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‘Public Scrutiny of Prisons – Can Unwelcome Democratic Control Prevent Torture?’

POLICY BRIEF

Executive Summary

The EU-Georgia Association Agenda includes the commitment to further strengthen internal and external monitoring of the penitentiary, police, military and other closed facilities as a means to prevent torture. Regular monitoring visits by external independent bodies (with carefully selected and properly trained committee members) to prisons is recognised as an effective measure for preventing torture and other forms of ill-treatment and is considered an important component of public oversight over an otherwise closed system.

In Georgia, instituting the practice of external monitoring has not been a priority and thus remains to be addressed. The Georgian authorities have not undertaken any actions to re-establish external, public monitoring of prisons (and other closed facilities). This issue features in the 2016 Action Plan for the Implementation of the Association Agenda, just as in the previous two plans, and also in the National Human Rights Strategy and its Action Plan for 2014-2015; however, no steps have been taken by the Ministry of Corrections, the responsible agency, to tackle this task.

Given the fact that 2016 is an election year in Georgia, the authorities are particularly sensitive to allowing prison monitoring by NGOs and any unforeseen consequences this might have. Unfortunately, past performance indicates that there will be new reasons for not allowing regular and systematic access even after the elections. The previous government explicitly barred NGOs' access to prisons and tacitly permitted large-scale torture and ill-treatment of prisoners. The current government's ministers of corrections have maintained that there are some risks that might arise if they permit civil society access to prisons.

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Introduction

Signature of the EU-Georgia Association Agreement and its respective Agenda commit Georgia to ensuring respect for human rights and fundamental freedoms,¹ rule of law, impartiality and effectiveness of law enforcement bodies, and a transparent, accountable and effective civil service. One of the issues identified in the Agenda for torture prevention is further strengthening of monitoring of places of detention, including external independent monitoring, as a means of ensuring a torture free environment in these institutions.² The action plans for 2014, 2015 and 2016 for the implementation of the Agenda all feature respective commitments. The responsible agency is the Ministry of Corrections of Georgia.

This document will focus on the external independent monitoring of prisons, given the past experience of independent monitoring boards, which were later dissolved, and also the past prevalence of large-scale torture in Georgia's prisons. The importance of independent external oversight over prisons is examined as a means for preventing torture and ill-treatment. This document also introduces why specifically public monitoring of penitentiaries is needed in addition to other existing mechanisms.

Explicit political will is certainly required to address the problem in question. This issue is a matter of good governance in terms of promoting government transparency and accountability as far as places of detention are concerned.

'Since ordinary members of civil society cannot easily discover for themselves what goes on behind the high walls and fences of a prison, there has to be a system of inspection which checks that everything is as it should be.'

**Andrew Coyle,
'A Human Rights Approach to Prison Management'**

Why is independent public monitoring key to preventing torture?

Prisons and other places of detention are closed to the public as they serve to isolate some individuals by legally depriving them of their liberty, based on a decision of a judicial or administrative authority. The closed nature of these institutions increases the risk of abuse and ill-treatment of detainees. 'All institutions which are managed by or on behalf of the state should be subject to public scrutiny. This is especially important in the case of prisons because of their coercive nature.'³

There is general agreement among the human rights community concerned with places of detention and protecting human rights therein that regular, unhindered and unannounced visits by independent bodies to prisons and other places of deprivation of liberty is considered a good practice and serves to prevent the oc-

¹ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part; Official Journal of the European Union, p. 9, available at: http://eeas.europa.eu/georgia/pdf/eu-ge_aa-dcfta_en.pdf [last accessed 30 May 2016]

² 'Further strengthen effective internal and external monitoring of the penitentiary system, police, military and other closed facilities for the early detection and prevention of abuse and ill-treatment', p. 6, Association Agenda between the European Union and Georgia, available at: http://eeas.europa.eu/delegations/georgia/documents/eap_aa/associationagenda_2014_en.pdf [last accessed 31 May 2016]

³ Andrew Coyle, *A Human Rights Approach to Prison Management*, 2009, International Centre for Prison Studies, Second Edition, pg. 121, available at: http://www.prisonstudies.org/sites/default/files/resources/downloads/handbook_2nd_ed_eng_8.pdf [last accessed 2 June 2016]

currence of torture and other forms of ill-treatment. This external oversight is also important to ensure transparency and accountability of the system in general, based on the principles of democracy and rule of law.

'This is especially true in the case of monitoring the power of the State to deprive people of their liberty. Monitoring the treatment and conditions of detention of persons deprived of their liberty through unannounced and regular visits is one of the most effective means of preventing torture and ill-treatment.⁴ This not only reduces the risk of torture and other ill-treatment but also contributes to increasing public confidence in the institutions.'⁵

According to the European Prison Rules,⁶ which set standards for operating prisons for CoE member states, 'All prisons shall be subject to regular government inspection and independent monitoring'. It further states that 'the conditions of detention and the treatment of prisoners shall be monitored by an independent body or bodies whose findings shall be made public.'⁷

The UN Standard Minimum Rules for the Treatment of Prisoners, also relevant to Georgia as a UN member state, describes a 'twofold system for regular inspections of prisons and penal services',⁸ i.e. external independent inspections in addition to internal, administrative ones.

