



# **DOES THE GEORGIAN NPM WORK?**

An assessment of 10 years of torture prevention

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## 1. INTRODUCTION

In the past 15 years, the creation of national monitoring mechanisms has been the most widespread advance in protecting people deprived of their liberty from torture and ill-treatment. Bodies that make monitoring visits to prisons are not new, but they have been extensively promoted through the Optional Protocol to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – the OPCAT. This treaty came into force in 2006 and Georgia was one of the first states to create the required national preventive mechanism (NPM), in 2009.

This year, 2019, marks the tenth anniversary of the creation of Georgia’s NPM, which is a suitable moment to reflect on the achievements of this institution. We were asked to conduct this assessment on the strength of our multi-country study, *Does Torture Prevention Work?*, published in 2016.<sup>1</sup> In that research, which included Georgia among the 16 country case studies,<sup>2</sup> we concluded that the most important preventive measures against torture were effective safeguards in practice when persons are first taken into detention. Criminalization, investigation and prosecution of perpetrators of torture and ill-treatment was also very important. The work of independent monitoring bodies also had a discernible positive impact – and this is particularly true in Georgia. So, while we concluded that monitoring bodies such as NPMs were not the most impactful mechanism for preventing torture, they are nevertheless an important part of the overall architecture of torture prevention. Indeed, it may be that they can play a significant role in encouraging states to provide more effective protection when people are first deprived of liberty – through access to a lawyer, medical examinations, and family notification among other steps – as well as advocating the more thorough and efficacious investigation and prosecution of torturers. This study of the Georgian NPM is an opportunity to look further into these questions.<sup>3</sup>

In order to conduct this research, we used two assessment tools developed out of previous research projects. One, derived from our multi-country study, measures the state of a country’s preventive mechanisms across detention safeguards, prosecution, monitoring, and non-judicial complaints bodies. It considers both the legal framework and actual practice in each of these four sets of preventive mechanisms. The other, derived from work for the United Nations Development Programme, is a tool for determining an NPM’s compliance with the Paris Principles.<sup>4</sup> We devised a conceptual model that links together

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1 Richard Carver and Lisa Handley, *Does Torture Prevention Work?* (Liverpool: Liverpool University Press), 2016. The research for this original project was funded by the Association for the Prevention of Torture.

2 The researchers who wrote that chapter were Bakar Jikia and Moris Shalikashvili. We are very grateful to them for work that provided the foundation for this further study.

3 We are grateful to the Open Society Georgia Foundation for their financial support for this research; to the staff of the NPM for their patient responses to our inquiries; and to all those who agreed to be interviewed.

4 Principles relating to the status and functioning of national institutions for protection and promotion of human rights (endorsed by UN Commission for Human Rights Res 1992/54 and UNGA Res A/RES/48/134 20 December 1993).

the capacity of the NPM to do its work and its actual work product with the short-term and long-term impact of the institution on torture reduction in Georgia. Our evaluation model relies in part on these assessment tools to explain the effectiveness of the NPM.

For reasons of time, we focused only on three types of institutions that fall within the remit of the NPM: police stations and temporary detention isolators; and psychiatric hospitals.<sup>5</sup>

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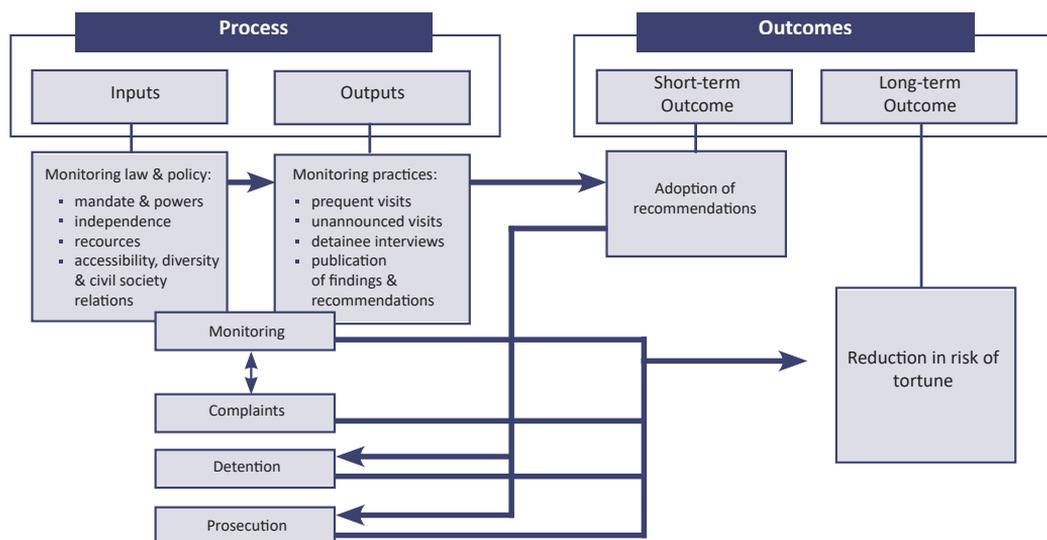
5 The data that we needed to arrive at scores for these assessment tools was gathered in three ways. First, it rested in part on the research conducted in our earlier project. Secondly, it was based on documentary research, including NPM reports, legal texts, and reports of other organizations – national, regional, and international. Thirdly, we conducted a two-week mission to Georgia in August 2019, visiting Tbilisi, Kutaisi, and Batumi, where we conducted more than 20 interviews with people from the NPM and PDO, governmental authorities, and civil society.

## 2. CONCEPTUAL FRAMEWORK

### 2.1. Evaluation model

Our assessment of the Georgian NPM and its impact rests on a conceptual model that considers both process (the operations of the NPM) and outcome – the short-term and long-term impact of the NPM on torture prevention.

**Figure 1: Conceptual Model for Evaluating NPM**



The first component of the evaluation model displayed in Figure 1 is to assess the independence, resources and general capacity of the NPM to do its work – that is, does it have the “inputs” required to carry out its work effectively? In assessing this, we rely in part on a tool we devised, referred to as Resource, Independence and Pluralism Evaluation (RIPE), which evaluates compliance of the NPM with standards contained in the Paris Principles. We then consider the actual work of the NPM: How frequently does it visit closed institutions? Are these visits unannounced? Are interviews of detainees conducted and are these private? Are reports of the NPM’s findings published? A portion of this segment of the assessment rests on the Assessment Tool for Evaluating Mechanisms for Preventing Torture (ATEMPT), which we developed based on our multi-country torture prevention study discussed below. These “inputs” and “outputs” are the portion of the conceptual framework referred to as “process.”

The second component of the conceptual framework in Figure 1 is “outcomes” in which we consider both the short-term and the long-term outcomes of the work of the NPM. In the short-term, the effects of the NPM are best assessed by reviewing the recommendations it has put forward and whether these recommendations have been implemented. Of course, in the long-term, the goal of these recommendations is to reduce torture and ill-treatment. We use ATEMPT to assess the overall effectiveness of NPM monitoring, compared to other torture prevention mechanisms, in reducing torture and ill-treatment in Georgia.

## 2.2. ATEMPT

The protection of people deprived of their liberty against torture and ill-treatment is one of the strongest norms in international law. This is true not only in the sense that this protection can never be derogated from or limited, but also because international law prescribes a far longer list of protections than for any other right. The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires the criminalization, investigation and prosecution of the crime of torture. Its Optional Protocol requires states parties to open the doors of their prisons and detention centres to an international monitoring body, the Sub-Committee on Prevention of Torture, as well as creating *national* preventive mechanisms as independent monitoring institutions. Similar provisions exist at the regional level, notably the European Convention for the Prevention of Torture. The international promotion of national human rights institutions has led to the proliferation of non-judicial complaints mechanisms, seen by many as an important part of torture prevention. And various non-binding international instruments, notably the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Nelson Mandela Rules,<sup>6</sup> establish important standards and procedural guarantees, many of them given stronger expression in the jurisprudence of the regional human rights courts, especially in Europe. So, the legal protection against torture is exceptionally strong. But does any of it actually work?

A few years ago, the Association for the Prevention of Torture approached us with precisely this question, having in turn been asked it by one of their long-standing financial supporters. The result, after four years of work by more than 20 researchers in 16 countries was a book entitled *Does Torture Prevention Work?* The question that it sought to answer was simply: do the various preventive measures required by international law or the recommendations of human rights bodies have the claimed effect? Do they actually prevent torture? The answer to this was a qualified yes. Anti-torture campaigners and international lawyers had not, by and large, been wasting their time. Most of the requirements of international law with regard to torture did have a positive effect in the 16 countries that we studied.

6 The Standard Minimum Rules for the Treatment of Prisoners.

However, the most interesting aspect of our findings was that the order of priority assigned by many anti-torture campaigners may not have been correct. We grouped anti-torture measures into four broad categories. The first was investigation and prosecution of torturers (as required by the UNCAT). The second was the establishment of independent monitoring bodies at a national level, and granting access to international and regional monitoring bodies (as required by the OPCAT). The third was the establishment of non-judicial complaints mechanisms (as recommended by the European Committee for the Prevention of Torture and strongly promoted by various UN bodies). The fourth was the various procedural guarantees that should be in place when a person is taken into custody (as recommended, but somewhat weakly, by the UN Body of Principles). It turned out that it was the fourth of these, the least strongly entrenched in international law, that was by some distance the most important in protecting against torture. Prosecution of torturers was also important and the establishment of independent monitoring mechanisms had a discernible positive impact. Independent non-judicial complaints mechanisms did not have a detectable effect in preventing torture in the countries that we studied.

Our other principal finding also has significant implications. For each of our four groups of preventive mechanisms – detention, prosecution, monitoring and complaints – we looked both at how far each measure existed in law, but also whether it was fully implemented in practice. We found very clearly that there was a wide gap between law and practice, especially with regard to detention safeguards and prosecutions – the two most effective sets of preventive measures. Indeed, we saw that adopting any of these preventive measures in law had no effect in reducing the incidence of torture; this only happens when they are implemented in practice. Of course, enacting prevention into law is usually (though not invariably) a necessary precursor to implementing prevention in practice. Table 1, below, provides an example of some of the preventive mechanisms we considered by cluster.

**Table 1: Examples of preventive measures by cluster**

	Law	Practice
<b>Detention</b>	<ul style="list-style-type: none"> <li>• Unofficial detention illegal</li> <li>• Notification of family required</li> <li>• Right to lawyer</li> <li>• Prompt presentation before judge required</li> <li>• Medical exam required</li> </ul>	<ul style="list-style-type: none"> <li>• Is unofficial detention employed?</li> <li>• Are families notified promptly?</li> <li>• Is right to lawyer conveyed and exercised?</li> <li>• Is presentation before judge prompt?</li> </ul>

<b>Prosecution</b>	<ul style="list-style-type: none"> <li>• Criminalization of torture</li> <li>• Substantial penalties for torture</li> <li>• Independent authority to investigate allegations</li> </ul>	<ul style="list-style-type: none"> <li>• Are allegations of torture brought?</li> <li>• Are allegations thoroughly investigated?</li> <li>• Are charges being brought in court?</li> <li>• Are conviction rates comparable to other serious crimes?</li> </ul>
<b>Complaints</b>	<ul style="list-style-type: none"> <li>• Independent complaints mechanism</li> <li>• Power to compel evidence and witnesses</li> <li>• Power to refer complaint to investigative authority</li> </ul>	<ul style="list-style-type: none"> <li>• Are complaints investigated effectively?</li> <li>• Are complaints referred to investigative authority (e.g., prosecution)?</li> <li>• Are redress recommendations made?</li> </ul>
<b>Monitoring</b>	<ul style="list-style-type: none"> <li>• Domestic monitoring mechanism</li> <li>• Power to make unannounced visits</li> <li>• Power to conduct interviews with detainees</li> </ul>	<ul style="list-style-type: none"> <li>• Does monitor conduct regular and unannounced visits?</li> <li>• Does monitor interview detainees?</li> <li>• Are monitors sanctioned for their activities?</li> </ul>

Within our four groups of preventive mechanisms, it was also possible to identify which specific safeguards were most important. Among the most important was that people are only held in official, recorded detention; that members of their family or another person are promptly notified of their detention; that they are informed and exercise their right to a lawyer promptly after arrest; and that they receive an independent medical examination in custody. More broadly, criminal justice systems that rely more on alternatives to confession evidence are likely to lead to reduced torture.

With regard to the prosecution of torturers, the most important step is that complaints of torture are actually lodged with the appropriate prosecutorial authority. The inference here is that very often victims of torture have no confidence in the system either to investigate properly or to protect them against further abuse. Allegations of torture need to

be fully and impartially investigated; conviction rates need to be comparable to those of other serious crimes; and there must be no amnesty or pardons for torturers.

The most important element of effective monitoring is the functional independence of the monitoring body – when monitors are free from threats or sanctions, then there is a higher correlation with reduced torture.

Of course, monitoring bodies may have an important indirect impact in reducing torture and ill-treatment through the recommendations that they make to the authorities. If their recommendations correspond to the most important steps needed to prevent torture and ill-treatment – and if the recommendations are then implemented – they can be a valuable part of the preventive architecture. In other words, one would expect that NPM recommendations that had a serious impact would be largely strategic. They would not merely react to particular bad conditions that were observed, but propose laws, policies, and systems that would reduce the risk of torture and ill-treatment.

