School of Law
University of Bristol
Wills Memorial Building
Queens Road
Bristol BS8 1RJ
United Kingdom

Tel: +44 117 954 5330
Fax: +44 117 925 1870
Email: Elina.Steinerte@bristol.ac.uk

Ms Tsira Chanturia
Penal Reform International
Regional Office
16 Kikodze str.
Tbilisi 01105
Georgia

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Dear Ms Chanturia,

Thank you very much for your kind request to examine the Organic Law on the Public Defender of Georgia as well as the Organic Law on the Amendments and Changes to the above mentioned Law, in the light of the obligations arising from the Optional Protocol to the United Nations Convention Against Torture (OPCAT). The OPCAT Research Team of the Law School of the Bristol University has examined these two documents. Please find below our comments.

In respect to the Organic Law on the Public Defender of Georgia.

1. Art. 3 and the description of mandate: the prevention aspect, which is central to the obligation arising from OPCAT, is missing from the provision. Certainly educational measures is one aspect of prevention, but in general the description in this paragraph could benefit from mention of prevention as such which then would allow the Public Defender (PD) to develop his/her own set of activities under this broader umbrella.
2. Art. 5: Budget. It is certainly more advisable that it is the Parliament which approves the budget of the PD and that the money actually comes from the Parliament. This goes back to the assurances of independence. It would also be advisable to stipulate that it is only the PD who is in charge of how the budget is spent.

3. Art. 5(4): the right not to testify etc in that para should also apply to the staff of the PD's office; especially important as they form part of the National Preventive Mechanism (NPM).
4. Art. 6: the stipulations as to who can be a PD appear somewhat limited: first, it would be beneficial to have someone who is well-established in the field of human rights. Second, para 2 of the same Article: the pool of people who can nominate is rather restricted as does not allow civil society to nominate.
5. Art. 8 (1): the stipulation that PD cannot participate in political activities: this is a rather broad and sweeping requirement as what is meant by 'political activities'? Participation in elections as a voter is a political activity too, for example.
6. Art. 13: why is there a need to list all the various groups of people who can submit claims to PD? It would be better to leave it open to 'everyone'.
7. Art. 18: para (a) on the point of 'unhindered access'- it could be worthwhile perhaps to add 'at any moment' so as to make clear that unannounced visits may be carried out too as per OPCAT.
8. Art. 19: once again, the preventive mandate of the NPM is missing here. It would be very advisable to include this overarching term in the legislation as it can allow the PD to engage in a whole array of activities.
   Secondly, in the same article there is a list of various categories of people that PD may talk to, but this appears restrictive again: he/she may find it useful to talk to the guards, doctors, other personnel as well as families of detainees etc.
   Thirdly, in the same article it states that the PD 'shall check the relevant documentation, confirming the legality of holding such persons'- this appears very limited in the light of the broad NPM mandate as per OPCAT: PD may need to do much more than check the documents about legality. Moreover, how about other documents, like medical records, records of interrogations and other custody documentation?
9. Art. 21: once again, this provision is rather re-active as opposed to pro-active as the NPM mandate requires. There needs to be some inclusion of this broader preventive mandate.
   Secondly, para (b): there is a corresponding obligation upon the authorities to enter into dialogue about the implementation of recommendations (see Art. 22 of the OPCAT). Moreover, as for the rationale of the recommendations, if the text of OPCAT is examined, the recommendations may need to go further than just recommendations 'on the redress'- the whole raison d'etre of the OPCAT is prevention, so recommendations are bound to strive to have wider impact than just providing redress to violations that have already occurred. Thus recommendations need to be not just of restorative, but also of preventive nature.
   Thirdly, para (h) which provides for the right of the PD to write to the President or speak in the Parliament 'in the case of gross and/or mass violation of human rights'- this seems restrictive, especially in the light of the preventive aspect as in effect it means that the PD can do little unless violations have occurred and this is in direct contradiction to the preventive nature of the NPM's mandate as per OPCAT.
10. Art. 22: on the reporting obligations. The OPCAT requires an NPM report to be submitted, which can be part of the overall PD report, but it should be made clear that the NPM report ought to be submitted.

