

**Improving the operational capacities of the Public
Defender's Office in Georgia**
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EXECUTIVE SUMMARY

The present report is a result of two needs assessment visits, the authors undertook to Georgia in June and July 2015, within the Council of Europe (CoE) project on “Improving the operational capacities of the Public Defender's Office in Georgia”.

The missions brought together the staff of the Georgian Public Defender’s Office (PDO) and the CoE’s consultants to discuss problems that the PDO is faced with in the achievement of their basic mission – protecting human rights of Georgian citizens.

PDO adheres to this goal through its two main functions: as an institution competent to receive and observe individual complaints and as the national protection mechanism (the NPM) from the Optional Protocol to the UN Convention against torture (the OPCAT). In order to be able to perform its functions, the PDO decides on individual complaints, recommending tailor-made solutions for each case where a violation is found. Furthermore, PDO can instigate general investigations into large scale or systemic issues by means of introducing legislative amendments, submitting constitutional complaints to request normative control by the Constitutional Court, or requesting the Parliament to set up a special investigation commission in relation to certain violations¹. The Public Defender can also decide to intervene as *amicus curiae* into a case pending in criminal proceedings or before the Constitutional Court.

The report explores the current situation, observes problems, legislative and practical obstacles, and analyses the needs of the PDO staff in central as well as regional offices, in an attempt to identify main findings and put forward recommendations for the improvement. The reports take into consideration the work of the CoE, in particular the CPT and the European Court of Human Rights (ECtHR), their findings and/or the violations of human rights found in respect of Georgia. Furthermore, the report is based on the work of the PDO themselves and its annual reports on the situation of human rights in Georgia, as well the work of the UN treaty bodies in relation to the respect of specific human rights obligations by the Georgian authorities.

The main findings relate to the issues identified in relation to the role of *amicus curiae* or the work of regional offices.

Findings are followed by a set of recommendations which aim to suggest ways in which the work of the PDO could be improved bringing to a better level of human rights protection in Georgia.

¹ Article 21 of the PDO Act.

INTRODUCTION

The present needs assessment report is a result of visits convened by the CoE and the Office of the Georgian Public Defender's Office (hereinafter: PDO), within the CoE's project on "Improving the operational capacities of the Public Defender's Office in Georgia". Its aim is to take stock of needs of the PDO, its staff as well as broader context of the need to provide adequate protection of human rights of individuals in Georgia and come up with recommendations on which particular steps should be taken within the project in order to ensure optimal use of resources to the benefit of final users – individuals whose human rights are in threat of being breached or have been violated.

The PDO is the core institution in Georgia with the mandate of providing human rights protection to every individual under Georgian jurisdiction. Established in 1997, in accordance with the Organic law on Public Defender in Georgia, the PDO is an institution with almost 20 years of track record in protecting human rights of individuals in Georgia. The present Public Defender, Mr Ucha Nanuashvili has been occupying the position since December 2012, and is the fifth ombudsperson of Georgia since the institution was established.

The staff of the PDO is headed by the Deputy Public Defender. The Office is organised between the central office in Tbilisi and eight regional offices in: Kutaisi, Gori, Batumi, Zugdidi, Akhalkalaki, Marneuli, Ozurgeti and Telavi. While regional offices are small and do not allow for much division of labour, central office is organised between different departments, centres and divisions. The structural units of the Office are services created for the implementation of the Public Defender's activities in different areas. At present the structural units of the office include: Secretariat of Public Defender, Department of Chancellery and Human Resources, Department of Prevention and Monitoring, Department of International Relations and Communications, Department of Gender Equality, Department of Protection of the Rights of Persons with Disabilities, Department of Administration and Finance, Analytical Department, Equality Department, Department of Human Rights' Protection in Defence, Department of Criminal Justice, Department of Protection of Civil, Political, Economic, Social and Cultural Rights, Regional Division, Child Rights Centre, Tolerance Centre. The first needs assessment mission was convened in Tbilisi on 2-3 June, 2015. During the visit authors of the present report have had an opportunity to discuss current situation regarding capacities of the PDO, in terms of their workload, internal organisation, human resources and infrastructure available, in an attempt to identify the specific needs in the areas where improvement is necessary and bettering of which may contribute towards an optimal use of the project resources. The attendees of the meetings during the first needs assessment mission were: Mr Mahir Mushteidzade, Project Manager in the CoE, Mr Alessandro Savaris, Head of CoE Office in Tbilisi, Mr Ucha Nanuashvili, Public Defender, Mr Paata Beltadze, First Deputy Public Defender, Ms Natia Katsitadze, Deputy Public Defender, Mr David Managadze, Head of Analytical Department, Ms Maka Gioshvili, Head of Department of Equality, Ms Rusudan Kokhodze, Deputy Head of Department of Rights of Persons with Disabilities, Ms Tatuli Todua, Head of Department of Civil, Political, Economic, Social and Cultural Rights, Mr Akaki Kukhaleishvili, Department of Prevention and Monitoring, Analyst.

