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مجلس حقوق الإنسان

الدورة الحادية والثلاثون

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

## تقرير المقرر الخاص المعني بمسألة التعذيب وغيره من ضروب المعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة عن بعثته إلى جورجيا

### مذكرة من الأمانة

قام المقرر الخاص المعني بمسألة التعذيب وغيره من ضروب المعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة بزيارة إلى جورجيا في الفترة من ١٢ إلى ١٩ آذار/مارس ٢٠١٥.

وخلال زيارته تحمّس المقرر الخاص كثيراً للآثار البارزة والقابلة للقياس التي خلفها تنفيذ الإصلاحات الرامية إلى منع التعذيب والمعاقبة عليه، في أعقاب الانتخابات البرلمانية التي جرت في تشرين الأول/أكتوبر ٢٠١٢.

بيد أن المقرر الخاص يناشد حكومة جورجيا أن تواصل، بالتزامها القوي، تنفيذ توصياته وأن تواجه التحديات المتعلقة بدمج الإصلاحات ووضع الآليات ذات الصلة لدى كفالة تحقيق العدالة في حالات التعذيب وسوء المعاملة، وتحسين ظروف الاحتجاز ومنع جميع أشكال التراجع، بما في ذلك عن طريق تصميم وإطلاق إطار مستقل وفعال للتحقيق بشأن حالات التعذيب وسوء المعاملة وملاحقة مرتكبيها ومعاقبتهم والانتصاف منهم.



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## Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia\*

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\* Circulated in the language of submission only.

## I. Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, conducted a visit to Georgia, at the invitation of the Government from 12 to 19 March 2015. The purpose of the visit, held 10 years after the visit conducted by the previous mandate holder, was to assess the impact of reforms instituted in Georgia at the end of 2012 on the situation of torture and ill-treatment in the country, including conditions of detention, and to identify measures to prevent torture and ill-treatment in the future.
2. During his mission, the Special Rapporteur met with the Minister for Foreign Affairs, the Deputy Minister for Internal Affairs, the Chief Prosecutor, the Minister for Justice, the Minister for Corrections, the Acting Chairperson of the Supreme Court, the Deputy Public Defender (Ombudsman), the Minister for Labour, Health and Social Affairs, the Chairperson of the Human Rights and Civil Integration Committee of Parliament, the Chairperson of the Legal Affairs Committee of Parliament, the Head of regional Office of the Public Defender in Batumi, and representatives of United Nations agencies, and of other international and civil society organizations.
3. The Special Rapporteur visited both eastern and western Georgia, including a representative sample of places of deprivation of liberty in and around Tbilisi, Telavi, Kvareli, Kutaisi and Batumi. He visited a total of 11 facilities, including psychiatric institutions, police stations, temporary detention isolators,<sup>1</sup> pretrial facilities and penitentiaries.
4. The Special Rapporteur also attempted to visit the Georgian regions of Abkhazia and the Tskhinvali region/South Ossetia; the authorities that exercise de facto control over these regions, however, either denied him access from the territory controlled by the central government of Georgia or did not respond to his requests.
5. The Special Rapporteur expresses his appreciation to the Government of Georgia for the cooperation extended during his visit, in particular with regard to the unfettered access accorded to all places of detention in accordance with the terms of reference for fact-finding missions by special rapporteurs/representatives (see E/CN.4/1998/45, appendix V), and to interview detainees in private.
6. The Special Rapporteur expresses his gratitude to the Office of the United Nations High Commissioner for Human Rights (OHCHR), the regional OHCHR Senior Human Rights Adviser for the South Caucasus and his staff presence in Tbilisi, and others involved in organizing the visit for the excellent assistance prior to and throughout the mission. He also thanks the representatives of Georgian civil society and the international community based in Georgia for their assistance and invaluable insights. The Special Rapporteur is grateful to all his interlocutors, including senior State officials, representatives of civil society, lawyers, detainees, including victims of torture and ill-treatment, with whom he met. He expresses solidarity with victims and their families, and his support for the important efforts of survivors of torture, their relatives and human rights defenders.
7. The Special Rapporteur shared his preliminary findings with the Government of Georgia at the end of his mission.

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<sup>1</sup> In principle, a temporary detention isolator is used to hold a detainee for the first 72 hours after arrest and before the courts have authorized remand for trial (for administrative imprisonment the maximum is 15 days). A pretrial facility is used to hold a detainee after the initial court decision until trial.

## II. Legal framework

### A. International level

8. Georgia is a party to the main United Nations human rights treaties prohibiting torture and ill-treatment, including the International Covenant on Civil and Political Rights and the Optional Protocol thereto; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and, since 2005, to the Optional Protocol thereto; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; and the International Convention on the Rights of Persons with Disabilities. The State is also a signatory to the Rome Statute of the International Criminal Court, and a party to the Convention relating to the Status of Refugees and the Convention relating to the Status of Stateless Persons.

### B. Regional level

9. At the regional level, Georgia is a member of the Council of Europe. It ratified the European Convention on Human Rights in 1999 and is subject to the jurisdiction of the European Court of Human Rights and the European Convention for the Prevention of Torture, Inhuman and Degrading Treatment or Punishment. Moreover, as a participating State in the Organization for Security and Cooperation in Europe, Georgia has made a number of commitments with regard to human rights, rule of law and democratization, including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, freedom from arbitrary arrest or detention, and the right to a fair trial.

### C. National level

#### 1. Constitutional and legislative provisions

10. Amended in 2005, the Criminal Code of Georgia defines, in its article 144(1), the crime of torture as “subjecting a person, his/her close relatives or financially or otherwise dependent persons to such conditions or such treatment that by their nature, intensity or duration cause severe physical or mental pain or suffering, and have the purpose of obtaining information, evidence or a confession, of intimidating, coercing or punishing a person for an act that he, she or a third party have committed or is/are suspected of having committed.”

11. Torture is prohibited under the Constitution of Georgia. Article 17 states that the honour and the dignity of an individual are inviolable, and that torture, inhuman, cruel treatment and punishment or treatment and punishment infringing upon honour and dignity are prohibited. The interpretation of the crime of torture is secured in the Criminal Code of Georgia.

12. Article 7 of the Constitution requires the State to recognize and protect universally recognized human rights and freedoms as eternal and supreme human values. While exercising authority, the people and the State are “bound by these rights and freedoms as directly acting law”.

13. According to article 15, everyone has the inviolable right to life, a right protected by law. Capital punishment is prohibited. The physical or mental coercion of a person detained or otherwise restricted in his or her liberty is prohibited.

