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Submission for the Universal Periodic Review of Georgia, 37th session, Jan-Feb 2021

Penal Reform International (PRI) is a non-governmental organisation working globally to promote criminal justice systems that uphold human rights for all and do no harm. We work to make criminal justice systems non-discriminatory and protect the rights of disadvantaged people. We run practical human rights programmes and support reforms that make criminal justice fair and effective. Registered in The Netherlands (registration no 40025979), PRI operates globally with offices in multiple locations, including Tbilisi, Georgia.

Based on Penal Reform International's work and experience in Georgia, this submission highlights both progress and concerns in relation to the criminal justice system, in particular:

- 1) Preventing and addressing torture and ill-treatment in detention facilities**
- 2) Living conditions for persons in detention.**

Key concerns include limitations to the operation of the Public Defender as a National Preventive Mechanism and the failure by respective authorities to follow up its recommendations; inadequate oversight or activity by the Interagency Coordination Council for combating torture; shortcomings in investigating allegations of torture; the impact of COVID-19 response measures on the human rights of people in prison; ill-treatment in places of detention, including the use of lengthy solitary confinement and de-escalation rooms; and challenges experienced by prison staff.

We recommend that the Working Group encourage Georgia to: strengthen institutional and procedural safeguards for combating and preventing torture in places of detention and enhance oversight mechanisms; review the use of lengthy solitary confinement and placement in de-escalation rooms, particularly for individuals with mental health conditions; address inter-prisoner violence and the influence of informal prisoner sub-cultures; and review the use of restrictive COVID-19 measures in prisons.

1 Preventing and addressing torture and ill-treatment in detention facilities

- 1.1 Georgia was reviewed in the second cycle of the Universal Periodic Review in 2015 (session 23) and received numerous recommendations to prevent and address torture and ill-treatment in detention facilities. In this submission, these recommendations are grouped, and their implementation is considered thematically.
- 1.2 Georgia received recommendations to **strengthen policy to prevent torture and ill-treatment** by officers in penitentiary establishments, and to ensure compliance with international standards as set out in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: **A/HRC/31/15, para. 117.50 (Bulgaria); para. 117.51 (Hungary)**
- 1.3 Georgia's Action Plan¹ for 2018-2020, set out under its National Strategy² for the Protection of Human Rights 2014-2020, defines the following objectives: strengthening legal, procedural and institutional mechanisms for combating ill-treatment; documenting torture and ill-treatment facts according to the Istanbul Protocol; improving quality of independence, effectiveness and transparency of investigation; promoting protection, compensation and rehabilitation of victims of ill-treatment; improving healthcare services; developing principles and procedures for use of coercive measures.³
- 1.4 The Public Defender oversees human rights protection and carries out the functions of the National Preventive Mechanism (NPM) stipulated under OPCAT.⁴ The NPM regularly monitors the conditions and treatment of detainees and prisoners, persons in psychiatric facilities, in homes for the elderly and children's shelters, in order to protect them from torture and other cruel, inhuman or degrading treatment or punishment.⁵ It is of concern that despite the guarantees stipulated in the UN OPCAT and the Organic Law on Public Defender, the Ministry of Justice repeatedly fails to provide information requested by the NPM relating to prisons, adequately respond to the issues of concern raised by the Public Defender, and prevent hindrances to the operation of its members⁶.
- 1.5 The Inter-agency Coordination Council⁷ under the Ministry of Justice oversees the implementation of measures to prevent and address torture, inhuman, cruel treatment or punishment. It is composed of representatives of state agencies, non-governmental and international organizations. PRI welcomes the Council's Action Plan (17 May 2019) that outlines key activities to be undertaken by different agencies to improve torture prevention and response. However, oversight by the Council on its implementation remains relatively weak and could be strengthened, for example by holding meetings with the regularity (every 3 months) foreseen by the law and respective statute.

