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Communication of the Public Defender of Georgia

AMIRIDZE v. Georgia (Application No. 15351/09)
Made under Rule 9(2) of the Rules of the Committee of Ministers for the Supervision
of the Execution of Judgments and of the terms of Friendly Settlements

Introduction

1. The Public Defender's (Ombudsman's) Office of Georgia (hereinafter PDO) presents this submission pursuant to Rule 9.2 of the Rules of Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.
2. This submission provides information on the implementation of general measures by the Government of Georgia in the course of the execution of the judgement in the case AMIRIDZE v. Georgia (Application No. 15351/09).
3. The Public Defender's Office will comment on the government's Action Report (04/01/2021). Contrary to the Government's position, in light of the very serious concerns raised in this submission about the existing shortcomings with regards to the right of an accused/convict to meet lawyer without any restrictions or interference and the problems related to filing complaints from penitentiary establishments, PDO propose that the examination of the present case should not be closed, but rather the Committee of Ministers maintain the enhanced supervision of this judgment.

General measures

Interference and the problems related to filing complaints from penitentiary establishments

4. The National Preventive Mechanism of PDO, as a result of the monitoring carried out in Establishment Nos. 2, 8, 14 and 15 in 2019, found that prisoners face obstacles in the realization of their right to requests/complaints. The convicted/accused person has the right to send a sealed, confidential complaint to a desired addressee, while the penitentiary facility is obliged to ensure the protection of confidentiality of the complaint.¹ However, establishments fail to ensure the above.
5. It is stated in the Action Report (04/01/2021) that in order to determine the addressee of the complaint or to resolve any other technical issue, the accused/convict enjoys the right to request the consultation of a social worker. The social worker is obliged to protect the confidentiality of correspondence. Upon request, the convict shall be provided with the necessary number of required means to file a complaint, including papers, envelopes for confidential grievances, writing instruments and etc.²
6. In fact, during visits to Establishments Nos. 2 and 8, members of the National Preventive Mechanism (hereinafter also as NPM) received numerous reports about the censorship of confidential complaints sent to the Public Defender. According to them, in many cases, complaints are not sent to the addressees.³

¹ Article 104 of the Imprisonment Code of Georgia. According to Article 15 of the Organic Law of Georgia on the Public Defender of Georgia, "Applications, complaints and letters sent to the Public Defender of Georgia by persons placed in penitentiary establishments, places of detention and other places of restriction of liberty shall be confidential. They may not be opened or censored. They shall be sent to the Public Defender of Georgia immediately."

² Government's Action report (04/01/2021) concerning the case of Amiridze v. Georgia (Application No. 15351/09) Para. 6.

³ Report of the National Preventive Mechanism 2019, p.53. Available at: < <https://bit.ly/2MACOdX> >

7. It also happens frequently that the administration does not provide the prisoner with confidential envelopes. In addition, complaint's boxes are placed under video surveillance, which makes it possible to identify the author of a confidential complaint.⁴
8. In 2019, the violation of confidentiality was witnessed by the members of the National Preventive Mechanism as well. While visiting Penitentiary Establishment No. 2, members of the NPM noticed an open envelope of a confidential complaint at the chancellery, the addressee of which was the Public Defender. A day earlier, the envelope (sealed) was handed over by one of the prisoners to the member of National Preventive Mechanism, which was asked to help in sending the complaint. To this end Public Defender's representative handed the envelope over to the social worker. Upon Public Defender's request, the Monitoring Department of Special Penitentiary Service conducted an official inquiry into the fact and as a result of this inquiry disciplinary sanctions were imposed on the social worker and the employee of the chancellery of Establishment No. 2 for failing to check whether the confidential envelope had been sealed properly. PDO maintains that the same envelope had been sealed properly when handed to the member of the NPM and this fact demonstrates once again censorship of complaints existing in Penitentiary Establishments. PDO assumes that in the case described above the liability was imposed on responsible persons due to the fact that the open envelope was found by NPM member the next day, leaving no other choice to Special Penitentiary Service but to hold them liable.
9. Another important issue stated by the government in its Action Report (04/01/2021) which we would like to comment on concerns providing information to the prisoner on his/her rights and responsibilities upon arriving at the penitentiary establishment. It is noted in the action report that a social worker informs the accused/convict in written regarding his/her rights and responsibilities, including the right to file a complaint and the rule provided by law to appeal.⁵
10. Contrary to this statement, NPM notes that during monitoring, most of the prisoners interviewed in Establishments Nos. 2, 8, 14 and 15 were not informed about their rights, complaints mechanism, disciplinary punishment or incentives. According to the prisoners, some information is provided to them orally upon admission, but it is difficult for them to remember it.⁶
11. In 2019 PDO issued recommendation to the Minister of Justice on this issue and recommended the Ministry to increase the role of social workers by obliging them to inform in detail the newly admitted prisoners of their rights and responsibilities, requests/complaints mechanisms and review procedures, as well as to periodically work with prisoners, individually or in group, in relation to their rights and responsibilities, requests/complaints mechanisms and review procedure, including by providing the above information to the untried/convicted persons through brochures, or by posting it on the walls in areas accessible to all prisoners.⁷ Unfortunately, this recommendation remains unfulfilled to this date.
12. In addition, it is alarming that since the introduction of special security measures in the establishments due to the pandemic, prisoners hand over letters and complaints