14. According to article 43, the protection of human rights and fundamental freedoms within the territory of Georgia is monitored by the Public Defender of Georgia (Ombudsman), who is elected for a term of five years by the majority of the total number of the members of the Parliament of Georgia. The Public Defender is authorized to identify the facts of the violation of

human rights and freedoms and to report on them to the relevant bodies and officials. Acts aimed at obstructing the activity of the Public Defender are punishable by law.

15. While not in itself less protective than the definition provided by article 1 of the Convention against Torture, the definition of torture given in paragraph 10 of the Criminal Code differs in some respects. Where the former provides an inclusive list of purposes, the list provided in the Criminal Code is exclusive. In addition, the definition of the perpetrator/s in Criminal Code article 144(1) is different, in that it does not state that “pain or suffering” may be, *inter alia*, “inflicted [...] at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

16. Under the Criminal Code, the crime of torture is punishable by imprisonment of 5 to 10 years and/or a fine.

17. In aggravating circumstances, the crime is punishable by the deprivation of liberty from 9 to 15 years and temporary disqualification from certain posts or professional duties for up to five years (art. 144(1), part 2). Aggravating circumstances include torture committed by “an official or a person equated to an official” or carried out “on the grounds of racial, religious, national or ethnic intolerance”.

18. Threatening with torture is punishable by up to two years of imprisonment (art. 144(2)).

19. Article 144(3), on “Inhuman and degrading treatment”, prohibits “humiliating or coercing” by putting a person in “inhuman and degrading conditions leading to intense physical, mental or moral suffering”; such acts are punishable by a fine and/or deprivation of liberty of up to five years. In aggravating circumstances (the same as mentioned above), the crime is punishable by four to six years of imprisonment and/or a fine, as well as temporary disqualification from certain posts or professional duties for up to five years.

20. There is no separate act dealing with the investigation of torture or other issues related to ill-treatment; these are generally covered by the Criminal Code. According to the order of Minister of Justice, the Office of the Chief Prosecutor is the body responsible for dealing with cases and allegations of torture allegedly committed by law enforcement representatives.

## **2. Safeguards during arrest and detention**

21. By virtue of article 18 of the Constitution and of Criminal Code articles 38 and 174, Georgian law provides guarantees against torture and other forms of ill-treatment during arrest and detention. Arrested (detained) persons are, before any questioning and immediately upon their arrival in a relevant institution (in a temporary detention isolator), informed of their rights to defence counsel, to remain silent, against self-incrimination and to undergo medical examination free of charge in cases of detention or arrest. Furthermore, together with the right of an arrested individual to undergo a medical examination free of charge and to receive a written report thereon immediately, the person is also authorized, at any time and at his or her own expense, to undergo an immediate medical examination by a doctor or expert of his or her choice.

22. The defendant has the right to notify, immediately upon arrest or detention, a family member or close relative, of the arrest or detention, and of his or her whereabouts and state or condition.

23. With regard to the arrest, detention and expulsion of illegal migrants, the Minister for Internal Affairs, by Order No. 631 of 19 August 2014, approved a procedure according to which alien detainees are to be placed in a temporary detention isolator or a special temporary placement centre for a maximum period of 72 hours. The Order also requires detainees to be informed of their rights, including the rights to legal counsel, to a medical examination, to notify their family of the detention and to contact diplomatic representatives. In addition, the Order addresses the principle of prohibition of discrimination, and establishes certain safeguards to protect the honour and dignity of the detainees.

### 3. Complaints and investigation of acts of torture and ill-treatment

24. The Office of the Chief Prosecutor is in charge of all prosecution and prosecutorial matters in Georgia. Parliamentary oversight of the Office of the Chief Prosecutor is provided for by article 49 of the Law on Prosecution. Parliamentary oversight of the activities of Prosecution Services is carried out through the hearing of information provided by the Chief Prosecutor and subsequent discussion. The hearing takes place at the request of Parliament or at the initiative of the Chief Prosecutor. This information must not contain issues related to the investigation of particular criminal cases, except for cases directly envisaged by national law, or international agreements and treaties. The Special Rapporteur is aware of new amendments to the law on the Prosecutor's Office providing for the establishment of a prosecutorial council, which will comprise prosecutors elected by their peers, members of Parliament, judges and representatives of civil society. One of the key functions of the council will be to hear reports from the Chief Prosecutor on the current state of affairs, including with regard to human rights and freedoms. The council will also play an important role in appointing and dismissing the Chief Prosecutor. The Special Rapporteur was informed that the amendments had had their first reading in Parliament and were expected to become law by the end of September 2015. He welcomes the amendments as a crucial step in ensuring the accountability of the Office of the Chief Prosecutor.

25. Georgia ratified the Optional Protocol to the Convention against Torture in 2005, and designated the Office of the Public Defender (Ombudsperson) as its national preventive mechanism in 2009, a parliamentary ombudsman institution, independent of other branches of government.

## III. Assessment of the situation

26. The Special Rapporteur noted a drastic change in the situation since the parliamentary elections held in October 2012, and welcomes the clear signal sent by the Government of its commitment to give a high priority to the fight against torture, ill-treatment and inappropriate conditions of detention.

27. Reports by various national and international organizations and mechanisms, including the previous mandate holder (E/CN.4/2006/6/Add.3), the Working Group on Arbitrary Detention (A/HRC/19/57/Add.2) and the European Court of Human Rights, have testified to widespread practices of severe beating and other forms of corporal punishment, psychological pressure and torture used against inmates throughout the Georgian penitentiary system in the period before the parliamentary elections in October 2012. The reports described the use of sensory and sleep deprivation, isolation and exposure to extreme temperatures, verbal insults and humiliation, threats, including of execution, torture, sexual abuse, ill-treatment of relatives, and of being made to witness the torture of fellow inmates; overall deficient conditions of detention, marked by overcrowding and insanitary conditions, lack of access to toilet facilities, showers, drinking water and food, compounded by restrictions imposed on the satisfaction of physiological needs.

28. Video footage showing cases of beatings and rape of inmates by prison staff in Gldani establishment No. 8 emerged on 18 September 2012 and may be considered a culminating event.

29. Following the parliamentary elections held in October 2012, the Georgian authorities committed to the fight against torture as a priority. They have since made efforts to prosecute and convict crimes of torture and ill-treatment, invested in new prison infrastructure and instituted extensive policy changes. The effort made to ensure effective application of the new laws and policies throughout the entire chain of command was reflected also in a fundamental change in the mentality of the personnel concerned. The Special Rapporteur notes that, altogether, the impact of these efforts has been visible and quantifiable at various levels.

30. The Special Rapporteur points out that 500 inmates have been declared victims after investigations, and 230 have been placed under medical examination.

31. According to information received from the Office of the Chief Prosecutor, the Office has received approximately 8,000 complaints of torture and ill-treatment committed in the era preceding the elections of October 2012; 2,500 cases have been investigated, of which 500 have been prosecuted, including 10 prison directors, 10 deputy directors, and 56 police officers. As at September 2015, 40 had been convicted, including two directors and 10 deputy directors.