The second needs assessment mission took place in Batumi a regional centre in the south-west of Georgia on 16-17 July, 2015. The aim of the second visit was to meet with the representatives of regional offices, identify issues specific for each regional office individually, as well as common needs of all regional offices, in an attempt to secure that project impact is evenly spread throughout the country, to the benefit of final users – victims or potential victims of human rights violations. The mission lasted two days, where the authors of the present report had an opportunity to discuss with the staff of all regional offices of the PDO specific issues they face in their daily work, and particular areas

where they see space for improvement in the efficiency and the effectiveness of the protection the PDO is providing in the remits of its competences. . The meeting was attended by: Mr Giorgi Giorgadze, CoE Senior Project Officer, Mr Bagrat Kiria (Zugdidi office), Mr Armen Marangozian (Akhalkalaki office), Ms Nino Dalakishvili (Gori office), Ms Shorena Kakitashvili (Gori office), Mr Giorgi Labadze (Kutaisi office), Ms Natia Pitskhelauri (Telavi office), Mr Giorgi Charkviani (Batumi office), Mr Gia Kartsivadze (Batumi Office), Mr Mikheil Mindadze (Regional Division), Ms. Ekaterine Datunashvili (Ombudsman's Assistant), Mr Niko Tatulashvili (Head of the Department of International Relations and Communications). As a part of the visit, the delegation paid a visit to the PDO Regional Office in Batumi on 17 July, 2015.

The present report is based upon findings of the two needs assessment missions and is aimed to inform stakeholders and policy makers about the specific needs of the PDO in Georgia. It, however, represents personal views of the authors and any views and opinions expressed herewith represent personal opinions of the authors, and not of the PDO or the CoE.

BACKGROUND

The PDO is a key mechanism for the protection of human rights in Georgia. In the past 18 years, since it had been established, the Office developed from a small group of human rights enthusiasts to an institution now employing 129 people and servicing the entire Georgian territory and receiving hundreds of complaints per month and their number keeps growing².

PDO provides protection of human rights through its two main functions: as an institution competent to receive and observe individual complaints and as the national protection mechanism (the NPM) from (the OPCAT). As of recently, the functions of the PDO are spreading further to the general anti-discrimination protection. Namely, in May 2014 the Parliament of Georgia adopted the Elimination of All Forms of Discrimination Act. The act aims at eliminating all forms of discrimination and ensuring equal rights of everyone within Georgian jurisdiction. From 2014, PDO has to monitor observation, promotion and implementation of the UN Convention 2006 on the Rights of Persons with Disabilities. The Public Defender of Georgia is entrusted with monitoring of this important process.

All these functions are of paramount importance not only for the protection of human rights of individuals, but also for the development of a human rights culture in a country with a history of internal armed conflicts and establishing a common understanding within the governing structures in Georgia that human rights development is an investment, not an expenditure.

In the context of requirements of Article 35 of the European Convention on Human Rights and Fundamental Freedoms (the ECHR), a complaint to the PDO cannot be seen as a “domestic remedy”, given that the PDO is not a judicial institution. Nonetheless, its importance is not diminished by this fact, only reinforced. Namely, while the complaint to the Public Defender cannot bring to a judicial resolution of a situation, with its “soft law” powers, it can make significant difference and can serve to develop awareness of human rights standards in Georgian institutions, having effect on individuals concerned, but maybe more importantly also on the development of the preventive function for any potential future cases.

However, in the context of its role within judicial proceedings, it is important to note that Since 2010, PD has the right to submit third party interventions in criminal and constitutional court cases. Since 2015 the same right is foreseen in administrative cases as well.

Article 3 of the European Convention on Human Rights (ECHR) provides for protection against torture, inhuman and degrading treatment and punishment, and is, in both its substantive and procedural form, a primary safeguard against any form of mistreatment in Europe. In addition to this protection, additional safeguards are provided by the, which imposes a requirement, *inter alia*, for the States to establish NPM mechanisms, which in Georgia is placed with the PDO.

Seemingly the NPM role is only limited to one single human right – the prohibition of torture. This role is deservingly singled out for a number of reasons. Firstly, it is a requirement of the OPCAT. Secondly, prohibition of torture is one of the rare absolute rights, which allows no restrictions. Finally, the fact that such violations are potentially taking place under the State authority makes them of particular interest for any state to be closely monitored, so that any potential violation is prevented.

² The number of applications has been on the increase since the establishment of the office. Only between 2013 and 2014 the number of applications grew from 5,457 to 7,272, hence achieving the growth rate of more than 33%. See Activity Report for 2014 of Public Defender of Georgia, available at: <http://ombudsman.ge/uploads/other/2/2175.pdf>.

In order to be able to perform its functions, PDO is now becoming a complex mechanism, with a developed structure, aiming to cater to needs of the entire population of Georgia. To that end, the office is aiming to develop profiled specialists, who work only on certain specific issues, like gender equality or rights of people with disabilities within the central office, but at the same time also employ a significant number of professionals with more general skill sets, who are deployed into regional offices.

Given the size of the office, it was necessary to develop a structure which would ensure the division of labour, but at the same time ensure that the information is shared, and that the work of different parts of the office is synchronised. Office has 11 departments, 2 centres and a division, which can be roughly divided between technical and legal. They all have their particular roles, and share information with each other as needed. Hence, weekly communication meetings are convened, where representatives of each department exchange important information. Furthermore, there is a set of databases, where case information is entered, and all relevant parties within the PDO have access to such information. However, even in the presence of databases and other information technologies, there is a need for interaction between staff members, exchange of experiences and opinions and discussions on how to improve the workflow, which requires personal interaction. In that regard, it might be problematic to ensure this exchange throughout the office, in particular with regards to the regions, which have so far not been taking part in regular interdepartmental weekly meetings.