⁴ Ibid. p.54

⁵ Government's Action report (04/01/2021) concerning the case of Amiridze v. Georgia (Application No. 15351/09) Para. 6.

⁶ Report of the National Preventive Mechanism 2019, p.53. Available at: < <https://bit.ly/2MACOdX> >

⁷ Ibid. p. 68.

to the security or staff members of the establishments, instead of the social workers, since they are not allowed to work inside prison during the pandemic.

13. The Public Defender considers it to be of an utmost importance that prisoners are provided with information about their rights and responsibilities in writing, in a consistent manner and in a language they understand, as soon as they enter the penitentiary facility.
14. According to statements of some prisoners at Establishment No. 15 informal leaders⁸ informed them of "prison rules" and their rights and responsibilities after being placed in the cell and warned them of the expected consequences in case of violation of the informal rules.⁹
15. PDO has been pointing out that the informal rule existing in the penitentiary establishments creates serious threats of ill-treatment of prisoners. In 2020, the Public Defender of Georgia published a special report,¹⁰ in which she talked about the fact that the management model of semi-open establishments was based on informal hierarchy of prisoners, where the so-called "prison watchers" provide fictitious order, aiming to silence prisoners and prevent them from talking about their problems.
16. The publication of this report was followed by public attacks on the Public Defender and illegal actions by the Minister of Justice and the Penitentiary Service,¹¹ as a result of which, it has become not only difficult but also dangerous for the representatives of the Public Defender's Office to carry out visits and monitoring at the penitentiary establishments. In particular, recently, a certain group of prisoners managed by the administration of the establishments and the so-called 'prison watchers' have been systematically carrying out verbal attacks, threats and aggression against representatives of the Public Defender's Office. The purpose of these illegal actions was to hamper PDO's communication with prisoners and monitoring of the prison area.¹²
17. The National Preventive Mechanism witnessed a fact when one of the prisoners was going to talk about his health problems, but other prisoners did not allow him to speak.
18. The fact that prisoners in semi-open facilities refrain from complaining due to the influence of informal leaders is also proved by the number of complaints sent to the Public Defender's Office. The diagram below shows a fairly large difference between the applications received from closed and semi-open facilities¹³ in 2019:

⁸ For more information on Informal rule in penitentiary institutions see Rule 9.2 - Communication from an NHRI (Public Defender's Office of Georgia) (23/10/2020) in the TSINTSABADZE group of cases v. Georgia (Application No. 35403/06) Available at: < <https://bit.ly/36GBJIG> >

⁹ Report of the National Preventive Mechanism 2019. p. 55. Available at: <<https://bit.ly/3anjN6z>>