11. Art. 25 (2): as mentioned earlier, it would be good to have Parliament's involvement on the budgetary issues so as to have more assurances on the independence.
12. Art. 26: nothing in this article reflects that there is an NPM in the structure of the office. It would be of utmost importance to mention the Special Preventive Group.

The following observations concern the proposed Organic Law on the Amendments and Changes in the above law:

1. Changes in Art. 3 (2): it is not stipulated in the provision who will provide the PD with all the appropriate material, technical and financial resources which of course is a shortcoming as in fact nobody appears to be responsible for carrying out this duty which may in turn impact the effectiveness of the NPM quite a bit.
   Secondly, in para 3 of the same Article, it could be useful to mention the contacts with the Subcommittee on the Prevention of Torture (SPT) specifically given that it is a direct obligation under the OPCAT.
2. Changes in Art. 19: first of all, the Special Preventive Group is introduced but there is no stipulation as to what it is in fact and what are its relations with the PD and PD's office. Furthermore, para 1 does not reflect the text of OPCAT: if the Special Group is carry out tasks of the NPM, it is to carry out regular, systematic, preventive visits and other activities, while the current wording only talks about 'shall examine the situation'- this is lacking in the current proposal.
   Secondly, para 2(a) of the same Art. 19: it would be very advisable to explicitly mention that the PD may also meet and talk with the staff of the places of deprivation of liberty, including medics and other personnel; also family members etc.
   Thirdly, para 2(b) omits the central obligation of the OPCAT: the system of regular, preventive visits and the on-going dialogue with the authorities. To limit the mandate to examining the documentation falls very short of the requirements of OPCAT.
   Fourthly, para 3 of Art. 19: OPCAT requires more than is stipulated there as guarantees must be put in place against reprisals against those who speak to the NPM (art. 21 of the OPCAT) and the SPT (Art. 15 of the OPCAT).
3. The new Art. 19 [1]: first of all, as mentioned before, the overall preventive mandate is missing from the description here.
   Secondly, para 1 of this Art, once again talks only about regular examination of the situation in the places of detention: OPCAT requires much more than that: system of regular, preventive visits; recommendations and an on-going, meaningful dialogue with the authorities about their implementation; other preventive measures.
   Thirdly, para 2: there is nothing about striving towards multi-disciplinary team as well as balance in terms of gender and ethnicity as per OPCAT Art. 18 (2) requirements;
   Fourthly, para 4 mentions special proxy but it is unclear as to what it is exactly.
4. Changes in Art. 21: once again, OPCAT requires more than stipulated there: OPCAT Art 19 (b): NPM must have the right to recommendations and the

competent authorities must examine these recommendations and there is a corresponding obligation upon authorities in Art. 22 of the OPCAT to enter into dialogues. So NPM recommendations may and should go beyond only those concerning the legislation.

5. Changes in Art. 22: to make the provision more meaningful, it would be advisable to include an obligation upon the Parliament to discuss the reports.
   Moreover, OPCAT requires an NPM report, i.e., report on NPM activities etc, and not just a report on the situation of human rights in country in general which is not reflected in this provision.
   Finally, the duty of the state to publish and disseminate the report as per Article 23 of the OPCAT is not reflected.

The OPCAT Research Team would also strongly recommend that a provision is included which would allow the NPM to use audio visual recordings during their visits: this is a recommendation that stems from the principle of effective investigation as established by the European Committee on the Prevention of Torture (CPT), the principle of thoroughness in particular (see CPT/Inf/E (2002)1– Rev. 2006).

Please do not hesitate to contact us if we can be of any further assistance and we look forwards to hearing from you about the progress of the implementation of OPCAT in Georgia.

Sincerely yours,

Elina Steinerte

On behalf of OPCAT Research Team
Prof Rachel Murray
Prof Malcolm Evans
Mr Antenor Hallo de Wolf