



SURVEY OF EXISTING DETENTION MONITORING BODIES IN GEORGIA

II. Monitoring of Penitentiary Institutions under the Ministry of Justice by civil society bodies

T Chanturia, Project coordinator 'Prevention of Torture in Georgia'

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Introduction

This paper concerns the analysis of monitoring bodies set up at penitentiary institutions under the authority of the Ministry of Justice involving civil society representatives. It was prepared in the context of an EU funded project on torture prevention which sought to assist the Georgian State in implementing the Optional Protocol to the UN Convention against Torture. The aim was to see how existing experience could inform the design of an effective future torture prevention mechanism for Georgia.

Background

First Initiative: Minister of Justice (Mikhael Saakashvili) by order #359 of 1999 December 28 approved a Statute for a Commission for Penal Establishments based on Article 97 of the Law on Imprisonment. The order became effective from January 1, 2000. According to the Statute the commission was a standing body of public control over penal establishments. Membership of the commission was open to representatives of local government, public figures, NGOs and religious organisations, also other persons appointed by the Minister of Justice. The number of members in a commission should not exceed 10. Composition of a Commission was presented by the Governor of each individual prison and approved by the Minister of Justice. Commission members worked unpaid. Responsibilities of the commissions included provision of assistance to prison administrations in allocation, education, employment, nutrition and medical care of prisoners, as well as oversight over them and also other issues requested by the administration. The Commissions were to provide recommendations to prison governors and also to report to the Minister on yearly basis. The statute expressly stated the right of unrestricted access of commission members, save in circumstances which endangered the implementation of security measures within a penal establishment. The Statute allowed for an individual to be a member of two different commissions simultaneously.

Second Initiative: Minister of Justice (Giorgi Papuashvili) approved a Statute of a Commission of a penal establishment by his order #1210 on October 1, 2004. Provisions of the statute included: membership term – 3 years; minimum number of members – 7; criteria for membership – interest, ability to work actively, honesty, analytical skills; Article 1.10 of the Statute clearly stated the possibility for commission members to have meetings with prisoners at any time. Article 2 (f) stipulated that one of the aims of the prison commissions was to reveal corruption, abuse of power and conflict of interests by prison staff. Another responsibility expressly stated in the statute was: to detect facts of such violations by prison officials as discrimination towards prisoners, unequal treatment; torture and degrading treatment. Prison commission members were entitled to invite outside experts. According to this Statute the Minister of Justice was responsible for providing written clarification in the case of refusing to fulfil recommendations made by the commissions.

One aspect which differentiates the statute, is that it envisioned the existence of a Public Supervisory Council set up by the Ministry of Justice which served as a central coordinating board for the individual commissions.

Unfortunately there are no objective data regarding commissions until 2003 which could give information about their work.

In August-October 2003, under PRI's United Kingdom Government funded project "Assistance to the Public Control Commissions in the Penitentiary System of Georgia" the

Centre for the Protection of Constitutional Rights undertook an assessment survey of the work of commissions using questionnaires as well as provided trainings for them. The survey included identifying the composition of individual commissions, their profile, how many active members there were and who wished to continue to work for the commissions, who were no longer eligible to be members, how they saw their role, etc. During the course of the survey not only prison commission members, but also prison governors and deputy governors were interviewed.

During 2003-2004 there were commissions at the following 15 prisons:

Tbilisi nr 1 (7 members), Kutaisi prison nr 2 (7 members), Batumi prison nr 3 (5 members), Zugdidi prison nr 4 (8 members), Tbilisi prison nr 5 (8 members), Rustavi penal establishment nr 1 (9 members), Rustavi penal establishment nr 2 (7 members), Women's colony nr 5 (9 members), Avchala penal establishment nr 6 (10 members), Ksani penal establishment nr 7 (5 members), Geguty penal establishment nr 8 (8 members), Khoni penal establishment nr 9 (7 members), Prison Hospital (9 members), TB Hospital for Prisoners (5 members), Juvenile Correctional Institution (9 members).

