



**№ 49/20071**

The Permanent Mission of Georgia to the United Nations Office and other International organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and has the honor to transmit the information provided by the Georgian side in response to the letter of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Mr. Nils Melzer (reference: AL GEO 2/2021).

The Permanent Mission of Georgia to the United Nations Office and other International organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights (OHCHR) the assurances of its highest consideration.

Encl. 17 pages



**Office of the United Nations High Commissioner  
for Human Rights (OHCHR)  
Geneva**

**Information in response to the letter of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Mr. Nils Melzer**

**19 July, 2021**

**A. REFORM OF THE PENITENTIARY**

1. The reform of the penitentiary system in Georgia has been the major milestone and a success story for the past several years. The progress achieved has been reflected in the reports of independent local and international monitoring bodies.
2. In 2015, Mr. Juan Mendez - UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment observed that the situation has been immensely changed since 2012 and torture does no longer constitute a systemic problem in Georgia. Mr. Mendez particularly noted that the high priority given to the fight against torture and ill-treatment is evident and the efforts of the Government of Georgia, including prosecutions and convictions, diminishing of the prison population, investments in new prison infrastructures and complex policy changes, are visible and quantifiable.<sup>1</sup>
3. The same spirit is reiterated in the report (May 10, 2019) published by the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (*hereinafter* - CPT) and re-confirmed by CPT Delegation after its ad hoc visit in May 2021, when visited the penal institutions of Georgia. Explicitly noting that almost no allegations of ill-treatment were received by the Delegation, neither in liberty deprivation establishments nor in psychiatric establishments. The CPT Delegation expressed its satisfaction concerning the measures taken for the improvement of legal and institutional guarantees, the development of new infrastructure and progress in the provision of medical services.<sup>2</sup>
4. Since July 2018, after merging of the Ministry of Corrections with the Ministry of Justice, further development of the penitentiary and crime prevention systems in accordance with the highest European and international standards has become a key priority for the Ministry of Justice of Georgia (*hereinafter* - MoJ).
5. In February 2019, upon the Order №385 of the Justice Minister, the Strategy and the Action Plan on the Development of Penitentiary and Crime Prevention Systems was adopted. Recommendations developed by international and national monitoring bodies,

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<sup>1</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia, December 1, 2015; available at: <https://cutt.ly/jmE4ziN>

<sup>2</sup> 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 (CPT), May 10, 2019; available at: <https://cutt.ly/kmE4Rbf>

including CPT, the Public Defender's Office (*hereinafter* - PDO) and National Preventive Mechanism (*hereinafter* - NPM), constitute specific milestones of the strategic documents. Adoption of the strategy and the action plan has been positively assessed by PDO and NPM.

6. The new wave of reform initiated by the Justice Minister aims at ensuring the formation of well-functioning and transparent systems that are predicated on the concepts of effective implementation of penalties, protection of rights and dignity of prisoners and promotion of their re-entrance into society. Among other priorities, the reform strives to prevent future reoffending, support inmates' resocialization and rehabilitation and hence secure the paths towards safer society.
7. As of today, with active involvement of the EU experts and EU funded project "Enabling the Prison System to Prevent Re-offending" the new draft of the Action Plan for the Development of Penitentiary and Crime Prevention Systems is being elaborated and is close to the adoption. New action plan reflects recommendations of international (CPT) as well as national monitoring bodies (PDO/NPM). Moreover, all relevant European and international standards (including ECtHR standards, European Prison Rules (EPR), UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) have been taken into account while working on the document.
8. New action plan will be focused on further improvement of material conditions of detention and penitentiary healthcare, on the introduction of micro, family-type prisons for juveniles, enhancement of out of cell activities, advancing vocational trainings, employment, etc.
9. The major goals of new strategy and action plan are:
  - a. Designing and building of new small-scale prisons and improving the existing prison conditions to meet international standards for security, human rights and rehabilitation;
  - b. Crime prevention by the reduction of re-offending through effective rehabilitation and resocialization programs;
  - c. Creation of safe and secure environment in penitentiaries and probation bureaus for defendants, convicts, staff and visitors;
  - d. Respecting and ensuring the human rights of defendants, convicts, visitors, with particular attention to vulnerable groups and staff;
  - e. Strengthening the management, organizational capacity and public visibility of penitentiary and probation systems.
10. It is particularly noteworthy that since 2013 not a single application has been lodged with the European Court of Human Rights or UN treaty-based bodies in relation to a violation

of rights in penitentiary institutions, which is a clear demonstration of successful penitentiary reforms.