Furthermore, there appears a lack of established internal procedural rules. While some internal rules exist, but however, there is no set internal procedure on how to handle a complaint, apart from incidental instructions, as to, for example, the obligation to decide on a claim within a set period of time. However, some other important questions such as, for example, when to intervene in a case in the capacity of *amicus curiae*, or when to extend a claim *proprio motu* (both in terms of extending the list of potential victims or potential violations), are not regulated procedurally, but are resolved on ad-hoc basis. In the light of absence of written procedural rules on that, it is an established practice that the third party interventions are prepared when there is a systemic problem identified and/or there is no practice set by the common court on certain issues.

The absence of strict fixed rules, however, enables the office to act with more flexibility, hence providing for a tailor-made approach to every case.

In this regard, it is important to note that such an institution should have its rule of procedure elaborated and made available and accessible to the prospective complainants, and such a document should be formally adopted by the Public Defender. On the other hand, such rules should not be too rigid to guarantee proper level of flexibility and allowing certain discretion to the PDO. In addition, in certain instances, additional instructions would be needed for specific aspects of the PDO's operations.

The PDO works in several different ways. Apart from dealing with individual cases, both following an individual complaint and those raised *ex officio*, the Office is also involved in the legislative process, and publishes regular annual reports, as well as specific thematic reports and studies.

The following two chapters are dealing with specific findings from the missions in the central and regional offices respectively.

CENTRAL OFFICE

The visit to the central PD Office in Tbilisi took place on 2-3 June, 2015. During the visit, the authors of the present report had an opportunity to discuss with the PDO staff issues they are faced with in performing their functions. The visit was focused on gathering experiences of staff, and taking stock

of the current needs for the improvement of the efficiency of the office work. While evaluating the situation, the consultants attempted to identify internal, as well as external factors which might influence the PDO's capacity to performing its functions in the human rights protection in Georgia.

Developing the amicus curiae role

Amicus curiae, Latin expression for the friend of the court, is one of the most important, alas underutilised functions of the PDO. Recognising the importance of the *amicus curiae* role for the PDO, the Organic Law makes reference to it. However, apart from generally providing the office with the power to intervene in the cases pending before the Constitutional Court, the law does not provide any further competence for the Public Defender in this regard. This has been, somewhat rectified by Article 55 of the Criminal Procedure Code, which now enables any interested person, and hence the Public Defender, to intervene in criminal cases, in order to assist the court in evaluating a case. However, given that the intervention is open to anyone, the court is not obliged to take the intervention into consideration when deciding. Recently, following a proposal from the PDO, an amendment was introduced into the Administrative Procedure Code of Georgia allowing Ombudsperson submission of written observations on the merits before the substantial consideration of a case by the court.

However, a significant gap remains in other proceedings, in particular within the anti-discrimination protection, given that civil procedure is yet to be amended to accommodate for the possibility of an *amicus curiae* intervention by the Public Defender. The experience, however, shows that the *amicus curiae* role of the Public Defender is not used systematically. So far, only 15 interventions in this capacity were made to the Georgian courts by the PDO.

Be as it may, this role is crucial in ensuring homogenous application of the international human rights standards, including the ECHR, at Georgian courts, as the PDO may use their unique position to inform and educate firstly the trial court, and consequently the broader structures of the State, about the European standards. This is the reason why, one of the priorities for the Public Defender and his Office is to develop and advance his role of *amicus curiae*, in order to contribute towards developing a human rights focused case-law before Georgian courts.

In order to be able to further their capacity as *amicus curiae*, the first necessary step is, naturally, a developed and reliable manner of identifying cases meriting such intervention. However, it would appear that this particular function is impeded by the fact that there is no systematic approach to identification of cases in which to intervene. There is an ongoing attempt on the part of the PDO to enter into memoranda of understanding, which has resulted in the engagement of several NGOs to exchange information with the PDO. According to these memoranda, the NGOs monitor trials and can request the office to intervene in any particular case they deem it requires the intervention, but other than that, there is no mechanism or a tool for identification of cases.

Furthermore, PDO's capacity as an *amicus curiae* intervener is limited. Regardless of their role as a partial intervener to the proceedings the office is not provided with access to the case-file, nor can it request the other parties to reveal it to them. It is, therefore, usually to the defendant to share the case-file with the PDO. The problem lays in the fact that PDO is not given the full capacity of a party to the proceedings, having a role similar to that of NGOs than that of a State institution entrusted with safeguarding of human rights in the country.

The law prescribes that the *amicus curiae* shall be submitted no later than 5 days before the hearing of the case on merits in criminal and administrative cases; In Constitutional Court, there is no time limit

and amicus brief can be submitted at any time, before the Court delivers its judgment. On the one hand, in order to control the workload, and ensure that the arguments are heard at the most important level, it might be justified to only limit the Public Defender's intervention at the cassation stage of the case furthermore, until that stage rising of certain issues of fairness of the trial may still be viewed as premature. On the other hand, given the relatively modest acceptance of human rights standards in Georgian case-law, it may seem justified to intervene as early as possible in the proceedings. This may prevent any unjustified problems with the admissibility of a claim and render a claim being rejected by the court, as well as provide guidance to courts on how to deal with issues that might affect the fairness of the trial. In addition, due to frequent use of pre-trial detention in Georgia it is important to intervene early enough, in order to try to prevent unnecessary pre-trial detention and possible violations stemming therefore.