The monitoring visits undertaken by these commission members were quite random and lacked coordination inside commissions, since the members acted as individuals rather than as a team. Some individuals on the commissions did not even know that they were members, as they had not been informed.

Although some members had knowledge of human rights and others did not, still there was a demonstrated need for training and induction, particularly in terms of monitoring prisons. Another drawback in the operation of the commissions as identified by the survey was insufficient frequency and regularity of monitoring, lack of motivation of some members, and lack of members on some commissions.

As the survey states, commissions had a formal nature: did not gather as a body, had no chairs elected, and did not set common goals and objectives for monitoring, mainly working independently from each other.

One of the reasons for the lack of organisation and coordination of prison commissions existing in 2003-2004 probably was the absence of an active coordinating body; no effective mechanism for the recruitment and dismissal of members was in place.

Needless to say, lack of resources, and particularly funding for basic costs which would allow for travel and communication of members, also played major role in impeding the work.

Third Initiative: The statutory basis for the operation of prison commissions remained Article 93 of the Georgian Law on Imprisonment (July 22, 1999). However, they were guided in their work by the Typical Statute of a Prison Commission approved by the Order #2190 of the Minister of Justice (Konstantin Kemularia) on November 29, 2005.

Stated goals for the establishment of the prison commissions are: a) to create an effective and just system for public oversight over penitentiary establishments and their operation; b) to promote transparency of the operation of prisons; c) public monitoring and evaluation of prisons; d) assistance to effective functioning of penitentiaries; e) identification of violations and infringements by prison staff of the constitutional rights, lawful interests of prisoners and other illegal actions; f) monitoring of discipline and legality to be followed by prison personnel. (Article 2, Statute).

One more power which commissions got as a result of an amendment to the Law on Imprisonment (dated 29.06.2007, effective from 1 September, 2007) is stipulated in the Article 48.4 (1). It states that prison commission can solicit a prison governor to grant an additional family visit to a convict.

In their work, prison commissions are to be guided by the principles of independence, legality, fairness, transparency and impartiality.

Commission members carry responsibility to fulfil obligations in an appropriate manner; act in accordance with the legislation while carrying out their duties; observe the procedures and behavioural norms fixed for the operation of commissions.

Membership

The term of the commission membership is 2 years, and the minimum number of members is 5. The work is unpaid. (Statute Article1). A person may not be a member for more than two consecutive terms. (Article 4) One person may not be a member of two commissions at the same time according to the amendment of 14 June, 2006 #575. (Article 6)

Members of prison commissions are representatives of local municipality and government, public figures, NGOs and religious organisations, also other persons based on the decision of a Minister of Justice.

Members may not be staff of penitentiary establishment, law-enforcement agencies and other related bodies. (Article 6)

Bases for the termination of membership are: a) violations of the requirements of the Georgian Law on Imprisonment as well as internal regulations of respective penal establishment; b) Expiration of the term of membership; c) Voluntary application to quit membership; d) Inability to carry out statutory obligations; e) Death; f) Being acknowledged as incapable, lost or deceased according to the rules established by the legislation; g) Failure to fulfil responsibilities for three months in a row for reasons ungrounded; h) Failure to observe procedures and behavioural norms established for the commissions; i) Verdict of guilty issued by the Court and having entered the force. (Article 6). The issue can be raised by at least two members of the commission and the recommendation is made by voting, and submitted to the Minister of Justice for ultimate decision.

Criteria for Membership

The selection of members occurs according to the willingness expressed, ability to work actively, qualifications and reputation. Georgian citizenship is required.

Accountability

The prison commissions are appointed by the Minister of Justice, and are accountable to this official. Commissions are supposed to report quarterly to the Minister on the situation in penitentiaries, about violations of prisoners' rights and for the purpose of improving the situation.

In addition, the Law on Imprisonment (Article 93.4) establishes a responsibility for the prison commissions to submit annual reports to the Minister of Justice as well as the Head of Penitentiary Department about the work accomplished (according to the amendment # 2942 of 28 April, 2006).