¹ <http://myrights.gov.ge/en/Policy%20Documents/action-plans-1/>

² Human Rights Secretariat website:

<http://myrights.gov.ge/en/About%20us/news/reports/About%20us/news/My%20Rights/Briefly%20on%20Human%20Rights/About%20us/My%20Rights/useful-links/Policy%20Documents/National%20Human%20Rights%20Strategy/>

³ <http://myrights.gov.ge/ka/plan/Action%20Plan%202020?sphere=737&goal=>

⁴ Organic law on the Public Defender, art. 3¹

⁵ Organic law on the Public Defender, art. 19¹

⁶ As reported by the Public Defender in the Parliamentary Report on the Situation of Human Rights and Freedoms in Georgia for 2019, pp. 40-42, <http://www.ombudsman.ge/res/docs/2020070407523954521.pdf>

⁷ Established by the Georgian Government Decree N341 on 7 May 2014

- 1.6 Order N 131⁸ of the Minister of Corrections, effective as of 1 April 2017, sets out rules for the recording, documentation and photographing by doctors in prisons of injuries sustained by prisoners as a result possibly of torture and other cruel, inhuman and degrading treatment, including sexual violence, which might later serve as a medical evidence for investigations. The Ministerial Order approved special forms to be used by doctors for the recording of disclosed injuries and requires medical confidentiality to be observed during these procedures. This law is a welcomed development. PRI is however concerned that Article 6 falls short of the Istanbul Protocol as it requires prison doctors to inform the investigative department of the Ministry, and not an independent authority such as Chief Prosecutor's Office or State Inspector. Investigation by an internal body of the Ministry cannot guarantee the institutional independence needed for the effective investigation of torture or other ill-treatment alleged. There is a need to update the Order (as the Ministry of Corrections was dissolved in July 2018 and amalgamated with the Ministry of Justice). The Ministry of Justice is required to approve a similar document, and has the opportunity to rectify this shortcoming. Furthermore, existing documentation practices by prison doctors, according to the Public Defender⁹, fall short of the Istanbul Protocol.
- 1.7 Georgia received nine recommendations in the second cycle UPR to strengthen measures to **address and investigate torture and ill-treatment of people in detention**, with some also recommending remedies for victims: **A/HRC/31/15, para. 117.78 (Montenegro); para. 117.79 (Czech Republic); para. 117.80 (Ireland); para. 117.81 (Turkey); para. 118.28 (Poland); para. 118.29 (Spain); para. 118.30 (United Kingdom of Great Britain and Northern Ireland); para. 118.31 (Belgium); para. 119.2 (Russian Federation)**
- 1.8 The Ombudsman's annual reports for 2016-2019¹⁰ state that investigations into allegations of torture and inhuman, degrading treatment are ineffective, delayed, and seldom lead to bringing perpetrators to justice. Primary causes mentioned include the lack of institutional independence of existing investigative bodies and ineffective collection of evidence.
- 1.9 PRI welcomes the creation of a mechanism for the investigation of alleged crimes committed by law-enforcement officers on 20 September 2019. An amendment to the Law on State Inspector's Service¹¹ extended the investigative jurisdiction of the State Inspector's Office to certain crimes, including torture, threat of torture, inhuman or degrading treatment; abuse and exceeding of official powers committed using violence or weapons, if these crimes are committed by the representative of law enforcement body, also other crimes committed by law enforcements which cause death of a person and during which fact this person was held in the preliminary detention facility, or penitentiary facility, or other place under the state control.¹² Their authority covers crimes committed since 1 November 2019.

⁸ Order N 131 of the Minister of Corrections, dated 26 October 2016 on the approval of rules for the documentation of injuries of prisoners inflicted possibly as a result of torture and other cruel, inhuman, or degrading treatment in penitentiary institutions of the Ministry of Corrections of Georgia

<https://matsne.gov.ge/ka/document/view/3402759?publication=0>

⁹ Public Defender's Parliamentary report on 2019, p. 48, available at :

<http://www.ombudsman.ge/res/docs/2020070407523954521.pdf>

¹⁰ <http://www.ombudsman.ge/eng/saparlamento-angarishebi> Annual parliamentary reports of the Georgia's Ombudsman/Public Defender

¹¹ <https://personaldata.ge/ka/about-us>

¹² Law of Georgia on State Inspector's Service, article 19,

<https://matsne.gov.ge/en/document/view/4276790?publication=4>

1.10 PRI notes there are a number of flaws foreseen that may hinder the independent and effective work of this new mechanism: Authority of the inspectorate is limited as it does not cover all crimes that could allegedly be committed by law enforcement officials within their working capacity. In addition, the inspectorate is only mandated to investigate crimes, while public prosecution function and prosecutorial oversight of the investigation conducted by the inspectorate remains with the Prosecutor's Office.

1.11 We hope the Working Group will welcome the establishment of the new inspectorate, but make recommendations that its mandate be extended to cover all crimes that could allegedly be committed by law enforcement officials within their working capacity and to include public prosecution function and prosecutorial oversight of the investigation. Also, recommendations should be made on more regular reporting (beyond annual reporting to the parliament) to the public for increased transparency and accountability.