## B. Alleged ‘informal hierarchy’

11. As for the so-called ‘informal hierarchy’ in prisons, the Special Penitentiary Service (*hereinafter - SPS*) promptly identifies any attempts of influence by convicts and takes all the necessary measures prescribed by domestic legislation to minimize possible impacts of inmates on one another. These measures include separation of prisoners from each other or a transfer to another institution. The procedure of separating and transferring is regulated by the Order №395 of the Justice Minister on the “Types of convicts’ risks, criteria for risk assessment, rules for risk assessment and reassessment, rules and procedures for transferring convict to the same or different type of penitentiary establishment, activities and authority of the convicts’ risk assessment team” dated May 8, 2019. The order improved the procedure for determining the risks, and those convicts who express support and a positive attitude towards criminal mentality are isolated from other prisoners, usually are placed in solitary confinement. In 2018-2021 (as of July 1), a total of 149 convicts who attempted to impact others were transferred from semi-open penitentiary establishments (*hereinafter – PEs*) to closed ones. In particular,

- a. 2018 – 40 convicts;
- b. 2019 – 48 convicts;
- c. 2020 – 29 convicts;
- d. 2021 – 32 convicts.

12. Georgian authorities do carefully examine all the concerns of the PDO/NPM and are committed to address issues such as “informal hierarchy” in a transparent way. To that end, a special session was convened in the Parliament of Georgia in January 2020. After having heard the positions of the Ombudsperson and the Minister of Justice and examined the materials submitted, the Parliament’s Human Rights Committee concluded that the allegations of the Ombudsperson with regard to the existence of the informal hierarchy practices in the penitentiary system were not substantiated.<sup>3</sup>

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<sup>3</sup> Conclusion of the Parliament of Georgia on the special report of the Public Defender of Georgia prepared on the basis of the monitoring results carried out by the Special Preventive Group in N2, №8, N14 and №15 PEs of the Special Penitentiary Service of the Ministry of Justice of Georgia, February 26, 2020; available at: <https://cutt.ly/imOqIKb>;

Press release of the hearing: <https://cutt.ly/UmOqNrx>

13. The Ombudsperson has also raised this issue at international level before the Council of Europe Committee of Ministers, a body in charge of supervising execution of the judgments of the European Court of Human Rights.<sup>4</sup> However, having examined the information submitted by both the Ombudsperson and the Government of Georgia, the Committee did not share allegations of the Ombudsperson at its session on December 2020 and did not issue any recommendation for Georgia in this respect.<sup>5</sup>
14. On June 18, 2021, the Parliament of Georgia held a hearing of the annual report for 2020 on human rights and freedoms, introduced by the Public Defender. Despite the fact that all the allegations raised in Special rapporteur's communication were also addressed in the annual report, after detailed examination of the issues and hearing to all parties the only recommendation issued by the Parliament was to further intensify measures to prevent criminal subculture in the penitentiary system.<sup>6</sup>
15. Noteworthy, the Ministry of Justice constantly urges PDO/NPM to name individuals allegedly involved in "informal hierarchy" or incidents for investigation to start immediately. However, no specific incidents have been reported so far.
16. Last but not least, under the guidance of Ministry of Justice of Georgia, a law on the State Inspector's Service was adopted by the Parliament of Georgia in July, 2018, which created a new institutionally independent investigative body for cases of ill-treatment allegedly committed by representatives of law-enforcement bodies. On November 1, 2019, the State Inspector's Service successfully commenced its investigative mandated.
17. In accordance with the amendment to the 30 November 2020 Order N663 of the Acting Minister of Justice (amending the Order N131), the medical professionals in penitentiary facilities are required to report cases related to ill-treatment directly to the State Inspector's Service. In June 2021, with the support of the UN OHCHR Office in Georgia, medical staff of the penitentiary system underwent the training on documenting torture and other cruel, inhuman or degrading treatment or punishment in PEs.

