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Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Información presentada por el Defensor del Pueblo de Georgia*

Nota de la secretaría

La secretaría del Consejo de Derechos Humanos transmite adjunta la comunicación presentada por el Defensor del Pueblo de Georgia**, que se reproduce a continuación de conformidad con el artículo 7 b) del reglamento que figura en el anexo de la resolución 5/1 del Consejo, según el cual la participación de las instituciones nacionales de derechos humanos se basará en las disposiciones y prácticas convenidas por la Comisión de Derechos Humanos, incluida la resolución 2005/74, de 20 de abril de 2005.

* La institución nacional de derechos humanos tiene la acreditación de la categoría "A" ante el Comité Internacional de Coordinación de las Instituciones Nacionales para la Promoción y la Protección de los Derechos Humanos.

** Se reproduce en el anexo tal como se recibió, en el idioma en que se presentó únicamente.

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Anexo

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Intervention from the Public Defender (Ombudsman) of Georgia to the Panel discussion on the protection of the human rights of persons deprived of their liberty

The Office of Public Defender of Georgia, as a National Human Rights Institution and within a broad mandate provided to it by the Organic Law of Georgia on Public Defender, is empowered to monitor human rights situation in the country. Monitoring the human rights of persons deprived of their liberty, prevention and eradication of torture and ill-treatment are the core priorities of Public Defender's activities. The present submission focuses on the investigation of crimes allegedly committed by representatives of the law enforcement bodies and strengthening the work carried out by the National Preventive Mechanism of Georgia that are of particular concern to the Public Defender of Georgia.

I. Observations with respect to the establishment of an independent investigation mechanism

In fulfilment of its mandate and competences granted by the Constitution of Georgia and national legislation, the Public Defender of Georgia has analysed, on its own initiative, the practice of investigation of alleged crimes committed by law enforcement officials, in light of the UN and European standards.

As a result of the analysis, a special report has been prepared based on the examination of appeals/complaints submitted to the Public Defender's Office (PDO) concerning alleged ill-treatment of the complainants by representatives of the law-enforcement bodies. The report has been discussed with major stakeholders in Georgia, representing state institutions, civil society organizations and international community.

Deficient investigation of cases of torture, inhuman and degrading treatment of those detained has been one of the major gaps of the legal system in Georgia over the years. This issue has been constantly raised in the reports of the Public Defender of Georgia, though no significant steps have been taken to change the established practice. The intensity of the problem became especially evident following the release of video footages in September 2012 revealing torture of prison inmates at penitentiary establishments. Later, new video materials on the cases of torture and ill treatment uncovered in Western Georgia, on the territory controlled by the Ministry of Internal Affairs of Georgia, made it evident that inhuman treatment and torture was much wider in scope and not confined solely to the penitentiary system. Impunity cultivated over the years have contributed to turning such actions of law enforcement bodies into an established practice – according to the reports of the Public Defender of Georgia, investigation on the cases of ill-treatment were either not carried out, and/or were qualified as abuse of power and authority.

While in 2013 there have been no reported cases of torture neither at police stations nor at penitentiary institutions, the problem of ill-treatment persisted. During the last year PDO received up to forty appeals/complaints which referred to inhuman or degrading treatment of citizens during and/or after detention from the part of law enforcers. The results of the study of these complaints as well as findings of PDO referring to the cases of torture committed during the previous years highlight the following:

- In many cases, allegations of the torture and/or ill-treatment inflicted upon detained/ imprisoned person by representatives of the law-enforcement agency, were/are being internally inspected by the representatives of that specific agency (as usual, by General Inspections of the particular agency) thus violating the ***principle of independence and impartiality of investigation*;**
- In numerous appeals submitted to PDO, the investigative authorities fail to carry out certain investigative measures into the alleged cases of torture/ill treatment inflicted by representatives of law-enforcement bodies (the Ministry of Internal Affairs, including police; the Prosecutor's Office; the Ministry of Penitentiary and Corrections; The Ministry of Justice) after the lapse of significant time period, thus violating the ***principle of thoroughness of investigation*** (for instance, medical examination of the victims);
- The investigation of the cases of alleged torture and ill-treatment are usually extended to unreasonably long period of times, thus violating the ***principle of promptness of investigation***;
- In many of the cases reviewed by PDO, there were cases when the persons who suffered damage as a result of the inhuman or degrading treatment, were not assigned the status of victim, thus violating the ***principle of victim's participation in public oversight over the investigation***.
- The investigation of the complaints of alleged torture and ill-treatment by the representatives of the law enforcement bodies were/are being conducted based on the signs of an offence stipulated by the Article 333 of the Criminal Code of Georgia (abuse of power) and are never qualified as torture or inhuman or degrading treatment;
- The analysis shows that there has been no criminal prosecution launched against individual representatives of law enforcement bodies, nor a final summary decision taken; while in separate incidents criminal investigation was ceased or was not launched due to the alleged absence of signs of crime;
- Replies to the requests of PDO from the bodies carrying out the investigation, are identical in their content, indicating general investigative actions, without going down into specifics of the cases.

Against the backdrop of this analysis, the Public Defender of Georgia finds it necessary to create a mechanism independent from law enforcement bodies for the investigation of the cases of killing/death and/ or torture, inhuman and degrading treatment committed by the representatives of law enforcement bodies. The recommendation is supported by the UN High Commissioner for Human Rights Navi Pillay, who during her visit to Georgia in 2014, urged the Georgian authorities to set up an independent mechanism for investigating future allegations of ill-treatment that according to her, "would help remove the public's doubts and suspicions over allegations of abuse".

