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Georgia's decade-long challenges of tackling torture

POLICY BRIEF

AUTHOR:

Tsira Chanturia

Penal Reform International

Peer review:

Kornely Kakachia

Proofreading:

Camrin Christensen



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Executive summary

Over the past decade, both domestic agencies and international bodies have emphasised that the lack of an independent investigative mechanism is an impediment to the prevention of torture in Georgia. Recently, the EU-Georgia Association Agreement has spurred reform of the criminal justice system with specific priorities outlined in the Association Agenda. One priority is preventing torture and combating impunity through the establishment of an independent and effective investigative mechanism.

This policy paper describes the urgent need to establish an independent investigation mechanism for allegations of torture, assessing the shortcomings of the existing framework and outlining the international requirements Georgia must meet in order to fulfil its Association Agenda. The proposed mechanism must be independent on an institutional, personal and practical level with a separate mandate from the Prosecutor's Office. Given the limited number of investigations over the past few years, the mechanism must allow for the investigation of current as well as past allegations of torture and inhuman, degrading treatment or threat of torture. The mechanism's leadership must be appointed by and accountable to the Parliament. The investigative body must also be equipped with all the necessary financial and human resources.

This government action should be supported and monitored by domestic civil society and encouraged by the EU and other international actors. Ultimately, its function should be transparent and accountable to the Georgian citizenry.

Introduction

By signing and ratifying the EU-Georgia Association Agreement in 2014, Georgia has committed to strengthening the rule of law, effective function of law enforcement institutions and administration of justice, as well as ensuring respect for human rights and fundamental freedoms.¹ The EU-Georgia Association Agenda for 2014-2016 contains provisions pertinent to the strengthening of prevention of torture and ill-treatment.² Furthermore, in its ENP Progress Report³ for Georgia for 2014, the EU recommended increasing the accountability and democratic oversight of law enforcement agencies and called for ensuring that criminal investigations and prosecutions be conducted in a transparent and impartial manner, free of political motivation. It further emphasised the urgent need to establish an independent and effective complaint mechanism for addressing gross human rights violations, including torture and ill-treatment by law enforcement agencies.

The Georgian authorities have included the issue of thorough, transparent and independent investigation into allegations of torture in the National Action Plans⁴ (for 2014 and 2015) for the Implementation of the EU-Georgia Association Agenda. This is also an obligation of the authorities explicitly outlined in the National Human Rights Action Plan (2014-2015).⁵

The present paper examines the shortcomings of existing mechanisms and suggests solutions compliant with international standards and Georgia's commitments to strengthen the institutional mechanisms for combating torture.

Approaches and Results

The lack of an independent and effective investigation mechanism undermines Georgia's ability to effectively combat/prevent torture, causing concern among the civil society, the Public Defender, the international community and the public at large. While domestic and international reports concerning Georgia (by the Public Defender (the Ombudsman), the European Committee for the Prevention of Torture (CPT), UN Special Rapporteur on Torture, Council of Europe Commissioner for Human Rights, UN High Commissioner for Human Rights, etc.) have expressed concern about the issue for over a decade, video footage showing torture of prison inmates that was leaked to the press in advance of the 2012 parliamentary elections caused public outrage. Reports suggested that the failure to investigate allegations of torture and ill-treatment by police or prison officers had been a deliberate move by the authorities, using the tacitly sanctioned systemic and wide-scale use of torture⁶ and other forms of inhuman treatment in Georgia's prisons to manage crime and enforce discipline in prisons. The significant disparity between the number of allegations and the number of subsequent investigations and successful prosecutions carried out⁷ evince the inaction by respective government agencies.

¹ Articles 4, 13, Justice, Freedom and Security, 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 Available at: http://eeas.europa.eu/georgia/pdf/eu-ge_aa-dcfta_en.pdf (accessed on April 3, 2015)

² See Priority 2.1. http://eeas.europa.eu/georgia/pdf/eu-georgia_association_agenda.pdf

³ Implementation of the European Neighbourhood Policy in Georgia Progress in 2014 and recommendations for actions, Brussels, 25.3.2015 SWD(2015) 66 final, Available at: http://eeas.europa.eu/enp/pdf/2015/georgia-enp-report-2015_en.pdf (accessed on April 3, 2015)

⁴ Approved by the Decree №1516 of the Government of Georgia (3 September 2014) and Decree #59 (26 January 2015) respectively

⁵ Approved by Government Decree #445 (9 July, 2014).