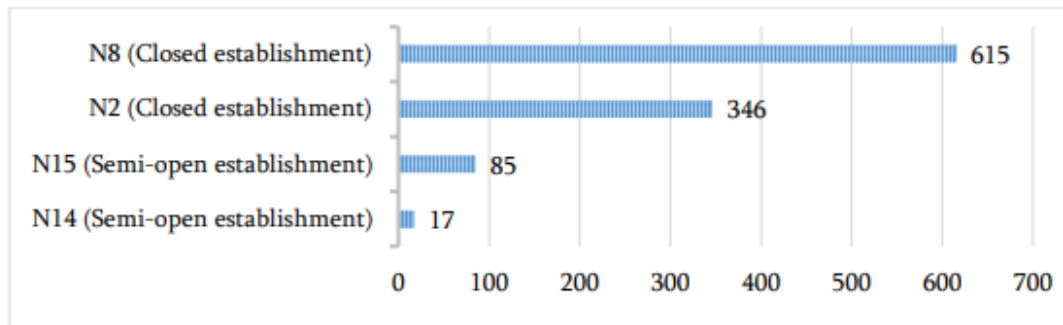
¹⁰ Public Defender's Report on the Monitoring Carried out in Four Penitentiary Establishments. Available at: <<https://bit.ly/3p5CkK9>>

¹¹ Public Defender's Special Statement on Attempted Interference with and Influence on Public Defender's Activities. Available at: <<https://bit.ly/3aG1SrW>>

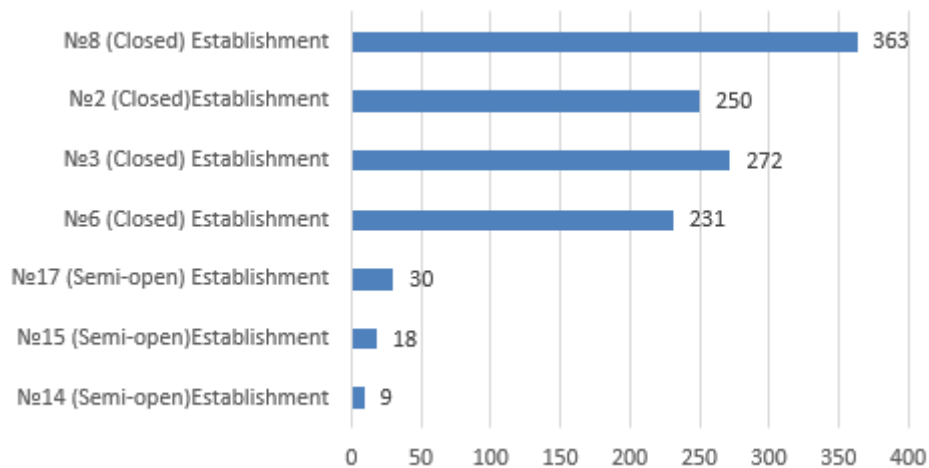
¹² Public Defender's Special Statement on Situation in Penitentiary Establishments. Available at: < <https://bit.ly/3p0M1cJ> >

¹³ In total, there were more than 2500 prisoners in #15 and #14 prisons during 2019. The same number for the closed prisons (#2 and #8) for that period was around 4000 prisoners.

Number of applications sent to the Public Defender in 2019



19. Unfortunately, this trend has continued, which is further illustrated by the number of complaints submitted to the PDO in 2020.



20. The National Preventive Mechanism assumes that the violation of the rules of sending confidential complaints, influence of informal governance (for which sending a complaint is inadmissible) and the lack of information about prisoners' own rights are the main factors that prevent the proper realization of the right to requests/complaints.¹⁴

21. This assumption is further confirmed by the study conducted by Non-governmental organization - Rehabilitation Initiative for Vulnerable Groups and International organization - Penal Reform International on the Influence of Criminal Subculture on the Management of a Penitentiary Institutions.¹⁵ It is stated in the study that when it comes to sending complaints from institutions, according to informal subculture rules, writing a complaint is not considered „a good tone”. Although, complaints are separated according to the content. According to the respondents of the above study

¹⁴ Report of the National Preventive Mechanism 2019. p. 55. Available at: <<https://bit.ly/3anjN6z>>

¹⁵ Influence of Criminal Subculture on the Management of a Penitentiary Institution p.48 Available in Georgian at: <<https://bit.ly/2MJr8oU>> Main findings of the report is available in English at: <<https://bit.ly/3amXiif>>

there is a relatively loyal attitude from the "watchers" towards the complaints related to the criminal case. Complaints which concern the situation in the penitentiary institution, are more strictly controlled and perceived as a deteriorating, the general situation", the so-called "Palajenia".¹⁶