International practice of public oversight

There are some examples of public monitoring of prisons in different parts of the world, most notably in European countries, many of which are part of National Preventive Mechanisms (NPM) as independent entities or have developed ways of cooperating with it. Within the framework of a project financed by the Open Society Georgia Foundation, a study⁹ has been undertaken exploring the structures and organisation of NPMs in various countries and the level of engagement of civil society in their work.

The Independent Monitoring Boards¹⁰ in the UK are a good example of how representatives of communities who are independent provide good public oversight over prisons (and other facilities) by undertaking unpaid work on average of 2-3 days per month. 'Their role is to monitor the day-to-day life in their local prison and ensure that proper standards of care and decency are maintained.'¹¹

'Objective of inspections shall be to ensure that penal institutions are managed in accordance with existing laws, regulations, policies and procedures with a view to bringing about the objectives of penal and correctional services, and that the rights of prisoners are protected.'

The Nelson Mandela Rules, Rule 55.2

⁴ "Monitoring Places of Detention: a Practical Guide", Association for the Prevention of Torture (APT), Geneva, April 2004, pg. 15, available at: http://www.apr.ch/content/files_res/monitoring-guide-en.pdf [last accessed 2 June 2016]

⁵ Association for the Prevention of Torture (APT), available at: <http://www.apr.ch/en/detention-monitoring/> [last accessed 6 June 2016]

⁶ Council of Europe, Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, Rule 9, available at: http://www.coe.int/t/dgi/criminallawcoop/Presentation/Documents/European-Prison-Rules_978-92-871-5982-3.pdf

⁷ Idem, Article 93.1

⁸ Article 83, Internal and external inspections, United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), 8 January 2016, Geneva, available at: <http://www.penalreform.org/wp-content/uploads/1957/06/ENG.pdf> [accessed 5 June 2016]

⁹ 'Types and Powers of National Preventive Mechanisms', Institute for Democracy and Secure Development (IDSD), February 2015, Tbilisi, available in Georgian at: <http://www.osgf.ge/files/2016/Publications/merged.pdf> [last accessed 14 June 2016]

¹⁰ Independent Monitoring Boards in the UK, available at: <http://www.imb.org.uk/> [last accessed 10 June 2016]

¹¹ Idem

'Most importantly, the introduction of the new system brings a new group of people, from a wide range of backgrounds, into Scotland's prisons as the eyes and ears of the community. The commitment, motivation and enthusiasm of the growing team of new Independent Prison Monitors is remarkable, and I am confident that in the coming months and years, the new system will improve Scotland's prisons, as well as informing best practice in independent monitoring to protect human rights.'

David Strang
HM Chief Inspector of Prisons

A novel structure of prison monitoring has emerged in Scotland based on a long tradition of community representatives visiting prisons in order 'to ensure humane treatment and conditions for prisoners'. These are Independent Prison Monitors,¹² community volunteers who undertake weekly monitoring visits to 15 prisons.

In Armenia, the Group of Public Observers Conducting Public Monitoring of Penitentiary Institutions and Bodies of the Ministry of Justice of the Republic of Armenia - a body of NGOs - has been conducting monitoring visits since 2005.¹³

'Following changes in the law in 2006 Japan has set up "Boards of Visitors for Inspections of Penal Institutions." The Boards should involve ordinary citizens in the work of prisons and bring the perspective of citizens to the attention of prison staff. Each Board should have in its membership one lawyer recommended by the local bar association, a doctor recommended by the local medical association and an official from the municipal government and up to seven lay members. The Board of Visitors should visit institutions, give feedback to the prison management on their operation and also interview prisoners when necessary. The Board should produce a report annually giving its opinion on the institution.'¹⁴

These are just a few examples of how well-selected and qualified members of the community can contribute to the protection of human rights in prisons and to the overall well-functioning of the system.

Georgia's experience of independent oversight over prisons

Currently, and in fact since mid-2009,¹⁵ the only external and national independent mechanism which carries out regular visits to Georgia's prisons is the Public Defender's National Preventive Mechanism (NPM), designated based on the ratification by Georgia of the Optional Protocol to the UN Convention against Torture. The NPM under the Public Defender's Office is an independent state mechanism of oversight over penitentiaries and other closed institutions, accountable to the parliament. However, its resources for preventing torture and abuse throughout all closed institutions and places of detention are not unlimited, thus inhibiting its potential to conduct advocacy.