### **C. Alleged obstruction of the work of NPM**

18. As for the alleged organized attacks on the representatives of PDO/NPM, the MoJ and SPS respectfully clarify that they have no leverage to influence the attitudes of prisoners

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<sup>4</sup> Communication of the Public Defender of Georgia in the TSINTSABADZE group of cases v. Georgia, October 23, 2020; available at: <https://cutt.ly/omOwyxy>

<sup>5</sup> The Council of Europe's Committee of Minister decision of December 1-3, 2020; available at: <https://cutt.ly/lmE48wJ>

<sup>6</sup> Resolution of the Parliament of Georgia on the report of the Public Defender of Georgia on the situation of protection of human rights and freedoms in Georgia in 2020, July 13, 2021; available at: <https://matsne.gov.ge/ka/document/view/5201789>

towards the ombudsman, any other institution and/or individuals. If prisoners express dissatisfaction towards the ombudsman, in such cases, PEs' administrations ensure safety of the ombudsperson's representatives.

19. Pursuant to Article 60 of the Code of Imprisonment, Public Defender of Georgia and members of the Special Prevention Group shall have an unimpeded access to all penal institutions. They do conduct monitoring visits, communicate with prisoners, both individually and in groups, as well as have an access to necessary documentation and information. The Special Penitentiary Service and administrations of PEs provide the Office of the Public Defender with the necessary assistance required to effectively carry out its functions.
20. Recent statistics of their visits are self-telling. Despite the Covid-19 restrictions, PDO/NPM representatives visited the PEs 308 times in 2020, had uninterrupted meetings with inmates and staff members. While as of 1<sup>st</sup> of July, 228 visits were carried out by the PDO/NPM in 2021.
21. Moreover, the PDO and NPM are also actively engaged in the policy planning process in the framework of the Anti-Torture Interagency Council. The latter adopted the 2021-2022 Anti-Torture Action Plan in February 2021, in which a large number of recommendations of the NPM were reflected;<sup>7</sup>
22. Effective and result-centered cooperation with the PDO/NPM is a priority for the Ministry of Justice. Illustration of this commitment is that the meeting with the representatives of PDO was one of the first held by the recently appointed Minister, where he discussed issues related to penitentiary system and declared full support to the PDO/NPM in implementing their mandate.<sup>8</sup>
23. Furthermore, the Deputy Public Defender was invited to attend the Justice Minister's meeting with the head of the CPT delegation, during their *ad hoc* visit in May 2021.<sup>9</sup>

#### **D. Particular information requested by the Special Rapporteur**

***1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.***

24. The information concerning general allegations referred to in Special Rapporteur's correspondence is addressed under sections C and B of the communication.

<sup>7</sup> Anti-Torture Action Plan, adopted on February 16, 2021; available at: <https://cutt.ly/fmHxnPR>

<sup>8</sup> Meeting of the Justice Minister with the representatives of PDO, May 21, 2021: <https://cutt.ly/PmOrbmr>

<sup>9</sup> Meeting of the Justice Minister with the delegation of the CPT, May 24, 2021: <https://cutt.ly/LmOrjEW>

25. Therefore, under this section information is provided with respect to the individual incidents:

## **INCIDENTS AT №17, №15 AND №8 PEs**

### **№17 Penitentiary Establishment**

(I) **On January 13, 2021**, the PDO delegation headed by the Deputy Public Defender made a visit to the №17 PE. The delegation met 11 convicts employed in agricultural services and started questioning them on the conditions in the PE, to which the convicts reprimanded the representatives of the PDO and accused them of not being interested in the fate of the convicts, but merely “playing politics” by prioritizing prisoners with political backgrounds. Furthermore, the convicts pointed out the TV show broadcast on September 13, 2020, where convicts employed at the penitentiary establishments were portrayed as humiliated and marginalized part of PEs. The convicts noted that, while they have been repeatedly addressing the PDO concerning the abovementioned fact, the PDO failed to react or release any statement condemning the abuse of prisoners.

The convicts further requested an active involvement of the Public Defender in the amnesty process, so that more convicts could be granted amnesty, noting that despite numerous requests to the PDO concerning the issue, requests were left again unreacted. The convicts’ demands were viewed by the delegation to be part of the process managed by the PE administration, which resulted in their decision to suspend the visit, despite the fact that other convicts also requested to meet and to have an interview with the delegation.

Present incident is being investigated by the Prosecutor’s Office.

(II) With regard to the incident at №17 PE on **April 30, 2020**, the MoJ and SPS clarify that the information provided does not correspond to reality and no such incident has taken place. Moreover, information concerning alleged incident was communicated to the MoJ and SPS a month after the alleged incident took place, making it impossible to address promptly.