22. It is further indicated in the study that high-ranking prisoners directly forbid other inmates from writing a complaint, or offer to resolve the issue through their intervention, without appeal. This type of influence was mostly discussed by inmate respondents. As for the interviewed employees, some of them denied that the so-called "watchers" in some way interfere in the appeal procedure, but also noted that it is unacceptable for prisoners of „this category" to write both a complaint and a pardon request themselves, and if there is a special need to appeal specific circumstances, influential groups make other people write complaints for them.¹⁷
23. To further illustrate the existing system there are excerpts presented in the above mentioned report, from the interviews conducted during the study:
- Former prisoner: "If you write a complaint and you have a problem with the administration, the employee does not come and tell you, the 'watcher' comes and he scolds you, scares you. There was a case when a convict wrote a complaint to the department, the same evening a "watcher" came in, withdrew the complaint and told him not to write something like that again, because it would spoil the „situation". "
 - Former prisoner: "As far as I know, they will not send the complaint unless it is acceptable for the administration... "
24. Experts¹⁸ interviewed as part of the study also spoke about their impact on the appeal process.
- Former employee: "Many complaints were written against the medical staff, the chief doctor, as well as the director or deputies of the institution. Here, these people ("watchers") were used to "hide" it, offer to assist in resolving problems without sending complaints. "
 - Expert: "A complaint could not have been sent if it had not been agreed or passed with the" watcher ".
 - Expert: "Complaints are not written, they are not sent. They resolve it internally and prefer to do so rather than write a complaint about it. However, this does not apply to their case, for which they are directly imprisoned, it does not apply to a criminal case. The complaint should not be about their situation in prison, it should not be a complaint against the administration, and it should not be about internal rules. "¹⁹
25. According to the National Preventive Mechanism's sociological survey conducted in 2015, 188 (10%) inmates indicated that they wished to file a complaint but for some reason did not. For the most part (up to 41%) the reason for refraining from filing a complaint is pressure, which mainly comes from the administration of the penitentiary institution. However, pressure has also been exerted on prisoners by prosecutors, investigators or others.²⁰ Respondents also cited self-censorship, or the feeling that writing a complaint would complicate their situation in a penitentiary (17% of cases)

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Members of the National Preventive Mechanism, representatives of different NGOs.

¹⁹ Influence of Criminal Subculture on the Management of a Penitentiary Institution. Available in Georgian at: < <https://bit.ly/2MJr8oU> > Main findings of the report is available in English at: < <https://bit.ly/3amXiif> >

²⁰ Public Defender of Georgia - National Preventive Mechanism - Requests/Complaints Mechanism in Penitentiary System of Georgia 2015. p. 41. Available at: < <https://bit.ly/3p3rWTc> >

as an important factor.²¹ The results of this survey are obvious reflection of the informal rule and their influence on the situation in the establishments.²²

26. One more problematic issue is related to the language barrier that creates obstacles in terms of accessing quality medical, legal or other services, including filing complaints.
27. According to the government action report, the accused/convict, who does not speak the state language of Georgia or does not understand the language of the proceedings, enjoys the free services of an interpreter. Contrary to this statement, the National Preventive Mechanism states that the problem of language barrier is acute in the establishments, both for foreign and some of the Georgian citizens. Prisoners are deprived of the opportunity to be informed of their rights. Those who do not speak Georgian or Russian, are in a vacuum of information.²³
28. The NPM believes that a long-term solution to the problem would be to offer regular language courses to prisoners, while the short-term solution would be to provide an interpreter's service, which at present is not provided by the establishments.

Lawyer-client meetings in penitentiary establishments

29. In the Action Report (04/01/2021) government emphasized with regards to the conditions of the lawyer-client meetings in penitentiary establishments that an accused/convict in a penitentiary establishment is provided with the right to meet lawyer without any restrictions or interference.
30. Contrary to this statement, there are significant shortcomings identified by PDO during the years. In particular, the right of a prisoner to call the Public Defender or the lawyer, is restricted while placed in the de-escalation rooms.²⁴
31. Placement in a de-escalation room is one of the security measures introduced in several penitentiary institutions and its use is regulated by the Statutes of the same institutions. The statutes of penitentiary establishments stipulate only the duration of placement of a person in the de-escalation room (maximum of 72 hours), while the frequency of placement of a person in the de-escalation room is not limited, making it possible to place a person in the room indefinitely, since the same prisoner may be placed in these rooms/cells at intervals of minutes and hours, which may be considered a continuous placement.²⁵
32. In practice, inmates are placed in a de-escalation room for long periods of time and continuously or with intervals of several minutes. For example, in N3 facility, there were cases of placing a prisoner in the de-escalation room for 7 and 9 days.²⁶
33. As noted earlier, during the period of placement in the de-escalation room, the prisoner does not have the opportunity to have contact with the outside world (phone call, personal correspondence and appointment), which also means, the inability to contact the lawyer by phone / letter. It is true that the Statutes of the institutions do not contain a specific provision on the prohibition of contact with the outside world, though the provisions explicitly state that it is inadmissible to remove an accused /

