

Mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolution 43/20.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **the criminal subculture in the penitentiary system intimidating and obstructing the work and mandate of the National Preventative Mechanism to conduct regular inspection of places of detention.**

I recall that the Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment raised the same concerns in a letter addressed to your Excellency's Government and will continue to monitor the situation.

According to the information received:

On 22 February 2019, the Ministry of Justice approved the 2019 – 2020 Strategy and Action Plan for the Development of Penitentiary and Crime Prevention Systems. The strategy was intended to facilitate the work of the Special Penitentiary Service in reforming the prison criminal subculture. However there have been serious drawbacks in the implementation of the action plan due to the continued prevalence and dominance of the power and influence of the criminal world, undermining the efforts of activities aimed at the rehabilitation and re-socialization of prisoners.

Within the prisons, there is an established criminal network of a small number of influential prisoners, known as the “watchers” – who ensure discipline and order by intimidating and exerting psychological pressure, and even physical constraint, on other prisoners. The Special Penitentiary Service is reportedly engaged in concealing this escalating problem, discrediting the NPM and provoking aggressions on its members. The penitentiary system is indirectly depending on the “watchers” services to disrupt the visits of the NPM and impeding on their functions. There are multiple incidents to demonstrate this, for example:

Visits to Prison NI7

On 30 April 2020, the NPM conducted a monitoring visit in order to assess certain aspects related to the COVID -19 pandemic. Although the main focus of the visit was to study the epidemiological situation and living conditions, the attention of the NPM was drawn by the behaviour of a group of inmates who interfered in the interaction between the members of the monitoring

group and other inmates and tried to pull away and obstruct individuals who wanted to speak out or be interviewed.

On 13 January 2021, representatives of the Public Defender undertook a visit to Prison N17, and a group of prisoners behaved aggressively towards them. They raised repetitively similar issues and demanded responses on matters which were not within their competences. At the same time, they were making political statements, praised the prison administration and called for the termination of the visit. As a result the visit was suspended, and the monitoring group were not able to talk to a large number of prisoners.

Visits to Ksani Penitentiary Establishment No. 15

On 31 October 2020, the NPM undertook an ad hoc visit to the Ksani Penitentiary Establishment No. 15 to monitor the parliamentary election voting to ensure they were being conducted freely and fairly. During the visit, the monitoring group was approached by two inmates, who spoke in a loud tone, in order to be heard by other inmates, announcing that everything was alright in the penitentiary system since 2012, arguing that it was before then that torture and ill-treatment was widespread and that there was no point to the visit. They demanded the termination of the visit. The NPM members attempted to explain the purpose of their visit, the inmates begun to verbally abuse and insult the NPM members. The Director and the staff who witnessed the incident did not take any measures to intervene or control the inmates. As a result of the escalating abuse towards the NPM members, the visit was halted.

The Office of the Public Defender issued a statement following this visit, raising worrying concern for the failure to conduct a full unimpeded visit, urging state authorities to investigate the incident and calling on them to take effective steps to reducing the negative influence of the criminal “world” in penitentiary facilities.

In response, the Special Penitentiary Service published a statement, reportedly misleading the public, saying that the prisoners of Establishment No. 15, "reprimanded the representatives of the Public Defender for their negligence and called for more frequent visits to the facility". A few days later, on the basis of the complaints filed by non-governmental organizations, the results of the ballot in this prison were annulled. The scale of the election irregularities made it clear to the Public Defender's Office why certain prisoners attacked the NPM members, which was not prevented by the administration of the establishment.

On January 14, 2021, during a routine visit following the death of an inmate in Prison N15 due to COVID-19, the staff of the Public Defender's Office were assaulted and were not allowed to conduct its visit.

Visits to Prison N8

On December 4, 2020 and January 13, 2021 during visits to the prison N8, the representatives of the Public Defender were threatened by prisoners who behaved aggressively and demanded the termination of the visits. Prison N8 is a closed facility where inmates are mostly in their cells and are not allowed to

move freely inside the premises. Reportedly, at each visit to the prison, the same prisoners were outside their cells, disrupting the visit.

In a follow up meeting with the Deputy Director of the Prison and the representatives of the Public Defender's Office, the latter were met with disrespectful comments and aggression when inquiring about institutional changes which were recently introduced.

While I do not wish to prejudge the accuracy of these allegations, I am bringing them to the attention of your Excellency's Government to be fully and promptly investigated. NPM and officials from the Public Defender's Office should be able to fully and effectively perform their mandate to undertake visits without interference from either the prison authorities or the prisoners themselves. I wish to stress that regular inspection of places of detention, with a view to monitoring the conditions of detention, especially when carried out as part of a system of periodic visits, constitutes one of the most effective preventive measures against torture and ill-treatment. Should the facts alleged above be confirmed, they would amount to a violation of articles 18, 19, 20, 21 and 22 of the Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment or punishment (OPCAT) which guarantees the functional independence of the national preventive mechanism, to which Georgia acceded to on 9 August 2005.

I am also concerned about the alleged intimidation and harassment of prisoners by other prisoners. In this regard, I wish to remind your Excellency's Government of its obligation to prevent prisoner-on-prisoner violence or ill-treatment by investigating any such reports, prosecuting and punishing those responsible, and offering protective custody to vulnerable individuals, without marginalizing them from the prison population more than is required by the need for protection and without putting them at further risk of ill-treatment, in accordance with the absolute and non-de non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Georgia acceded to on 26 October 1994, as well as the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

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

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.
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.

I would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of my highest consideration.

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

The freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right under international law that must be respected and protected under all circumstances and has been codified in human rights treaties, including in the Universal Declaration of Human Rights (art. 5), the International Covenant on Civil and Political Rights of 1966 (art. 7) and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (art. 2 and 16).

I would like to draw the attention of your Excellency's Government to the reviewed Standard Minimum Rules for the Treatment of Prisoners (as amended and adopted by the UN General Assembly on 5 November 2015 and renamed the "Mandela Rules") and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988. I recall that the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment. I also refer to paragraph 28 of the General Assembly resolution 68/156 (2014) which emphasizes that conditions of detention must respect the dignity and human rights of persons deprived of their liberty and calls upon States to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment.

Furthermore, article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture.

I would also like to draw the attention of your Excellency's Government to the Recommendation E/CN.4/2003/68, para. 26 (f) of the Special Rapporteur on torture (my predecessor's recommendation), which states that, "independent non-governmental organizations should be authorized to have full access to all places of detention, including police lock-ups, pre-trial detention centres, security service premises, administrative detention areas, detention units of medical and psychiatric institutions and prisons, with a view to monitoring the treatment of persons and their conditions of detention. When inspection occurs, members of the inspection team should be afforded an opportunity to speak privately with detainees. The team should also report publicly on its findings. In addition, official bodies should be set up to carry out inspections, such teams being composed of members of the judiciary, law enforcement officials, defence lawyers and physicians, as well as independent experts and other representatives of civil society. Ombudsmen and national or human rights institutions should be granted access to all places of detention with a view to monitoring the conditions of detention. When it so requests, the International Committee of the Red Cross should be granted access to places of detention. Non-governmental organizations and other monitoring bodies should also be granted

access to non-penal State-owned institutions caring for the elderly, the mentally disabled and orphans as well as to holding centres for aliens, including asylum-seekers and migrants.”