### **№15 Penitentiary Establishment**

(I) **On October 31, 2020**, at 10:25, the five-person delegation of the PDO representatives visited the PE №15 in Ksani to observe the on-going election process. The representatives were stationed at the entrance of the polling station while the convicts were coming to polls to cast a vote. The delegation was approached by a group of convicts of up to 4-5 persons expressing their discontent towards the PDO Office for its alleged lack of



attention to beatings, torture and other ill-treatment of prisoners occurring before 2012, and for alleged disregard of the complaints submitted to that end. This went on for a few minutes, after which the director of the №15 PE intervened to de-escalate the situation, before being interrupted by the head of the delegation and asked to let the exchange to continue. The director accepted the request and remained nearby to react promptly in case it was required. The incident was over in a few more minutes and the delegation left the PE territory at 12:23.

Present incident is being investigated by the Prosecutor's Office.

- (II) **On January 14, 2021**, at 14:30 the PDO representatives entered the establishment and requested access to the medical unit to have an interview with convicts. During the interview, several convicts were expressing complains about the PDO's inaction before 2012, when under the former government, the prison administration severely tortured, beat and put prisoners in an unbearable condition. For this reason, the PDO representatives suspended interviews, and accused convicts and the administration of the PE of intervening in their work.

Representatives of the PDO prepared a protocol of the visit, stating that certain group of convicts had verbally abused them, prevented them from performing their official duties, and expressing dissatisfaction with the administration for failing to address these facts. The deputy director was asked to sign the protocol, however refused since the content of this document was not true. After the protocol was drawn up, the representatives of the PDO left the premises of the institution at 15:35.

Present incident is being investigated by the Prosecutor's Office.

### **№8 Penitentiary Establishment**

- (I) On **December 4, 2020**, and **January 12, 2021**, during the PDO visits at №8 PE, convicts expressed dissatisfaction caused by the visit of representatives of the PDO, since due to the COVID-19 preventive measures, special conditions were in place and a possibility for a long visits, as well as other entries into the PEs were restricted. Unhindered access to the facility, in view of severe epidemical situation and restrictive measures imposed, was unacceptable to some convicts.

Present incidents are being investigated by the Prosecutor's Office.

### **Investigative Activities**



26. In the course of those investigations, all PDO representatives were interviewed, namely, those were visiting specific penitentiary facilities of the Ministry of Justice to conduct their official activities on dates mentioned in the Public Defender's proposal and who considers that their professional activities were interfered by inmates, as well as by penitentiary facilities' administration representatives.
27. On the basis of Tbilisi city court ruling, video footage demonstrating PDO representatives' movement in penitentiary facility №15, penitentiary facility №8 and penitentiary facility №17, were examined using technical means.
28. On the basis of the video footage examination and the information received from interviewing PDO representatives, the identification process regarding inmates, as well as Special Penitentiary Service facilities' administration representatives, which in any manner were in contact with them, is in active progress. The investigation will encompass every detected criminal episode. Currently, all possible investigative and procedural actions are being conducted in active manner.

***2. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the allegations of intimidation, harassment, and ill-treatment of NPM officials and prisoners. If no investigation has been initiated, please explain why and how this is compatible with the international human rights obligations of Georgia.***

29. As underscored in paragraphs 25-28, all the incidents referred to in Special Rapporteur's correspondence have been duly addressed.
30. Apart from those incidents, all the cases of alleged harassment and ill-treatment are promptly and effectively addressed, in particular:
  - In 2020, General Inspection of the Ministry of Justice launched investigation of 468 cases concerning inter-prisoner violence in penitentiary establishments and 111 investigations, where there were suspicious damages on the body of inmate;
  - As of July 1, 2021, General Inspection of the Ministry of Justice launched investigation of 230 cases concerning inter-prisoner violence in penitentiary establishments and 16 investigations, where there were suspicious injuries on the body of inmate;
  - In 2020, General Inspection of the Ministry of Justice launched 2 investigations on the alleged negligence of the official duty by the staff of penitentiary establishment and 2 investigations in 2021;
31. From November 1, 2019 to June 30, 2021, the State Inspector's Office launched an investigation into 62 criminal cases against the staff of the Special Penitentiary Service of the Ministry of Justice, namely -
  - 2019 - 4 criminal cases;
  - 2020 - 49 criminal cases;

– 2021 (as of July 1) - 9 criminal cases.