Access to prisons

Commission members get special passes authorised by the Ministry of Justice to get access to respective prison establishments.

Amendment of 14 June 2006 (#575) enables commission members to meet prisoners any time, providing this does not infringe on the rights of these individuals (Article 10).

The same amendment also entitles the commission to conduct monitoring on any day of a week and any time during the day, without prior warning and agreement with the administration, in order to reveal violations (article 8.1)

Members of the commissions are not entitled to carry with them while accessing prisons, any items prohibited by the legislation and internal rules of a penitentiary establishment including recording devices. (Art 11).

Access to documentation

Commission members are entitled to obtain any documentation (except for those which are recognised as confidential by the legislation). (Article 8, para 1). This gives them the right to consult, for instance, prison administrations and particularly, prison governors, staff of special units in charge of prisoner files, social service, duty office, medical unit, etc.

Recommendations by prison commissions (Article 8)

The commissions are entitled to draft recommendations regarding the placement and allocation of inmates; educational programmes; employment of prisoners; the improvement of food and nutrition of inmates; the improvement of medical care for prisoners.

The authority of the commissions also includes the right to submit to the Minister of Justice suggestions regarding the violations by prison staff and recommendations for their eradication.

Commissions may address relevant officials under the Ministry of Justice concerning facts of violations and discrepancies revealed at penitentiaries and get a founded response from them.

In addition, commissions may develop recommendations regarding purposeful and effective expenditure of financial resources and the use of facilities/utilities by the respective penitentiary.

Recommendations on the improvement of financial management and control, as well as internal auditing policy, standards, procedures and practice may also be submitted to Minister and a substantiated answer sought from this official.

Prison commissions may also make recommendations on contracts of state-run purchases with regard to needs of penitentiaries.

And finally, commissions can provide monitoring on the implementation of recommendations.

Minister of Justice has discretion to decide whether to fulfil recommendations submitted by the commissions and they shall be informed about the outcome. (Article 9).

According to Article 93.3, the commissions may also apply to governor or respective penitentiary official with a recommendation.

Application to the commission

Any person can apply to a commission. (Article 4). The commissions are entitled to receive written complaints and statements (verbal and written) regarding violations and discrepancies. And based on these a commission develops a recommendation which is submitted to Minister of Justice.

If need be, the commission is entitled to send materials concerning the complaint to General Inspectorate of the Ministry of Justice and Prosecutor General's Office.

Organisation of the Work of Prison Commissions

Work of any prison commission is led by a Chair, elected for the term of 1 year by majority votes at a general meeting. Commission meetings are to be held at least once a month, called by a Chair.

Chairs of the commissions undertake the following tasks: lead and direct the work of commissions; chair meetings; draft agenda and ensure discussion of the issues on the agenda; monitor the fulfilment of recommendations of the commission; supervise the implementation of responsibilities by commission members.

Meetings of the commissions are open, subject to being closed based on grounded decision taken by majority votes of those attending.

Commissions also have secretaries, elected among their members.

Status of the Commissions at December 2007

There were 11 prison commissions operating in December 2007, including commissions for the following penitentiaries:

Batumi prison #3, Kutaisi Prison #2, Zugdidi prison #4, Tbilisi prison #5, Geguti establishment #8, Ksani TB hospital, Ksani penal establishment #7, Rustavi prison #6, Rustavi penal establishment #1, Prisoner hospital, Women's penal establishment #5.

Three of these commissions, specifically Batumi, Zugdidi and Kutaisi prison commissions were established at the end of 2005 (December).

The rest of the commissions were set up at the end of 2006: On November 27, 2006 – Rustavi prison 6 (Order # 778), Prison Hospital (Order # 777), Rustavi #1 (Order # 780), Women’s colony; Ksani #7 – 27.10.2006, (Order # 749), Ksani TB hospital commission – 19.10.2006, (Order #745), Geguti colony # 8 – 19.10.2006 (Order #744) and Tbilisi prison #5 - 25 December 2006.