32. The Office of the Chief Prosecutor informed the Special Rapporteur that it had registered 52,000 claims of torture and ill-treatment committed in the period 2004-2011, although no documentation supporting this figure was provided. The Special Rapporteur was also informed that, between January and September 2015, 12 criminal investigations were initiated into allegations of ill-treatment committed by personnel in the penitentiary (10 cases) and the police (two cases) in 2014 and 2015. Moreover, he is aware that, on 29 April 2015, three officers from the Ministry of Internal Affairs were charged with torturing three recruits in aggravating circumstances. The three officers are in detention, pending proceedings. Furthermore, on 11 February 2015, charges were filed against seven inmates for torturing a fellow inmate; a hearing is now pending.

33. The Ministry of Corrections has invested in new infrastructure, closed down unsuitable establishments and renovated others. The Special Rapporteur observed good – and in some cases exemplary – sanitary conditions in all places visited, including cells, showers, kitchens and common areas.

34. Since early 2013, the prison population in Georgia has been drastically reduced (from 19,000 to less than 9,000) by a law on amnesty applicable to many different offences. Many inmates have been released through a combination of commuted sentences, the reduction of other sentences by a quarter, earlier eligibility for parole and other measures. The Special Rapporteur notes with concern, however, that some of the measures are applied in a somewhat imbalanced way (for example, with regard to persons serving life sentences).

35. The reduction in the prison population has also addressed the problem of overcrowding. Although all inmates have a bed and bedding, the Special Rapporteur notes with regret that the prison population has now grown to about 10,400 and that the system is approaching its maximum capacity (estimated at 11,500, or 4 m<sup>2</sup> per inmate). In this regard, he welcomes efforts by the Ministry of Justice to amend the Criminal Code and to liberalize its criminal law, including by a clearer definition of criminal liability for drug possession and distribution.

## **A. Torture and ill-treatment**

36. In interviews with numerous inmates, including with those who had been in the system before 2012, the Special Rapporteur heard consistent accounts that physical violence, including corporal punishment, verbal mistreatment and forced confessions, had been virtually abolished in Georgian prisons. Similarly, the Special Rapporteur did not hear any testimonies of mistreatment at the hands of police or of investigators.

37. The Special Rapporteur also noted that, generally, both corrections and police personnel are credited with acting professionally and respectfully towards inmates.

38. On several occasions, the Special Rapporteur found evidence of traumatic physical and psychological sequelae from torture committed several years earlier, and of mental disturbances, in the form of depression and post-traumatic stress.

39. The Special Rapporteur observed several cases of persons with self-inflicted wounds, used a way to draw attention or to protest against detention or due to psychological disorders.

40. According to the Ministry of Corrections, the number of deaths in custody has decreased substantially in recent years, while the number of suicides has been stable. An independent investigation, including a forensic autopsy, is reportedly conducted for every case of death in custody. The Special Rapporteur was informed that, in 2013, 23 deaths were registered, of which six suicides; in 2014, the number had risen to 27 deaths, of which seven were suicides. He learned that the Ministry of Corrections was developing a specific suicide-prevention programme; he did not, however, see sufficient data to make any conclusions about its effectiveness.

41. During his visit, the Special Rapporteur was informed about two inmates who had alleged being beaten (one in November 2014, the other in January 2015) while they were staging a hunger strike to protest against what they alleged was unsatisfactory medical attention. In both cases, a complaint was filed; an investigative unit from the Ministry of Corrections interviewed them, then informed them that investigations were ongoing. The Special Rapporteur was informed that, at the time of his visit, the investigations were still pending. A third inmate who had alleged mistreatment during interrogation refused to elaborate.

42. The Special Rapporteur learned of several recent cases of physical and verbal abuse by law enforcement officers despite the guarantees provided for by the law for arrested and detained persons with regard to legal counsel, medical examination, and notification of relatives about the arrest, and noted with concern, in this context, reports of improper investigations.

43. In addition, the Special Rapporteur heard testimonies of individuals who, without their consent, had been taken from the street for a “conversation” in a police car or police station. He notes that, under the law, two procedures may qualify as “conversations”; he also notes, however, that both procedures require that information be given voluntarily. The Special Rapporteur wishes to stress that taking a person for a “conversation” without explicit and freely given consent not only restricts that person’s right to liberty and security but also heightens the risk of torture and ill-treatment.

44. Article 174 of the Criminal Code sets out the rules and duration of detention. According to article 174, a police officer who makes an arrest must immediately take the detainee to the nearest police station or premises of another law enforcement agency. The Special Rapporteur notes that a detainee may be held in a police station only for the purpose of conducting investigative activities, and for no more than eight hours. In this regard, he stresses the importance of the proper registration of detainees and their access to counsel in preventing any form of coercion during investigative activities and in ensuring that a person taken to a police car or police station enjoys the same guarantees against any type of pressure or ill-treatment as a person in a temporary detention isolator.

45. The Special Rapporteur notes the programme for former prisoners, initiated in 2012, which is aimed at supporting the rehabilitation of persons released from penitentiary institutions and at facilitating their reintegration into society as full-fledged members. The programme also includes the provision of health-care services and psychological assistance.

## **B. Safeguards and prevention**

46. The Special Rapporteur welcomes the approval given on 18 May 2015 for the plan of action against torture and ill-treatment for 2015/16 by the Interagency Council on Combating Torture and Other Forms of Degrading and Inhuman Treatment or Punishment, which was presented in late February by the Chair of the Parliamentary Committee on Human Rights and Civil Integration. The plan involves cooperation between several government agencies, with various objectives: (a) strengthening procedural, legislative and institutional mechanisms against ill-treatment; (b) ensuring effective investigation of all cases of ill-treatment; (c) ensuring the defence and rehabilitation of and compensation for victims of ill-treatment; and (d) training, awareness-raising and capacity-building as integral components of the fight against ill-treatment.



The Special Rapporteur regrets that the latest version of the plan no longer includes the objective of “ensuring effective disclosure to the public of cases of ill-treatment, and prompt, impartial and effective investigation of complaints”, but merely provides for “the dissemination of information”.

47. In the above context, the Special Rapporteur learned that the “hearsay” law had been amended to ensure that no conviction may be based solely on hearsay evidence.

48. With regard to the investigation, prosecution and punishment of acts of torture, the Special Rapporteur is aware of a 2014 reform of the law on plea bargaining that, *inter alia*, allows the defendant to invoke it when a plea agreement has been reached as a result of undue pressure (torture or other ill-treatment) or to conceal acts of torture or ill-treatment.