One important and determining factor of the *amicus* intervention in a criminal, or any other case, is not to take sides or discuss the issues of guilt. The purpose of the submission is seen within its literal meaning – being a friend of the court, assisting the court to reach a fair and balanced decision, based on applicable standards of international human rights law. This is being done while heavily relying on the case-law of the European Court of Human Rights (the ECtHR), but also, depending on the particular situation, on other international human rights instruments, such as the International Covenant on Civil and Political Rights, the UN Convention on the Rights of Persons with Disabilities, Convention on the Rights of the Child and many others. Not one single department is responsible for preparing submissions of *amicus curiae*. This in practice means that many people from different departments may eventually be involved, depending on their particular expertise. This, in turn, may be considered as not the most optimal use of resources. In addition, not being anyone's particular responsibility, the role of *amicus curiae* remains quite random and depends on the will and interests of individuals employed by the PDO.

In addition, the PDO has difficulties in learning about cases meriting their involvement as *amicus curiae*, as there is no systematic obligation on the part of the courts' administration to inform the Office about pending cases, and the Office itself does not have resources to undertake comprehensive trial monitoring. Hence, in order to learn about the cases, the PDO largely depends on NGOs and individuals concerned. Furthermore, once the PDO gets involved in the proceedings, and provides contribution as *amicus curiae*, there is no obligation on the part of the court to respond to such submission, or to reflect on it in any way in its decision. Therefore, it is difficult to follow up on the effect a submission may have on the outcome of proceedings, and hence on the success rate of any submissions.

Finally, the *amicus* briefs may be very informative and educational, not only for the courts to which they are being submitted, but also to judiciary in general, and even broader public, when elaborating on the practical application of human rights norms in Georgian legal environment. Therefore, it would be important to make such submissions public and broadly available.

Fight against intolerance/ Equality Department

Intolerance and consequent discrimination are issues which impede with the entirety of a person's rights, and often lead to intersectionality, or social marginalisation, which can hardly be rationalised. Equality Department has the ungrateful task of looking into the issues of discrimination on any grounds, study discrimination cases, whether it's about PwD, Gender or Children.

One of the most important competencies of the department is that according to which legislative amendments may be introduced. Namely, the department systematically observes issues of discrimination, either upon individual complaints, or of their own motion. In situations, in which the department identifies, that a legal provision may amount to direct discrimination, or may weaken the level of anti-discrimination protection needed for Georgian citizens, the department may propose legislative amendments.

Regarding the duty to ensure non-discrimination, this competence was allocated to the PDO by virtue of the 2014 Anti-Discrimination Act, whereby the Public Defender was entrusted with the monitoring of the elimination of discrimination in the process of ensuring proper application of the anti-discrimination legislation in Georgia.

Within this competence of the department, recently amendments were introduced into parliamentary procedure, aiming to extend the existing time-limit for the introduction of anti-discrimination claim, which is hoped to improve the protection against discrimination in Georgia.

This function, related to the legislation, is of large importance, and is a necessary complement to the competence of the PDO to deal with individual claims, which stand on the other end of human rights protection the PDO provides. However, given the limited powers of the Ombudsperson, this function may prove to have only limited impact on the protection of human rights in the country.

Department of Protection of the Rights of Persons with Disabilities

Recognising that people with disabilities are more vulnerable than other individuals, since 2008 the PDO has had a structural unit dealing with the rights of people with disabilities – Centre for Protection of the Rights of People with Disabilities. Since January 2015, the Centre was transformed into the Department for the rights of People with Disabilities. The department is responsible for promoting the rights guaranteed in the UN Convention on the rights of Persons with Disabilities (the CRPD) and monitoring the process of its implementation.

As a matter of fact, the PDO, through the department serves as the monitoring mechanism, as provided for in Article 33 of CRPD. The department is working on gathering up a team of external experts who will be responsible for field work and research to enable full compliance with the reporting requirements from the CRPD. To that end, the department is establishing an advisory board, which will ensure also the participation of NGOs of people with disabilities, as well as experts, who will ensure that the PDO is fully compliant with the requirements set for the monitoring mechanism from Article 33 of the CRPD.

The department is not responsible for monitoring of institutions for people with disabilities; this is the responsibility of the Department of Prevention and Monitoring together with the department. Institutions monitored are psychiatric hospitals, social care homes, as well as any other form of institution where people with disabilities might be housed.

There are two types of monitoring: regular and ad hoc. Regarding regular, planned monitoring, there is the annual monitoring plan, which is being developed in advance. This systemic monitoring is done according to plan, and methodologies are elaborated specially to take into consideration particular needs of people with disabilities held in the institutions. With the support of the CoE, the PDO ensures supervision over the psychiatric institutions. Within this initiative, the monitoring methodology is being prepared, and should be finalised shortly. Monitoring methodologies ensure that all the rights of

individuals are monitored; hence, the monitors take stock of general conditions in institutions, as well as individual situations of people placed therein.

The process of deinstitutionalisation has started, and two institutions for children with disabilities are to be closed soon. It would appear that this process is lagging behind and there is a lot to be done to ensure full deinstitutionalisation of people with disabilities in Georgia. While maintaining institutions is clearly in violation of the CRPD, while they still exist, the department ensures that, the institutions, in particular institutions for children with disabilities are closely monitored, and the rights of people in institutions safeguarded as much as possible. This includes organising often surprise visits to institutions, to ensure that the rights of institutionalised people are protected as much as they can be in the enclosed settings.

The department uses external experts, to cover for the necessary knowledge which is not to be found in the PDO. Hence, they work with a team of experts, such as doctors, psychiatrists, psychologists, social workers and others. Experts prepare their reports, the findings from which are then included in the PDO reports.