Table: Status of commissions at December 2007

Penal Establishments	Regimes	Location	Date of Establishment of a Commission	Number of members ¹	Number of active members by the end 2007	Passes received	Commission Commenced To work	Number of visits to prisons ²
Prison #1	Prison	Tbilisi	N/A	N/A				
Prison #2	Prison/Strict	Kutaisi	December 21, 2005	10 members	3 members	March 2006	March 2006	
Prison #3	Prison	Batumi	December 2005	6 members	3 members	May 2006		120
Prison #4	Prison	Zugdidi	November 29, 2005	10 members	3 members		December 2005	248 visits
Prison #5	Prison	Tbilisi	December 25, 2006	5 members	1 member			
Prison #6	Strict/common/Prison	Rustavi	November 27, 2006	5 members	2 members	February 2007	February 2007	12 visits
Prison #7	Prison	Tbilisi	No Commission					
Prison #8		Gldani, Tbilisi	No Commission					
Penal Establishment #1	Strict/common	Rustavi	November 27, 2006	5 members	3 members	February 2007	December 2006	13 visits
Penal establishment #2	Strict/common/Prison	Rustavi	No Commission					
Penal establishment #5	Common/strict/prison	Tbilisi	November 27, 2006	5 members	3 members	February 2007	February ,2007	10 visits
Penal establishment #7	Strict/Common/Prison	Ksani, Mtskheta area	October 27, 2006	6 members	2 members		February 16, 2007	8 visits
Penal establishment #8	Strict/common	Geguti, Imereti region	October 19, 2006	5 members	3 members	January 2007	January 2007	
Penal establishment #9	Strict/common	Khoni, Imereti region	No commission					
Penal establishment #10	Strict/Common	Avchala, Tbilisi	No commission					
Juvenile Correctional Institution		Avchala, Tbilisi	No commission					
Central Prison Hospital		Tbilisi	November 27, 2006	5 members	2 members	February 2007	February 2007	19 visits
TB Hospital for Prisoners		Ksani, Mtskheta area	19 October, 2006	5 members	3 members	February 2007		7 visits

Problems encountered during the work of prison commissions³

¹ The number of members of individual commissions initially appointed changed over the time, and therefore, the numbers as of the end 2007 are given separately.

² The number of visits to prisons since the commencement of work by prison commissions and to end 2007.

³ Based on the survey conducted by PRI in March 2007, also via subsequent commission reports and interviews with commission members. Training workshops organised by PRI also served to identify needs of commissions.

- Belated reception of passes from the Ministry of Justice, resulting in the delay of work;
- No members with medical or legal profile on some of the commissions (Geguti commission, Rustavi prison #6 commission); The commissions have problems in terms of staffing as when the members were selected insufficient attention was paid to having such specialists among the members as doctors, lawyers etc.
- There is no flexible mechanism for adding new members to the commissions. Some commissions have applied to the Ministry of Justice and have even proposed candidates for membership, however have received no responses. The lack of members creates problems for the work of commissions, especially those which work with big prisons with a large number of prison populations (Tbilisi prison #5, Rustavi prison #6, Ksani facility #7, Kutaisi prison #2, etc).
- Frequent changes of prison governors (particularly Kutaisi);
- Lack of motivation and activeness of some prison commission members; not all members in the commissions do active work and not all are motivated enough to work as a commission member having links with the recruitment process. Another related problem is that there are members on commissions who appear to have been appointed as members without being asked for their opinion (particularly, those from local governments, although this is disputed by the Ministry of Justice); laying off inactive members is also a problem, considering that the Ministry makes no regular assessment of the work of commissions and takes no subsequent decisions on the replacement of idle members.
- Failure of Ministry of Justice to respond regarding the recruitment of new members proposed by prison commissions;
- Lack of members on the commissions;
- Lack of response from the Ministry of Justice, or central prison administration on the recommendations provided by the commissions;
- The problem which the commissions initially faced with regard to lack of funding for transportation, communication and other technical expenses, has been alleviated by PRI through seeking EU funding.
- Also the initial need of prison commission members for information on updates of prison regulations and legislation has been met through their involvement in various trainings and networking with the assistance of PRI.