Recommendations that seek to improve detention and prosecution laws and practices are relevant not only as potential short-term outcomes of the NPM, but also improve detention and prosecution practices, both of which play important roles in preventing torture and ill-treatment. (Hence, in our model, the arrows from recommendations point back to detention and prosecution, indicating their possible effect on detention and prosecution law and practice.) Limitations of time mean that it has not been possible to trace the implementation of every single recommendation generated by the Georgian NPM over a decade. However, it has been possible to develop an overall picture of the impact of NPM recommendations.

To research *Does Torture Prevention Work?* we used a combination of methods. We conducted 16 qualitative case studies of countries over the period 1985 to 2014. In each country we looked at the incidence of torture and the various legal and policy steps taken to prevent it. This was placed in the context of the political and social issues in each country to explain the drivers behind torture and ill-treatment, as well as the motivations or obstacles to preventive measures. However, our overall conclusions about the efficacy of prevention were drawn from a statistical analysis that measured the impact of various preventive mechanisms on the incidence of torture. For each of our 16 countries we looked separately at each of the 30 years (1985-2014) and determined if the preventive mechanism was present (or partially present or absent). We did this for a total of 66 preventive measures grouped into the four clusters described above. We also did this for the dependent variable: the incidence of torture measured using a new scale called the Carver Handley Torture Score – CHATS.

The statistical analysis allowed us to determine which preventive mechanisms were most effective at reducing torture. We used this information to develop an assessment tool to evaluate a country's anti-torture strategy. This is called the Assessment Tool for Evaluating Mechanisms for Preventing Torture (ATEMPT). Most assessment tools are simply a list of questions. An example of such a checklist is the assessment tool devised by the UN SPT for

evaluating national preventive mechanisms. For our list of questions, however, we have the advantage that we have already tested and drawn conclusions as to which answers matter more in reducing torture. And we use this information to weigh those mechanisms and clusters of mechanisms that have proved the most effective in reducing torture more heavily than those that are less effective.

The ATEMPT questionnaire mirrors our codebook for the multi-country study. It consists of 63 questions corresponding to 63 preventive mechanisms. The questions are divided into four categories – detention, prosecution, complaints, and monitoring – and each of these clusters are then further subdivided in turn into sections on law and practice. The monitoring portion is also divided between police detention and prisons. The questions are multiple choice, usually with three options (the preventive mechanism is wholly present, partly present or wholly absent). We have included a copy of the ATEMPT questionnaire as Appendix A.

Each question is scored depending on the answer and then weighted, depending on how important that particular mechanism has proven to be in preventing torture. The higher the correlation between the given mechanism and its role in reducing torture, the greater the weight assigned.

The weighted individual scores within each category are then tallied to produce a cluster score. In order to compare scores across categories/clusters, the scores are expressed as a percentage of the total points possible for each cluster. For example, the highest score possible for the detention cluster, when weighting is taken into account, is 78. If the detention items tally to 43 for a given country, the score for that cluster would be 55.13% (since 43 is 55.13% of 78).

To produce an overall score, a second weight is then applied to each cluster score, depending on the overall importance of the category in preventing torture. Again, the higher the correlation between the cluster and the reduction in torture, the greater the weight assigned. These four weighted cluster scores are then summed for the total score. Countries will score higher when they put their efforts into achieving those measures that have been found to have the strongest impact on torture prevention.

### 3. TORTURE AND ILL-TREATMENT IN GEORGIA BEFORE 2009

From the international perspective, Georgia is often viewed as a success story in torture prevention. Of course, this is a view that may not be shared either by those who are directly affected by the criminal justice or mental health systems, or by those who monitor it on a daily basis. It is helpful, then, to consider the history of torture and ill-treatment in Georgia, particularly since its re-emergence as an independent state. It is also important to identify the situation of torture prevention in the country just before the formation of the NPM to set a baseline for this study.

Soviet Georgia was marked by very poor conditions in police custody, prisons and psychiatric hospitals, where deliberate ill-treatment was also rife. Police investigations consisted, to a large extent, of beatings of suspects aimed at securing confessions. Political dissidents in Georgia were likely to face similar deliberate ill-treatment or torture to those elsewhere in the Soviet Union, including incarceration in psychiatric hospitals and enforced medication. However, the collapse of the Soviet Union, the withdrawal of non-Georgian authorities, and civil war in Georgia led to a situation that was considerably worse than the late days of Soviet rule. There were widespread illegal detention, torture and extrajudicial execution in the early 1990s, and even once governmental power had been restored, torture persisted. In prisons, the main problem was poor conditions, exacerbated by increased overcrowding with growing prison populations from the mid-1990s. Prisoners were most at risk of violence from fellow inmates, because of the strength of Soviet criminal subcultures and informal hierarchies. Torture and deliberate ill-treatment were most likely to take place in police custody and pretrial detention. From the mid-1990s, reports began to emerge of the widespread use of electric shock torture.

In 1994, Georgia ratified the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Various legislative and procedural reforms followed, aimed also at facilitating Georgia's accession to the Council of Europe. These included judicial oversight over detention, procedural safeguards in the new criminal procedure code, and the creation of the Public Defender's Office, with its complaints and monitoring functions. Another important reform was moving authority for the penitentiary system from the Ministry of Internal Affairs to the Ministry of Justice. This was followed by a new practice from 2000, whereby prison authorities refused to allow the transfer of detainees from police custody if they had injuries that could have been caused by torture. While torture appears to have reduced in this period, it was far from eliminated, as the European Committee for the Prevention of Torture (CPT) noted:

The allegations of ill-treatment related to both the time of apprehension and that of subsequent questioning by police officers. The types of ill-treatment alleged mainly concerned slaps, punches, kicks and blows struck with truncheons, gun butts and

other hard objects. The most serious allegations concerned the infliction of electric shocks, asphyxiation by using a gas mask, blows struck on the soles of the feet, and prolonged suspension of the body in an inverted position.<sup>7</sup>

After the Rose Revolution of 2003, the new government (and the PDO) set about addressing the problem of torture in police custody. One decisive change was the dismissal of 80 percent of police officers, reorganizing the force away from the Soviet quasi-military model towards a modern democratic police service. The PDO conducted systematic and intense monitoring of police stations to determine whether procedures were being followed and detainees being properly treated. Some unlawful detention outside formal custody continued, but the treatment of persons in police custody significantly improved by about 2006. Of equal importance, from 2006 detainees were required to be promptly removed after interrogation to special detention centres – temporary detention isolators – that were not under the control of the arresting police. There, detainees would be entitled to a medical examination on request. They would be held in the isolator until being presented before a judge. This separation of custody and investigation appears to have had a great positive impact.

During the same period, however, torture and ill-treatment in prisons were a growing problem. This was partly a result of overcrowding and very poor conditions, but it was also associated with the government's tough anti-crime policies.

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7 CPT report to the government of Georgia – 2001.

## 4. ESTABLISHMENT OF THE NPM IN GEORGIA

Georgia was one of the first countries to ratify the OPCAT and hence one of the first to be faced with the challenge of how to constitute a national preventive mechanism. After considering a variety of options,<sup>8</sup> Georgia made the same decision as the overwhelming majority of parties to the OPCAT and designated its (internationally accredited) national human rights institution, the PDO, as the national preventive mechanism. This had various practical advantages: the PDO already had the required legal powers (although the Organic Law on the Public Defender was amended to make its new function explicit) and had been actively engaged in monitoring closed institutions for a number of years. Hence it had the necessary expertise – or at least as much as any Georgian institution had.

The revised Law on the Public Defender created a body called the Special Preventive Group, which encompassed both the staff of the NPM itself and a broader range of experts to be recruited and empowered to act as members of the NPM as required. In addition, an advisory council was created, comprised of members of civil society and other experts, which was intended to give broad strategic guidance to the NPM. However, despite this involvement of civil society organizations and external experts (as per the requirement that NPMs have regard to the Paris Principles), the Georgian NPM should not be seen as an “Ombudsman plus” model, since control of the mechanism rests entirely within the PDO.

The decision to adopt this model was made in 2008 – about a year after the formal deadline under the OPCAT – and the NPM became operational in 2009.

Initially responsibility for the functions of the NPM rested with the department already dealing with criminal justice and penitentiary matters, since this was where the expertise for monitoring visits rested. The number of personnel in this department was increased, but resources were still inevitably limited, since the department had responsibility not only for the preventive monitoring visits that it needed to undertake as NPM, but also the processing and consideration of large numbers of individual complaints from persons in police or prison custody. The recruitment of the Special Preventive Group (SPG) did, however, constitute a significant expansion of the PDO’s capacity, both in simple numbers available to conduct monitoring visits, but also in expertise. This was particularly apparent in relation to disciplines such as medicine, not much in evidence within the PDO, but

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8 One population option, suggested by a number of NGOs with the support of the then Public Defender, was the creation of a National Council for Torture Prevention (NCTP), which would include representatives of all relevant government bodies as well as civil society. Under this proposal, the Public Defender would have been a member with equal voting rights and chairperson of the NCTP. The NCTP would have had several subordinate thematic/local bodies (commissions) in charge of monitoring prisons, police establishments, military detention units, children’s homes, psychiatric institutions, and homes for the elderly. A small NCTP secretariat would provide organizational and administrative support, probably located at the premises of the PDO. Other proposals included the creation of an Anti-Torture Departmental Council or the assignment of NPM functions to an existing body such as the Presidential Council on Penitentiary Institutions.

available for hire through the SPG. This was important in relation to a key part of the NPM's work – monitoring of psychiatric hospitals – but also in relation to evaluating prison healthcare, which has been a continuing priority over 10 years, and ensuring that the skills exist in the detention isolators and prisons to conduct forensic medical examinations to document allegations of torture or other ill-treatment.

#### **4.1. Separation of monitoring and complaints functions**

For approximately the first half of the NPM's life, preventive monitoring and complaints handling were functions of the same department. This is visible in the very high numbers of visits recorded in the period 2009-13, which dropped dramatically from 2014 onwards. The reason for this was not a change in the number of preventive visits, but the fact that the NPM no longer conducted visits to address individual cases. Under the old system, a half-hour meeting with a complainant, which would usually not even entail the NPM staff member entering the main part of the closed institution, would nevertheless count as a visit.

The view of the SPT, and the general consensus of commentators on NPMs, has been that these mechanisms should not be involved in individual case-handling, since they are “preventive” rather than “responsive.” This seems a little disingenuous at the theoretical level, since NPMs and other monitoring bodies of course publish evidence of torture or ill-treatment if they gather it. However, it seems to be generally accepted as a practical proposition that NPMs should not also be handling an individual caseload. In 2014, the policy and structure of the PDO changed to reflect this understanding, with a new criminal justice department responsible for handling complaints and for other matters relating to the criminal justice system that fell outside the NPM mandate. Of course, something was lost through this change. One of the arguments in favour of keeping the complaints and monitoring functions together is that information gathered through individual cases may be a way of identifying more systemic issues that can then be addressed through monitoring. Analysis of complaints may also tell the monitoring body whether its recommendations have been complied with in practice. Interviewees within the NPM told us that communication between their department and the criminal justice department is good and frequent, so they still have the necessary information about complaints, which are automatically shared on the office computer network. The other consequence of this shift of responsibilities is that NPM staff cannot receive complaints in the course of their visits, but must refer inmates to the correct channels. Staff maintained that this caused no problems and that inmates understood the different functions of the two departments. We were unable to evaluate this claim. However, the NPM did clarify that in an extreme situation, they could act as courier to convey a complaint from a vulnerable person; they could also document photographic evidence of ill-treatment.

In our interviews with outside actors, whether governmental or non-governmental, no one made any distinction between the NPM and the PDO. Indeed, all our questions were framed using the term “NPM” but were almost invariably answered with reference to the “PDO.” This is not to suggest that outsiders do not understand the distinct nature of the NPM function, but it is clear that the NPM is not seen as a different entity from the PDO. While there is potential for confusion, this is not a bad thing. When the NPM was assigned to the PDO, the office and its incumbents enjoyed considerable popular trust and a reputation for being willing to challenge the authorities.<sup>9</sup> This sort of public legitimacy can be immensely important to the credibility and impact of the NPM.

There may be overlaps between the work of the NPM and that of other arms of the PDO. For example, although the NPM does not handle complaints, this does not mean that the PDO does not do monitoring. A very positive example of this was described by a staff member of the PDO regional office in Batumi. He said that the office receives very few complaints relating to treatment in police custody, in contrast to inmates in the penitentiary system. He conducts monitoring visits to police stations and temporary detention isolators, opening a complaint file if he identifies a breach of a suspect’s rights. This is part of a more general policy of conducting proactive visits to identify human rights violations in closed institutions, not only police facilities, that have not been the subject of a complaint. This is clearly a different process from that conducted by the NPM, but it supplements the NPM’s work in an important way. The NPM is entirely based within the national headquarters in Tbilisi. Between visits, the staff of the regional offices are the sole presence of the PDO. Given that the frequency of NPM visits to local police stations is going to be very low (though much higher for temporary detention isolators), this is an effective way of maintaining a monitoring presence at an important site of risk to persons deprived of their liberty. It was also striking that in our interview with Batumi police, they made no distinction between the NPM and the PDO.