In April 2016 Georgia is due for its first review before the CRPD Committee, and the PDO will prepare the report. There are concerns, however, regarding the timeliness and quality of that report. There appears to be lack of recognition of needs for support for people with disabilities. Thus, for example, while inclusive education is nominally fully introduced in Georgia, in practice only 100 of 2000 schools are adapted to provide inclusive education for children with disabilities. The school staff sometimes lacks training and skills to provide necessary support to students with disabilities, and generally, inclusion in education works with difficulties already at the level of primary and secondary education. Problems are even greater at the higher education level, where none of the universities are accessible. In vocational education only several institutions were adapted and made accessible to students with disabilities.

National Preventive Mechanism (NPM)/ Department of Prevention and Monitoring

As mentioned above, among its other competences, the PDO plays the role of NPM in accordance with the OPCAT. This competence means that the PDO plays an important role in the identification of instances of ill-treatment and in the ill-treatment prevention.

NPM, as a very important competence is performed by a department within the PDO, in charge of this particular activity. The department is multidisciplinary, and cooperates with a number of external experts, who are hired on an as needed basis, depending on the particular type of activity.

Until recently, the NPM department was in charge of dealing with individual complaints and performing the NPM function. However, as of October 2014, it has been dealing exclusively with the NPM competence, however, closely cooperating with the Department of Criminal Justice, now in charge of dealing with complaints, in order to ensure that the complaint is dealt with properly. Within their monitoring work, the department is intensifying their work on visits of places of detention. Recently, the department has also started issuing periodic reports, made available to the broader public.

The department plans its visits annually, and maintains a list of such planned visits, which information is classified. They mostly aim to visit all prisons at least twice a year, each police detention facility once a year, and also aim to visit other places of detention, such as psychiatric hospitals (in cooperation with Department of Protection of the Rights of Persons with Disabilities), institutions for children (in

cooperation with Child Rights Centre), as well as other places of deprivation of liberty.

There is regular cooperation between the department and regional offices. Regional offices often provide valuable information to the department, regarding places of detention from their jurisdiction. Furthermore, central office relies on the knowledge of particular local circumstances which is with the regional offices.

There are several issues that the department faces regarding collecting evidence during visits. Firstly, the existing legislation provides that video records from surveillance cameras are only to be kept for no less than 24 hours. This means that practically no video evidence is made available to the PDO, which may facilitate potential abuse. Furthermore, the PDO at the moment does not have a legal right to take photo or video evidence themselves. While the former problem appears to remain, the latter is currently being dealt with through the legislative procedure, which should enable the PDO to at least collect its own evidence. According to recent legislative changes in to the prison code of Georgia as of September 2016 PDO will be entitled to take photos in prisons.

In addition, in cases of abuse which is prosecuted, the PDO cannot be given access to the file until the case is closed. This in practice means that the PDO cannot intervene in the case, as they don't have evidence. In order to overcome this obstacle, the Office quite often conducts its own investigation and fact-finding missions.

The department, even though fully exercising its competences, still might profit from further development of tools for evaluation, monitoring and research, which are necessary in their daily work.

Department of Protection of Civil, Political, Economic, Social and Cultural Rights

Department of Protection of Civil, Political, Economic, Social and Cultural Rights deals with all the issues that are not being taken over by any other department in the office. Hence, they work on freedom of religion, freedom of expression, labour rights, social protection, cultural rights, environmental rights, healthcare, rights of the internally displaced people (IDPs), migrants and other issues. The civil and political side of the work of the department is based on the standards provided by the ECHR, International Covenant on Civil and Political Rights. At the same time, the department bases its work regarding economic, social and cultural rights on the standards provided for in the International Covenant on Economic, Social and Cultural Rights and the European Social Charter. In addition, other international and human rights instruments are taken into consideration when dealing with particular issues, depending on the situation.

The department is involved in the international activities and preparing periodic reports to different international treaty bodies. Recently the department has worked on the submission to the UN Human Rights Council within the universal peer review cycle, where an emphasis was put on social rights.

Most important challenges that the department is facing with is the change of social policies being introduced by the Government and the influence and the impact of those changes on Georgian citizens. In the department's efforts to ensure protection of social rights there is always the problem that the state cannot provide even minimum social housing or social assistance to all people in need, and even the minimum standard of protection is difficult to achieve.

Along these lines, there is also another important issue, and that is the process of budgeting at all levels

of state administration. Namely, the process of budgeting is beyond the attention of civil society, and only politicians discuss budgets. There is no attempt to reform this process to ensure that the voices of people affected, or civil society at all, are heard, and when creating budget, there is no warning that the social giving is nowhere close to satisfy the actual needs for social assistance. PDO is attempting to discuss budgeting for social rights with the government.

The department is focused on following up on the obligation of progressive realisation of economic, social and cultural rights, in accordance with the international treaties, such as the International Covenant on Economic, Social and Cultural Rights, or the European Social Charter. Progressive realisation means that States must demonstrate that they are making every effort to improve the enjoyment of economic, social and cultural rights, even when resources are scarce and it is what the department is looking into when reflecting on the obligations of Georgia in this regard.

In addition, the department also works on individual cases, which would not be taken upon by other departments, but at the same time also looking into structural problems on a more general scale and beyond individual complaints.

REGIONAL OFFICES

Following the visit to the central PDO Office in June 2015, on 16-17 July the delegation was given an opportunity to meet with the representatives of all regional offices in Batumi, the capital of the Adjara region.