49. The Special Rapporteur notes that, for several years prior to 2012, the rate of conviction in Georgia was higher than 90 per cent. The threat of torture and the almost certain prospect of conviction led to an excessive use of plea bargaining and the circumvention of fair trials. In addition, he was informed of threats to deny access to a plea bargain if the defendant reported torture or ill-treatment.

50. According to recent amendments, a judge in charge of a case, before approving any plea agreement, is required to verify whether the agreement has been reached voluntarily and whether the defendant has been subjected to any type of pressure. Even after the court has approved a plea agreement, the defendant has the right to challenge it before a higher court if, *inter alia*, it has been reached through the application of pressure or by undue treatment.

51. The testimonies given by numerous inmates indicated to the Special Rapporteur that plea bargaining is common and that there is still an element of coercion in its practice. While the prospect of torture no longer seems to motivate defendants to admit to wrongdoing, the prospect of long months or years in very restrictive pretrial detention may effectively do so. Available data suggest that, in the past five years, a clear majority of criminal cases have been solved this way; indeed, figures for the Supreme Court show that, in 2013, the ratio of plea bargaining to the total number of convictions was 89.6 per cent; in 2014, the ratio dropped to 69.9 per cent.

52. The Special Rapporteur notes the recent efforts made to strengthen procedural safeguards by introducing a number of legal amendments. According to the information provided, the ratio of plea bargaining to total convictions has dropped further; the period of January-June 2015 saw a further drop in the ratio to 64.7 per cent, a decrease of 4.2 per cent compared to the same period in 2014.

53. With regard to the prosecution of cases relating to torture, the Special Rapporteur stresses that obstacles to prosecution, such as amnesty, pardons, statute of limitations or prosecutorial discretion to decline prosecution, are not permissible in international law. Cases of torture must be prosecuted; the only legitimate limitations to this obligation are lack of evidence and the duty to respect guarantees of fair trial and due process of law. The Special Rapporteur notes information according to which prosecutorial discretion to initiate prosecution has never been used in relation to cases of torture.

54. While plea bargaining is not banned in principle, any exercise of prosecutorial discretion in this regard must be subject to scrutiny and to consultation with victims and their families. Importantly, plea bargaining should not be used by defendants who bear or share responsibility for torture to testify against other co-defendants to escape serious punishment.

55. With regard to the national preventive mechanism under the Office of the Public Defender (Ombudsman), the Special Rapporteur learned that, apart from an isolated incident in 2013 when members of the Office were not granted access to a police office, no case of substantial obstruction by the authorities to the Ombudsman when entering prison or police facilities has been reported in the recent past.

56. The Special Rapporteur did, however, receive reports that members of the Special Preventive Group, acting as the national preventive mechanism, were not allowed to bring photographic equipment into prisons during their visits. Given that an important aspect of the methodology laid down by the Optional Protocol to the Convention against Torture is the prerogative of the national preventive mechanism to not merely observe but also document any violation that it may witness, the Special Rapporteur welcomes the adoption on 18 May 2015 of an amendment to the Imprisonment Code removing the above-mentioned restrictions. Regrettably, the amendment will not enter into force until 1 September 2016.

#### **1. Office of the Chief Prosecutor**

57. The Special Rapporteur welcomes the announcement made by the Chief Prosecutor in March 2015 of the plan to create a department with an investigative mechanism within the Office of the Chief Prosecutor to deal with, inter alia, the large backlog of cases of torture and ill-treatment from the period 1994-2004. Authorities estimated that more than 8,000 victims of abuse from that period await access to remedies, but provided no documentation to support that figure.

58. While the Special Rapporteur understands that the investigative mechanism of the Office of the Chief Prosecutor is not intended to be a substitute for the independent investigation mechanism envisaged in the discussions led by the Inter-Agency Council on Combating Torture and Other Forms of Degrading and Inhuman Treatment or Punishment (see paras. 62-68 below), it is unclear how the new department will interact with the mechanism or whether it will deal only with the backlog or also with ongoing or future cases of torture or ill-treatment.

59. The Special Rapporteur understands that, to date, the department has not announced any investigation of cases of torture or ill-treatment.

60. The Special Rapporteur notes that, although forensic experts may be invited, none has been included in the composition of the new department, which comprises 10 investigators, four prosecutors and four coordinators.

61. The Special Rapporteur hopes that the new department will offer guarantees of independence in its appointment and removal process, as envisaged in the draft law.

#### **2. Inter-Agency Council on Combating Torture and Other Forms of Degrading or Inhuman Treatment or Punishment**

62. The previous mandate holder recommended that allegations of torture and ill-treatment should be promptly and thoroughly investigated by an independent authority with no connection to that investigating or prosecuting the case against the alleged victim (E/CN.4/2006/6/Add.3, para. 60 (c)). This idea was further elaborated in the assessment and recommendations of the European Union Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia, Thomas Hammarberg, and the Public Defender of Georgia in 2013, and by the United Nations High Commissioner for Human Rights following her visit to Georgia in May 2014.

63. In response, the Inter-Agency Council, which has operated under the chairmanship of the Ministry of Justice since 2007, is considering a draft law to create an independent investigating mechanism, as proposed by the Open Society Georgia Foundation and the South Caucasus presence of the Office of the High Commissioner. The Council has held policy discussions thereon. The Special Rapporteur notes that the draft law enjoys the strong support of civil society.

64. During his visit, the Special Rapporteur had planned to participate in a meeting of the Inter-Agency Council. After the scheduled meeting was postponed, he decided instead to discuss the proposal with the Minister for Justice, the Minister for Corrections and Deputy Ministers for Internal Affairs, and with representatives of the Office of the Public Defender, the Office of the Chief Prosecutor and of civil society organizations. In addition, he noted the comments made by

the previous mandate holder, who was invited as a consultant by the Office of the Council of Europe in Georgia.

65. The Special Rapporteur expresses his strong support for the proposal of an independent investigating mechanism with broad authority to investigate and prosecute cases of torture.