## **4.2. Tension between the NPM and the Public Defender**

If these are clear benefits from the decision to situate the NPM within the PDO, there have been other aspects of the relationship that have been more problematic. A decisive event in the NPM’s history took place at the end of 2013, when the recently appointed Public Defender, Ucha Nanuashvili, dismissed Natia Imnadze, the head of the NPM department, who had directed its operations since 2009, along with her deputy, Otar Kvatchadze. According to Imnadze, the reason for their dismissal was a press interview she had given in which she discussed the strength of criminal subcultures in the prisons and was critical of the Minister of Corrections and Legal Assistance, Sozar Subari (a former Public Defender). Subari had himself been critical of a recommendation issued by the Public Defender on the issue of prisoners with tuberculosis. Nanuashvili stated that he dismissed the two

<sup>9</sup> See National Democratic Institute, *Public Attitudes in Georgia: Results of July 2019 Survey*, Tbilisi 2019, for evidence that the PDO retains considerable public confidence.

because of intentional failure to perform duties, according to media reports. Imnadze and Kvatchadze sued the Public Defender for wrongful dismissal – a case that an administrative court decided in their favour in 2019.

All but one of their colleagues resigned in protest, with the effect that the NPM more or less ceased to exist for several months until a new team could be appointed. The European Committee for the Prevention of Torture (CPT), which visited Georgia in 2014, expressed its concern about this turn of events in its mission report.<sup>10</sup> The effect of this hiatus was essentially to impose a new start on the NPM. Continuity was provided by some members of the SPG, the external experts who continued to work on behalf of the NPM. Even so, much institutional memory had been lost with the departure of most staff, with existing records and procedures found to be inadequate. This was also the point when the decision was made to remove complaints-handling functions from the NPM. A new NPM team was built, led by Nika Kvaratskhelia, which has maintained a remarkable continuity up until the present. The existence of the SPG meant that the rupture in 2013-14 was less damaging than might have been the case. Many SPG members continued to work with the NPM throughout. Kvaratskhelia, the new head of the NPM, had himself been a member of the SPG, while at least one of the staff members who resigned in 2013 later returned as an SPG member.

The dismissal of Imnadze and Kvatchadze, followed in effect by a conflict between the NPM staff and the Public Defender, raises a question about how we understand the notion of independence of an NPM when it is nested within another institution. Guarantees of the NPM's independence in the OPCAT – and by implication in the Paris Principles – assume that what is at issue is the autonomy of the entire institution in relation, primarily, to the executive branch. It does not address a situation where the operations of the mechanism may be impeded by the head of the institution as a whole, which they arguably were in this instance, given the court finding against the Public Defender's decision. Our assessment tool, RIPE, is based upon the same normative framework and hence shares these assumptions. The reality is that the legal guarantees of independence attach to the institution as a whole and, in this instance, are embodied in the person of the Public Defender, who has extensive guarantees and immunities. Realistically, it is hard to envisage how the independence of employees of the institution might be equally entrenched, beyond the workings of administrative law, which in this instance did protect the rights of the affected staff. It should be noted that the subsequent law on public service of 2015 extends the rights of public servants, including PDO staff.

In other areas, however, it may be possible to establish specific guarantees for the NPM, independently of the institution that hosts it. The most important of these is budget. There is still no separate and guaranteed budget for the NPM, voted by Parliament independently from the overall budget for the PDO. In practice, much of the operational budget of the NPM is in any case provided by one external funder, the European Union,

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10 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 1 to 11 December 2014, p.16.

supplemented by project funding from other agencies. However, core costs come out of the PDO budget – ultimately state funds – and should arguably be protected so that the continuing operation of the NPM, which is an international treaty obligation of the Georgian state, can be guaranteed.

### **4.3. Relations with civil society**

Relationships with non-government organizations are managed in a number of ways, with the verdict from NGO personnel that we interviewed being generally positive, with one significant exception. One important means of engagement has been the hiring of experts from civil society organizations to be members of the Special Preventive Group. While they are not engaged there as representatives of their organizations, but are rather hired because of their personal expertise, this has been a way of keeping people from NGOs in dialogue with the NPM.

More formally, NGOs participate in the NPM advisory council, which meets periodically to discuss the institution’s overall strategic direction. Initially these meetings were quarterly but are now much less frequent, which drew criticism from some of our NGO interviewees. The statute of the advisory council was amended in 2019 to allow meetings to take place at a minimum of once every six months. The lesser frequency was because of members not attending regularly.

A third avenue for collaboration between the NPM and NGOs has been through joint projects, of which there have been successful examples with the Human Rights Centre, the Rehabilitation Initiative for Vulnerable Groups and Prison Reform International. In this model, NGO personnel are able to visit closed institutions with the NPM and separate reports are produced. The NPM benefits from the additional expertise, and new viewpoint, of the NGO, while the latter obtains a level of access that would not otherwise be available.

Finally, there have been joint training events involving NPM and NGO staff, for example on conducting monitoring and on ethics.

However, several representatives of different NGOs strongly suggested that another, non-governmental monitoring body was required in addition to the NPM.

## 5. EVALUATING THE INDEPENDENCE AND RESOURCES OF THE NPM: RIPE

We devised an assessment tool for evaluating the independence and resources of NPMs that we refer to as Resources, Independence, and Pluralism Evaluation, or RIPE. It is based upon an effectiveness framework that we developed on behalf of the United Nations Development Programme for evaluating national human rights institutions.<sup>11</sup> The original framework looked at the relationship between, on the one hand, various structural and legal attributes usually regarded as being important for NHRIs and mainly deriving from the Paris Principles, and, on the other hand, various important outputs. This is primarily a tool for assessing “first-order effectiveness” – that is to say, the activities and outputs of the institution, rather than the overall impact of the NHRI on society. We had to adapt this tool since it addresses itself to the attributes and activities of the NHRI. A national preventive mechanism is not, in itself, a national human rights institution, even though, like the Georgian NPM, it may be housed within an NHRI. Therefore, it does not have the full range of attributes and functions that an NHRI should have. However, the OPCAT does specify that states should give “due consideration” to the Paris Principles in creating national preventive mechanisms (Art. 18(4)). From the context, this primarily refers to the provisions of the Paris Principles relating to independence, pluralism and the need for adequate resources (Art. 18(1-3)).

RIPE entails, in effect, a capacity assessment of the NPM, ranging from the legal framework within which it was created, to the resources available to carry out its mandate. These resources are both material, including budget and hence numbers of staff, and human, including the skills and expertise contained within the NPM. RIPE also assesses the alliances that the NPM forges, some regarded as particularly important in the Paris Principles. We used RIPE to essentially evaluate the “inputs” column of our conceptual model. This section summarizes our findings.

The first set of RIPE criteria relate to independence.

### ***Statutory basis for the NPM***

The PDO is the NPM. The Public Defender and the office that supports that person are established by law, amended in 2009 to explicitly recognize their function as the national preventive mechanism under the OPCAT. The Public Defender has constitutional status (Article 35), the highest possible basis of statutory protection, although the NPM as such does not. Of course, the fact that the NPM in everyday parlance is a department within the NPM means that it is possible for conflicts to occur between the department and the

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<sup>11</sup> Richard Carver, *Measuring the impact and development effectiveness of national human rights institutions: a proposed framework for evaluation* (Bratislava: UNDP, 2014).

Public Defender. As discussed, this possibility is not merely hypothetical. For the purposes of scoring RIPE, we consider the Public Defender, as she is the NPM in law, but note where answers differ with respect to the NPM department. *Score 2/2.*

### ***Appointment process***

The Public Defender is elected by Parliament. In formal terms, this process takes place entirely within the legislature, with no involvement of the general public in either nominating or choosing. In practice, selection of the Public Defender is widely reported in the media and involves consultation with relevant stakeholders, including political parties, citizens, NGOs, and other civil society groups

The head of the NPM department in the PDO is ultimately hired by the Public Defender, in the same sense as all PDO staff. In fact, the selection panel that appointed the current head of department was a mixed one, including outside participants, and recruitment committees may also involve NGOs and trade unions. *Score 2/2.*

### ***Criteria for membership***

The Organic Law on the Public Defender states only that the Public Defender shall be a citizen of Georgia. It does not require any particular expertise, such as prior knowledge of human rights. A full score would require that such criteria be set out by law. Membership of the Special Preventive Group, however, is according to certain specified criteria: “appropriate education, professional experience and has professional and moral qualities to carry out the functions of the National Preventive Mechanism” (Article 19). *Score 1/2.*

### ***Term of office***

The term of office for the Public Defender is a non-renewable six years. This is a reasonable term of office that allows the incumbent to independently pursue human rights matters of concern. There are strong arguments that not offering the option of renewing the term of office encourages the incumbent’s independence. The head and staff members of the NPM department have guarantees in the general terms and rights that they enjoy under the law on public service, but as employees rather than office-holders they are appointed for an indefinite period. *Score 2/2.*

### ***Avoidance of conflict of interest***

The Organic Law on the Public Defender (Article 8) sets out a number of clear potential conflicts of interest from which a Public Defender would have to divest herself, including membership of a political party or employment in the public service.

Members of the Special Preventive Group – those people who actually conduct the NPM monitoring – are also required not to be members of a political party (Article 19). *Score 2/2.*

### ***Adequate remuneration***

The salary of the Public Defender is equivalent to that of the chairperson of the Constitutional Court (Article 25(4)), which is a more than adequate guarantee of independence. Staff of the NPM are remunerated on the relevant public service salary scale. *Score 2/2.*

### ***Immunities***

The Georgian Public Defender has unusually extensive immunities in order to guarantee the independence of her work (Article 5). She enjoys personal immunity from prosecution, arrest or detention and from search of home, car or office without the approval of Parliament, except in the event that she is apprehended in committing a crime. State bodies must guarantee the security of the Public Defender and family. The Public Defender has the right not to testify on information gathered in the course of her official functions, a right that continues after leaving office. The Public Defender may not be prosecuted for opinions or views expressed in the course of her duties.

The law does also spell out certain immunities enjoyed by members of the Special Preventive Group, which for these purposes also includes staff members of the NPM (Article 19<sup>1</sup>). It is specified that SPG members act under special authority from the Public Defender and are answerable only to her. They are entitled not to give evidence about matters gathered in their monitoring function, an immunity that continues after they are no longer SPG members. Mail and correspondence may not be subject to seizure or surveillance. Although these are not strictly immunities, the Organic Law also (Article 19) guarantees the privacy and confidentiality of interviews with inmates during monitoring visits and specifies that these meetings may not be subject to surveillance. *Score 2/2.*

### ***No instruction from government***

The Public Defender “shall act independently” and operate according to the constitution, international legal obligations and domestic law. “Any influence on or interference in the activity of the Public Defender of Georgia shall be prohibited and shall be punishable by law” (Article 4). *Score 2/2.*

## ***Removal***

Article 10 of the Organic Law sets out seven circumstances in which the tenure of the Public Defender may be terminated (one of them being that he or she is dead). This also includes resignation or engaging in activities that would have rendered the person ineligible to be Public Defender. It includes being found guilty of a crime – but the immunities clauses limit the circumstances in which that may occur.

The same protection does not obtain for the head of the NPM department or any other employee, who may be removed from office in accordance with the law on the public service, following a designated procedure set out by law. *Score 2/2.*

The overall score for the independence criteria is 17/18 or 94.4%.

The next group of questions relates to the resources available to the NPM.

### ***Does it have adequate staff?***

Since there is no objective way of measuring how many staff are required for an NPM – of course more would always seem desirable – we looked at whether posts were filled, and if those who filled them were adequately trained and qualified. The answer to both these questions is yes, with the permanent staff supplemented by the numbers and skills of the SPG. *Score 2/2.*

### ***Can it appoint its own staff?***

Staff are appointed according to the normal recruitment procedures of the PDO, which are independent of either the executive or legislature. *Score 2/2.*

### ***Is there adequate training of existing staff?***

There has been consistent training dating back from the formation of the NPM in 2009, which is constantly updated. One of the strengths of the NPM has been an unusually high level of staff retention, which means that training is not “wasted” but feeds into future practice. Training is also provided for non-staff SPG experts. The NPM only scores less than the full amount because the requirement for that is personalized training plans, although a procedure is in place to implement such a system from January 2020. *Score 1/2.*

### ***Does the NPM have control over its own budget?***

The PDO sets its own budget, which is then subject to vote of Parliament. The budget for the NPM is not guaranteed by law and is not regarded as being in any way separate from

that of the PDO. In practice, the state budget funds the employment costs and basic infrastructure for most, but not all, NPM staff, while operations are largely funded by external donors. *Score 1/2.*

### ***Is the NPM adequately funded?***

As with levels of staffing, the answer to this will always be that the NPM would benefit from more funding. In this instance, however, there is a serious shortfall in operational funding from the state budget, even though the NPM does in practice have the necessary funds from other sources to carry out its mandate. *Score 1/2.*

### ***Is the NPM free to raise funds from other sources?***

Yes, and there is no corresponding reduction in funds from the state. *Score 2/2.*

The total score the resources criteria is 9/12 (75%).

The final section of RIPE addresses accessibility and partnerships with civil society.