2 Living conditions for persons in detention

2.1 In the second cycle UPR, Georgia received recommendations to improve the **living conditions for people in detention**, reform the prison system and strengthen human rights protection in penitentiary establishments: **A/HRC/31/15, para. 117.52 (Andorra); para. 117.55 (Bulgaria); para. 117.56 (Australia); para. 117.84 (Morocco)**

2.2 Conditions in detention play a crucial role in the safety and security of people in prison and in providing an effective rehabilitation and resocialization process. Conditions in the Georgian prison system have improved since the second cycle, following a number of reforms taken by authorities, but significant challenges remain.

2.3 PRI welcomes the commitment by the Ministry of Justice in its *2019-2020 Strategy and Action Plan on the Development of Penitentiary and Crime Prevention Systems* to build small prisons and calls on the Government to involve local and international experts in its implementation.

2.4 In June 2018, maximum risk penitentiary establishment N7 was closed and persons were moved to a new prison that can accommodate 29 people. Living conditions in this new facility are largely in line with international standards, with single-occupancy cells. However, by the Order N524 (dated 29 April 2020) of the Minister of Justice, this new prison N7 is to be closed down on August 5, 2020 for reasons unknown to the public.

2.5 Remaining issues that have been highlighted in relation to living conditions in prisons include problems with the design and arrangement of walking areas; restrictions on contact with families for people detained in a special risk penitentiary establishment; phones in closed establishments are located in areas where it is not possible for people in prison to make a phone call without staff overhearing their conversation.¹³ In addition, some de-escalation rooms present safety challenges for people, toilets in these cells are in view of the CCTV cameras, and there is a lack of meaningful activities for people in special risk penitentiaries.¹⁴

¹³ Special Report of National Preventive Mechanism, Follow-up monitoring visit of penitentiary establishments N2, N8, N14 and N15, 2019, pg. 31-33, available at <http://ombudsman.ge/res/docs/2019121618092132463.pdf>

¹⁴ REPORT ON MONITORING PENITENTIARY ESTABLISHMENTS IN GEORGIA, Human Rights Center, Tbilisi, 2019, pg. 16, 23-24, 38-39, available at <http://www.hridc.org/admin/editor/uploads/files/pdf/hrc2019/penitenciuri-report-eng.pdf>

- 2.6 PRI notes that torture or inhuman, degrading treatment is no longer a systematic problem in Georgian prisons. However, we note with concern that lengthy solitary confinement is used (in violation of the Nelson Mandela Rules) and the problematic use of de-escalation rooms as punishment in relation to certain categories of people.¹⁵
- 2.7 Special attention needs to be directed to the living conditions of life-sentenced prisoners. In Gldani prison N8, an employment project has been launched where people in prison, including those who are sentenced to life, can benefit.¹⁶ However, living conditions are excessively limited and unfit for lengthy prison sentences: time for open-air exercise is short, without any meaningful activities or the possibility of exercising; life-sentenced persons have limited contact with the outside world living in complete isolation for long periods, in violation of relevant international standards; the penitentiary system does not have rehabilitation plans tailored to the specific and actual needs of persons detained, both regularity and type of measures being fully dependent on private initiatives.¹⁷
- 2.8 In response to the COVID-19 pandemic, strict lockdown measures were taken by Georgian authorities to prevent the spread of the virus in penitentiaries. These included a blanket ban on family visits and parcels from families, restrictions on meetings with lawyers, and visits by the NPM were adapted. PRI welcomes that family visits were re-introduced in early May, albeit conducted through glass barriers, and parcels are now also allowed. However, restrictive regimes are still in place in many penitentiaries. The impact of the lengthy use of these measures should be assessed and mitigated, and the restrictive regimes reviewed, as a matter of urgency. Contingency plans should also be put in place for crisis management.
- 2.9 PRI expresses concern about the existence in some prisons of privileged persons who belong to criminal sub-cultures and impose informal rules over others, subjecting them to bullying, coercion, extortion, ostracizing, even threatening their physical safety.¹⁸ We note that prison administrations tolerate and even support this sub-culture for the purpose of using it to control the prison population.
- 2.10 Georgia received one recommendation in the second cycle UPR to develop a high standard of **human resource management** to avoid administrative infractions and human rights violations in prisons: **A/HRC/31/15, para. 117.54 (Bosnia and Herzegovina)**
- 2.11 Based on monitoring in December 2018 by PRI and partner organisations¹⁹ in four prisons, we welcome the fact prison staff take part in general training on human rights, international standards on the penitentiary and probation system, treatment of prisoners, etc. However, such training needs to be expanded to working with foreign nationals, people

