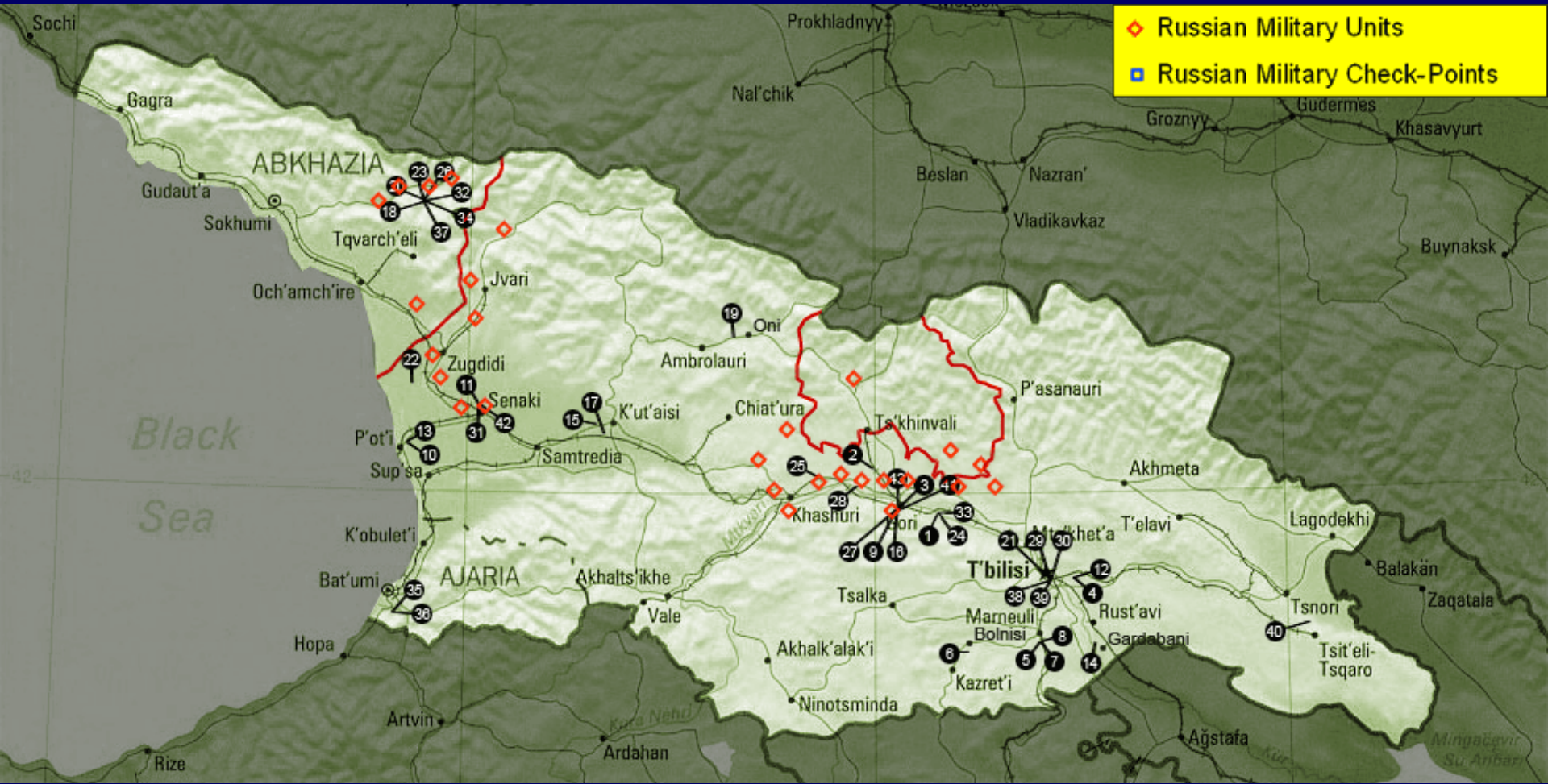
However the War Conflicts and political tension situation between Russian Federation and Georgia since 1992 – 1993, 2008 creates horrible problems for independency and democratization of Georgia.