### ***Is there formal consultation with civil society?***

The Special Preventive Group is established by law, which guarantees collaboration between the NPM and experts within academia, the medical profession, non-governmental organizations and other sections of civil society. An advisory group of civil society meets regularly to give the NPM guidance on strategic objectives. *Score 2/2.*

### ***Is there partnership with civil society organizations in activities?***

Yes, there are joint projects with NGOs, usually involving joint monitoring, but also training. *Score 2/2.*

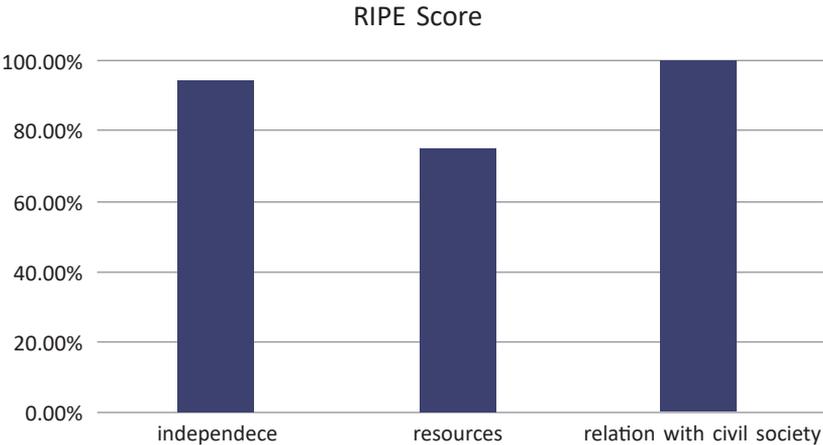
### ***Does the NPM have local offices?***

The PDO has a number of regional offices. While the staff in these offices are not formally part of the NPM, we observed that they did carry out some NPM functions and collaborated closely with national mechanism. *Score 2/2.*

The total score for pluralism, partnerships and accessibility is 6/6 (100%).

The overall RIPE score is 32/36 or 88.9% with a perfect score for civil society relations and the weakest score (75%) for resources. A comparison of the scores for the individual sections of RIPE can be found in Figure 2.

**Figure 2: RIPE Scores for NPM**



## 6. OUTPUTS OF THE NPM: MONITORING AND REPORTING

### 6.1. Monitoring

As noted above, when the NPM was formed in 2009, this new mandate was assigned to the department of the PDO that already had responsibility for monitoring closed institutions. However, they used training to increase the capacity of the department, drawing first on the CPT and later on training by Arman Danielyan, then a member of the UN Subcommittee on Prevention of Torture, as well as by the Association for the Prevention of Torture (APT) and others.

The recruitment of the Special Preventive Group, one of the new dimensions introduced by the legal amendments that established the NPM, drew in a variety of different areas of expertise, particularly in the sphere of health and medicine as well as disciplines such as social work. From the outset, SPG experts were paired with NPM staff members, a practice that continues and ensures a combination of professional expertise and familiarity with monitoring procedure. Although a monitoring visit was always preceded by a review of reports of previous visits and a study of previous recommendations, in recent years the pre-visit procedure has been systematized, with a day's formal briefing in advance of the visit. As well as alerting the visiting team to likely issues, this also involves the development of the monitoring instruments – the questionnaires and checklists to be used in this institution. At the end of the visit, there is a lengthy debriefing, often lasting a couple of days, in which observations are pooled in order to develop a draft of the report and identify recommendations. Also, daily debriefings have been introduced in the evenings of the visit. While these are not universally popular among tired monitors, it is recognized that this has been a very effective way of identifying issues in the course of a monitoring visit to ensure that they can be followed up during the visit.

Visits are planned to target particular issues, such as prison healthcare, with a list of questions addressing them prepared in advance. We were told that some care is taken to ensure that staff of the institution being visited are given a full opportunity to express their concerns. As will be discussed below, the NPM has generated a number of recommendations related to the interests and working conditions of police and prison employees. Interviews are conducted on both an individual and group basis, and which format is used depends on the topics being covered. Individual interviews are conducted out of the sight and hearing of prison staff. Where particularly sensitive information is uncovered in the course of a private individual interview, further interviews will be conducted with a number of inmates in order to conceal the source of the information.

Coverage of the various closed institutions is good. Georgia is not a large country, with 15 prisons and 29 temporary detention isolators. The cycle of visits is non-stop and each institution is likely to receive a couple of visits a year. (The exception would be police sta-

tions, of which there are many more and where visits are more random and irregular.) Visits are unannounced, and even when the NPM was new this did not pose problems as the PDO was already a familiar visitor with powers to enter closed institutions unannounced.

## 6.2. Reporting

Publication of findings is clearly an indispensable part of the process of monitoring by a national preventive mechanism. It is only by documenting findings and enumerating recommendations that change can come about. The Georgian NPM produces essentially three types of reports.

First, visit reports are drafted immediately after each monitoring visit to a closed institution. In our research we were necessarily limited to reviewing those reports available in English, which is a very small proportion of visit reports. However, based on what we have seen, these reports are detailed, precise and professional. They set out clearly the observations that the monitoring team made and sets these against the appropriate standards in national, European and international law. Specific recommendations are attached to each set of observations or each issue being reported upon. Recommendations are discussed in greater detail below, but the ones that we studied in visit reports, while not recent, could sometimes have benefited from greater precision. The impact of recommendations will be considered below.

The second type of report is described as “special reports,” which are essentially issue-based, addressing topics such as healthcare in the penitentiary system or the rights of persons with disabilities in prisons. Alternatively, they may be general sectoral reports, covering psychiatric hospitals or temporary detention isolators. In this instance we were able to study a larger sample of reports produced, since most if not all are available in English. The quality of these reports, particularly the more recent ones, is high. For example, the 2018 report on the health of prisoners in the penitentiary system is a high-quality piece of research that combines the findings from the NPM’s experience in monitoring prisons with a survey of prison inmates. The report focuses on the healthcare system in prisons – a subject of recommendations for many years – as well as other factors that have an impact on the health of inmates. These range from food and nutrition, to infestation with pests, to violence by prisoners on each other. The only real weakness of the reports is that recommendations, of which there are many, have tended to be buried in the text and not sufficiently highlighted. Practice in this regard has improved greatly

The third type of report is the annual reports of the NPM. Periodic reporting to the legislature is a proper function of any ombudsman institution. However, in its earlier years, the PDO laboured under a particular burden of being required to report six-monthly to Parliament. The common complaint at the time was that PDO staff had no time to do anything because they were constantly engaged in reporting. The requirement has been reduced

to the more reasonable (and common) annual report. Perhaps under the influence of the earlier, extremely voluminous six-monthly reports, earlier NPM annual reports are extremely lengthy and comprehensive. While these are useful as a complete record of the activities and focus of the NPM (and hence an important source for us), this may not have been the most effective approach in terms of impact. In recent years, annual reports have become shorter and more focused, with recommendations more clearly highlighted. We heard comments in interviews to the effect that the more recent reports were preferable.

### **6.3. Using ATEMPT to assess NPM monitoring practices**

As part of the process of assessing the overall state of a country's torture prevention system using ATEMPT, we assign scores to the mechanism(s) designated to monitor closed institutions. In this section, we discuss the ATEMPT scores for the NPM's monitoring practices in 2018.

#### ***Does domestic monitoring mechanism conduct regular and frequent visits?***

Considering the three types of institution that were our focus – prisons, closed psychiatric hospitals, and police stations/isolators, the Georgian NPM conducts visits at the rate of approximately two a year. (For police stations, the frequency is lower because their number is much higher, but in principle no one is supposed to be detained there.) International comparison suggests that this is both frequent and regular. *Score 2/2.*

#### ***Does domestic monitoring mechanism conduct unannounced visits?***

The PDO has the clear legal power to conduct unannounced visits, with closed institutions obliged to comply. All visits are unannounced. *Score 2/2.*

#### ***Does the monitoring mechanism conduct interviews with detainees?***

NPM visits invariably entail interviews with inmates of the institutions, whether individual or group. The law provides the conditions for private interviews and prohibits surveillance or interference with privacy. Individual interviews are always conducted under these conditions. Group interviews are assumed to be less confidential because of the likely presence of informers among the group, which naturally determines which topics are discussed in which type of interview. *Score 2/2.*

***Does the domestic monitoring mechanism publish its findings?***

The NPM produces three types of reports: visit reports, special reports, and annual reports. While special reports are necessarily occasional and to date the product of distinct funded projects, annual and visit reports are produced routinely and contain detailed recommendations. *Score 2/2.*

***Have domestic monitors been sanctioned for their monitoring-related activities?***

In the period prior to the creation of the NPM, there were serious threats of reprisal against some PDO employees as a consequence of their monitoring work. This has not happened in the past 10 years and NPM staff and SPG members have been able to work unimpeded. *Score 2/2.*

***Is there torture prevention training of domestic monitoring personnel?***

All monitors and SPG members (as well as NGO personnel who participate in joint projects with the NPM) have received regular and repeated training in monitoring practice and issues related to the prevention of torture since the formation of the NPM. *Score 2/2.*

The NPM scores a perfect 100% on monitoring practice.<sup>12</sup>

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12 The reason the overall ATEMPT monitoring score discussed in the final section of the report is not 100 per cent is that Georgia scores a slightly less than perfect score on monitoring law. This is because the law does not include immunity from sanction for those who communicate with the mechanism.

## 7. SHORT-TERM OUTCOMES: THE IMPACT OF NPM RECOMMENDATIONS

To determine the impact of the Georgian NPM on reducing torture and ill-treatment – the right-hand side of our conceptual model – we consider both short-term outcomes and the long-term impact. The impact of the NPM in the short-term is best gauged by looking at what NPM recommendations have been adopted. As a consequence, we discuss the recommendations issued by the NPM. We are particularly interested in whether they are actually implemented, but we also examine the process by which recommendations are formulated, how they are communicated to the relevant authorities, what dialogue ensues, if any, the role of Parliament in monitoring and implementing recommendations, and the NPM's own system for follow-up.

Improvements in the treatment and conditions of persons in closed institutions is always going to be determined by a variety of factors. Nevertheless, in order to determine what specific part a monitoring mechanism has played in securing change, it is useful to identify the recommendations made and to determine how far these have been implemented. Of course, the mere fact that a change was previously included in a list of NPM recommendations is not itself proof that it was the NPM's advocacy that secured the change. Nevertheless, it is undeniable that the NPM is engaged in a process of formulating policy proposals for prisons, police custody, temporary detention isolators, and psychiatric hospitals that goes far beyond what is offered by any other non-executive agency. One of the changes that was identified in our research was an increasingly close engagement and dialogue with the governmental authorities responsible for the safety of persons in closed institutions. This day-to-day engagement was not there at the outset in 2009 and has evolved over the years. On the NPM side it is a conscious strategy to discuss recommendations and attempt to bring officials on board, as compared with the earlier process which only entailed submitting written recommendations. Based on our interviews, it seems that this process is most developed in relation to the department of the Ministry of Internal Affairs responsible for temporary detention isolators, although it was apparent that the same strategy is in place, and with some effect, in relation to penitentiaries and psychiatric hospitals.

The recommendations issued by the Public Defender as national preventive mechanism, like all other recommendations of the PDO, are included in the annual report to Parliament and considered there by the Committee on Human Rights. In recent years, the Committee has started the practice of endorsing many of these recommendations, a procedure welcomed (cautiously) by the NPM. The Parliament of Georgia has recently published a resolution endorsing the Public Defender's 2018 Parliamentary Recommendations. In this resolution, 259 (72.9 per cent) of recommendations out of 355 were reflected. This is the highest number of Public Defender's recommendations that have been endorsed. However, these did not include those recommendations issued to the parliament itself. The

resolution established a working group to consider the recommendations addressed to Parliament. When these are taken into account, the number of endorsed recommendations rises to 308 or 84.1 per cent.

The advantage, clearly, is that a parliamentary motion adds extra pressure on the relevant government body to implement the recommendations. It is for this reason that the NPM has welcomed this approach. The downside, however, which leads us to be sceptical of its value, is that those recommendations of the Public Defender *not* endorsed by Parliament will be less likely to be implemented. They will be seen as second-class recommendations carrying less weight than those with parliamentary endorsement. The clear understanding should be that there is a legal requirement on government authorities to respond to *all* recommendations from the Public Defender.

At an operational level, the NPM takes into account prior recommendations. Hence, for example, in the briefing sessions in advance of visits, relevant recommendations will be considered because they will be one of the things under observation during the monitoring process. In that sense, there is some monitoring of compliance. However, it is only more recently that a tracking mechanism has been put in place that attempts a systematic evaluation of compliance, or non-compliance, with all prior recommendations. This is an extremely important means of enhancing the efficacy of recommendations, which should be further developed and maintained.

Non-compliance with recommendations does not, of course, necessarily mean rejection. Many of the NPM's recommendations have entailed very substantial spending on the government's part, which often means that prompt implementation is unlikely. However, such recommendations – for example, including the closure of penitentiaries and the building of others – have in some instances been implemented in the long run. As will be seen from the discussion below, this has been more often the case in relation to prisons, which have been a government priority in recent years, rather than mental health care, which has not.

## **7.1. Penitentiaries**

When the NPM was established in 2009, some of the worst aspects of torture and ill-treatment in police custody had been addressed, but problems in the penitentiary system were extremely serious and attracting little attention. As is well known, this changed dramatically in 2012 with the release of video evidence of torture of inmates in Georgia's prisons, raising this high on the political agenda, arguably contributing to the downfall of the United National Movement government in general elections, and ensuring that prison reform was top of the agenda for the newly elected Georgian Dream government. It was this accidental combination of political events that created the context in which problems of ill-treatment could be seriously addressed, but it would be incorrect to assume that

no one was aware of these problems earlier. From its first annual report in 2010, the NPM was drawing attention to “physical assault,” as well as “degrading and humiliating treatment by the officials of penitentiary establishments.”<sup>13</sup> Even at this early date, the NPM identified the obstacles to full investigation of alleged torture and ill-treatment, with inmates being reluctant to complain against officials who still exercise power over them. Complaints were often withdrawn and injuries were explained as being self-inflicted or the result of accidents. As the NPM put it,

the syndrome of fear has emerged within inmates that certainly, considerably hinder identification of facts of ill-treatment and punishment of offenders.<sup>14</sup>

The political context within which the issue of prison torture was addressed meant that, more or less for the first time, there were thorough investigations of perpetrators whose acts predated the new government and a number of officials were brought to justice. This can be counted as a successful outcome, triggered in part by the attention that the NPM paid to the issue. Unfortunately, the systemic lack of effective investigation, which continued after 2012, is evidence that the NPM has not succeeded in ending impunity. Almost all prosecutions of officials for ill-treatment of persons in their custody have related to events that took place up through 2012. Charges that are brought tend to be for lesser offences. For example, in 2018 there were 18 prosecutions. Of these, three were prison officials charged with inhuman or degrading treatment and 15 were police officers charged with excessive use of force. This ratio of prisons to police roughly reflected the overall number of investigations last year: 395 of which 367 were police and the remaining 28 prisons. The PDO referred 221 cases to the prosecutor’s office, but investigations were opened on only 29 of these cases.<sup>15</sup>

The PDO/NPM has been particularly vocal on the issue of impunity over the years, to the extent of taking its campaign outside national borders to gatherings in Strasbourg and Geneva. Recommendations over the years have set out the case for establishing an independent mechanism for the investigation and prosecution of crimes against inmates by state officials.