32. In the period from November 1, 2019 to June 30, 2021, one employee of the Special Penitentiary Service was found guilty in one criminal case investigated by the State Inspector's Service. The investigation started in 2020 under Article 342<sup>1</sup>(2) (*Violation of the internal regulations by an employee of the Special Penitentiary Service or an equivalent person that has resulted in death or other grave consequences*) of the Criminal Code of Georgia, while the prosecution was launched in 2021 under Article 342<sup>1</sup>(2) of the Criminal Code.
33. The MoJ and SPS would like to underline that all the incidents with the signs of crimes, are being investigated by Prosecutor's Office and administration of the relevant PEs closely cooperate with investigative authorities and provide all the information/materials required.

***3. Please provide information on measures adopted by your Excellency's Government to ensure that the National Preventative Mechanisms, inspection teams of National Human Rights Commissions, defence lawyers, NGO's, judiciary, and physicians are able to conduct unannounced visits, and allowed full and unfettered access to the premises and to conduct interviews privately with detainees of their choice. If no such measures have been adopted, please explain how this is compatible with the international human rights obligations of Georgia.***

34. In addition to the information provided under section C, the MoJ and SPS would like to note, that under Article 60 of the Code of Imprisonment, authorised personnel of the Prosecutor's Office have an unimpeded access to all penal institutions. The same practice is established in respect to the personnel of State Inspector's Service.
35. Pursuant to Article 18 of the Code of Imprisonment accused/convicted person has the right to meet with his/her defense lawyer without any limitations or interference. The full confidentiality of these meetings is ensured. Despite the difficult epidemiological situation, no detainee was restricted from communicating with his or her lawyer. Moreover, SPS fully provided all penitentiary institutions with an access to necessary equipment for them to participate in remote trials. 20'134 remote trials were conducted in 2020.
36. MoJ and SPS note that, pursuant to Article 24 of the Code of Imprisonment each detainee is provided with the necessary medical care, both within the penitentiary system and in civil society clinics, and is provided with qualified medical care 24 hours a day. If so requested, an accused/convicted person may invite a personal physician at his/her own expense. During 2020, in order to provide relevant medical services, a total of 5,116

referrals of accused/convicted persons were carried out in various medical institutions of the civil sector, including:

- Planned outpatient medical services - 1963;
- Planned inpatient medical services - 583;
- Emergency medical services - 2570.

37. As emphasized in paragraph 17, since November 2020 the medical professionals in penitentiary facilities directly report the cases related to ill-treatment to the State Inspector's Service.

***4. Please indicate if there are guidelines or training provided to the prison authorities in relation to the mandate of National Preventative Mechanism and inspection visits of places of detention by various bodies and officials. If no such trainings and guidelines are provided, please explain how this is compatible with the international human rights obligations of Georgia.***

38. The majority of training modules designed for the staff of penitentiary system, include a session regarding the mandate of the Public Defender and the National Prevention Mechanism. Specifically, these issues are covered within the following training modules:

- Basic principles and ethics of penitentiary staff;
- Orientation course for escort officers;
- Orientation course for employees of the Main Security Division of the Penitentiary Department;
- Mandatory universal training module for newly recruited staff of the Special Penitentiary Service;

39. Within the aforementioned trainings staff of the SPS receives following information:

- The rules regulating PDO/NPM's entry into penitentiary establishments;
- The role of the NPM in combating and preventing torture, ill-treatment and punishment in the penitentiary service and penitentiary establishments;
- Ensuring confidentiality of the meetings of the PDO/NPM with accused/convicted persons or others deprived of their liberty;
- Responsibility for the obstruction of the activities of the PDO/NPM under the legislation of Georgia.

40. Apart from that, for further promotion of effective cooperation with the PDO/NPM, the new draft action plan for the Development of Penitentiary and Crime Prevention Systems covers activities aimed at informing inmates as well as staff of the SPS on the PDO/NPM's mandate. For this purposes in cooperation with UN OHCHR office in Georgia, SPS intends to develop informational materials and distribute them in all PEs.

## **E. Conclusion**

41. The Government of Georgia would like to confirm its commitment to continue cooperation with Special Rapporteur's office and express readiness to submit any further information upon request.