



Institute for Democracy and Safe Development

**Submission to the 37th session of the third cycle of the
Universal Periodic Review of Georgia**

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Webpage: <https://idsd.org.ge/>

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Introduction

a. About the organization

The Institute for Democracy and Safe Development (IDSD) is a Georgian non-governmental organization founded in 2014 by former members of the National Preventive Mechanism of Georgia. IDSD aims at protecting human rights and fundamental freedoms, supporting criminal justice reforms, including penitentiary and probation systems, raising awareness on human rights through research, trainings, seminars and other events with special focus on, vulnerable groups and prisoners' rights.

IDSD team has developed number of researches and policy documents. In particular, , research on *Models and Functions of National Preventive Mechanisms, Human Rights Situation of Lifers and Other High Risk Prisoners in Georgian Penitentiary System*; a draft-law drawing up the changes in the Penitentiary Code of Georgia necessary to the establishment of a new independent monitoring body composed by the representatives of CSOs; a *Guideline for Monitoring Penitentiary Institutions* (accompanied with a practical checklist brochure for monitors' use during the visit) tailored to the specifics of Georgian penitentiary system, which will allow actual or future monitors to gain/deepen the knowledge on the specificities of the monitoring of the penitentiary and acquire the necessary technical skills.¹

b. Scope of the submission document

Since 2016, IDSD has been monitoring the implementation of the chapters of the Human Rights Action Plans (HRAP) related to the protection of human rights in places of detention (penitentiary institutions an Temporary Detention Isolators²), reform of law enforcement agencies and eradication of torture and ill-treatment.³ To this end, the organization has constant communication with the state agencies responsible for the implementation, notably, with the Special Penitentiary Service of the Ministry of Justice of Georgia (former Ministry of Corrections), National Probation Agency, the Ministry of Internal Affairs of Georgia, etc.

Accordingly, this submission focuses on protection of human rights in places of detention, reform of law enforcement agencies and eradication of torture and ill-treatment in 2016-2019

1 All the publications of the IDSD are available on the organization's website. Unfortunately, some of them are available only in Georgian: <https://idsd.org.ge/publications/>

2 Temporary Detention Isolators (TDIs) represent the first place where a person arrested for a criminal offence is placed for up to 48 hours, in exceptional cases - 72 hours

3 Action Plan of the Government of Georgia on the Protection of Human Rights for 2016-2017:

Chapter 4. Protection of Human Rights in Penitentiary System and

Chapter 5. Elimination of Torture and Ill-Treatment;

Governmental Action Plan on Human Rights (2018-2020):

Chapter 3. Human Rights and Law Enforcement System,

Chapter 4. Rights of Accused Persons, Convicted Defendants and Former Prisoners,

Chapter 5. Fight against Torture and Ill-Treatment.

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

and is largely based on the information and data gathered and analyzed during the monitoring process of HRAP.

I. Human rights situation in Georgian penitentiary institutions and pretrial facilities (*Recommendations 117.50 to 117.57 of the UPR in Georgia, second cycle, Right or area 12.6. Conditions of detention*)

1.1 Temporary Detention Isolators (TDIs)

1. In the period of 2016-2019, numerous activities were carried out towards the improvement of material conditions of persons placed in TDIs: a number of buildings were renovated and medical units were arranged. However, some isolators still fail to comply with established standards as toilet areas are not isolated and there are no outdoor areas arranged. According to the information received from the Ministry of Internal Affairs of Georgia, , it is planned to renovate all TDIs by the end of 2020.⁴
2. It is also commendable that access to medical services are ensured in all TDIs. Furthermore, it is planned to staff each TDI with medical personnel, which, under conditions of appropriate vocational training, will positively affect the accessibility of medical services and their quality. Nevertheless, documenting injuries remains to be a problem. to this end, it is necessary to provide TDIs with medical personnel and ensure their intensive and periodic training on the methodology determined by the Istanbul Protocol.⁵
3. Unfortunately, at this stage, the provision of TDI population with adequate food remains problematic. However, according to the Ministry of Internal Affairs, it is planned to solve this problem partially by the end of 2019 – instead of dried meals, some TDIs will serve boiled food.

1.2 Penitentiary Institutions

4. In the reporting period, there were some improvements in terms of material, sanitary and hygienic conditions of penitentiary establishments. The buildings of the two problematic penitentiary establishments (nos. 7 and 12) were closed down in 2018-2019; several penitentiary establishments were renovated; prisoners are supplied with soft furniture and hygiene items. However, the infrastructure of a number of penitentiary establishments is still outdated and should be renovated.
5. No considerable steps were made to identify the actual reasons of overcrowding and to eradicate them. According to the statistics reports of 2018 published by the Special Penitentiary Service,

⁴ Letter from the Ministry of Internal Affairs of Georgia MIA 6 20 00965423, 01 May 2020

⁵ Istanbul Protocol – Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Office of the High Commissioner for Human Rights, 2004

overcrowding was a problem in penitentiary establishments, nos. 2 and 15.⁶ Apart from the problem regarding placing prisoners in penitentiary establishments over the statutory limits, some establishments, fail to provide each prisoner with a minimum living space of 4 m².