Regional offices were created in order to discharge the work from the central office and to provide easier access to the PDO for local populations in different, even remote parts of the country. This, however, does not mean that regional offices can exist in isolation from the central office. On the contrary, it is necessary for the regional offices to coordinate and closely cooperate with the central office.

In their daily work, regional offices are rather autonomous. However, centralisation and coordination in the work with the central office is achieved mainly through maintaining a single database of all the cases, and are assigned to the regional office, according to the region. In straight forward cases, where a decision can be made at the regional level, the head of regional office has the authority to decide. However, when the case is more complicated and requires more coordination, it is discussed with the central office and the specific expertise, which exists in the central office, is sought before a decision is made. Decision is finally made by the regional office, apart from the cases which are being transferred to the central office, as well as any other case for which it is decided that central office would be better placed to take it upon themselves.

Cases involving children's rights and rights of people with disabilities, also gender equality and domestic violence cases are automatically transferred to the central office. At other certain instances, when an issue is specific or complicated, the entire case may also be reassigned to the central office. Otherwise, the regional office deals with a case.

Offices operate with a minimum of staff, some of them employing only one person, who is in charge of the entirety of the workloads, which can be quite challenging at times. Therefore, with some particular exceptions, there can be no specialisation of staff, meaning that everyone needs to deal with everything. Furthermore, there appears to be a lack of necessary resources for the proper performance of PDO's functions in the regions. For instance, offices are not equipped with cars.

Generally the offices are quite free to do their work, acting in accordance with general policy guidelines. They mostly work on individual applications, majority of which relate to social rights. Most regional offices are also involved in the NPM function of the PDO, for which function they are given special mandate by the Public Defender. Only two regions do not have this mandate, but that is due to the fact that these regions are quite close to Tbilisi, and the central office may easily reach the institutions in that region. At instances where it is urgent to intervene, the regional offices also get involved in the allegations of ill-treatment in detention; however, normally this is the task of the NPM department. Two regions which are particularly affected by conflict, and consequently the inflow of refugees and IDPs are also heavily involved in the work with their particular problems. These regional offices are also responsible for conflict monitoring. However, it would appear that they are not trained enough for this uneasy task.

Similarly, in Samtskhe-Javakheti region, which is a region where large majority of the population belong to national minorities, there are some specific issues that occur. First, there is the issue of language, given that most of the members of minorities there do not speak Georgian. While they may complain in their own language, the proceedings within the PDO office take place in Georgian language, and the PDO will respond in Georgian, which may prevent the minority member from fully understanding the outcome of the proceedings. However, there is a concern that the notion of discrimination is not fully understood by general public, who are likely to declare any administrative obstacle, or refusal of a request as discrimination, not understanding that being a member of a minority is not enough per se to justify differential treatment, and that certain criteria need to be satisfied in order for the discrimination to come into play. Due to this misunderstanding, while there are complaints of discrimination being filed to the PDO, hardly any of them are valid and grounded complaints of ethnicity based discrimination.

With this in mind, regional offices are in a position to be pioneers of human rights education of broader population. To that end, staff of regional offices undertakes dozens of field visits, which is crucial to educate population about their rights and understanding of certain basic concepts.

In their work, regional offices are to a certain extent supported by contact persons. Contact persons are hired on an as needed basis, and are not staff of the PDO. They are present in smaller, more distant part of each region, and are selected following a public competition. Their job is to monitor human rights situation in their local area and keep the regional office informed about any developments. They also assist the staff of PDO in performing their functions in their respective areas of coverage.

MAIN FINDINGS

The PDO is the institution of the utmost importance for the protection of human rights in Georgia. It has a number of crucial functions, including the competence to decide and issue recommendations upon individual complaints, intervening in a court case in the capacity of *amicus curiae*, or proposing legislative amendments to the legislator, when it identifies direct discrimination in legislation. While all these functions are of key relevance and are exercised commendably by the Public Defender and his staff, the Public Defender himself, as well as his staff is aware of the fact that there is much to be done to bring the work of the office further towards full implementation of human rights of population of Georgia. The present section aims to summarise the main findings, and identify problems which should be treated as a matter of priority in order to optimise the functioning of the PDO and improve the level of protection the office may provide to victims of human rights violations.

While the PDO function of *amicus curiae* in the proceedings could have great potential and if properly

strengthened and then strategically used may bring to a change of overall case-law of Georgian courts and bear a great educational potential towards judiciary, but also law enforcement and other actors in the proceedings, it is regrettable that this function is significantly limited by the current legislative solutions. In criminal proceedings, the PDO may participate, but there is no obligation of the criminal court whatsoever to reflect on the intervention. In administrative proceedings there is a possibility for the PDO to intervene in a case, however, under the same terms as to anyone else from general public. In addition, the PDO still has no standing to get involved in the civil proceedings in any capacity, hence limiting its role in particular in the area of protection against discrimination.

The PDO staff appears to have a need to be better equipped to interview victims of human rights violations. Furthermore, given that the decisions of the office are not mandatory, and the legal knowledge in the country is low, it is important to have good information on the techniques of lobbying and advocacy, as the soft techniques of getting human rights standards to penetrate into official policies. These skills would bring to a change of the organisational culture which exists within the entirety of Georgian institutions, and which represents an environment in which respect for human rights does not highly on the list of priorities. Hence, good lobbying and advocacy skills are an important factor in improving human rights protection in Georgia.