Actuality of issue of documentation

- Taking in consideration this data amount 500 000 persons for nowadays are victims of ethnic cleansing in Georgia that means that 1/9 of whole population of Georgia are victims of ethnic cleansing and mass violence, survivors of military crimes.
- 20 % of territories of Georgia still are occupied by the Russian Forces
- In 2012 happened “prison torture scandal” in Georgia more then 2000 cases are under investigation

Georgian territories

www.mod.gov.ge



International Obligations

- ❑ Georgia is the post soviet Country that restored independence in 1991.
- ❑ Georgia acceded to the UN Convention Against Torture ...on 22 September 1994
- ❑ In 1999 Georgia became the member state of the Council of Europe and accepted all relevant documents and Conventions, among them European Convention on Human Rights and Fundamental Freedoms – Article 3: Prohibition of Torture (Rome, 4 November 1950); European Convention on Prevention of Torture and Inhumane, Degrading Treatment or Punishment (Turine, 18.10.1961);
- ❑ In 09.08.2005 Georgia ratified the Optional Protocol to the UN Convention Against Torture that enter into force in June 22, 2006.
- ❑ In 2014 the associated membership with EU will be signed

National Obligations

- In December 2005 the special articles 144 ‘, 144 ‘’, and 144’’’ were incorporated regarding torture and inhuman treatment, with definition of torture in the Criminal Code of Georgia;
- The prohibition of torture is included in the Article 17 (Chapter 2) of the Constitution of Georgia;
- In year 2014 the new Human Rights Strategy of Georgia was elaborated by the Government and the Action Plan is under development.

National Obligations

- **This plan of actions will include the implementation of the Istanbul Protocol too**
- **Since December 2009 the NPM is formed in the Framework of the Public Defender's Office and the Optional Protocol is Implemented in Georgia**

International Law – Background Regulations for the NPM Georgia

- ❑ **UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987) (obligation on Universal Prohibition of Torture)**
- ❑ **Article 1 – Definition of Torture**
- ❑ **Article 11 – Related to implementation of prevention standards toward to imprisoned persons**
- ❑ **Article 12 – Obligation on Prompt, Impartial and Effective Investigation**
- ❑ **Article 10 – Obligation of Education**
- ❑ **Article 14 – Right to Rehabilitation**
- ❑ **Article 16 – Obligation on prevention not only facts of torture, but any forms of Inhuman Treatment**

Obligations

- ❑ **European Convention on Human Rights and Fundamental Freedoms – Article 3: Prohibition of Torture and Article 13 Right to Effective Investigation (Rome, 4 November 1950);**
- ❑ **European Convention on Prevention of Torture and Inhumane, Degrading Treatment or Punishment (Turine, 18.10.1961);**
- ❑ **Optional Protocol to the UN Convention Against Torture that enter into force in June 22, 2006. (UN OPCAT)**