6. Except the establishment of partial judicial control,⁷ no tangible changes were made to improve the parole mechanism. The new regulation⁸ does not contain any changes in terms of reasoning of decisions, involvement of inmates in the examination procedure or improving the individual approach.
7. The legislative changes to the Imprisonment Code of Georgia made in 2017 improve prisoners' situation to a certain extent, e.g. introduction of home confinement and electronic monitoring system for all prisoners, possibility of higher education for low risk facilities, right to have a TV or a refrigerator in the cell, introduction of judiciary control in compassionate release system etc.⁹ However, more needs to be done to achieve the goal of establishing a penitentiary system that complies with universal and European standards. The amendments, as a rule, fail to be based on systemic analysis of legislation and needs assessment. The discriminatory approach adopted towards high risk prisoners deserves negative assessment - high education is denied to all prisoners placed in high risk establishments without any individual risk assessment. So far, no legislative amendments were made to improve the legal status of remand/convicted prisoners.
8. In the reporting period, programmes and activities implemented for resocialization and rehabilitation of prisoners' fail to address the existing needs; Moreover, only a small part of the prison population is involved in the existing limited activities.¹⁰ Lack of outdoor exercise remains a serious problem in all closed-type facilities.¹¹ Programmes intended for female remand and convicted prisoners are better organised in comparison to male prisoners. In 2017-2018, in addition to the existing small employment hubs, two new small hubs became operational; with the support of EU4Justice,¹² a special tool to identify women as victims of violence was developed as well the rehabilitation programme tailored to women. In 2018, a rather large number of women were involved in the rehabilitation programmes.¹³
9. Against the background, where the resocialisation and rehabilitation activities are scarce and there is a powerful criminal underworld and deep-rooted forms of the informal rule, thus exposing

6 Although, the National Preventive Mechanism of Georgia reports overcrowding problems in more establishments. For example, according to the 2018 report of the National Preventive Mechanism, the minimum living space of 4 m² as established by Article 15 of the Imprisonment Code for each convicted person remains problematic in penitentiary establishments nos. 2, 8, 14, 15 and 17.

7 See par. 6

8 Order no. 320 of the Minister of Justice of Georgia of 7 August 2018 which governs the procedure for examination of the issue of conditional early release and decision-making by the local councils of the Special Penitentiary Service

9 Legislative changes of 1 June 2017 to the Code of Imprisonment of Georgia

10 According to the 2018 statistics report of the Special Penitentiary Service, the number of convicted persons participating in educational and vocational training programmes in the course of the year was between 0.89-5.9 percent of the total number of the prison population. This data is practically the same as the data of 2017 (6%) and less than that of 2016 (11%).

According to the Review of the Annual Implementation of the 2018 Budget of the Ministry of Justice of Georgia, in 2018, only 862 offenders were involved in the employment programmes, among them, 89 women.

11 Inmates spend up to 23 hours a day in their cell without any meaningful activity

12 EU-funded Penitentiary and Probation Support Project

13 According to the Review of the Annual Implementation of the 2018 Budget of the Ministry of Justice of Georgia, in the reporting period, 86 women were involved in the employment programme. The following served as the employment hubs: household services, beauty salon, sewing workshop, handicraft workshop. 397 female offenders were involved in psychosocial and rehabilitation training sessions.

weaker prisoners to the risk of violence and intimidation, the use of disciplinary measures is not uniform and adequate etc. it is difficult to discuss the human rights based prison management. The first steps made since the previous years in this regard are undoubtedly commendable: development of risk assessment and needs assessment mechanism; introduction of individual sentence planning; the work towards the improvement of these mechanisms is to be mentioned positively and the active assistance by the EU-funded Penitentiary and Probation Support Project (EU4Justice) to the penitentiary authorities of Georgia. However, to properly assess the outcome of these innovations, they must now be applied in practice.