¹⁵ Report on Monitoring Penitentiary Establishments in Georgia, 2019, pp. 23-25, <http://hridc.org/admin/editor/uploads/files/pdf/hrc2019/penitenciuri-report-eng.pdf> ; also see Public Defender's parliamentary report for 2019, pp. 45-47

¹⁶Source: Special Penitentiary Service of Georgia, available at <http://sps.gov.ge/ka/media/akhali-ambebi/article/23359-gldanis-sapatimros-msjavrbulebi-datsesebulebis-teritoriaze-soflis-meurneobis-sferoshi-dasaqmdebian.html>

¹⁷ Rights of Lifers and High-Risk Prisoners in the Penitentiary System, Institute of Democracy and Safe Development (IDSD), Tbilisi, 2018; pg. 14-15, available at <https://cdn.penalreform.org/wp-content/uploads/2019/02/IDSD.pdf>

¹⁸ The issue has been highlighted in the Public Defender's Special Report in December 2019, reiterated again in the 2019 Parliamentary report, also in CPT's report on Georgia on its visit in 2018.

¹⁹ The monitoring was carried out within the framework of Penal Reform International's EU-funded project "Monitoring Government's Commitments and Promoting Reforms in Penal Sector through the Engagement of CSOs", carried out with PRI's partner organizations-Human Rights Center and Initiative for Rehabilitation of Vulnerable Groups.

with disabilities and other specific groups.²⁰ Training sessions need to be better planned as the needs of personnel are not surveyed when planning the training.²¹ Most of the interviewed employees hardly remember the topics of the training they undertook.²²

2.12 The training of top-level management needs to be regulated, since legislation does not oblige them to take part in any training upon appointment.²³ Continuation of training needs to be supported for all personnel, by considering their needs and area of expertise.

2.13 Considering the specificities of the closed penitentiary establishments and the working conditions of the prison staff, it is crucial to support employees with training on burnout prevention. The NPM has stressed the issue since 2017, yet according to its 2018 Report, no such training was conducted.²⁴

2.14 PRI has concerns regarding the legal status and treatment of low-grade prison staff in Georgia's penitentiaries as a survey²⁵ conducted within a project by PRI revealed problems with staff recruitment, retention, treatment and working conditions. One of the key issues identified is the prevalence of informal prisoner subculture over formal personnel relations and influence on staff morale.

2.15 Measures undertaken by the Ministry of Justice to prevent the spread of Coronavirus in Georgia's penitentiaries have also included lengthy lockdown of prison staff in prison premises, causing concerns regarding staff remuneration for overtime, as well as potential worsening of staff-prisoner relations due to increased stress, etc.

2.16 We hope the Working Group will welcome the improvement of living conditions for prisoners in the facilities concerned but make recommendations to alleviate overly restrictive regimes and settings, including for life-sentenced prisoners and those in high security prisons. We hope recommendations will also be made to ensure the use of solitary confinement and de-escalation rooms is in compliance with international human rights standards, and that prisoner criminal sub-cultures in some of Georgia's prisons are addressed through measures at the policy level and in practice to reduce their influence.

Penal Reform International briefing note

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²⁰ REPORT ON MONITORING PENITENTIARY ESTABLISHMENTS IN GEORGIA, Human Right Center, Tbilisi, 2019, pg. 54, available at <http://www.hridc.org/admin/editor/uploads/files/pdf/hrc2019/penitenciuri-report-eng.pdf>

²¹ Ibid.

²² Ibid.

²³ Desk Research on Prison Staff, Rehabilitation Initiative of Vulnerable Groups, 2018, pg. 3, available at <https://cdn.penalreform.org/wp-content/uploads/2019/02/prison-staff.pdf>

²⁴ The Report of National Preventive Mechanism of Georgia, 2018, pg. 51, available at <http://www.ombudsman.ge/res/docs/2020011615511256803.pdf>; also see the report in the above footnote for more evidence and recommendations

²⁵ Prison Staff Satisfaction Survey, 2020, summary available in English at: <https://cdn.penalreform.org/wp-content/uploads/2020/04/GCRT-KUTAISI-ENG.pdf> (and full Georgian report at: https://cdn.penalreform.org/wp-content/uploads/2020/04/GCRT_web.pdf)

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