66. With regard to independence and impartiality, the draft law contains important provisions in terms of appointment and removal of the authority (Commissioner) of the new mechanism, distancing the institution from executive, judicial and prosecutorial authorities, in accordance with the *Guidelines on European Standards: Effective Investigation of Ill-Treatment*.<sup>2</sup>

67. The Special Rapporteur notes, nevertheless, that at least two important issues remain to be resolved in the draft law: first, the scope of jurisdiction of the new investigative and prosecutorial authority to be created. He understands that some offences in the Criminal Code, if committed by law enforcement agents, would be the exclusive jurisdiction of the Commissioner. In addition, the Commissioner would have discretionary authority to take over from the Office of the Chief Prosecutor other offences committed by law enforcement agents that are not part of the core group of torture or cruel, inhuman or degrading treatment or punishment. In this context, the Special Rapporteur is concerned at the risk that unduly broad jurisdiction, whether exclusive or discretionary, may make the task of the Commissioner overly burdensome and overlap the role of the Prosecutor General, which in turn may lead to jurisdictional conflict. In addition, he is concerned that the Commissioner could lose jurisdiction over pertinent cases owing simply to the fact that they are qualified as offence other than torture or cruel, inhuman or degrading treatment. The Special Rapporteur was informed about cases in which police officers or prison guards suspected of ill-treatment had had their case instituted for “exceeding official power” – punishable by lenient sentences – rather than for “torture or ill-treatment”, which is punishable by heavy sanctions and penalties. The Commissioner ought to have exclusive jurisdiction to investigate cases with prima facie evidence that an individual has been tortured or ill-treated, even if initially the investigative authorities have charged a public official or any other person not for torture or ill-treatment but for exceeding or abusing their official capacity or similar lesser offences. The second issue is whether the mechanism will focus on the above-mentioned backlog of cases of torture and ill-treatment or on current and future cases, or on a combination of both. The Special Rapporteur has another similar concern. Dealing with this backlog remains crucial, including also the offer of meaningful remedy to every victim of torture; however, if the proposed new mechanism is to have an actual preventive effect, it will be important to ensure that this does not come at the expense of the capacity to respond swiftly to new cases.

68. In the light of the above, the Special Rapporteur notes the decision of the Inter-Agency Council, made at its meeting of 18 May 2015, to continue its work on the possible modalities of the independent investigative mechanism, and welcomes its declared intention of soliciting feedback and recommendations from all stakeholders. In addition, he welcomes the decision made by the Council on 16 June 2014 to create three working groups, mandated to focus on (a) strengthening the mechanism under the Office of the Public Defender; (b) establishing a mechanism to ensure a thorough, transparent, independent investigation into any allegation of the use of torture and ill-treatment; and (c) improving rights and conditions of inmates in the penitentiary system and other closed facilities.

### C. Conditions of detention

69. Responsibility for the penitentiary system, including for pretrial detention facilities, rests with the Ministry of Corrections, while police temporary detention isolators are the responsibility of the Ministry of Internal Affairs.

<sup>2</sup> Eric Svanidze, *Effective Investigation of Ill-Treatment, Guidelines on European Standards* (Council of Europe, Strasbourg, 2013).

70. Visits to remand, semi-open and closed prisons allowed the Special Rapporteur to note that, overall, the size of cells and fittings (windows, ventilation, bathrooms and showers) is adequate. The same applies to cells used for disciplinary isolation and cells formerly known as “de-escalation” or “anti-vandalism” cells, now referred to as “safe cells” (used for closer surveillance of inmates considered at risk of harm to themselves or to others).

71. With regard to access to lawyers, the Special Rapporteur learned that, overall, inmates avail themselves of lawyers and have no complaints about access. Visits by lawyers are granted at any time during work days and working hours and, as far as the Special Rapporteur was able to observe, are held in confidential settings.

72. According to article 54 of the Imprisonment Code, video surveillance must be based on justified suspicion, to protect security and other interests of prisoners, including the prevention of suicide and self-harm violence, destruction of property and other violations of the law. While recognizing the need to use electronic systems for the purposes of surveillance and the prevention of violence, including by inmates and guards, the Special Rapporteur noted with concern a highly inadequate use, in practice, of closed-circuit television. In addition to its justified use in the “safe cells” (see para. 85 below), closed-circuit television is placed in many other parts of facilities, including cells for women in pretrial detention, depriving them of the little privacy that they might enjoy in a shared cell.

#### **1. Temporary and pretrial detention facilities**

73. Inmates may be held for a maximum of 72 hours in police temporary detention isolators before a decision is made on whether to remand them to pretrial detention to or release them; any charges must be brought within the first 48 hours of the arrest. The Special Rapporteur did not hear of cases where these terms were not observed. Nevertheless, he wishes to stress the general importance of limiting any unnecessary pretrial detention. Temporary detention isolators are in fact also used for administrative detention for misdemeanours. In this context, the Special Rapporteur welcomes the recent reduction from 90 to 15 days of the maximum term for administrative detention. In addition to the greater degree of fairness with regard to the deprivation of liberty with minimum due process, he notes that this measure in all likelihood results in a more adequate use of temporary detention isolators, including less overcrowding.

74. While not finding fault with the size of cells and facilities, the Special Rapporteur notes with great concern that the pretrial regime is unduly restrictive, including access to and quality of “open” areas. He learned that persons in pretrial detention who ought to enjoy the presumption of innocence actually spend 23 hours a day in their cells with up to five other detainees.

75. Persons in pretrial detention are allowed to exercise one hour per day in an area only slightly larger than their cell, which is covered by a grid rather than of a ceiling. Their social contact is strictly limited to those detainees with whom they share their cell; and since outdoor exercise is offered to all detainees held in a given cell, none enjoys any time to himself or herself.

76. According to article 124 of the Imprisonment Code, persons in pretrial detention may make up to three telephone calls per month, no longer than 15 minutes each, at their own expense, subject to the permission of the investigator, prosecutor or the court. The Special Rapporteur expresses concern at numerous testimonies from persons in pretrial detention who in practice had no access to telephones or visits, sometimes for several months. Contact with families is limited to receiving clothes and certain types of parcels. They have no work opportunities, recreational activities or access to educational services (with the exception of juveniles; see para. 100 below).

## 2. Semi-open centres

77. The Special Rapporteur learned that, when detained in a semi-open regime, most inmates sleep in open dormitories and spend several hours a day away from their cell or dormitory. In addition, they enjoy access to some very good libraries, with loan services available.

78. Telephones for use by inmates with calling cards have been installed everywhere and in adequate numbers. Sealed complaint boxes are present in various places, and social workers provide inmates with the possibility to write inquiries and address them to the authorities concerned.

79. The Special Rapporteur noted, however, that there is a need for additional work opportunities, given that the only two options currently offered to inmates are work in the prison services and classes in computer literacy.

80. The Special Rapporteur welcomes the plans to design an open system for inmates soon to be released, to ensure and promote complete rehabilitation and reintegration of inmates prior to their release. He encourages the Government to proceed with these plans, including by making the necessary investments in adequate infrastructure and work opportunities.