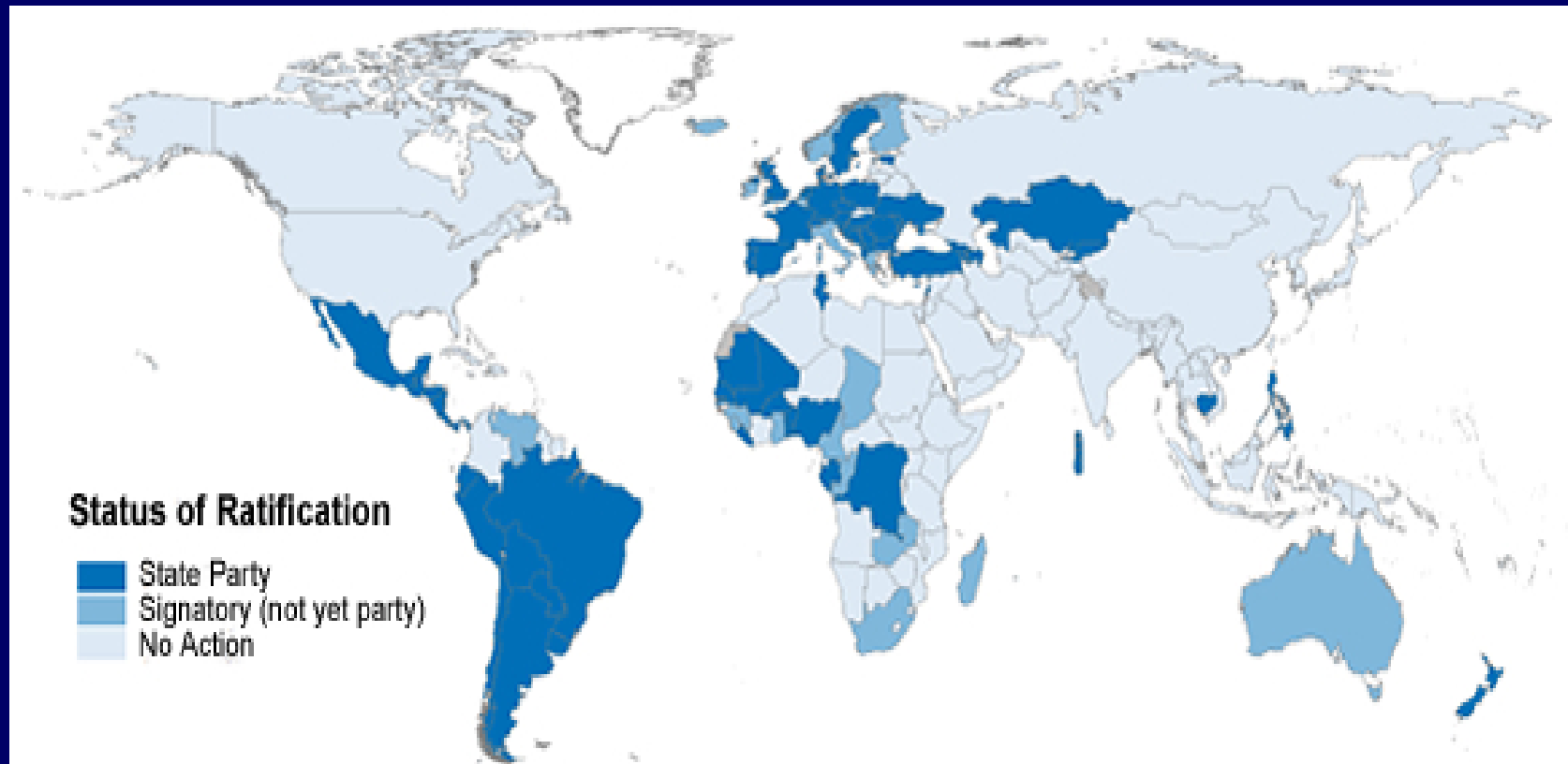
UN OPCAT

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199

entered into force on 22 June 2006

Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, January 2013



UN OPCAT

- **General principles**
- *Article 1*
- The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

UN OPCAT

- *Article 3*
- Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

UN OPCAT

- *Article 4*
- 1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.
- 2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

SPT in OP CAT

- **PART II**

- **Subcommittee on Prevention**

- *Article 5*

- 1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

What is the SPT?

- The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (“SPT”) is a new kind of treaty body in the United Nations human rights system. It has a preventive mandate focused on an innovative, sustained and proactive approach to the prevention of torture and ill treatment.
- The SPT started its work in February 2007.

OP CAT PART IV

National preventive mechanisms

- *Article 17:* Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

OP CAT PART IV NPM *Article 18*

- 1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.
- 2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.
- 3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.
- 4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

OP CAT PART IV NPM *Article 19*

The national preventive mechanisms shall be granted at a minimum the power:

- (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
- (c) To submit proposals and observations concerning existing or draft legislation.