Moreover, the competence to deal with *amicus curiae* submissions is not responsibility of any particular department. This approach may be justified by the need to still maintain focused expertise and to have experts normally working on certain issues contributing towards the best possible arguments in the submission. Nonetheless, in the absence of a specific responsibility to identify and follow cases meriting PDO's intervention, some important cases may just slip through the system. It is, therefore, necessary also for this reason, to strengthen the coordination between different parts of the office, to make sure that PDO intervenes in as large number of cases as possible, while at the same time ensuring the highest possible standard of these interventions. According to Article 23 of the Organic Law on the Public Defender in Georgia, only state and local self-government authorities, officials or legal persons shall be obligated to assist the Public Defender. Unlike in the public sector, there is no equivalent obligation for private actors. This in practice means that when faced with private sector, individuals enjoy less protection, which is a worrying instance of disproportionality, which results in the total absence of protection for violations of human rights by private actors. One potential approach to fill in this gap, at least in the current legislative setting, could be to observe violations by private actors through the lenses of positive obligations of the State, according to the doctrine of such obligations which has been developed by the [European Court of Human Rights](#) (ECtHR) Such an approach is a reflection of the obligation of the state authorities to guarantee that human rights are protected also in relations between private persons or entities.

PDO seems to have most of the currently pressing human rights issues covered, providing for special focus on the rights of women, children and people with disabilities. However, it would appear that this expertise is being built up only in the central office, not reaching the regions. While it seems reasonable to have a small number of good specialists in certain areas, it might appear necessary to also educate people working in the field on how to recognise certain issues, ensuring that any human rights violation is recognised as such and dealt with adequately.

In line with the [United Nations Convention on the Rights of Persons with Disabilities](#) (CRPD) and other developing standards, such is, for example, the Common European Guidelines on the Transition from Institutional to Community-based Care, institutionalisation is increasingly acknowledged as poor

policy and a violation of human rights³. The PDO is aware that the process of deinstitutionalisation of adults and in particular children held in institutions is a process which needs to be set in motion as soon as possible. Providing food and shelter to those in need may be a necessary precondition for proper care. However, there is awareness that providing care in community based settings, and enabling all people to live independently is a basic human right and that warehousing people in institutions cannot replace the basic right of all people to live a dignified life in an environment where they can build up their own individuality. The work of the Department should be developed around these considerations.

With this in mind, there appears to be a great need for improving the skills of the PDO staff in the department for the rights of people with disabilities, in particular regarding the monitoring of the implementation of CRPD rights, as well as promoting the rights of people with disabilities. It will also be crucial to develop methodology which will ensure that mechanisms for the protection of the rights of people with disabilities function properly.

Regarding the work of the NPM department, there appears to be a need for focused training of external experts, in particular in relation to the development of their report writing skills, which would facilitate the PDO to make better use of such experts' contributions in their reports.

The PDO, given its reputation and regional presence, may play an important role not only in the protection of human rights already violated, but also in the prevention from violation. In that regard, it would be important for the PDO staff to know how to exercise the conflict prevention role and how the PDO can be involved in the situation where conflict is obviously being built up, to act properly and in good time to prevent it.

Furthermore, Annual report of the Public Defender is not a report of the activities of the PDO but rather a report on the conditions of the human rights in the previous year. In 2014 this report was more than 900 pages long. Such reports are necessary to flag any human rights issue, and obviously, in a situation where such issues are numerous, cutting down on the report's length might mean not reporting certain problems. However, it would be important to make these reports more readable and more concise – simply more user friendly.

Staff of regional offices, while generally very competent to deal with their daily duties, seems to be lacking some specific training, in particular when it comes to interviewing techniques of people with disabilities and monitoring closed institutions. Moreover, in the regions which are affected by external conflict there would appear to be a great need for conflict monitoring training, where the role of the PDO might be complementary to the international conflict monitoring mechanisms.

The PDO does not conduct its own social research, but is likely to command any necessary research from organisations which are equipped and trained to conduct the research needed. While there is a commendable effort of the Georgian government to provide funding for the work of the PDO, it appears difficult to recruit knowledgeable, qualified staff. Furthermore, there seems to be lack of staff in the regions, as well as lack of equipment for field work, particularly cars which might service difficult terrains.

Providing prevention is one of the main tasks of the Ombudsperson's institution. This is the only body with the capacity to start certain preventive dialogue with parties involved, trying to propose solutions which will help avoiding or limiting any possible confrontations. One of the main challenges for the

³ Common European Guidelines on the Transition on from Institutional to Community-based Care, available at: <http://deinstitutionalisationguide.eu/>.

PDO is how to become a body of confidence to the communities in conflict and how to bring them together in an attempt to try to find common ground to reach mutual understanding and learn how to coexist in peace. This would make the PDO the place of reference for providing good offices to all sides in the case of conflict, which is a great potential for the Office that should be explored in the period to come.

RECOMMENDATIONS

Having conducted two needs assessment missions, the following recommendations are put forward for further considerations:

Training of staff

In the field of PDO staff training, which should be conducted by national and international experts, the following actions are suggested as possible actions for improvement:

1. The PDO staff should further develop their skills at interviewing victims of human rights violations, in particular the most vulnerable victims.
2. When developing their interviewing skills, the staff should in particular receive training in the rights of people with disabilities as well as interviewing techniques with people with disabilities. Such training would particularly be recommended for the field offices staff.
3. Further training should also be provided in methodology and techniques of monitoring in closed institutions, for all staff of the PDO, in particular the field offices staff.
4. In view of the newly acquired competence in the anti-discrimination protection, the staff should receive instructions on how to investigate discrimination, in particular in terms of the collection of evidence, data collection and data analysis.
5. Similarly, skills of staff should be developed in how to recognise and investigate indirect discrimination and how to deal with challenges in proving such discrimination.
6. Further education is also needed in the field of discrimination in the private sector regarding the responsibility of private persons or entities in this regard.
7. Capacities of PDO staff regarding investigating instances of ill-treatment should also be advanced.
8. PDO staff should receive instructions as to how to act as mediators and provide good offices.
9. Contact persons should be provided with basic human rights training.
10. Legal staff of the PDO should receive training in how to develop legal and/or human rights argumentation and how to convincingly present arguments before courts and other institutions.
11. Specific training should also be provided to staff to identify strategic cases in which the PDO should intervene as *amicus curiae*.