## 3. Closed or high-security system

81. The Imprisonment Code defines different types of penitentiary establishment, inter alia, closed and high-security establishments. It states that, in both types of establishment, convicted persons are to be kept in special cells, where visual or electronic surveillance may be implemented in accordance with relevant rules. The criteria for placing convicts in one type of establishment or another are defined in Order No. 70 of 9 July 2015 issued by the Minister for Corrections. According to Order No. 70, when taking the decision to place a convict in a closed or a high-risk establishment, authorities must bear in mind the threat stemming from the convict, the convict's personality, the severity of the crime committed and relevant negative results of the crime, the convict's conduct in prison with other inmates and prison staff, compliance with the prison regime, attempts to escape, the convict's ties with organized crime or terrorism, and participation in rehabilitation or resocialization programmes. Similarly, it provides for a procedure to assess the risks posed by a convict.

82. The Special Rapporteur learned that convicts who have committed serious crimes and pose a moderate or high risk to society are kept in closed establishments, while convicts who have committed the most severe offences and/or are serving a life sentence are kept in high-security establishments. Both categories are kept in cells containing from four to six people, distinctly separated from other prisoners.

83. High-security establishments are primarily used for the detention of organized crime or mafia bosses, persons with a high status in the criminal community and inmates who have sufficient authority to initiate a riot in the prison or to incite other inmates to commit unlawful acts. Furthermore, the authorities also transfer to high-security establishment prisoners who pose a threat to other inmates, seriously undermine order in prisons or inflict self-injury.

84. The Special Rapporteur was informed that a large number of inmates, generally those serving longer sentences, are held in high-security prisons, of which several were originally designed for shorter-term pretrial detention. In this way, high-security inmates may spend years living in highly restrictive conditions, comparable with those of pretrial detainees, with the exception that they enjoy access to telephone calls and family visits. Like persons in pretrial detention, access to outdoor areas is restricted to an hour a day and in similar conditions. In addition, the Special Rapporteur noted with concern that some cells, including those occupied by inmates serving a life sentence, did not offer adequate natural light or ventilation. Although all high-security inmates theoretically are eligible for woodcarving or embroidery workshops, only very few actually have access to them.

#### 4. Restrictions and disciplinary sanctions

85. Some facilities have special “safe cells” equipped with closed circuit television for inmates that require closer surveillance. The relevant rules allow prison authorities to decide to place inmates in these cells for a “reasonable amount of time”, a decision that, following a medical report, may be reviewed every 30 days by the same authority that made it. The Special Rapporteur was informed that, in practice, inmates may spend several months in this form of solitary confinement, and is of the opinion that this may constitute cruel, inhuman or degrading treatment and even torture, and may indeed risk exacerbating the conditions that make these inmates a risk to themselves or others in the first place.

86. Infractions of prison rules are punishable by the withdrawal of privileges. In the case of serious infractions, punishment may entail confinement in an isolation cell. The official maximum time in isolation for disciplinary breaches was recently reduced from 20 to 14 days; the Special Rapporteur notes that, in practice, the number of days in isolation is frequently reduced. In addition, during isolation, inmates continue to be allowed an hour outside in a small exercise yard, by themselves.

87. The Special Rapporteur learned, however, that some inmates are held permanently in isolation regime, spending 23 hours a day alone in their cells, some of them for years. He notes the security reasons given by the prison authorities. While the Special Rapporteur finds that such a regime might be justified in cases where an inmate so requests or in cases of risk of self-injury, he noted with concern that at least one inmate had spent two and a half years in isolation without being offered any alternative regime.

88. The Special Rapporteur notes with concern that while inmates are notified whenever a sanction (including solitary confinement) is imposed, no actual process of hearing is made available to challenge the decision, or of shared decision-making through a disciplinary board.

89. In addition, the Special Rapporteur received testimonies of inmates who had had their sentences extended, generally when they were close to their date of release. He heard allegations that the authorities would claim to have found blades or other weapons in their possession, which according to the inmates were planted there by the authorities themselves. The inmates were subsequently referred to the Office of the Chief Prosecutor with new charges, resulting in a new conviction. In another case, an inmate originally charged with homicide complained to the Public Defender about alleged ill-treatment in October 2014, and was subsequently charged with having made a false complaint. The Special Rapporteur stresses that criminal charges of false testimony risk having a chilling effect on future complaints, whether to the national preventive mechanism or to any other authority.

90. While the Special Rapporteur is not in a position to verify the above allegations, he notes with concern that some inmates have been re-charged and re-sentenced, therefore made to serve a term much longer than the one originally handed down. He also notes that convicted persons have a right to expect an end to their prison terms, and to rehabilitation and reintegration into society.

#### 5. Medical attention

91. With regard to medical attention and the documentation of physical or psychological trauma, the Special Rapporteur learned that a medical examination is routinely conducted on detainees upon their admission to or transfer between prison facilities, and medical registration forms are filled out. He found that all prison facilities are adequately staffed, with doctors and nurses working in shifts, to serve the population with basic services, including dental care. Similarly, in temporary detention isolators, medical exams are conducted upon the detainee’s arrival, as are services through the public hospital and ambulance services when considered necessary. The Special Rapporteur nonetheless noted an overall need for improvement in quality and consistency of recording and documentation and of the medical attention offered.

92. With regard to the recording and documentation of injuries, the Special Rapporteur found that reports were generally incomplete, lacking correct and complete descriptions or photographic documentation of the injury, and an interpretation of the probable cause. While the Special Rapporteur noted with concern that in only one establishment did the head doctor have a copy of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol), which he acknowledged was not applied, the Special Rapporteur also noted that measures are being taken to remedy this situation.

93. With regard to medical attention, while noting that specialized services are available through referral to local hospitals or the central penitentiary hospital in Gldani, the Special Rapporteur found the in situ care and services to be elementary and that medicines provided by the establishment very limited. Pharmaceutical supplies (at the inmate's expense) are generally not available, and only in cases where the inmate had a prescription was the family allowed to bring medicines, and this was further limited in cases where the detainee's family lived far from the place of detention.

94. In addition, the Special Rapporteur learned that transfers for medical reasons, in particular from peripheral areas to the central penitentiary hospital in Gldani, were often unduly arduous, sometimes involving many hours of uncomfortable transport and occasionally even made in vain when specific doctors or treatments are not available. According to information from the Government, no transfers have been delayed since 2012.

## **6. Visits**

95. Detainees in temporary detention isolators and in pretrial facilities are not entitled to receive visits of any kind.

96. Inmates in semi-open facilities are allowed two short-term visits per month and three long-term visits per year, while inmates in closed facilities, including high-security ones, are only allowed non-contact family visits of two hours, involving up to two adults and three children that have all been previously registered and certified as family members. The visits are conducted through a glass panel and by telephone.

97. The Special Rapporteur learned that, in open and juvenile facilities, both short and long family contact visits are allowed (including, in the case of short visits in juvenile facilities, the freedom to take walks on the premises). Long (24-hour) visits, including conjugal visits, are held in well-prepared, decent rooms. The Special Rapporteur noted with concern, however, that inmates are only entitled to a long visit once every six months, an entitlement they may lose in the event of disciplinary measures. Furthermore, even short visits are infrequent, allowed on average only once a month. The Special Rapporteur takes note of the Juvenile Justice Code, due to enter into force in January 2016, which aims to improve conditions for visits and calls.