Expertise, capacity, training

The Ministry of Justice has carried no responsibility to train or support commission members. PRI has provided several training workshops for commissions at various stages of their development. Most prison commission members had little or no previous experience of carrying out monitoring of prisons or other establishments.

Training 22 - 24 February, 2006 – *Public Monitoring in Penal Establishments* (Likani) provided within the framework of the PRI's project "Creating a National Monitoring Mechanism for Human Rights in Georgia" supported by the UK Foreign and Commonwealth Office (FCO). Kutaisi and Geguti prison commissions attended (16 persons)

Topics: Monitoring concept and functions; review of the Law on Imprisonment; grounds for parole and early release; statute of commissions – practical exercise; appeal procedures and methods of responding; prisoners' rights according to Georgian Constitution and international standards; internal rules and regulations of penal establishments of all types; international standards on imprisonment (European Prison Rules, Standard Minimum Rules for the Treatment of Prisoners, etc)' medical care, nutrition, education and employment of prisoners; personal files of prisoners; basic principles and ethics of monitoring; significance of monitoring, forms and

methods of monitoring; preparing report and recommendations. Certificates of completion were issued. Training methods used: lecture, practical exercise, brainstorming, etc.

Training 17 – 21 February, 2006 – Same training *Public Monitoring in Penal Establishments* (Likani) provided, again within the framework of PRI's project "Creating a National Monitoring Mechanism for Human Rights in Georgia" supported by the British Foreign and Commonwealth Office (FCO). Batumi and Zugdidi prison commission members attended (15 persons). Materials distributed to all participants.

Training 25 – 28 July, 2006 – *Public Monitoring in Penal Establishments* (Batumi) provided within the framework of PRI's project "Creating a National Monitoring Mechanism for Human Rights in Georgia" supported by the British Foreign and Commonwealth Office (FCO).

Members of Zugdidi, Batumi and Kutaisi commissions (16 persons) took part in the training.

Topics: Overview of the work of prison commissions; European Prison Rules; Elections in penal establishments; overview of existing practice and national legislation; Presentations by groups of the preparation for monitoring and implemented work; stages of monitoring; presentations of monitoring reports by groups; monitoring strategy; forms and methods of monitoring; amendments to the Law on Imprisonment.

Training 3 - 4 December, 2006 – *Public Monitoring in Penal Establishments* (Mtskheta) provided within the framework of the PRI's project "Creating a National Monitoring Mechanism for Human Rights in Georgia" supported by the British Foreign and Commonwealth Office (FCO).

Members of the following commissions took part: Rustavi 1; Rustavi 6; Women's and juveniles prison; prison hospital; TB hospital; Geguti 8; Ksani 7, and also one member each from Zugdidi, Kutaisi and Batumi prisons. (33 persons). Materials were distributed to all participants.

Topics: national legislation on penal system, international human rights standards; conditional early release, parole; typical statute of the commission; discussion on how many times the commissions are to meet, what issues it should be discussing; Function of monitoring and principles of the monitoring; monitor's skills how to conduct monitoring, how to do prepare etc. following issues have been covered: stages of the monitoring: who might be a monitor; main principles of the monitors and ethic code; team of monitors; collaboration of the monitoring team with partners; preliminary work of the monitors; methodology of the monitoring; follow-up activity after the monitoring including reporting. What mechanisms does Georgia have in terms of monitoring; monitoring at international and national level. (OPCAT, CPT, CAT, HRC, prosecutor's office, ombudsman, special rapporteur, MOJ, Judges etc). What to monitor: rights and freedoms of the prisoners (convicted and pre-trial prisoners; living conditions; contact with outside world; medical care, rehabilitation of the prisoners and education, as well as labor; categorization of the prisoners, staff of the prisons, early release and conditional release, complaining procedures); How to work and get information about relevant prisons.