⁶ Open Society Georgia Foundation (OSGF), 2014 'CRIME AND EXCESSIVE PUNISHMENT: THE PREVALENCE AND CAUSES OF HUMAN RIGHTS ABUSE IN GEORGIA'S PRISONS'; at http://www.osgf.ge/files/2015/Publication/Final_Report_ENG.pdf (accessed on April 17, 2015)

⁷ Letter of the Supreme Court #27-K (dated 26.04.2012) to Penal Reform International, between 2007 and the first quarter of 2012 there were 10 persons convicted for the crime of torture

The election of a new ruling Coalition in late 2012 brought about significant changes in penal policies, focused on alleviating prison overcrowding and shifting to more humane treatment in prisons. Because of the impact that the leaked video footage depicting torture and abuse of prisoners had on election outcomes, the new government was under public pressure to investigate the numerous allegations of ill-treatment of prisoners. According to data⁸ from the Chief Prosecutor's Office, seven criminal cases were launched and 38 perpetrators charged with offences of torture, or inhuman, degrading treatment or abuse of power based on allegations pertinent to facts prior to 2012. According to the Public Defender, the present government's actions have helped to eliminate the systematic use of torture and ill-treatment in Georgia's prisons, however there is a backlog of thousands of pending cases under investigation. Apart from a few cases pursued no results have been achieved.

Although a number of former prison and police officials were prosecuted in 2013, the sanctions imposed did not meet the requirements of either international law or Georgian legislation or public expectations given the gravity of crimes. Plea bargaining agreements were concluded with alleged perpetrators and the sentences imposed were significantly less than what is prescribed by law. One perpetrator was fully released from criminal liability contrary to the requirements of Georgian legislation.⁹ This made it clear that even with the new government's policies pursuant to the torture scandal and high public expectations, there was still no principled and straightforward approach to combating torture and punishing perpetrators. Allegedly, this was partly due to the fact that some officials from the former government retained decision-making positions in law enforcement agencies.

There have been no substantial improvements as far as the issue of investigations is concerned. The Public Defender's 2014 Annual Report emphasised that the independent, impartial and effective investigation into allegations of torture and ill-treatment by law enforcement agencies remained an issue in 2013 and 2014. In fact, no investigations into these issues were launched in 2014. The persistence of the problem has compelled the Public Defender to devote a special thematic report¹⁰ to the issue and to highlight that the "deficient investigation of cases of torture, inhuman and degrading treatment of detainees has been one of the major gaps of the legal system in Georgia over the years. Although constantly raised in the reports of the Public Defender of Georgia, no significant steps have been taken to change the established practice."¹¹

Besides the reasons associated with political will as described above, there are also issues related to institutional culture and connections among and hierarchies within law enforcement agencies that necessitate the establishment of an institutionally independent mechanism. It is clear that freedom from political as well as institutional influence is needed for an independent and impartial investigation into alleged human rights violations by law enforcement agencies.

⁸ Public Defender's Annual Report, The Situation of Human Rights and Freedoms in Georgia, 2014, page 314, available at: <http://www.ombudsman.ge/uploads/other/2/2439.pdf>, (accessed on April 3, 2015)

⁹ Joint statement of non-governmental organizations regarding investigation of facts of torture in the penitentiary system, 19 September 2013, available at: <http://transparency.ge/en/node/3408> (accessed on April 18, 2015)

¹⁰ Public Defender of Georgia Special Report on PRACTICE OF INVESTIGATION OF ALLEGED CRIMES COMMITTED BY LAW ENFORCEMENT OFFICIALS, REGULATIONS AND INTERNATIONAL STANDARDS ON EFFECTIVE INVESTIGATION, TBILISI 2014, available at: <http://ombudsman.ge/uploads/other/2/2316.pdf> (accessed on April 3, 2015)

¹¹ Idem

In his 2013 report, Thomas Hammarberg, former European Commissioner for Human Rights, in his capacity as EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia, recommended that “As part of the ongoing structural reforms, time has come for Georgia to decide, without delay and in the light of a history of past systematic abuses, on the best way to conduct independent and impartial investigations of violations of human rights whenever there is a suspicion that law enforcement agents may be involved. By doing so, decision-makers should try to minimise the pernicious consequences of ‘colleagues investigating colleagues.’”¹² Given the country’s recent past, he recommended the introduction of a credible and fully independent investigative body which would “redress the wrongdoings of the past and build a system aimed at effectively preventing violations from occurring,” by conducting timely, thorough and effective investigations of any allegations.

Given the background of impunity and domestic and international concern over past systemic abuses, as well as the backlog of cases pending investigation, it is necessary to determine what is wrong with Georgia’s institutional mechanism for investigating torture and ill-treatment. This should be done with a view to stepping up efforts to prevent torture both now and into the future.

Limits of the current system of investigation into torture and ill-treatment and the requirements set by international instruments¹³ and mechanisms

International instruments outline how an independent and effective torture investigation mechanism should function. These practices should be taken into account while trying to establish one in Georgia. The European Court of Human Rights assesses the effectiveness of an investigation according to the following criteria: independence and impartiality; thoroughness; promptness; competence; and victim participation in public oversight.