## **7. Nutrition**

98. Despite receiving a few isolated complaints (mainly regarding the lack of variety), the Special Rapporteur found the food to be highly adequate in terms of both quality and quantity. He was informed that the system caters for five different diets: a regular diet, and four diets for inmates with specific health needs. In all prison facilities, food services are provided by a contractor, which was found to comply fully with applicable standards.

## **8. Women and juveniles**

99. With regard to women's detention facilities, the Special Rapporteur observed that conditions were generally good, including with regard to the right of women detainees to have their children with them until the age of three. He heard complaints from women held in pretrial facilities about shortages and sometimes the absence in the prison shops of feminine hygiene products and other items, such as deodorants.

100. The Special Rapporteur was informed that, between 2008 and 2014, the number of convicted juveniles decreased from 1,166 to 381. Similarly, the proportion of custodial sentences decreased significantly from 40 per cent in 2008 to 26 per cent in 2014. In both juvenile detention establishments he visited (one pretrial and the other for convicted children), the facilities were better than adequate, and significantly better than the adult facilities. Juvenile detainees enjoy more sports opportunities than their adult counterparts, even when in pretrial detention, and educational and other opportunities are also amply available.

101. With regard to pretrial detention, however, the Special Rapporteur notes with concern that children, in violation of the Juvenile Justice Code, are not kept separate from adults during, inter alia, meal times or while being transported, which could expose them to the risk of ill-treatment.

102. The Special Rapporteur was informed that, in 2014, a programme aimed at diverting juveniles away from criminal activities was implemented throughout the country, and that, as at June 2015, 888 children had been diverted away from the criminal justice system, therefore allowing first-time offenders to avoid a criminal conviction.

103. The Special Rapporteur takes note of the legislative reform of the juvenile justice system adopted in March 2015, and of the new Juvenile Justice Code, adopted in June. He is pleased to note that the new code introduces a child-friendly approach to children in the criminal justice system, including children in conflict with the law, child victims and child witnesses of crime; that the reform brings juvenile justice legislation in Georgia closer to conformity with international standards, particularly in certain areas, such as the mandatory specialization of justice professionals; the use of detention as a measure of last resort and for the shortest period of time; increased recourse by courts to diversion programmes and the minimization of prosecutors' participation in mediation processes; regular revision of the use of pretrial detention; and strengthening an individualized approach through the introduction of individual assessment reports at all stages of criminal proceedings.

## IV. Conclusions and recommendations

### A. Conclusions

104. **The Special Rapporteur notes a large degree of success in the implementation of reforms made following the parliamentary elections in Georgia in October 2012. In order to make the fight against torture and ill-treatment a priority, significant efforts and resources have been made to prosecute past crimes of torture and ill-treatment and to convict perpetrators, to build new and to improve prison infrastructure, and to effect extensive policy changes, as well as to ensure the effective application of these measures.**

105. **The Special Rapporteur concludes that physical violence, including corporal punishment, verbal mistreatment and forced confessions, has been almost totally abolished in Georgian prisons. Cell conditions, food and medical care are generally satisfactory. By significantly reducing its prison population while at the same time investing in new and better prison infrastructure, the Government has managed to eliminate overcrowding and many of its detrimental consequences.**

106. **Nevertheless, the Special Rapporteur has identified significant room for improvement in the overall conditions of detention and the rights of inmates: access to open areas, telephone calls and visits is currently far too restrictive; there is a notable lack of meaningful activities; and the use of isolation, for disciplinary or other measures, is highly unsuitable. Furthermore, mental issues, including depression and post-traumatic stress, go untreated, resulting in, inter alia, self-inflicted injuries and, in some cases, suicide.**



107. While cases of physical violence, including corporal punishment, and verbal mistreatment by prison staff have almost entirely disappeared, Georgia continues to face a challenge with regard to police officers overstepping their powers, as seen in particular in the recent allegations of police abuse.

108. Legislative and law enforcement agencies in Georgia are advised to bring all arrested persons immediately to temporary placement isolators. All relevant investigatory action must be conducted in the isolators, to ensure that all guarantees of detainees are safeguarded. The recording of the time of placement and of the health conditions of detainees protects them from ill-treatment and minimizes the risk of arbitrary apprehension and deprivation of liberty. The practice of taking people to a police station for an “off-the-record” conversation should be abolished, given that it creates room for arbitrary or unregistered arrests and subsequent ill-treatment.

109. Despite the significant prosecutions and convictions for cases of torture and abuse of the recent past, much remains to be done. Hundreds of victims are still due an effective remedy. In promoting accountability, the Government faces the challenge of ensuring that old, present and future cases of violations of torture and ill-treatment committed by law enforcement officers and prison staff are properly dealt with through prompt, effective and transparent investigation, prosecution, punishment and remedy by an independent and impartial body.

110. To respond to the crucial need to prevent any form of retrogression, reforms must be consolidated and developed to ensure, inter alia, better conditions of detention. The national preventive mechanism must be strengthened, and an effective framework for investigating, prosecuting, punishing and remedying past, current and future cases of torture and ill-treatment should be developed and implemented.

## **B. Recommendations**

112. The Special Rapporteur recommends that the Government of Georgia, in a spirit of cooperation and partnership and with appropriate assistance from the international community, including the United Nations and other actors, take decisive steps to implement the recommendations below.

113. With regard to legislation, the Special Rapporteur recommends that the Government of Georgia:

(a) Review Criminal Code article 174(2) to ensure clear rules and guidelines for procedures to be followed immediately after an arrest, including with a view to defining a time limit for holding the arrested person in a police station before transferring the person to a temporary detention isolator;

(b) In accordance with Criminal Code article 218(8), and to ensure that offences of torture and ill-treatment are duly sanctioned, take measures to close any gap – whether due to inadequate use of plea bargaining or erroneous interpretation of article 144(1) – that would allow perpetrators of torture and ill-treatment to receive a more lenient sentence;

(c) Take steps to eliminate all coercion in plea bargaining, including by revising the restrictive and prolonged nature of the current pretrial detention regime;

(d) Take the steps necessary to prevent the prison system from reaching or exceeding its maximum capacity;

(e) Revise the measures enacted in early 2013 and make necessary adjustments to avoid imbalances and to ensure fairness in their application;

(f) In that regard, reconsider the rules governing eligibility for parole and early release;

(g) Take steps to ensure that inmates who show signs of mental disability or illness are removed from prisons and receive adequate treatment in mental health hospitals; in this regard, the Special Rapporteur recommends that current relevant laws be amended to allow courts to order such a removal;

(h) Consider reducing penalties for non-violent offences, in particular drug-related offences involving the use of rather than trafficking in drugs; instead of prison, drug users should receive appropriate treatment;

(i) In that regard, reconsider the feasibility of criminalizing drug use.