²¹ Ibid

²² So-called "prison watchers" are in close cooperation with the administration of the establishments and prisoners may perceive them as one.

²³ Report of the National Preventive Mechanism 2019. p. 56. Available at: <<https://bit.ly/3anjN6z>>

²⁴ Report of the National Preventive Mechanism 2019, p.37. Available at: <<https://bit.ly/2MACOdX>>

²⁵ Ibid. p.34.

²⁶ Public Defender's Report on Monitoring Carried out in Penitentiary Establishment No. 3. p. 6. Available in Georgian at: <<https://bit.ly/2L6h4Gh>>

convict from the de-escalation room until the grounds for his / her placement in the de-escalation room are eliminated, except in cases of medical emergency and for meeting with a lawyer. However, in practice, as stated above, prisoners are not allowed to make a phone call, or send a personal correspondence in order to request the meeting with the lawyer. This practice is confirmed by the NPM of Georgia. To sum up, if a lawyer on his/her own initiative requests to meet a prisoner, placement in the de-escalation room is not an obstacle, however, prisoner placed in the de-escalation room has no access to a lawyer due to the restrictions on having contact with the outside world, including phone calls to a lawyer.

34. Consequently, the risk of ill-treatment is high when placed in a de-escalation room, therefore, it is even more important for prisoners to be able to contact a lawyer.
35. It is noteworthy that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter CPT) also noted in its report on the visit to Georgia that “de-escalation cells” are used as de facto punishment, with banning visits, calls, parcels, correspondence, etc.²⁷
36. With regards to the conditions of the lawyer-client meetings in penitentiary establishments, it should be also noted that before global pandemic of COVID – 19 there were no infrastructural deficiencies in the meeting rooms and lawyers were able to meet and talk to prisoners in an isolated spaces. However, in the context of the pandemic, the situation in this regard has changed, according to the PDO representatives, in penitentiary institutions there is no isolated space for meetings anymore. There are tables with isolation baffles placed next to each other in short visit rooms and meetings with different prisoners are held simultaneously, hence their visitors sit side by side in a short distance, which allows them to listen to each other’s conversations.
37. As for the violation of the right to confidential communication with a lawyer, PDO would like to bring to the Committee’s attention recent case where Public Defender established violation of this right.²⁸
38. On December 30, 2020, accused Iveri Melashvili²⁹ met with his lawyer to discuss the defence strategy issues at Penitentiary Establishment No. 8 . He wrote comments on the maps provided by the lawyer and requested that the materials be handed over back to the lawyer. Instead of handing over the documentation directly to the lawyer, the staff of the establishment handed these maps over to the Director of the Penitentiary Establishment who got acquainted with the the content of the comments without any legal grounds and only afterwards the staff offered the lawyer to pass the maps.
39. Another important issue related to the confidentiality of the lawyer-client meetings is shortcomings of visual and/or electronic surveillance in penitentiary establishments. The rules for carrying out visual and/or electronic surveillance and control in penitentiary establishments, as well as keeping, deleting and destructing recordings are defined by Order No. 35 of May 19, 2015 of the Minister of Corrections of Georgia. The order sets forth specific grounds for archiving video recordings, the relevant procedure, persons responsible for the procedure and the term of keeping the recordings.

²⁷ CPT/Inf (2019) 16, Para. 88. Available at: < <https://bit.ly/3t5xXSs> >

²⁸ Public Defender Establishes Violation of Iveri Melashvili’s Right to Confidential Communication with Lawyer Available at: <<https://bit.ly/2O6D0SP>>

²⁹ Former official in the high-profile Georgia-Azerbaijan border case, Melashvili has been accused of withholding materials from a border agreement with Azerbaijan that, according to the Chief Prosecutor’s Office, led to the forfeit of about 3,500 hectares of lands against Georgia’s interests.