A major step forward has been the passing of a law providing for a State Inspectorate with powers to act as a special investigation body looking at allegations of torture and ill-treatment against officials. At the time of writing, this body is not actually operational in its investigative function. And questions remain as to how effective it will be. It appears that it will have limited human and material resources. Decisions on whether to prosecute will continue to rest with the prosecutor’s office, not with the new body. But there may be reason for cautious optimism.

More broadly, there have been substantial and visible improvements in the treatment of inmates in the penitentiary system between 2009 and 2019, both in living conditions and in the eradication of the previously widespread practice of collective and informal

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13 *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2010, p. 7.

14 *Ibid.*

15 Information provided by Prosecutor’s Office, department of human rights protection, 14 August 2019.

punishments. Many of these improvements can be traced to NPM recommendations, as we discuss below.

One important step has been the introduction of new procedures and templates based upon the Istanbul Protocol to document cases of torture and ill-treatment, with medical doctors trained in its use.<sup>16</sup> This will have to be evaluated in light of the broader assessment of the healthcare regime in prisons (see below), but it undoubtedly represents a significant step forward.

The NPM also finally emerged victorious in a long battle over whether its monitors were permitted to take photographs to document injuries or poor conditions in prisons.<sup>17</sup> They have succeeded in securing this power, although photographs may only be used to document ill-treatment for the purposes of investigation, and are not to be published in reports.

Another important victory has been to require prisons to retain footage from closed circuit television cameras for at least one month (or longer if it is required as evidence). When the NPM was established in 2009, CCTV evidence would almost invariably be wiped, ostensibly by a system with insufficient capacity, meaning that recordings were never available to substantiate claims of ill-treatment. The PDO was in communication with the Council of Ministers of the Council of Europe over the execution of the judgment in the Strasbourg case of *Merabishvili v Georgia*, in which one issue revolved around the erasing of CCTV footage of the applicant in custody. The PDO succeeded incrementally in extending the storage period from the initial 24 hours, to five days, and then up to a month, at least in those prisons with audiovisual systems with sufficient capacity.<sup>18</sup>

### ***Security and discipline***

The NPM has had to address the problem of security and disciplinary measures that have constituted ill-treatment. Conflict in prisons is dealt with by confining prisoners to “de-escalation rooms.” It used to be that no time limit was set on this, amounting to indefinite solitary confinement, defined by the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as torture.<sup>19</sup> The NPM pressed for confinement in de-escalation rooms to be limited to 24 hours.<sup>20</sup> Ultimately a

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16 See *National Preventive Mechanism*, 2015, p. 29.

17 See *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2013, p. 11.

18 For example, *The Report of the National Preventive Mechanism*, 2014, p. 33; *National Preventive Mechanism*, 2015, p. 41; *Human Rights Situation in Closed Institutions: National Preventive Mechanism*, 2016, p. 44.

19 Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment A/66/268, 5 August 2011.

20 For example, *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2010, pp. 16-17; *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2012; *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2013, p. 12; *National Preventive Mechanism*, 2015, p. 41; *Human Rights Situation in Closed Institutions: National Preventive Mechanism*, 2016, p. 44.

72-hour limit has been set, which at least represents a significant improvement on the previous situation.

Another security issue that posed a persistent problem was strip-searching of women prisoners. This procedure has now been brought in line with international standards, after strong pressure and recommendations from the NPM,<sup>21</sup> and scanners have also been installed for searches in the country's one women's prison. However, the NPM continues to receive some allegations of abusive strip searches.

The prison regime remains extremely strict, with a relatively weak emphasis on rehabilitation (see below). This is especially the case in closed and high security prisons. However, it is no longer a lawless environment. The previous practice of imposing restrictions without any legal basis has been largely eliminated. One unintended consequence of the liberalization of the penitentiary regime has been the re-emergence of criminal subcultures and the role of gangs or criminal organizations in imposing their own discipline, an issue to which the NPM has drawn attention.<sup>22</sup>

### ***Conditions of detention***

From the outset, the NPM has brought the poor material conditions in prisons to the attention of the authorities.<sup>23</sup> Responsibility for the prisons has shifted over the life of the NPM. In 2009, it was removed from the Ministry of Justice into a new Ministry of Corrections and Legal Assistance (later the Ministry of Corrections). The Penitentiary Department operated autonomously under the nominal authority of the Ministry – with a separate office and budget – and the problem of torture and poor conditions was not addressed. After the change of government, in 2015 the Penitentiary Department was fully integrated into the Ministry of Corrections. In 2018, however, responsibility for the penitentiaries was shifted back to its original home, the Ministry of Justice, in the form of the Special Penitentiary Service.

There has been a substantial investment in the penitentiary estate. The NPM has recommended the closure of several prisons, which have indeed been replaced with modern buildings or thoroughly renovated.<sup>24</sup>

Just as importantly, there has been a massive decrease in the prison population. By 2010, Georgia had the highest per capita prison population in the world – 530 prisoners per 100,000 citizens, amounting to 23,684 in total. This represented a massive increase from just 152 per 100,000 in 1994, 7,376 in total.<sup>25</sup> A combination of amnesties, rehabilitation

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21 For example, *Human Rights Situation in Closed Institutions: National Preventive Mechanism*, 2016, p. 168.

22 *Human Rights Situation in Closed Institutions: National Preventive Mechanism*, 2016, p. 38.

23 For example, *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2012, p. 40.

24 For example, *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2010, p. 16; *Human Rights Situation in Closed Institutions: National Preventive Mechanism*, 2016, p. 77.

25 *Does Torture Prevention Work?* p. 401.

and a radical change in sentencing policy more than halved that total after 2012, with the prison population now in the range of 9-11,000 persons. Such changes have been advocated in NPM recommendations.<sup>26</sup> The Constitutional Court has also issued judgments that preclude imprisonment for minor drug offences.

One area that has improved as a result of NPM recommendations has been the transport of prisoners outside the penitentiaries. Vehicles used to be old and in poor condition. NPM inspection visits identified boxes inside the vehicles that, on questioning, were revealed be used to transport women and LGBT prisoners. This practice has now been stopped and the vehicles replaced.

The lack of rehabilitative activities has been identified as a major problem,<sup>27</sup> combined with a lack of social workers employed in the prisons. Recently the Ministry of Justice has begun to hire them in response to an NPM recommendation.

### **Health care**

One of the biggest issues within the penitentiary system, which the NPM has repeatedly addressed, is healthcare. From 2010 the NPM recommended major structural changes to the prison health care system. Its ultimate aim, still not achieved, is that prison healthcare be independently run under the national healthcare system.<sup>28</sup> Aside from the overall improvements in quality that would result from this, it would establish a level of independence that would assure greater confidence in examination of alleged victims of ill-treatment. While this ultimate step has not been achieved, there have been significant improvements in the quality of care over the past decade, with NPM recommendations forming a template for these reforms.<sup>29</sup>

After 2012 the number of doctors in prisons was increased, with the result that access to medical care became much easier. Treatment became more accessible, with medication more readily available. Measures for stricter quality control were introduced and record-keeping improved. Regulations to ensure medical confidentiality were introduced and rooms provided for confidential meetings with doctors.

The penitentiary system has made serious efforts to tackle drug abuse in prisons, with detoxification and methadone programmes and a psychosocial rehabilitation programme

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26 For example, *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2010, p. 22; *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2012, p. 47.

27 See *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2010, p. 26; *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2012, p. 45; *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2013, p. 25; *Human Rights Situation in Closed Institutions: National Preventive Mechanism*, 2016, p. 94.

28 See *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2010, p. 47; *Human Rights Situation in Closed Institutions: National Preventive Mechanism*, 2016, p. 43.

29 For example, *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2010, p. 46.

for drug users. There have been preventive screening programmes for tuberculosis, hepatitis C and HIV, as well as screening for various non-communicable diseases. Suicide prevention programmes have been introduced in all prisons.<sup>30</sup> The NPM has been consistently critical of the more curative and reactive approach that has been typical of prison healthcare, and these preventive programmes have been, at least in part, a product of the more proactive approach advocated.<sup>31</sup> This has yielded benefits. Mortality rates within the penitentiary system dropped dramatically. There were 142 deaths in prison in 2010, compared to 21 in 2018. Even allowing for the dramatic decrease in the prison population over the same period, the mortality rate has more than halved.

Another area of significant improvement has been food, where meals are now planned based upon their nutritional value and special dietary needs are accommodated.<sup>32</sup>

### ***Complaints and inspection***

Prior to 2012, prison administrations would systematically block inmates from sending complaints out of the prison (for example to the Public Defender). The situation improved after 2012, with a recognition that prisoners needed some legitimate outlet for grievances, but in recent years they have become more reluctant to utilize complaints channels because of threats from criminal organizations within the prisons.

The process of internal inspection by the penitentiary authorities has improved over the past decade, with inspection being more regular and proactive. In addition, far more effort is made to inform prisoners of their rights, with booklets and brochures widely available, including in other languages for prisoners who do not understand Georgian.<sup>33</sup>

### ***Contact with outside world***

A continuing issue has been the obstacles that the penitentiary system places in the way of prisoners' contact with the outside world. There have been improvements in recent years, in response to NPM recommendations.<sup>34</sup> No prior consent is required for remand prisoners to make phone calls, send letters and receive visits. These rights can now only be restricted on the basis of a reasoned decision of an investigator or prosecutor.

For convicted prisoners it is no longer possible to impose a complete ban on contact with the outside world. Previously, prisoners placed in a disciplinary punishment cell could be

30 See *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2010, p. 62; *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2013, p. 41-44; *The Report of the National Preventive Mechanism*, 2014, p. 120. *Human Rights Situation in Closed Institutions: National Preventive Mechanism*, 2016, p. 155.

31 *The Report of the National Preventive Mechanism*, 2014, p.118.

32 See, *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2010, p. 58; *Human Rights Situation in Closed Institutions: National Preventive Mechanism*, 2016, p. 157.

33 *Human Rights Situation in Closed Institutions: National Preventive Mechanism*, 2016, pp. 124-5.

34 For example, *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2010, p. 24.

deprived of family visits for a year; the law has now been amended to remove this punishment.

Visiting rights have been expanded, with long-term family visits available once a year in all prisons and video visits introduced.<sup>35</sup> Prisons have started to remove glass partition screens in visiting rooms after many years of NPM recommendations.<sup>36</sup>

### ***Vulnerable groups***

Protections for vulnerable groups in prison have improved. A special women's prison has been built and conditions of imprisonment for women, including mothers and babies, have improved. Family visits are allowed and mothers are permitted to leave the penitentiary on weekends once a child reaches the age of three and can no longer be held with the mother in prison. More rehabilitation programmes and gender-specific health care has been introduced. As noted above, search procedures for women prisoners have been brought in line with international standards.

For children in conflict with the law, the most important change has been the increased use of alternatives to prison resulting in many fewer juvenile prisoners. For those who are imprisoned, material conditions have improved, with a broader range of activities.

Fewer people with disabilities are now imprisoned and for those who are within the penitentiary system, prisons have adapted cells for people with physical disabilities and staff have been trained on their specific needs.<sup>37</sup>

### ***Staff***

It was suggested to us by a senior official at the Ministry of Justice that penitentiary staff resented the constant negative criticism emanating from the NPM (a view not echoed by the head of the Special Penitentiary Service). However, one of the striking aspects of the NPM's recommendations has been their emphasis on looking after the interests of prison employees. (It was also described to us by several different interviewees how NPM visits made a point of listening to staff grievances.) For example, staff did not receive health insurance as a service benefit until it was introduced as a consequence of an NPM recommendation. Salaries have increased and food has been provided, in accordance with an NPM recommendation, for those who are working a 24-hour shift. In some instances, transport to and from work is now provided, since institutions are sometimes remote.

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35 *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2013, p. 21; *Human Rights Situation in Closed Institutions: National Preventive Mechanism*, 2016, pp. 117-18.

36 For example, *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2012, p. 43; *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2013, p. 19; *The Report of the National Preventive Mechanism*, 2014, p. 153.

37 See, *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2012, p. 118; *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2013, p. 59.

Training has led to increased competence and clearer job descriptions are available.<sup>38</sup> The main outstanding problem is that numbers of staff are still insufficient (which is the explanation, at least in part, for the increased dominance of criminal subcultures in the prisons). Medical staff has increased in number, which has contributed to the positive outcomes noted above, but numbers are still insufficient in some prisons.