114. With regard to safeguards and prevention, the Special Rapporteur recommends that the Government:

(a) Guarantee with regard to the backlog of past cases of torture and ill-treatment meaningful and effective investigation, prosecution, punishment and remedy to every case of torture – whether by means of an independent investigating mechanism, as envisaged in the discussions led by the Inter-Agency Council on Combating Torture and Other Forms of Degrading and Inhuman Treatment or Punishment, or otherwise – and ensure that processing the said backlog does not have an impact on the capacity to respond swiftly to new cases;

(b) With regard to cases of physical and verbal abuse by law enforcement officers, ensure immediate and effective investigation, prosecution, punishment and remedy;

(c) In that regard, in order to prevent future cases of physical and verbal abuse by law enforcement officers, take measures to ensure that they receive more and better training and instructions;

(d) With regard to the design of an independent investigating mechanism and to make sure that all voices are heard, ensure the broadest participation possible of stakeholders in consultations;

(e) Clarify how the independent investigation mechanism is to interact with the new department under the Office of the Chief Prosecutor;

(f) In that regard, consider amending the composition of the department to include one or more forensic experts, who must be given guarantees of independence; and, as envisaged in the draft law establishing the department, effectively safeguard its independence by means of fair and independent appointment and removal processes;

(g) Reconsider the date of the entry into force of the amendment to the Imprisonment Code of Georgia, adopted on 18 May 2015, aimed at removing current restrictions to the right of members of the Special Preventive Group, acting as the national preventive mechanism, to bring photographic equipment for the purpose of documenting torture;

(h) With regard to the allegations of inmates being unfairly re-charged and re-sentenced, ensure the rights of all convicted persons to expect an end to their prison term and to benefit from rehabilitation and reintegration into society;

(i) In that regard, and with regard to new charges based on allegedly false complaints, ensure that all allegations of torture and ill-treatment are subject to prompt and effective investigation;

(j) Make publicly available reliable information on the number of perpetrators from the previous regime that have been prosecuted and sentenced, and how these persons are being treated in the special prison where they are held.

115. With regard to conditions of detention, the Special Rapporteur recommends that the Government:

(a) Take steps, in law and in practice, to increase the number of hours all categories of inmates are allowed access to open areas, and to improve the physical spaces in which such access is enjoyed;

(b) Take measures to offer more and meaningful work opportunities and activities, conducive for both physical and mental health, to inmates in semi-open and closed establishments, and particularly those serving long or life sentences;

(c) With regard to the currently very strict pretrial regime, take steps to ensure full observance of the presumption of innocence; this includes the right of persons in pretrial detention to enjoy as much social contact and opportunities for movement as is consistent with their status as innocent persons;

(d) In that regard, should there be a need to separate co-defendants pending investigations, guarantee that this be done on a case-by-case basis and by court order;

(e) Take measures to provide juveniles who break the law with alternatives to detention; and in cases where alternatives to detention are not available, guarantee that children are kept separate from adults at all times (see A/HRC/28/68);

(f) Consider alternatives to prolonged or indefinite solitary confinement in “safe cells”, including supervision that does not exacerbate conditions that make detainees a risk to themselves or others; this includes training prison personnel to be able to identify and deal with early signs of potential mental illness;

(g) In that regard, guarantee that adequate psychological treatment is readily available in cases where inmates have inflicted self-injury or show behaviour suggesting they may do so;

(h) With regard to both solitary confinement and placement in “safe cells”, take measures to guarantee fair process, including by granting inmates the authority to challenge the decision and an independent review;

(i) Ensure effective use of the in situ complaints scheme, including by providing ways in which inmates, including those in closed or high-security regimes, may enjoy confidential and anonymous access to sealed complaint boxes;

(j) Consider revising the rules on and practices related to visits and other communications with the outside world: in the case of visits, this includes the type allowed (short or long, contact or non-contact), the categories of inmates allowed to enjoy visits, frequency of visits and the categories of visitors allowed to visit; with regard to communications, this includes the categories of inmates allowed to make telephone calls and the frequency with which they may be made;

(k) Immediately eliminate all unjustified surveillance that risks constituting an invasion of the privacy of inmates;

(l) Ensure regular and programmed medical check-ups, including routine analytical blood and urine medical tests and thorax radiology, by medical and lab staff, of all inmates and in all detention facilities;

(m) Take measures to ensure that photographic documentation of trauma injuries becomes routine practice, including by making available appropriate cameras and other relevant equipment in all medical services;

(n) In order to ensure consistency in the documentation of physical and psychological trauma, take measures to ensure full compliance with international standards, as set out in the Istanbul Protocol, for the effective investigation of torture and ill-treatment, including by training detention and other health professionals on the proper forensic assessment, documentation and interpretation of physical and psychological trauma and ill-treatment, and on the application of the Istanbul Protocol;

(o) In that regard, take measures to improve the current medical registration form, including by ensuring its compliance with the Istanbul Protocol;

(p) With regard to transfers for medical reasons, in particular from peripheral regions to the central penitentiary hospital in Gldani, ensure that all measures are taken to prevent the sick inmate being subject to additional stress and pain, including by providing local medical attention as promptly as possible;

(q) Allocate the resources necessary for adequate infrastructure and work opportunities in order to realize its plans to design an open system for inmates soon to be released.

110. With regard to institutional reform, the Special Rapporteur recommends that the Government:

(a) In order to preclude any potential regression to the practice of torture, consolidate as State policy the reforms made over the past two years, including through further legislation and policy directives, and through a firm commitment to breaking the cycle of impunity;

(b) In that regard, ensure the participation of all stakeholders and take into account as many views and concerns as possible in the decision on how best to organize institutional, procedural and jurisdictional resources to ensure accountability for torture and to prevent future mistreatment;

(c) Provide alternatives to incarceration in pretrial situations, including for the purpose of ensuring appearance at trial.

111. The Special Rapporteur stresses that pretrial detention should be the exception, not the rule, for persons who are presumed to be innocent until proven guilty, and recommends that any judicial decision to remand defendants to pretrial detention be carefully justified, in each case, and under strict criteria, including the likelihood of the defendant of absconding or of repeating the offence allegedly committed.

112. The Special Rapporteur requests the international community to support the efforts of Georgia to implement the above-mentioned recommendations, in particular in its efforts to respond to the challenge of consolidating its recent reforms and initiatives, including by designing and launching an effective framework for investigating, prosecuting, punishing and remedying cases of torture and ill-treatment.