II. Actions taken to combat ill-treatment in Georgia (UPR of Georgia, second cycle, rights or area 12.5. Prohibition of torture and cruel, inhuman or degrading treatment, recommendations 117.50, 117.51, 117.78-117.81, 118.28-118.31, 119.2)

2.1 General Observations

10. Fight against ill-treatment remains one of the major challenges in Georgia in terms of human rights protection. Ill-treatment of persons held in closed institutions, manifested in unbearable living conditions of mental in-patients, violence by prison personnel, inter-prisoner violence with administration's instigation or acquiescence; use of excessive force by police; unjustified use of means of restraint and dire living conditions of prisoners with mental health problems in penitentiary establishments, remain a systemic problem.
11. Even though the National Strategy of Human Rights Protection of Georgia for 2014-20 envisages setting up a public monitoring mechanism for closed institutions,¹⁴ the NPM of Georgia remains the only mechanism for monitoring closed institutions with regard to the ill-treatment of persons deprived of their liberty. In 2016, with participation of independent experts and CSOs, IDSD prepared a draft-law drawing up the changes in the Penitentiary Code of Georgia necessary to the establishment of a new monitoring body. Despite numerous requests from civil society, the establishment of a new monitoring mechanism has never been put on the government's agenda.
12. Proper investigation of cases of ill-treatment remains problematic. According to data from National Statistics Office of Georgia, only a small number of investigations result in bringing criminal charges under articles 144¹ (Torture), 144² (Threat of torture) or 144³ (Degrading or inhuman treatment) of the Criminal Code of Georgia; in the period 2018-2019, no investigations

14 Approved by the Resolution of the Parliament of Georgia from 30 April 2014, available at: <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/>

were initiated under these Articles.¹⁵

The vast majority of these investigations relate to events prior to 2012.¹⁶

13. Relevant state agencies still have to make a serious effort in order to facilitate interagency agreement on developing a uniform and comprehensive system of collection of statistical data that would reflect full information about ill-treatment. Specifically, statistics should include information of all incidents and which agencies' employees are involved. Furthermore, statistics should be maintained not only according to qualification of crimes but also stemming from the facts/complaints of ill-treatment itself (including the number of complaints about incidents of ill-treatment lodged with a certain agency, the details of the agency to which the employees belong, in how many cases investigation was instituted/discontinued and by which body, under which article(s) of the Criminal Code, against how many individuals criminal prosecution was instituted, how many cases, against how many accused persons, were referred to court, in how many cases plea agreement was concluded, etc.
14. It is to be positively mentioned that, in the reporting period, an order of the Minister of Internal Affairs approved the instruction for medical assistance for persons placed in temporary detention isolators, which complies with universal and European standards. It is commendable that the Ministry of Corrections and the Ministry of Internal Affairs developed forms for documenting ill-treatment, complying with the Istanbul Protocol. It will be necessary in future to train/retrain all current and future employees in documenting incidents of ill-treatment, using the said forms and to introduce the documenting methodology in practice efficiently.

2.2 Establishment of an independent investigative mechanism

15. After the 2012 elections, the establishment of an independent mechanism to investigate cases of ill-treatment committed by public officials was declared as a priority. The need for such a mechanism has been stressed by various international bodies and experts.¹⁷ In 2015, Open Society Georgia - Foundation together with the Office of the High Commissioner for Human Rights –

¹⁵ In 2016-2017, the Prosecutor's Office started investigation in 322 cases of ill-treatment (29 of them under articles 144¹ (Torture) and/or 144³ (Degrading or inhuman treatment) of the Criminal Code of Georgia); the indictments were issued against only 6 persons and those under article 333 (Exceeding official powers) of the Criminal Code of Georgia.

Statistical data from the Ministry of Internal Affairs for 2018-2019 do not indicate any investigations initiated under the articles 144¹, 144² (Threat of torture) or 144³ of the Criminal Code; available at: <https://info.police.ge/uploads/5e3a6b603887b.pdf>

In the cases of investigations into the misconduct of officials, it is not indicated how many of them involve ill-treatment. In the same period, 9 people (5 in 2018 and 4 in 2019) have been accused of torture and 27 (13 in 2018 and 14 in 2019) - of degrading or inhuman treatment; available at:

<https://www.geostat.ge/en/modules/categories/132/criminal-justice-statistics>

¹⁶ This tendency is also mentioned in the 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) from 10 to 21 September 2018, Strasbourg, 10 May 2019, par. 13, available at: <https://rm.coe.int/1680945eca>

¹⁷ Georgia in Transition, report on the human rights dimension: background, steps taken and remaining challenges, assessment and recommendations by Thomas Hammarberg in his capacity as EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia, September 2013, p. 14 available at: http://gov.ge/files/38298_38298_595238_georgia_in_transition-hammarberg1.pdf

Investigating Ill-treatment, stocktaking report on Georgia, John Murdoch, February 2013, par. 31, available at: <https://rm.coe.int/16800922ae>

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia; 2015, December 1, A/HR/31/57/Add. 3; P. 8, available at: <https://www.refworld.org/docid/56c436dc4.html>