## 7.2. Police and temporary detention isolators

Many of the decisive improvements in treatment of persons arrested and pre-trial detainees predated the creation of the NPM, although the PDO was an important actor in initiating a systematic and thorough reform of the police and the creation of temporary detention isolators to replace police custody for those arrested before their presentation in court. However, neither police stations nor isolators are free of problems and the NPM has made extensive recommendations for their improvement. These have not always been successful. Isolators are, in general, fit for criminal suspects who are held there for no longer than 72 hours, but those detained on administrative matters can be held for up to 15 days, for which the isolators are unfit.<sup>39</sup>

Nevertheless, the temporary detention isolators are becoming safer places. A complaints procedure is now available, as a result of an NPM recommendation. Medical care in the isolators has been improved, with doctors employed in most.<sup>40</sup> Where doctors are not present, sick detainees are promptly transferred to hospital by ambulance. Detainees receive an automatic medical examination when they are transferred to the isolator. There is a new form for the documentation of bodily injuries, based on the Istanbul Protocol. The medical doctor is required to notify any cases of torture or other ill-treatment to the prosecutor's office.

The use of CCTV cameras in police stations has been expanded, but the period for storage of recordings is still insufficient.<sup>41</sup> Police on patrol are required to wear body cameras, but there is no obligation for them to make recordings of their interactions with the public yet.

Record-keeping in police stations is now more rigorous, with a proper detention log.<sup>42</sup> Guidelines have been developed for interviewing persons with psychosocial and intellectual disabilities, again on the recommendation of the NPM, but these have not been fully implemented.

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38 See *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2010, p. 27; *The Report of the National Preventive Mechanism*, 2014, pp. 52-3; *National Preventive Mechanism*, 2015, p. 35.

39 See *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2012, p. 79; *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2013, p. 54.

40 For example, *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2010, p. 37.

41 *Human Rights Situation in Closed Institutions: National Preventive Mechanism*, 2017, pp. 29-30.

42 *Human Rights Situation in Closed Institutions: National Preventive Mechanism*, 2016, pp. 218-19; *Human Rights Situation in Closed Institutions: National Preventive Mechanism*, 2017, pp 29-30.

While the worst period of police torture is now in the past, we heard repeated allegations of excessive use of force by the police. The NPM echoes this with reports of cases of suspicious injuries incurred in police custody, as well as identifying instances where detention safeguards were violated and making appropriate recommendations for compliance.<sup>43</sup> This differs from the more sanguine assessment offered by the CPT on its recent visits.

As with prison staff, the NPM has also advocated on behalf of improved conditions of service for police officers, including salary increases.<sup>44</sup>

### 7.3. Psychiatric institutions

The NPM has probably been least successful in improving conditions in psychiatric hospitals. This is due in part to the low priority given to this issue by the state. The mental health system has been consistently underfunded. The NPM has recommended increases, which have occurred but not to the necessary levels. In 2015, the NP reported that the budget allocation for psychiatric healthcare had doubled since 2014, but also noted that funding continued to be inadequate, with not enough beds for long-term patients and lack of community services.<sup>45</sup> According to the Public Defender's 2018 Parliamentary Report, there was an increase in funding of mental health care from 20.5 million lari in 2018 to 24 million lari in 2019 – a welcome change, although the cost of a bed-day for patients remains the same. The NPM has advocated a strategy entailing increased community care and smaller institutions.<sup>46</sup>

In practice, the system continues to be dominated by large institutions, often with very poor conditions.<sup>47</sup> The Public Defender herself has drawn attention to very bad conditions at psychiatric hospitals in Surami and Bediani. In 2018, at least partly as a response, the infrastructure in the Surami Psychiatric Clinic was renovated. Parts of the Academician B. Naneishvili National Centre for Mental Health were also renovated in 2018, with the construction of a new building. However, most patients still live in the old building, where there continue to be problems with food, personal hygiene, clothing and linen.

There has been some effort on the part of the authorities to develop a strategy for improving mental health care provision and to increase the available resources, reflected in the improvements mentioned above. The National Concept on Mental Health, adopted by Parliament in 2013, advocates deinstitutionalization and explicitly acknowledges the findings of the PDO in informing its new approach.<sup>48</sup> However, monitoring by the NPM, recorded by the Public Defender in her 2018 parliamentary report, has shown that timely

43 For example, *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2012, p. 73.

44 *Human Rights Situation in Closed Institutions: National Preventive Mechanism*, 2017, p. 30.

45 *National Preventive Mechanism: Report on the Monitoring of Mental Health Institutions*, 2015, pp. 20-1.

46 *Human Rights in Closed Institutions: Report of National Preventive Mechanism of Georgia*, 2012, pp. 111-12.

47 *Human Rights Situation in Closed Institutions: National Preventive Mechanism*, 2017, p. 30.

48 *National Preventive Mechanism: Report on the Monitoring of Mental Health Institutions*, 2015, p. 22.

implementation of the strategy has been problematic. The LEPL Agency of State Regulation of Medical Activity has been effective of late in monitoring the compliance of psychiatric institutions with their licensing terms – and finding a number of them falling short of the requirements. The SPG has argued that examining compliance with licensing terms is only one element of monitoring psychiatric facilities. It should be proactively assessed how far patients receive care based on the bio-psycho-social model, with due respect for patients’ rights. By these criteria, according to the Public Defender’s 2018 parliamentary report, the monitoring by the LEPL Agency of State Regulation of Medical Activity has not been adequate. Draft amendments have been proposed to the Law on Psychiatric care, which the PDO is currently reviewing.

The NPM’s work on the mental health sector is closely coordinated with the unit of the PDO monitoring compliance with the UN Convention on the Rights of Persons with Disabilities (CRPD). The NPM has followed the CRPD in advocating the deinstitutionalization of mental health care, with no great success so far. This also entails a reduction in the use of physical and chemical restraint of psychiatric patients – again an issue where the NPM has made little headway, despite recommendations.

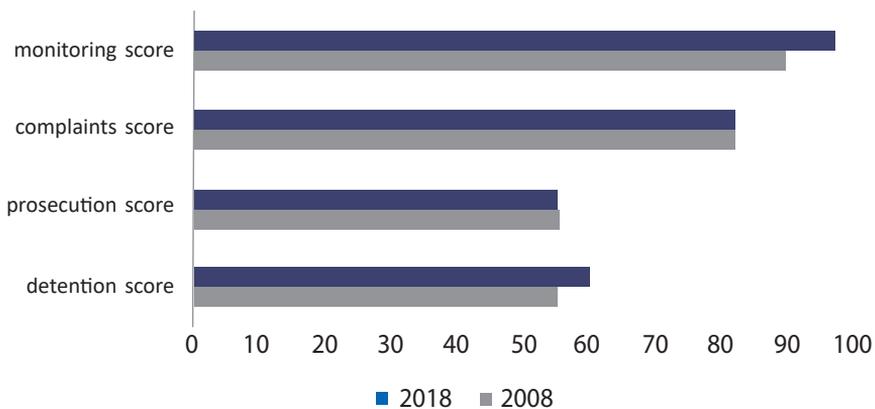
## 8. LONG-TERM OUTCOME: THE ROLE OF THE NPM IN REDUCING TORTURE IN GEORGIA

AEMPT allows us to compare the strength of the preventive mechanisms in place in Georgia in 2008 (before the establishment of the NPM) and, based upon our new research this year, in 2018. In this instance at least, AEMPT allows us to do something that is always a great challenge when it comes to assessing the impact of any particular human rights body, such as a national human rights institution. Because the scores in two of the four categories (prosecution and complaints) remained constant over the ten-year period, any reduction in the incidence of torture is most likely to be a consequence of improvements in detention and/or monitoring as opposed to prosecution or complaints.

Figure 3 reports the detention, prosecution, complaints, and monitoring scores for Georgia in 2008 and 2018. The higher the score, the more preventive mechanisms in that category in place, and the more effective those mechanisms are for reducing torture. The highest score possible is 100% – meaning that all of the preventive mechanisms identified by AEMPT are in place. Lower scores mean that there are fewer mechanisms in place and/or the mechanisms that are in place have been found to be less effective in reducing torture than the ones that have not been put in place. The scores for each individual AEMPT question, and the weighting factors assigned, for both 2008 and 2018 are included as Appendix B.

What is clear from comparing the scores in Figure 3 is that (1) the monitoring and complaints scores are much higher than the prosecution and detention scores and (2) there has been no change in the complaints or prosecution scores between 2008 and 2018.

**Figure 3: AEMPT scores 2008 and 2018**



As indicated in Figure 3, the scores for monitoring and complaints in 2008 were both high (82.74% and 82.14% respectively), reflecting both the strong legal basis of the PDO and its good practice in both its complaints and monitoring functions. However, as noted above, the complaints function is found overall to be of relatively little significance as a measure to prevent torture and ill-treatment. The scores for detention and prosecution, both of which are more important for prevention, were lower than the monitoring and complaints scores in 2008 (55.13% and 55.36%).

The detention score reflects the introduction of some strong procedural protections in law prior to 2008, but also some continuing gaps, for example in the use of video monitoring and electronic recording of police interviews. It also reflects some weaknesses in practice: while families are almost always promptly informed of a person's detention and the detainee is brought before a judge within the legal time limit from the formal time of detention, there continued to be some use of unofficial detention – for example, in manipulating records of the time of arrest – and detainees were not always informed of their right to a lawyer.

On prosecution, the score also reflects a gap between law and practice, with torture and deliberate ill-treatment criminalized, but seldom properly and effectively investigated or prosecuted. Prosecutions of alleged torturers were few, as were conviction rates and officials convicted of such crimes could expect to face lower penalties than equivalent civilian criminals.

Ten years later, the scores for two of the clusters, complaints and prosecution, remain the same as they were in 2008. However, there has been an increase in both the monitoring and detention scores.

The maintenance of the high complaints score reflects the fact that in both law and practice Georgia in 2008 already had a highly developed non-judicial complaints mechanism in the PDO. The only weaknesses identified in our scoring related to the legal powers of the PDO to compel the production of evidence and witnesses and its powers to recommend redress. None of this changed between 2008 and 2018 – the amendments to the Organic Law on the Public Defender in 2009 and 2010 did not affect these points.

The low prosecution score reflects almost entirely the actual practice (as opposed to the law), with a general lack of investigations of those alleged to have committed torture or ill-treatment. Even when prosecutions are initiated, the rate of conviction is far below that for equivalent crimes committed by ordinary criminals and, even on conviction, sentences are much lower. Despite a number of prosecutions relating to the well-publicized acts of torture in prison that were exposed in 2012, the general pattern has not changed between 2008 and 2018. This is an issue that has been a constant focus of recommendations from the PDO, dating from before the formation of the NPM. The creation of a new special investigator's office with a mandate to investigate (but not prosecute) allegations of torture and ill-treatment might make a difference in this. This proposal has been adopted by government but, since it has not yet been implemented, we cannot determine its effect.

The detention index, we know from our multi-country study, is the most important in terms of impact on the incidence of torture. The improvement from 55.13% in 2008 to 60.26% in 2018 is attributable to two changes. One is the introduction of mandatory medical examinations for detainees on transfer from police custody to temporary detention isolators. The other, which is directly attributable to the recommendations of the NPM, is the increased use of closed circuit television to monitor police stations and temporary detention, as well as a significant improvement in the retention of recordings (from 24 hours to approximately one month) and better practice in making the recordings available in the event of an investigation.

The monitoring index directly measures the work of the NPM, since the PDO is the official monitoring body for both police and temporary detention on the one hand, and penitentiaries on the other. (We measure the two separately because in some countries different bodies are assigned to different types of deprivation of liberty.) The monitoring score for 2018 is nearly perfect (97.44% out of 100%), reflecting both a strong legal framework and good practice. From the perspective of our scoring, the legal framework did not change between 2008 and 2018, although the 2009 amendments to the Organic Law on the Public Defender provided the legal basis for the NPM. That law established the Public Defender as a monitoring body appointed by Parliament with strong guarantees of independence, both in the appointment process and in the legal protections against interference in its work. Although the 2009 amendments specifically designated the PDO as the NPM, there were already strong guarantees of independence through the appointment process and the prohibitions on interference with the work of the Public Defender, as well as the immunities that the office enjoys. In its visiting functions, the PDO had the power to conduct unannounced visits to closed institutions, a power that is carried over to the NPM, as well as to conduct private interviews with inmates. This confidentiality is explicitly protected against interference. The one weakness in the law, which precludes a maximum score on ATEMPT, is that the protections and immunities that attach to the Public Defender, and to a lesser extent the members of the Special Preventive Group, are not available for those whom the PDO/NPM interviews. Article 21 of the OPCAT explicitly requires that “No authority or official shall order, apply, permit or tolerate any sanction against any person” who communicates with the NPM, and there are clear prohibitions in the Organic Law on the Public Defender (Articles 4 and 5) on interfering or impeding the activities of the Public Defender. However, there is no explicit protection against reprisals for those cooperating with the NPM, in the event either that the clear right of confidentiality is breached or that the authorities simply take measures against those that they presume to be sources of information. There needs to be a specific criminal offence of reprisal against those deprived of liberty, as well as procedures to protect the NPM’s informants. The risk with such procedures, clearly, is that they may actually help the authorities to identify informants. However, these procedures might include removal of persons to somewhere else within the custodial system, as well as maintaining vigilant monitoring of their situation.