¹² 'New Structure for Prison Monitoring in Scotland, JUSTICE and SAFETY, September 1, 2015, available at: <http://blogs.scotland.gov.uk/justice-safety/2015/09/01/new-structure-for-prison-monitoring-in-scotland/> [last accessed 6 June 2016]

¹³ 'Group of Public Observers Conducting Public Monitoring of Penitentiary Institutions and Bodies of the Ministry of Justice of the Republic of Armenia', University of Minnesota, Human Rights Library, available at: https://www1.umn.edu/humanrts/research/armenia/public_observers.html [last accessed 14 June 2016]

¹⁴ Japan Federation of Bar Associations, Information for Prison Inmates, 2006, as cited in Human Rights Approach to Prison Management, p. 122, International Centre for Prison Studies, 2009, available at: http://www.prisonstudies.org/sites/default/files/resources/downloads/handbook_2nd_ed_eng_8.pdf [last accessed on 10 June 2016]

¹⁵ Even though Georgia ratified OPCAT in 2006, the National Torture Preventive Mechanism was only designated in July 2009 through amendments to the Organic Law on Public Defender (Ombudsman) (noted: TC)

Arguably, the authorities used the emergence of the NPM as an excuse to dissolve public monitoring bodies for prisons in 2008 and have since then referred to its operation as a reason for not (re)establishing a body vested with the powers of public scrutiny. Either there was a failure to understand the complementarity of the two mechanisms for enhanced protection of prisoner rights or else it was a deliberate move.

In 2012, only after the footage of prisoner torture went viral and caused public indignation was a temporary mechanism of public scrutiny established. Prior to that, in 2005-2007, Georgia had 12 prison monitoring commissions, one at almost every prison, comprised of representatives of NGOs, community organisations, local government authorities and churches, established on the basis of the Law on Imprisonment.¹⁶ Members enjoyed unhindered access to respective prisons and were entitled to produce recommendations on the improvement of treatment of prisoners, conditions of imprisonment, staff-related and other issues and to submit to the Ministry in charge of prisons. The impact of these commissions was controversial, due to the rather weak mandate, lack of resources and support and necessary feedback. However it can be argued that since the dissolution of these boards, the ill-treatment of prisoners in Georgia's jails became particularly prevalent and widespread.

The government in place prior to the parliamentary elections of 2012 explicitly rejected civil society's calls and appeals to re-establish public oversight over prisons, as they did not favour public scrutiny over institutions where torture and ill-treatment were a systemic practice. This was evidenced in responses received by civil society organisations to their petitions and even proposals for different models of oversight. After the change of government, the new authorities were similarly un-receptive to the idea of public scrutiny, voicing fears and coming up with different excuses to resist civil society's initiatives to monitor prisons.

Civil society is prevented from monitoring the situation in prisons and contributing valuable recommendations and suggestions to the Ministry of Corrections. The official reasons for the resistance to allowing civil society access are linked to the Ministry of Correction's perceptions of risks associated with this arrangement. Two examples are the opportunity for politically motivated NGOs to generate negative publicity of the situation in prisons or NGO access upsetting prison order and discipline through criminal subcultures. Allegedly, the upcoming elections contribute to the government's concerns about these risks.

Hence, the desire to maintain the reputation of the ministry and prison system in general outweighs both the possibility of realising the benefits that public monitoring can contribute to prison reforms and the significance and necessity of public scrutiny for the purposes of torture prevention and democratic control. The authorities fail to appreciate the expertise and commitment of the civil society organisations engaged with the penitentiary system for over a decade and their capability to inform positive change.

¹⁶ Article 93, Independent Monitoring, Law of Georgia on Imprisonment, 1999

Conclusions

Even though 2016 is the final year for the implementation of the EU-Georgia Association Agenda, one particular and important commitment in terms of strengthening external monitoring over penitentiaries remains unaddressed. Despite the explicit obligation to establish external public oversight over prisons articulated in the action plans for the Agenda as well as the National Human Rights Action Plan, there have been no actions undertaken by the responsible agency in this regard.

The government's lack of progress on this issue demonstrates the absence of political will to effect change. The authorities must learn from the country's extremely negative experience of ensuring a torture-free environment in prisons in the recent past and engage with the civil society organisations that have extensive expertise and are committed to improving Georgia's prison system.

Recommendations

- ▶ The issue of strengthening external monitoring over places of detention (including prisons) should be reflected in the new Association Agenda for 2017-2019, as it has not been addressed under the current one.
- ▶ The authorities, specifically the Ministry of Corrections, need to address the issue as a matter of priority, by conducting consultations with civil society organisations as to the general model and setup of a public monitoring body and the membership and selection criteria, which should guarantee that experienced monitors, with necessary qualifications and backgrounds, will be involved in the important and responsible task of prison monitoring (considering the various concerns the authorities might have in this regard).
- ▶ The agreed model of public scrutiny over prisons should be launched by creating the necessary legislative basis and other arrangements, including the selection of members by an independent selection committee and ensuring its unhindered operation.