Sharing best practices with other ombudsperson institutions

In order to bring the PDO staff closer to fully performing their functions, it is recommended that they are given an opportunity to learn about best practices from other similar institutions in Europe, via seminars, workshops, study visits, translation of relevant publications and other similar activities. It would be particularly important that experiences are exchanged with ombudsperson institutions which have experience in dealing with:

1. Serious social problems, issues of social exclusion, acting in zones affected by conflict, in state of emergency and with problems of large refugee and/or internally displaced population. on the selection and preparation of cases for *amicus curiae* briefs;
2. Operating through regional offices;
3. Domestic violence;
4. Case management;

Amicus curiae role

Apart from the above-mentioned staff training needs, in order to enable the PDO to fully assume its *amicus curiae* role, the following steps are necessary:

1. Provide for a clear legal framework in the law on the PDO as well as procedural laws, in particular the criminal and administrative procedure, but also civil, at least for cases in which one of the parties is the State, as well as within the framework for anti-discrimination protection;
2. Enable the PDO to have proper access to files and other documents related to the case prior to submitting an *amicus curiae* brief and during the entire process of adjudication of the case;
3. Provide for an obligation of courts to deal with the PDO arguments and to respond to them in the written reasoning of the decision;
4. Enable wide public dissemination of *amicus curiae* briefs
5. In order to further develop the role of the PDO in the judicial proceedings, it might be worthwhile considering introducing the competence of the PDO to actually assume the capacity of the party to certain proceedings, as is known in some legal systems. Hence, the PDO might be given the power to submit cassation appeals to Supreme Court on certain issues.

Training to other actors

In addition to the training of the PDO staff, it is important to train broader actors on human rights issues. These trainings may be provided, depending on the audience and the type of training, by the PDO staff as well as external - international and Georgian experts. The training should be provided in accordance with the following suggestions:

1. Human rights trainings for public service, legal profession, law enforcement on different aspects of human rights protection with a special attention to issues of concern in Georgia;
2. Public lectures and other events raising human rights awareness within the general public, especially in the area of discrimination and minority rights;
3. Human rights trainings for future trainers for different social groups: professional (for example teachers, journalists), ethnic, religious, etc.
4. In relation to the *amicus curiae*, trainings should be provided to courts and administrative institutions to get them acquainted with the *amicus curiae* role and how to profit from such interventions.

Media, public relations

In order to inform the general public, and make the Office's work known to the wider Georgian society, it is necessary to continue developing media presence and public relations of the PDO. In that regard, it would be particularly important to ensure:

1. Publication of a quarterly reports presenting the work of the PDO, cases, problems dealt with by the office disseminated to target institutions and persons, available also to the general public via Internet;
2. Preparation of a summary annual report, to be disseminated to state institutions and broader public, besides the regular full annual report;
3. Preparation and dissemination of TV spots, also at regional level;
4. Closer work with the media on national and regional levels.

Other recommendations

In addition to the above mentioned, the following observations and recommendations are made, in order to ensure full capacity of the PDO to deal with human rights violations on the entire territory of Georgia:

1. It is obvious that more staff is needed especially in the regional offices covering rather large geographic areas, and this is an issue of concern. It would be necessary to ensure that sufficient staff is employed, in particular in regional offices;
2. There appears to be lack of structured regular communication between the central and regional offices. To that effect, it might be useful to include staff of regional offices in the regular monthly meetings of staff;
3. The staff of regional offices should have better logistic capacities to be able to visit more regularly and frequently different places within their respective areas. To that end, it would be desirable to equip each regional office with at least one small car of performances appropriate for the kind of terrain and weather conditions prevalent in the region;

4. More *ex officio* cases should be taken upon, in particular in relation to human rights issues concerning entire groups of people, rather than to wait for complaints, in particular having in mind that the public still needs to be educated on how to understand and take up complaints;
5. It would be advisable to consider an option of arranging “open days” of the Public Defender or his deputies in the different regions, giving the people an opportunity of meeting them personally and discussing their cases. This may be an important tool towards raising the awareness and developing level of confidence to the PDO among the population, especially outside of the capital city;
6. In order to keep the staff of the PDO updated concerning the case law of the ECtHR as well as of other international bodies, most important from the Georgia’s perspective, it is recommended to organise regular review seminars, where sharing and discussing any such information would be encouraged and facilitated;
7. The PDO should play an active role in the process of implementing ECtHR judgments in cases against Georgia, by participation in any meeting on the level of the Government or the Parliament at which such issues are discussed, as well as presenting its comments within the supervision procedure in the Committee of Ministers of the Council of Europe in special cases requiring such an action, or by any other action which the Public Defender would consider appropriate;
8. The PDO might consider the idea of presenting *amicus curiae* briefs in selected cases pending before the ECtHR, against Georgia, as well as other countries.