The main difference between the monitoring scores over the 10-year period is not the legal framework but the fact that threats against the staff of the PDO, which had been a

feature in the years prior to the establishment of the NPM, have not been repeated since. During that earlier period there were threats against PDO monitors in the Samegrelo region. In 2006, police threatened to arrest and plant drugs on a staff member of the Zugdidi office after he witnessed a detainee being beaten. In 2007, another staff member was accused of “provoking a crime” during a monitoring visit.<sup>49</sup> There has been no recurrence of such threats in recent years.

### *Overall ATEMPT score*

ATEMPT provides not only four individual cluster scores (detention, prosecution, complaints and monitoring) but an overall score that combines the four categories, weighting the more important categories in preventing torture more heavily than the less important categories. A comparison of the overall scores for Georgia in 2008 and 2018 can be found in Table 2. As the scores in this table indicate, Georgia has implemented changes that have improved their overall torture prevention scores, from 63.47% to 67.62%, but there is much room for improvement. Detention practices remain a problem, and prosecution practices remain a bigger problem since there have been no improvements in the latter at all in the past 10 years.

**Table 2: ATEMPT scores for 2008 and 2018**

Cluster	initial points	weight	final points	Overall Score
2008				
detention	55.13%	0.45	0.248077	
prosecution	55.36%	0.30	0.166071	
complaints	82.14%	0.05	0.041071	
monitoring	89.74%	0.20	0.179487	
SCORE			0.634707	63.47%
2018				
detention	60.26%	0.45	0.271154	
prosecution	55.36%	0.30	0.166071	
complaints	82.14%	0.05	0.041071	
monitoring	97.44%	0.20	0.194872	
SCORE			0.673168	67.32%

<sup>49</sup> Does Torture Prevention Work? p 416.

## 9. CONCLUSION

When we were commissioned to conduct this study, the working title was described as “Does the Georgian NPM Work?” echoing the title of our early study. It is clear from what we found that the answer to that question is “yes.”

The ultimate measure of an NPM’s effectiveness might appear to be whether the incidence of torture and ill-treatment has reduced. Based on our interviews, the consensus seems to be that it has. Big steps had been made to reduce torture in police and pre-trial custody before the creation of the NPM, but in the past decade the significant improvements have been made in conditions in penitentiaries. Although the NPM had persistently drawn attention to torture and ill-treatment in prisons prior to 2012, it was the emergence of torture as a national political issue that created the momentum for change. Broader improvements in prison conditions have been consequent upon recommendations of the NPM. The move that has had the greatest impact has been the dramatic reduction in the prison population, through amnesties and reformed sentencing policies. This in turn has allowed other systemic improvements, including closure and refurbishment of prisons. The temporary detention isolator system, introduced before the creation of the NPM, remains a highly effective protection in the early days in custody. Although police treatment of suspects remains a great improvement on 15 years ago, there have been persistent reports of excessive force being used in arrests and outside formal custody. This is an issue that the NPM has identified. The situation in psychiatric hospitals is where least progress has been seen in the past decade. The NPM recognizes that it should be a priority to develop capacity and understanding of mental health issues (both in specialized institutions and in prisons).

The architecture of protection was largely in place a decade ago, although there have been marginal improvements, identified by ATEMPT, in detention and monitoring practice. Investigation and prosecution of torturers remains a significant weak point – again one that has been persistently identified by the NPM. It is to be hoped that the new state inspector’s office will begin to address this problem.

The NPM has enjoyed a remarkable stability in its staffing, since a massive turnover in 2013-14. This means that training has been beneficial for the work of the institution, with staff being retained to implement their skills. The Special Preventive Group is an important resource. It has provided continuity, as well as skills that could not realistically be expected among the staff. While the Organic Law on the Public Defender does an effective job of buttressing the Public Defender *qua* NPM from external interference, one episode in the NPM’s history underlines the danger of differences between a Public Defender and the NPM staff. Overall, there is no doubt that the NPM benefits from being located within the PDO, since it can draw on expertise from elsewhere within the institution and also benefits from the Public Defender’s high public reputation.

The system of reporting and recommendations has become more streamlined over the years – a general improvement – and there have been recent innovations in tracking recommendations, as well as a more consultative approach in presenting recommendations to government. These all seem to have strengthened the NPM’s effectiveness. The practice adopted by the human rights committee of Parliament in adopting endorsing some – but not all – of these recommendations has been cautiously welcomed by the NPM. However, this seems to us unwise, since it potentially downgrades some of these recommendations to optional status and allows the Parliament to assess the priority rather than the NPM. The law is quite clear on the obligation of governmental authorities to respond to recommendations of the Public Defender within a specified time, which should continue to be insisted upon.

The material resources available to the NPM have been adequate, but the lack of a designated independent budget seems to us potentially dangerous. While resources have been sufficient, there are still risks, with the NPM’s operational budget essentially donated by outside funders. This creates a dangerous dependency. To continue to be effective, the NPM must continue to monitor and issue recommendations with the same efficiency and regularity. If it is unable to do so, the implications for torture prevention in Georgia would be serious.

## Appendix A: ATEMPT Questionnaire

### Assessment Tool for Evaluating Mechanisms for Preventing Torture (ATEMPT)

#### **Part I: DETENTION**

##### **Law**

- Q1. Has unofficial detention been criminalized?
- a. unofficial detention not criminalized
  - b. unofficial detention criminalized, but with exceptions (e.g., delayed registration of detainee not criminalized)
  - c. all forms of unofficial detention criminalized
- Q2. Is there a requirement that a family member or another person of choice be promptly informed (within the same day) of the detainee's detention?
- a. no requirement that family be notified
  - b. notification required, but with exceptions (e.g., delays possible for detainee held under security provisions)
  - c. no exceptions to requirement that some family member or other person of choice be notified promptly
- Q3. Is there a legal provision requiring prompt access (at a minimum, prior to the first interrogation) to a lawyer?
- a. no requirement of immediate access to lawyer
  - b. access required, but with exceptions (e.g., delays possible for detainee held under security provisions)
  - c. no exceptions to the requirement of immediate access to lawyer
- Q4. Is there a legal provision requiring prompt presentation (within 48 hours) of the detainee before a judge?
- a. no requirement for prompt presentation before judge
  - b. prompt presentation required, but with exceptions (e.g., delays possible for detainee held under security provisions)

- c. all detainees must be presented to judge within 48 hours – no exceptions
- Q5. Does the law require a medical exam shortly after detention?
- a. no requirement for a medical exam
  - b. medical exam required automatically or upon request, but under compromising circumstances or with exceptions (e.g., medical examiner not independent; security personnel present during exam; delay possible under security provisions)
  - c. prompt medical exam by objective doctor required upon request or automatically in all circumstances
- Q6. Does the law require that interrogations be audio or video recorded?
- a. no requirement that interrogations be recorded
  - b. recording required, but with exceptions or only upon request (e.g., recording possible only if detainee pays cost; no recording if detainee held under security provisions)
  - c. all interrogations must be recorded
- Q7. Is there a requirement that detention centers be monitored by cameras?
- a. no CCTV monitoring requirement
  - b. CCTV monitoring required, but with exceptions (e.g., limited number of centers)
  - c. all detention centers monitored by CCTV

### ***Practice***

- Q8. Is unofficial detention employed?
- a. widespread unofficial detention
  - b. some unofficial detention
  - c. no unofficial detention
- Q9. Are families or other person of choice being promptly notified of detainee's detention?
- a. families usually not promptly informed of detention

- b. families sometimes informed of detention
- c. families almost always promptly informed of detention

Q10. Are detainees promptly informed of their right to a lawyer?

- a. detainees usually not informed of their right to a lawyer
- b. detainees sometimes informed of their right to a lawyer
- c. detainees almost always informed of their right to a lawyer

Q11. Do detainees exercise their right to a lawyer?

- a. detainees usually do not exercise the right to a lawyer
- b. detainees sometimes exercise the right to a lawyer
- c. detainees almost always exercise the right to a lawyer

Q12. Are detainees promptly presented to a judge?

- a. detainees usually not promptly presented to a judge
- b. detainees sometimes presented promptly to a judge
- c. detainees almost always promptly presented to a judge

Q13. Are medical exams being given by independent doctors without security being present?

- a. medical exams are not given or, if exams are given, are compromised (e.g., doctor not independent; security present during exam)
- b. medical exams are provided but are often compromised (e.g. doctor not independent; security is present during exam)
- c. medical exams are almost always given and are almost always uncompromised (e.g., conducted by independent doctor with no security present)

Q14. Are interrogations electronically recorded and are these records provided to investigating authorities when requested?

- a. interrogations are rarely electronically recorded
- b. interrogations sometimes electronically recorded but recordings may not be provided
- c. interrogations almost always electronically recorded, and recordings are almost always provided

- Q15. Are detention center cameras used and are the films provided to investigating authorities when requested?
- a. cameras are usually not used, or if used, usable film is rarely available as evidence
  - b. camera sometimes used, and film sometimes provided
  - c. cameras are often or always used, and usable films almost always provided
- Q16. Is there torture prevention training of arresting, detaining, interrogating and custodial personnel, as well as medical personnel charged with examining detainees?
- a. little or no training of any personnel related to the detention process
  - b. some detention-related personnel receive torture prevention training
  - c. almost all detention-related personnel are routinely trained in torture prevention
- Q17. Do confessions play an important role in the evidence presented in criminal cases?
- a. police and prosecutors rely overwhelmingly on confession-based evidence
  - b. although there is some use of scientific and other techniques, confessions still play a prominent role
  - c. confessions are only used in combination with other forms of evidence (e.g., scientific evidence, electronic surveillance)

## ***Part II: PROSECUTION***

### ***Law***

- Q18. Is the state a party to the CAT?
- a. no
  - b. yes
- Q19. Is torture criminalized in the law?
- a. torture not criminalized
  - b. torture criminalized but with definition falling short of Article 1 of CAT
  - c. torture criminalized with definition that complies with Article 1 of CAT

- Q20. Is there a statute of limitations on torture (or a commensurate crime if torture is not used to prosecute alleged torturers)?
- statute of limitations on torture 10 years or less
  - statute of limitations, but more than 10 years
  - no statute of limitations on torture
- Q21. Are the penalties associated with torture substantial? Or, if torture is not outlawed, are there other laws with commensurate penalties that are applied?
- penalty for torture not substantial (less than 6 years)
  - penalty may be greater than 6 years but there are exceptions (e.g., defense of necessity or obeying orders) that lessen the severity of penalty
  - penalty is substantial (more than 6 years), and without exceptions
- Q22. Are allegations of torture/ill-treatment investigated by an independent authority?
- there is no requirement that allegations of torture be investigated
  - allegations of torture must be investigated, but there is no requirement that investigation be carried out by an authority independent of the alleged torturer (e.g., same police force accused by detainee of torturing is charged with investigating detainee's allegation of torture)
  - investigation must be carried out by an authority other than one that is associated with the alleged torturer
- Q23. Are statements extracted under torture admissible as evidence?
- yes, in all instances
  - not admissible, but with some exceptions (e.g., in administrative proceedings; if the torture evidence originates from other countries)
  - evidence extracted under torture is inadmissible in all instances, except as evidence of the act of torture

### ***Practice***

- Q24. Are complaints of torture being lodged, assuming torture is occurring?
- complaints of torture usually not lodged
  - complaints of torture sometimes lodged
  - torture is not occurring or complaints almost always lodged

- Q25. Are allegations of torture being thoroughly investigated?
- allegations of torture usually not thoroughly investigated, or investigated by an authority that is not independent
  - allegations of torture sometimes thoroughly investigated by an independent authority
  - torture is not occurring or allegations of torture almost always thoroughly investigated by an independent authority
- Q26. Are charges of torture being brought against alleged torturers?
- charges are usually not brought
  - charges are sometimes brought or lesser charges are brought in torture cases
  - torture is not occurring or torture charges are almost always brought
- Q27. Is the alleged torturer suspended from duty or otherwise removed from contact with the public (prior to conviction)?
- alleged torturers usually not suspended or removed from contact with public
  - alleged torturers sometimes suspended or removed from contact with public
  - torture is not occurring or alleged torturer almost always suspended or removed from contact with public
- Q28. Is the rate of conviction for torture comparable to that of other crimes?
- rate of conviction is very low compared to other crimes
  - rate of conviction is relatively low compared to other crimes
  - torture is not occurring or rate of conviction is comparable to other crimes
- Q29. Are sentences being given commensurate with the seriousness of the crime?
- sentence is very low compared to the seriousness of the crime
  - sentence is relatively low compared to the seriousness of the crime
  - torture is not occurring or sentence is commensurate with seriousness of the crime
- Q30. Have civil proceeding ever been brought against the State or an alleged torturer seeking redress?

- a. no civil proceeding have been brought against State or alleged torturers
- b. civil proceeding have been brought, at least on occasion, but have usually not been successful
- c. torture is not occurring or civil proceedings have been brought and have resulted in the State or alleged torturer being found liable

Q31. Is there torture prevention and torture investigation training of prosecutors and judges?

- a. little or no torture prevention training given to prosecutors and judges
- b. some prosecutors and judges receive torture prevention and torture investigation training
- c. almost all prosecutors and judges are routinely trained in torture prevention and torture investigation techniques

### **Part III: COMPLAINTS**

#### **Law**

Q32. Are there independent complaints mechanisms for dealing with torture complaints (that are not associated with the detaining or interrogating authorities)?

- a. no complaints mechanisms exist for complaints of torture
- b. complaints mechanisms exist, but are limited in scope (e.g. do not cover all relevant agencies such as security forces)
- c. complaints mechanisms exist and are compliant with Paris Principles

Q33. Does complaints mechanism have the power to compel the production of evidence and witnesses?