OP CAT PART IV NPM *Article 20*

- ❑ In order to enable the national preventive mechanisms to fulfill their mandate, the States Parties to the present Protocol undertake to grant them:
- ❑ (a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- ❑ (b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
- ❑ (c) Access to all places of detention and their installations and facilities;

OP CAT PART IV NPM *Article 20*

- (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- (e) The liberty to choose the places they want to visit and the persons they want to interview;
- (f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

OP CAT PART IV NPM *Article 21*

- 1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.
- 2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

OP CAT PART IV NPM *Article 22 and 23*

- The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.
- The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

UN OPCAT PART VII

Final provisions *Article 35*

- Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

International Standards that used by the NPM Georgia

- **The Istanbul Protocol – UN Guideline on Effective Investigation and Documentation of Torture**
- **Standards of International Humanitarian Law on prohibition of torture, ethnic cleansing and other forms of war crimes**

International Standards of Medical Ethics

- **Resolution of WMA – on Torture (2003 – 2007) – Regarding obligations of Physicians when they discovering facts of torture**
- **Declaration of Tokyo**
- **Declaration of Hamburg – on Protection of “Doctor’s at Risk)**
- **WHO and CoE Recommendations on Prison Healthcare**

International Medical Standards for Referring the Clients

- ❑ Guidelines on Holistic Rehabilitation: Including Medical, mental/psychological, social and legal services and MDT approaches, based on individual client centred plan of rehabilitation
- ❑ Investigation standards according to the principles of the European Court of Human Rights

National Legal Frameworks for NPM

- **Organic Law of Georgia on the Public Defender**

- **Article 1 (21.07.2010. N3565)**

This law sets out the powers, the basic principles and types of the activities of the Public Defender.

- Article 2 (21.07.2010. N3565)**

The Public Defender shall oversee observance of human rights and freedoms on the territory of Georgia and within its jurisdiction.

Organic Law on Public Defender of Georgia: NPM

□ Article 3 1 (16.07.2009 N 1462)

1. The Public Defender of Georgia exercises the functions of the National Preventive Mechanism, envisaged by the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. The Public Defender of Georgia is provided with the necessary logistical and financial resources required for performing the functions stipulated in paragraph one of this Article.

Organic Law on Public Defender of Georgia: NPM

□ Article 3 1 (16.07.2009 N 1462)

3. Pursuant to the aims of the National Preventive Mechanism, the Public Defender of Georgia shall cooperate with the respective bodies and mechanisms of the United Nations as well as international, regional and national institutions or organizations working on the protection of persons from torture and other cruel, inhuman or degrading treatment or punishment in the places of arrest, detention or other places of restriction of liberty.

Organic Law on Public Defender of Georgia: NPM Article 19:

- 1. The Public Defender or a member of the Special Preventive Group shall inspect the observance of human rights and freedoms in police stations, pre-trial detention facilities and other places of restriction of liberty.

Organic Law on Public Defender of Georgia: NPM Article 19:

- 2. To monitor regularly the treatment of persons placed in the police stations, pre-trial detention facilities and other places of restriction of liberty and to ensure their protection from torture and other cruel, inhuman or degrading treatment or punishment, the Public Defender or a member of the Special Preventive Group shall :

Organic Law on Public Defender of Georgia: NPM Article 19: Point 2

- a. Without a whitiness, personally or with the assistance of an interpreter meet and interview persons under arrest, pre-trial detention or any other form of restriction of liberty and convicts, as well as persons which can provide any information on violation of the rights of the abovementioned individuals.
- b. Inspect documentation in respect of persons held in the police stations, pre-trial detention facilities and other places of restriction of liberty.

Organic Law on Public Defender of Georgia: NPM Article 19: Point 3

3. Meetings of the Public Defender/ member of the Special Preventive Group with persons under arrest, pre-trial detention or any other form of restriction of liberty and convicts shall be confidential. Any interception or surveillance shall be prohibited:

PD Law: Article 19 (1) (16.07.2009 N 1462)

1. A Special Preventive Group shall be set up under the Public Defender of Georgia to carry out functions of the National Preventive Mechanism. The Special Preventive Group shall examine the condition and treatment of the persons under arrest, detention or any other form of restriction of liberty to protect them from torture and other cruel, inhuman or degrading treatment or punishment.

PD Law: Article 19 (1) (16.07.2009 N 1462)

2. A person with respective educational background, professional experience and ability to carry out functions of the National Preventive Mechanism due to his/her professional and moral qualities can be a member of the Special Preventive Group.
3. A member of the Special Preventive Group shall not be a member of a political party or shall not participate in any political activity.