Against the body of international requirements, a list of shortcomings can be identified in terms of the current system of investigation:

- **Grounds for launching an investigation** – Investigations rarely start without a complaint. According to international standards, investigations must be undertaken when there are indications of torture or other ill-treatment even without a formal complaint.
- **Inadequate sanctioning** – Very few perpetrators are brought to justice and, when they are, the sanctions are not commensurate with the nature and gravity of the crimes committed.
- **Unclear authority** – The Prosecutor’s Office has discretion when deciding to take over the investigation of cases of alleged ill-treatment from respective

¹² Thomas Hammarberg, ‘Georgia in Transition’, Report on the human rights dimension: background, steps taken and remaining challenges, September 2013, Available at: http://eeas.europa.eu/delegations/georgia/documents/virtual_library/cooperation_sectors/georgia_in_transition-hammarberg.pdf, page 23

¹³ UN Convention against Torture, ECtHR case law, CPT’s 14th General Report, UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Istanbul Protocol

investigatory units of the law enforcement ministries (e.g. Ministry of Interior, Ministry of Corrections);

- **Lack of institutional independence and impartiality of the investigative mechanism** – For an investigation to be effective, the persons responsible for and carrying out the investigation must be independent and impartial, in law and in practice. This means not only a lack of hierarchical or institutional connection with those implicated in allegations but also a practical independence. Esprit de corps or loyalty towards fellow law enforcement agencies versus ‘criminals’ against whom cases are led often prevents effective and thorough investigations.
- **Substandard investigations that lack thoroughness, comprehensiveness, timeliness and expeditiousness** – Failure to start investigations in a timely manner or order forensic medical examination has in the past contributed to the ineffectiveness of investigations¹⁴ into allegations. Often alleged ill-treatment is wrongly categorised under the articles of abuse of power and not torture¹⁵ or inhuman treatment.¹⁶

Other related factors with implications on the ineffectiveness of investigations are:

- **No safeguards for whistle blowers¹⁷** – Out of fear of reprisal, detainees/prisoners refuse to give testimony, as they are not protected either by law or in practice when making allegations of ill-treatment and they are left in the hands of alleged perpetrators. Those who have allegedly committed torture remain in their positions of power.
- **Weak judicial oversight** – Judges do not enquire whether a defendant had been subject to ill-treatment and do not order immediate investigation.
- **Evidence collection** – a) The lack of evidence due to poor documentation of physical injuries/mental consequences of alleged ill-treatment in places of detention and forensic medical examination results in non-compliance with standards established by the Istanbul Protocol; b) The video surveillance systems in prisons do not allow for recording to be kept for more than 24 hours. Thus, potential evidence has been deleted by the time a complaint reaches the Chief Prosecutor’s Office.

¹⁴ The subject of lengthy and ineffective investigations into instances of ill-treatment and abuse of force by police in Georgia has been reflected in judgements of the European Court of Human Rights and reports of the CPT.⁴⁷ Cf. Gharibashvili v. Georgia, judgment of 29 July 2008.

¹⁵ Article 1441 of the Georgian Criminal Code

¹⁶ Article 1443, Idem

¹⁷ UN Convention against Torture, Article 13 ‘Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given’

Conclusions and Recommendations

The existing system of investigation into allegations of torture and ill-treatment has consistently failed to meet the requirements of the international bodies/mechanisms and relevant international standards. A change in practice will require significant political will, adherence to international norms and standards, and institutional and legislative changes.

To meet the requirements established by relevant international instruments as described above, we suggest establishing an independent investigative body to address alleged human rights violations committed by law enforcement bodies, including a specialised unit for investigating allegations of torture and inhuman, degrading treatment. For this body to be effective, it must be:

- Independent on an institutional, personal and practical level with a separate mandate from the Prosecutor's Office.
- Empowered to deal with current as well as past allegations of torture and inhuman, degrading treatment or threat of torture;
- Led by individuals appointed by and accountable to the Parliament;
- Equipped with all the necessary financial and human resources and commissioning examinations by impartial medical forensic and other experts as needed;

Ultimately, the methods used to carry out such investigations must meet the highest professional standards. The findings should be made public in order to promote transparency and accountability to the public.

In establishing this mechanism, the Government should open discussions under the Anti-torture Interagency Coordination Council and respective working group. This would ensure that relevant stakeholders, including the civil society, are engaged in designing the concept, developing the action plan and setting a timeline for the establishment of this mechanism. This should be done in line with the Action Plan for the EU-Georgia Association Agenda and based on the underlying principles of transparency, accountability and inclusiveness for its implementation.