- a. no complaints mechanisms or none of the complaints mechanisms have the ability to request or compel production of evidence and witnesses
- b. only some of the mechanisms the ability to request evidence or compel production of evidence and witnesses
- c. all of the relevant mechanisms have the ability to compel production of evidence and witnesses

- Q34. Does the complaints mechanism have the power to refer the case to an investigative authority (e.g., police, prosecutorial authority)?
- a. no complaints mechanisms or none of the mechanisms have the power to refer cases for investigation
  - b. only some of the mechanisms have the power to refer or require cases for investigation
  - c. all of the relevant mechanisms have the power to require an investigation
- Q35. Does the complaints mechanism have the power to recommend redress?
- a. no complaints mechanisms or none of the mechanisms have the power to recommend redress
  - b. only some of the mechanism have to the power to recommend redress
  - c. all of the relevant mechanisms have the power to require redress

### ***Practice***

- Q36. Is the complaints mechanism investigating torture complaints effectively?
- a. no complaints mechanisms for torture complaints
  - b. complaints mechanism does not usually investigate torture complaints effectively
  - c. torture is not occurring or complaints mechanisms routinely investigate complaints thoroughly and effectively
- Q37. Does complaints mechanism refer cases to an investigative authority (e.g., police, prosecutorial authority)?
- a. no complaints mechanism for torture; or mechanism has no power to refer cases; or complaints mechanism does not refer cases to investigative authority even though it holds this power
  - b. power to refer cases to investigative authority is not often exercised
  - c. torture is not occurring or complaints mechanism routinely refers cases to investigative authority
- Q38. Does the complaints mechanism make redress recommendations?
- a. no complaints mechanism for torture; or mechanism has no power to make recommendations; or complaints mechanism does not make recommendations even though it holds this power

- b. power to make recommends is not often exercised
- c. torture is not occurring or complaints mechanism routinely makes recommendations for redress

Q39. Does the complaints mechanism publish its findings in relation to torture complaints?

- a. no complaints mechanism for torture; or complaints mechanism does not publish findings
- b. complaints mechanism does not often publish its findings
- c. torture is not occurring or complaints mechanism routinely publishes findings

Q40. Is there torture investigation training of complaints personnel?

- a. little or no torture investigation training of complaints-related personnel
- b. some complaints personnel receive torture prevention and investigation training
- c. almost all complaints personnel are routinely trained in torture prevention and torture investigation

## **DOMESTIC MONITORING**

### ***Monitoring of Police/Gendarmerie Stations***

#### ***Law***

Q41. Is the state a party to the OPCAT or some other regional or international treaty or agreement allowing for international monitoring visits?

- a. no
- b. yes

Q42. Is there a domestic monitoring mechanism for police/gendarmerie stations outlined in the law?

- a. no domestic monitoring mechanism for police detention facilities exists
- b. domestic monitoring mechanism exists, but is not compliant with Paris Principles
- c. domestic monitoring mechanism exists and is compliant with Paris Principles (formally independent)

- Q43. Does the monitoring mechanism have the power to make unannounced visits to all places of detention?
- a. monitoring mechanism has no access to places of detention with prior notice to authorities
  - b. monitoring mechanism has limited access to all places of detention with prior notice to authorities
  - c. monitoring mechanism has access to all places of detention with no notice required
- Q44. Does the monitoring mechanism have the power to conduct interviews with detainees?
- a. monitoring mechanism has no power to interview detainees
  - b. monitoring mechanism has the power to interview detainees, but with no guarantee of privacy
  - c. monitoring mechanism has power to conduct interviews with guarantee of privacy
- Q45. Is monitoring mechanism required to produce reports on its activities and findings?
- a. monitoring mechanism is not required to report findings
  - b. monitoring mechanism is required to report but not publicly
  - c. monitoring mechanism is required to publish findings
- Q46. Do monitors have immunity from sanction for their monitoring-related activities?
- a. monitors have no immunity from sanction
  - b. monitors, or some portion of the monitors (e.g., head of the institution) have immunity from sanction
  - c. immunity from sanction for all monitors and those who communicate with the mechanism

### ***Practice***

- Q47. Does domestic monitoring mechanism conduct regular and frequent visits?
- a. no domestic monitoring mechanism for police facilities exists; or monitoring mechanism does not conduct visits

- b. domestic monitoring mechanism exists, but conducts irregular or infrequent visits
- c. domestic monitoring mechanism routinely conducts visits

Q48. Does domestic monitoring mechanism conduct unannounced visits?

- a. no domestic monitoring mechanism exists; or monitoring mechanism does not conduct unannounced visits
- b. domestic monitoring mechanism exists, but conducts unannounced visits only occasionally
- c. domestic monitoring mechanism routinely conducts unannounced visits

Q49. Does the monitoring mechanism conduct interviews with detainees?

- a. no domestic monitoring mechanism exists; or monitoring mechanism does not interview detainees
- b. domestic monitoring mechanism conducts some interviews, but not privately
- c. domestic monitoring mechanism conducts interviews in private

Q50. Does the domestic monitoring mechanism publish its findings?

- a. no domestic monitoring mechanism; monitoring mechanism does not publish findings
- b. domestic monitoring mechanism does not often publish its findings
- c. domestic monitoring mechanism routinely publishes findings

Q51. Have domestic monitors been sanctioned for their monitoring-related activities?

- a. no domestic monitoring mechanism exists; or the monitoring mechanism is ineffective (and therefore there is no need for sanctions or the threat of sanctions)
- b. domestic monitoring mechanism is rendered ineffective by sanctions or threats of sanctions; alternatively, monitoring mechanism is effective but monitors are sometimes sanctioned for their activities
- c. domestic monitoring mechanism is effective and monitors are not sanctioned for their activities

Q52. Is there torture prevention training of domestic monitoring personnel?

- a. little or no training of domestic monitors
- b. some monitors receive torture prevention training
- c. almost all monitors are routinely trained in torture prevention

### ***Monitoring of Prisons***

#### ***Law***

Q53. Is there a domestic monitoring mechanism for prison facilities outlined in the law?

- a. no domestic monitoring mechanism for prison facilities exists
- b. domestic monitoring mechanism exists, but is not compliant with Paris Principles
- c. domestic monitoring mechanism exists and is compliant with Paris Principles (formally independent)

Q54. Does the monitoring mechanism have the power to make unannounced visits to all places of detention?

- a. monitoring mechanism has no access to places of detention with prior notice to authorities
- b. monitoring mechanism has limited access to all places of detention with prior notice to authorities
- c. monitoring mechanism has access to all places of detention with no notice required

Q55. Does the monitoring mechanism have the power to conduct interviews with detainees?

- a. monitoring mechanism has no power to interview detainees
- b. monitoring mechanism has the power to interview detainees, but with no guarantee of privacy
- c. monitoring mechanism has power to conduct interviews with guarantee of privacy

Q56. Is monitoring mechanism required to produce reports on its activities and findings?

- a. monitoring mechanism is not required to report findings
- b. monitoring mechanism is required to report but not publicly
- c. monitoring mechanism is required to publish findings

Q57. Do monitors have immunity from sanction for their monitoring-related activities?

- a. monitors have no immunity from sanction
- b. monitors, or some portion of the monitors (e.g., head of the institution) have immunity from sanction
- c. immunity from sanction for all monitors and those who communicate with the mechanism

### ***Practice***

Q58. Does domestic monitoring mechanism conduct regular and frequent visits?

- a. no domestic monitoring mechanism for prisons exists; or monitoring mechanism does not conduct visits
- b. domestic monitoring mechanism exists, but conducts irregular or infrequent visits
- c. domestic monitoring mechanism routinely conducts visits

Q59. Does domestic monitoring mechanism conduct unannounced visits?

- a. no domestic monitoring mechanism exists; or monitoring mechanism does not conduct unannounced visits
- b. domestic monitoring mechanism exists, but conducts unannounced visits only occasionally
- c. domestic monitoring mechanism routinely conducts unannounced visits

Q60. Does the monitoring mechanism conduct interviews with detainees?

- a. no domestic monitoring mechanism exists; or monitoring mechanism does not interview detainees
- b. domestic monitoring mechanism conducts some interviews, but not privately
- c. domestic monitoring mechanism conducts interviews in private

- Q61. Does the domestic monitoring mechanism publish its findings?
- a. no domestic monitoring mechanism; monitoring mechanism does not publish findings
  - b. domestic monitoring mechanism does not often publish its findings
  - c. domestic monitoring mechanism routinely publishes findings
- Q62. Have domestic monitors been sanctioned for their monitoring-related activities?
- a. no domestic monitoring mechanism exists; or the monitoring mechanism is ineffective (and therefore there is no need for sanctions or the threat of sanctions)
  - b. domestic monitoring mechanism is rendered ineffective by sanctions or threats of sanctions; alternatively, monitoring mechanism is effective but monitors are sometimes sanctioned for their activities
  - c. domestic monitoring mechanism is effective and monitors are not sanctioned for their activities
- Q63. Is there torture prevention and torture investigation training of domestic monitoring personnel?
- a. little or no training of domestic monitors
  - b. some monitors receive torture prevention training
  - c. almost all monitors are routinely trained in torture prevention training

Appendix B: ATEMPT Scores for Georgia NPM 2008 and 2018

Question	2008 initial points	multiplier	final points	2008 Cluster Total	Final Score	2018 initial points	multiplier	final points	2018 Cluster Total	Final Score
Q1	2.00	1	2			2.00	1	2		
Q2	2.00	1	2			2.00	1	2		
Q3	2.00	1	2			2.00	1	2		
Q4	2.00	1	2			2.00	1	2		
Q5	0.00	1	0			1.00	1	1		
Q6	0.00	2	0			0.00	2	0		
Q7	0.00	1	0			1.00	1	1		
Q8	1.00	4	4			1.00	4	4		
Q9	2.00	4	8			2.00	4	8		
Q10	1.00	4	4			1.00	4	4		
Q11	1.00	4	4			1.00	4	4		
Q12	2.00	2	4			2.00	2	4		
Q13	1.00	4	4			1.00	4	4		
Q14	0.00	2	0			0.00	2	0		
Q15	0.00	2	0			1.00	2	2		
Q16	2.00	2	4			2.00	2	4		
Q17	1.00	3	3			1.00	3	3		
				<b>43</b>	<b>55.13%</b>				<b>47</b>	<b>60.26%</b>
					<b>Detention</b>					<b>Detention</b>

Question	2008 initial points	multiplier	final points	2008 Cluster Total	Final Score	2018 initial points	multiplier	final points	2018 Cluster Total	Final Score
Q18	2.00	2	4			2.00	2	4		
Q19	2.00	1	2			2.00	1	2		
Q20	2.00	1	2			2.00	1	2		
Q21	1.00	1	1			1.00	1	1		
Q22	2.00	2	4			2.00	2	4		
Q23	1.00	1	1			1.00	1	1		
Q24	2.00	4	8			2.00	4	8		
Q25	1.00	3	3			1.00	3	3		
Q26	1.00	2	2			1.00	2	2		
Q27	1.00	2	2			1.00	2	2		
Q28	0.00	3	0			0.00	3	0		
Q29	0.00	2	0			0.00	2	0		
Q30	0.00	2	0			0.00	2	0		
Q31	1.00	2	2	<b>31</b>	<b>55.36% Prosecution</b>	1.00	2	2	<b>31</b>	<b>55.36% Prosecution</b>

Question	2008 initial points	multiplier	final points	2008 Cluster Total	Final Score	2018 initial points	multiplier	final points	2018 Cluster Total	Final Score
Q32	2.00	2	4			2.00	2	4		
Q33	0.00	2	0			0.00	2	0		
Q34	2.00	1	2			2.00	1	2		
Q35	1.00	1	1			1.00	1	1		
Q36	2.00	2	4			2.00	2	4		
Q37	2.00	2	4			2.00	2	4		
Q38	2.00	1	2			2.00	1	2		
Q39	2.00	1	2			2.00	1	2		
Q40	2.00	2	4	<b>23</b>	<b>82.14% Complaints</b>	2.00	2	4	<b>23</b>	<b>82.14% Complaints</b>

Question	2008 initial points	multiplier	final points	2008 Cluster Total	Final Score	2018 initial points	multiplier	final points	2018 Cluster Total	Final Score	
Q41	2.00	1	2			2.00	1	2			
Q42	2.00	1	2			2.00	1	2			
Q43	2.00	1	2			2.00	1	2			
Q44	2.00	2	4			2.00	2	4			
Q45	2.00	1	2			2.00	1	2			
Q46	1.00	1	1			1.00	1	1			
Q47	2.00	1	2			2.00	1	2			
Q48	2.00	1	2			2.00	1	2			
Q49	2.00	2	4			2.00	2	4			
Q50	2.00	1	2			2.00	1	2			
Q51	1.00	2	2			2.00	2	4			
Q52	2.00	2	4			2.00	2	4			
Q53	2.00	1	2			2.00	1	2			
Q54	2.00	2	4			2.00	2	4			
Q55	2.00	2	4			2.00	2	4			
Q56	2.00	2	4			2.00	2	4			
Q57	1.00	1	1			1.00	1	1			
Q58	2.00	2	4			2.00	2	4			
Q59	2.00	2	4			2.00	2	4			
Q60	2.00	3	6			2.00	3	6			
Q61	2.00	2	4			2.00	2	4			
Q62	1.00	4	4			2.00	4	8			
Q63	2.00	2	4			2.00	2	4			
				<b>70</b>	<b>89.74%</b>	<b>Monitoring</b>			<b>76</b>	<b>97.44%</b>	<b>Monitoring</b>