PD Law: Article 19 (1) (16.07.2009 N 1462)

4. Members of the Special Preventive Group shall act on the basis of a special authority granted by the Public Defender and shall be accountable only to the Public Defender.
5. Members of the Special Preventive Group shall be entitled not to give evidence on the fact which was disclosed to them when exercising their functions of national preventive mechanism. Members of the Special Preventive Group shall continue to enjoy this right after termination of their office.

PD Law: Article 19 (1) (16.07.2009 N 1462)

6. Arrest, examination and seizure of the mail-telegraph correspondence or postal parcel addressed to the member of the Special Preventive Group shall be prohibited.

PD Law: Article 20

1. Any information containing state, commercial or other secret material required to be kept confidential by law shall be provided to the Public Defender in accordance with the relevant requirements of law.
2. The Public Defender and a member of the Special Preventive Group shall be under the obligation to maintain the confidentiality of the secret information and the information declared as confidential, as well as information on torture, or any other cruel, inhumane or degrading treatment of a person unless this person has explicitly expressed consent for such disclosure.

PD Law: Article 27

- 1. The Deputy Public Defender and the staff as well as the members of the Special Preventive Group shall discharge, in whole or in part, the functions provided for in Articles 18 and 19 of this Law under the special authority conferred by the Public Defender. (16.07.2009 N 1462)
- 2. The staff acting under the special authority of the Public Defender may not be compelled to testify concerning information confided to them in the performance of stipulated duties without the consent of the Public Defender. This provision shall continue to apply after the expiry of the said mandate. The use of any related records as evidence shall only be permissible with the consent of the Public Defender.

Relevant Articles in other Legal Codes related to NPM

- Code of Imprisonment of Georgia
- Article 32: Relates of NPM obligation on supervision of anti – torture and preventive activates in penal system of Georgia
- Article 60: Access to prison facilities
- V) NPM Members
- Article 98: Includes rights of detainees to address appeal directly to the NPM
- Article 105: Regarding appeals related to torture and ill – treatment no later 24 hours should be informed administration, or/ and NPM

Relevant Articles in other Legal Codes related to NPM: CC, CPC

- ❑ CC: Article 352 relates to the sanctions in case of obstacles to the functioning of Public Defender
- ❑ CPC: Article 50: Relates to the rights of Public Defender and NPM members to kept confidentiality even during the investigation and not act as witness
- ❑ In Administrative Code: Article: 1734: Relates to the sanctions on not responding of the Public Defender's requests

Positive Regulations for Forensic Evaluation

- According to CPC Chapter V, Article 38
- Detainee has right on medical evaluation immediately after the imprisonment
- Article 9 – Regarding Prisoner’s right on medical evaluation and also on independent medical evaluation in any circumstances and any time, paid by himself or free of charge in case of poverty police

Positive

- Chapter on Expertise of CPC also contains possibilities of photo documentation during the expertise and all materials should be annexed to the Expertise Report
- Codex of Imprisonment: Article 75 Regarding necessary medical evaluation during arrival in the prison
- **Code on Patients Rights Article 7** – Patient has right to apply to other medical examination for second opinion

Code on Patients Rights

- ❑ Chapter 10 – Regarding Rights of Prisoners on Health Care
- ❑ Article 46 regarding equal rights of prisoners and civilian patients

MoH Orders on Forensic Evaluation

- **Order No 142/n of the Minister of Health, Labor and Social Protection on Rules of Conducting of Forensic-psychiatric Examination , June 19, 2008**
- Mental disorders are diagnosed in accordance with standards, established by the Ministry of Health, Labor and Social Protection and international medical standards. Given standards define the scope of examination to be conducted. Formulation of diagnosis is conducted on the basis of international classification of diseases (**10th revision of international statistical classification of diseases**).

Article 2. Basis for Assigning Conducting of Forensic-psychiatric Examination

Forensic-psychiatric Examination can be assigned at any stage of investigation, as well as during court proceedings and serving of sentence for the purpose of establishing the following:

- Mental state of a person at the time of committing of offence;
- Mental state of a person after committing of offence, prior to completion of judiciary proceedings;

MoH Order on Psychiatric Examination

- Mental state of a person in the period of serving of his sentence;
- Examination of mental state of a person for the purpose of establishing of his capability.
- Other issues, within the competence of Forensic-psychiatric Examination.