40. To this date there is video surveillance in every room where prisoners meet with e.g. PDO representatives in every penitentiary institution in the country, except one meeting room at N8 establishment. Representatives of PDO consider this as problematic since there are instances when prisoners refrain from demonstrating their injuries due to the fact that they are watched by the prison administration through video surveillance cameras.
41. Consequently, PDO considers that its representatives should be able to choose in every establishment if they prefer to meet with prisoners in a room without surveillance cameras to allow them to communicate with PDO representatives without any restraints.
42. With regards to this issue it is also notable that on January 21, 2020, at the sitting of the Parliamentary Human Rights and Civil Integration Committee, when the Public Defender of Georgia spoke about the scale and forms of informal governance in the penitentiary establishments, the Minister of Justice tried to discredit the Public Defender and the entire institution in her response and showed the committee videos of a confidential meeting between authorized representatives of the Public Defender and prisoners in the cell and criticized the actions of the representatives of the Public Defender.
43. Following these events Public Defender addressed the State Inspector and requested that the lawfulness of the action of the Minister of Justice at the sitting of the Human Rights and Civil Integration Committee on January 21, 2020 be examined and also to conduct inspection on the legality of data processing as a result of electronic surveillance in establishments in general.
44. In the decision of the State Inspector 2501/67 (classified document) of November 25, 2020 several shortcomings were identified in the inspection process. Based on this inspection the State Inspector issued 9 assignments and 7 recommendations towards the Special Penitentiary Service to improve the procedures of the video surveillance process. It is crucial to supervise execution of this assignments and recommendations by Committee of Ministers since they highly influence (directly/indirectly) confidentiality of meetings between lawyer and prisoners.
45. Overall, since every meeting is recorded by the prison administration and the abuse of use of these recordings already took place publicly as described in para. 17, it is very difficult to ensure confidential communication. In addition, the video infrastructure of the penitentiary system needs serious renovation.

Conclusion

46. As described above, there are notable deficiencies in terms of lawyer-client meetings and functioning of complaints mechanism in penitentiary establishments. These two issues are crucial in protecting the rights of prisoners, hence it is of an utmost importance that the authorities take all the necessary measures to guarantee that prisoner's avenues of complaint are open to them both within and outside the context of the prison system, including the possibility to have confidential access to an appropriate institution or agency.
47. Ultimately, in order to ensure the prevention from violations similar to those established by the Court in the case AMIRIDZE v. Georgia, PDO once again reiterates

the importance to fulfil the recommendations issued by the Public Defender to the Ministry of Justice over the years, in particular:

- Increase the role of social workers by obliging them to inform in detail the newly admitted prisoners of their rights and responsibilities, requests/complaints mechanisms and review procedures, as well as to periodically work with prisoners, individually or in group, in relation to their rights and responsibilities, requests/complaints mechanisms and review procedure, including by providing the above information to the untried/convicted persons through brochures, or by posting it on the walls in areas accessible to all prisoners;
- In order to ensure that prisoners can send complaints confidentially, put confidential complaint envelopes so that the receipt of the envelope is not dependent on prison staff and the recipient of the envelope is not identified. In addition, ensure that all prisoners have free access to material technical stuff (paper, pen, envelope) and are allowed to keep a certain number of envelopes in their cells;
- Ensure that the General Inspectorate of the Ministry of Justice, through systematic inspection and appropriate response, identifies and investigates the cases of violation of the rules of sending confidential complaints in Penitentiary Establishment Nos. 2, 8, 14 and 15, as well as the cases of exerting pressure on prisoners due to filing complaints, and punishes the perpetrators.
- Provide interpretation for all foreign language prisoners, if necessary; inter alia, provide information about services and regulations applied in the facility in a language they understand;
- In order to guarantee the right of prisoners to speak about their grievances without any restrictions, overcome the criminal underworld and its informal rule in penitentiary establishments, ensure the adoption of strategy that incorporates the activities proposed by National Preventive Mechanism.³⁰

³⁰ The National Preventive Mechanism - The Report on Monitoring Visits to Penitentiary Establishments nos. 2, 8, 14 and 15. p.18. Available at: < <https://bit.ly/3q5G6EH> >