In order to bring Georgian legislation on the investigation of the alleged crimes committed by representatives of law-enforcement bodies in line with UN standards, the Public Defender of Georgia makes following recommendations to the Georgian authorities:

1. Recommendations to the Parliament of Georgia

- Prepare and enact amendments to the relevant Georgian legislative acts in order to create an independent body, which will be the only authorised institution to conduct investigation on the crimes related to death, inhuman and degrading treatment allegedly committed by the representatives of the law enforcement bodies (the Ministry of Justice of Georgia, the Ministry of Internal Affairs, the Prosecutor's

Office, the Ministry of Penitentiary and Corrections of Georgia) and crimes committed on the territory of the penitentiary institutions;

- Implement legislative changes in the Criminal Code of Georgia to ensure protection of the rights and legitimate interests of the victims in the process of criminal prosecution; namely, to enable the victim to engage in the investigation process, have information on its progress, and have access to the documents containing the similar information.

2. Recommendations to the Minister of Justice

- Prior to the establishment of an independent institution, clearly delineate and define the issues of institutional jurisdiction; namely, the investigation of the crimes committed by the staff of the Ministry of Justice of Georgia, the Ministry of Internal Affairs of Georgia, the Ministry of Penitentiary and Corrections of Georgia and those committed on the territory of the penitentiary institutions, should be carried out by the Prosecutor's Office of Georgia.

3. Recommendations to the Chief Prosecutor's Office

- Investigate the crimes allegedly committed by the representatives of the law enforcement bodies (the Ministry of Justice of Georgia, the Ministry of Internal Affairs, the Prosecutor's Office, the Ministry of Penitentiary and Corrections of Georgia), as well as those committed on the territory of the penitentiary institutions.

4. Recommendations to the Minister of Internal Affairs of Georgia

- Declassify the part of the Statute of the General Inspection of the Ministry of Internal Affairs of Georgia, which pertains to the establishment of rules for investigation proceedings.

5. Recommendations to the Ministry of Internal Affairs of Georgia, the Ministry of Penitentiary and Corrections of Georgia, the Ministry of Justice of Georgia, the Chief Prosecutor's Office of Georgia

- Ensure initiation of the investigation and not internal inspection upon the receipt of the information about crime being committed. Internal inspection carried out by the General Inspections of the Ministries should not be considered as the preliminary stage of the investigation; ensure thoroughness and promptness of the investigation.

II. Observations with respect to the strengthening of the National Preventive Mechanism of Georgia

Along with the establishment of an independent body responsible for investigating crimes allegedly committed by representatives of the law enforcement bodies, it is of crucial importance to enhance preventive endeavour to minimize the risks of reoccurrence of human rights violations particularly in the form of arbitrary detention, torture and ill-treatment. In the pursuit of sustainability of the protection of human rights of persons deprived of their liberty and prevention of reoccurrence of human rights violations, the National Preventive Mechanism[1] responsible for contributing to the prevention of torture through its preventive visits to all places of deprivation of liberty has its exclusive standing.

[1] Since 2009, Public Defender of Georgia exercises the functions of the National Preventive Mechanism, envisaged by the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

However, while exercising its functions, National Preventive Mechanism faces several obstacles that Public Defender of Georgia would like to highlight. In particular:

- The National Preventive Mechanism of Georgia, unlike many National Preventive Mechanisms across Europe, has been denied to use camera and audio recording device in prisons and temporary detention isolators. The use of camera is seen very important for the purposes of documenting bodily injuries as envisaged by the Istanbul Protocol, Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. Not less important is the documentation of conditions of detention.
- Another issue that may greatly influence the effectiveness of the work of the National Preventive Mechanism is related to the access to classified data containing information on the treatment of persons deprived of their liberty and to the possibility to review CCTV recordings made in places of deprivation of liberty. The Georgian legislation as it currently stands does not contain clear regulation of the above issues thus entailing divergences in interpretation. Such regulation runs counter to the spirit of the Optional Protocol to the Convention against Torture, which stipulates that the States parties to the Protocol undertake to grant the National Preventive Mechanisms access to all information referring to the treatment of persons deprived of their liberty as well as their conditions of detention.

In the report following the visit to Georgia in 2011, the Working Group on Arbitrary Detention has outlined the critical importance of creation of the National Preventive Mechanism particularly in view of the visits it conducts to the places of detention. The Working Group encouraged the Government of Georgia to continue to provide its full support and cooperation in strengthening the National Preventive Mechanism. In its turn, the government of Georgia in its submission to the Working Group has emphasized the importance of monitoring by the independent oversight bodies such as the Office of Public Defender of Georgia.

Therefore, in order to strengthen the work of the National Preventive Mechanism, the Public Defender of Georgia makes following recommendations to the Georgian authorities:

1. Recommendations to the Parliament of Georgia:

- Pass amendments to the Organic Law on the Public Defender of Georgia and empower the National Preventive Mechanism of Georgia to use camera and audio recording device in prisons and temporary detention isolators.

2. Recommendation to the Government of Georgia:

- To eradicate gaps related to the access to classified data containing information on the treatment of persons deprived of their liberty and to the possibility to review CCTV recordings made in places of deprivation of liberty.

Hereby, the Office of Public Defender (Ombudsman) of Georgia avails itself of the opportunity to renew to the Human Rights Council assurances of its highest consideration and expresses his readiness to contribute to the work of international human rights system in the promotion and protection of rights of persons deprived of their liberty.