MoH Order on Forensic Medical Evaluation

- Order No 245/n**
- of the Minister of Health, Labor and Social Protection**
- on Rules of Conducting of Forensic Medical Examination and activities of Medical Staff**

Article 1. Forensic Medical Examination implies conducting of the following:

- ❑ Conducting of examination of corpses in the event of violent death;
- ❑ Conduct examination of corpses in the event of suspicion of violent death or other circumstances, due to which forensic medical examination is required.

Article 1.

- ❑ **Conducting of forensic medical examination of the injured party, the accused and other persons, as well as citizens, for the purpose of establishing of gravity of bodily injuries, age, sex and other issues.**
- ❑ Conducting of forensic medical examination in regard to materials of civil and criminal cases.
- ❑ Conduct examination of medical documentation.

NPM Georgia

- First NPM was established in 2009 according to the special competition and included NPM members + experts
- Was Updated in year 2013 and was increased number of experts and called as NPM +
- Provides Planned Monitoring , as well as Ad Hoc Visits to the close and restricted facilities
- Provides analysis of legal frameworks on issue of torture and ill – treatment and rights of vulnerable persons
- Provides of analysis of relevant documentation

NPM Georgia

- ❑ Provides monitoring of places
- ❑ Meets inhabitants, as well as administration
- ❑ Lawyers, attorneys, relatives, journalist and other persons that have information on violations
- ❑ Referring clients for furthermore assistance to the forensic evaluation or to the legal support , to the rehabilitation programme
- ❑ Submits Cases to the Prosecutor's Office
- ❑ Preparing Reports with recommendations to the Public Defender's Parliamentary Report, as well as special reports of NPM

NPM Georgia

- ❑ Submits Reports and have regular responsibilities to the SPT
- ❑ Has networking with International, Regional and National Human Rights Bodies and Agencies
- ❑ Participating in Educational Programmes and Public Awareness Campaigns

NPM Georgia: Tools

- Uses form of the Protocol for appeals of the inhabitants
- Has the Informed Concept Form
- The NPM members in cases of documentation of torture or ill – treatment: Providing information on: When happened, where, what, how, by whom, as well as regarding physical, psychological, social or /and legal outcomes, including descriptions of injuries
- In case of need referring to the NPM medical experts and in more deep assessment to the RCT/Empathy for the assessment according to IP
- For documentation in the Proxy forms of the Empathy, as well as IP Annex IV and III (Diagrams) are in use

NPM Tools

Medical monitoring is provided usually with participation of the medical experts and special questionnaires and guidelines are in used that was listed above

Example of the special medical report (Key points): Healthcare within Penitentiary System of Georgia and Mechanisms of Prohibition of Torture 2012

Table of Contents

I. Purpose of Monitoring and Methodology

II. Organizational Aspects of Healthcare within Penitentiary System of Georgia (General overview and recommendations)

III. Access to Treatment

IV. Equivalency of Medical Services

V. Confidentiality and Informed Consent

VI. Humanitarian Support – Special Categories

VII. Torure, Inhuman Treatment and Standards for Prevention of Torture

VIII. Professional Independence and Competency

NPM Selection Criteria

- According to the appeals submitted to the PD
- Appeals received during the monitoring
- Focused selection analyzing the Injuries registration journals, doctors visiting journals, medical documentation etc.
- Hunger strikers, person with self – harm or with mental problems, with disabilities, with other injuries, persons in isolation cells, several sub cultural categories etc
- Randomly selected

Statistics Year 2013

- ❑ In Penal System where provided – 45 planned visits and 313 Ad Hoc visits, were interviewed and evaluated 2670 inhabitants
- ❑ In Police Loc – Ups: 140 planned and 13 d hoc visits, visited 107 persons individually
- ❑ Psychiatric Facilities: 9 visit , evaluated 25 persons
- ❑ In Ministry of Defense facilities: 3 planned visits, visited individually 27 persons
- ❑ Orphans Houses: 30 visits, monitored individually 250 children

Published Reports

- <http://www.ombudsman.ge>
- Parliamentary Reports
- As well as NPM Special Reports

Thank You for Attention