Tbilisi Office prepared a draft law on independent investigative mechanism with the functions of investigating as well as prosecuting cases of ill-treatment perpetrated by public officials. The draft was developed with the participation of civil society and received its full assent. The project was also welcomed by the government. However, its official initiation did not take place until 2018, when at the initiative of the Georgian government, the parliament adopted a model fundamentally different from the one approved by civil society and gave the mandate of an independent investigative mechanism to the Personal Data Inspector, renamed as State Inspector Service.¹⁸

16. The introduced law was strongly criticized by the Coalition for an Independent and Transparent Judiciary of which IDSD is a member.¹⁹ Several aspects were considered particularly problematic:

- It is unclear what rational considerations led to the unification of the two totally different but equally important functions, that of protection of personal data on the one hand and investigation on the other, under the mandate of the State Inspector.
- Article 3, "h", of the Law excludes the Inspector's jurisdiction over crimes committed by the Chief Prosecutor, the Minister of Internal Affairs and the Head of the State Security Service. The Coalition found it illogical to exclude from the Inspector's mandate those officials who present a particularly high risk of abuse of power.
- The exhaustive enumeration of the articles of the Penal Code falling under the mandate of the Inspector was also considered problematic - thus, the exercise of his investigative functions by the Inspector will depend on the qualification given to the facts, which had always been problematic in cases of ill-treatment.
- The Coalition also criticized that maintaining the function of the prosecutor's office relating to the supervision of the investigation as well as mandatory instructions on its part jeopardized the effectiveness of the Inspector's mandate.

As of today none of these recommendations have been taken into account.²⁰

2.3 Investigation of alleged ill-treatment cases of 20-21 June 2019

17. On 20 June 2019, a huge demonstration took place in front of Parliament. The citizens protested against the fact that on the morning of the same day, Sergei Gavrillov, a member of the Russian Duma, was allowed to take the seat of the head of Georgian Parliament and open the session in Russian. This event was considered an outrage given that 20% of the territory of Georgia is occupied by the Russian Federation. Late in the night, the demonstration was dispersed by the police using tear gas and rubber bullets.

¹⁸ Law of Georgia on the State Inspector's Service, available at:

<https://matsne.gov.ge/en/document/download/4276790/3/en/pdf> The provisions relating to the inspector's new duties did not come into force until 1 November 2019.

¹⁹ The statement of the Coalition is available only in Georgian at:

http://coalition.ge/index.php?article_id=185&clang=0

²⁰ The criticism is shared by the Committee for the Prevention of Torture - see, notably, the 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) from 10 to 21 September 2018, Strasbourg, 10 May 2019, par. 14

18. The dispersal of the demonstration of 20-21 June 2019 had particularly serious consequences due to uncontrolled use of rubber bullets and other non-lethal weapons, by the police. According to the official data, 275 persons sustained injuries during the June 20-21 events, among them 187 civilians, 15 journalists²¹ and 73 police officers. 28 persons needed surgery due to injuries, among them eight persons underwent ophthalmologic surgery and four persons – neurosurgery;²² as a result of injuries caused by rubber bullets, at least two civilians (one demonstrator and one journalist) lost an eye.²³ In seven cases, the Ombudsman of Georgia made a recommendation to the Chief Prosecutor to open an investigation.²⁴
19. Despite numerous requests by the Ombudsman as well as CSOs to start an investigation on ill-treatment and excessive use of force by police officers, during the 20-21 June events, tangible results have not been achieved - three police officers were charged with abuse of power and eight demonstrators were recognized as victims. Regarding the allegations of excessive use of force on the part of the police forces, As pointed out in the special report of the Ombudsman, the investigation only focuses on the police officers directly responsible for the misconduct without seeking to establish the responsibility of the senior officials who gave the order to use rubber bullets against peaceful demonstrators.²⁵

21 The Appeal by the Journalists to the Georgian Government, the Georgian Interior Minister and the Diplomatic Corps Accredited in Georgia lists 39 journalists injured during 20-21 June events, available at <https://www.qartia.ge/en/news/article/73297-appeal-by-the-journalists-to-the-georgian-government-the-georgian-interior-minister-and-the-diplomatic-corps-accredited-in-georgia>

22 <https://osgf.ge/en/june-20-21-victims-without-status/>

23 https://en.allmedia.news/sazogadoeba/35624-mako-gomouri-and-giorgi-sulashvili-publish-a-joint-photo-from-the-hospital-rustavi2/?doing_wp_cron=1593611187.0353529453277587890625

24 Special Report of the Public Defender of Georgia - Interim Report on the Investigation of the June 20-21 Events, 2020, p. 3, available at: <http://www.ombudsman.ge/res/docs/2020062613524385612.pdf>

25 Special Report of the Public Defender of Georgia - Interim Report on the Investigation of the June 20-21 Events, 2020, p. 32