Three chairs of the already existing commissions were invited to talk about their experience, problems they experienced and achievements. There also has been a small speech by the director of PRI Tbilisi Office giving the history of commissions' creation and what kind of problems they had.

Training 12 April, 2007 - "*Prevention of Tuberculosis and Prophylaxis Activities*" (Tbilisi) provided within the framework of PRI's project "Prevention of Torture in Georgia" funded by the European Union (EU).

Topics: Tuberculosis, its forms, routes of dissemination, its prevention, risks of contracting, ways to prevent contraction, DOTS programme, etc. Materials were distributed.

In attendance: members of commissions for prison hospital and those for TB hospital for prisoners (7 persons)

Delivered by Nikoloz Megrelishvili, Head of Medical Supervision department at the Ministry of Justice, under contract to PRI.

Training 25 – 26 November, 2007 – Training on prison monitoring (Kutaisi) provided within the framework of PRI's project "Prevention of Torture in Georgia" funded by the European Union (EU).

In attendance were members of the following commissions: Kutaisi, Geguti, Ksani, Rustavi 1, Rustavi 6, Batumi (14 persons).

Topics: Practical exercise of reviewing other commissions' reports in order to refine the reporting format; Monitoring (what is monitoring and its steps, functions and basic principles of monitoring; stages of monitoring. Essential qualities of a monitor; guiding principles for monitors, monitoring team, cooperation with partners; Monitoring methodology, follow-up activities, reporting); Preparation for monitoring visit, meeting of monitoring team, preparatory activities prior to visits, monitoring visit.)

Areas/Issues to monitor, specifics of concrete spheres (Human rights, liberties, material conditions, contact with the outside world, medical services, regimes and activities, rehabilitation programs, prison staff, categories of prisoners, treatment of prisoners, confinement regimes, conditional early release, procedures of complaints).

National legislation (changes to the Law on imprisonment, criminal code and criminal procedure code and other laws); National laws about medical service, family visits in prison (changes and new normative documents); Role-playing a monitoring visit

Shadowed monitoring visit in Geguti prison; preparation of a report by mixed groups following the visit.

Besides the above-mentioned training workshops, prison monitoring commissions have also been invited by PRI to a number of roundtables and meetings organised by various agencies.

11 May, 2007 - Roundtable meeting Healthcare in Prisons – Developing Networking, organised by NGO Empathy within the framework of its EU and UK Embassy-funded projects.

Aim: Acquaint expert and professional organisations working in the field of healthcare in prison with members of civil society bodies monitoring Georgia's prisons; share information on perceived healthcare priorities in prison and the possibilities for addressing these; increase awareness among internationals supporting reforms in Georgia's prisons of current and possible future initiatives in the field of healthcare.

Outcome: practical working relations established between the parties present at the roundtable; network for healthcare in prison widened and strengthened; exploration of the possibilities for practical collaboration on healthcare by Empathy/GMA/Ombudsman and prison monitoring commissions.

29-30 September, 2007 - Training "International instruments and Mechanisms for Prevention and Documentation of Torture" –organised by NGO Empathy.

Additional training events included a series of roundtables organised by PRI regarding the OPCAT, to which all prison commissions were invited, funded by PRI.

A meeting of the commissions with the Ombudsman and his staff was called on April 4, 2007 to discuss ways of cooperation, information sharing, etc.

Additional Activity of Prison Commissions

In addition to the statutory duty of monitoring prisons and developing recommendations, some prison commissions have carried out other activities, eg have provided rehabilitation and re-socialisation activities for prisoners under international funding and also supplied some necessary items for prisoners:

- Kutaisi prison commission: under NORLAG/PRI funding support within the framework of the Small Grants Rehabilitation Initiatives has provided the following activities for two years: Computer training for prisoners, creation of web design studio, civic education for prisoners, assistance to the contact with the outside world; Georgian language classes for foreign prisoners; legal literature provided to the prison library; all cells supplied with radio sets; table tennis and chess sets provided; (2006 – 2007);
- The commission solicited to Aversi pharmacy, which provided medications worth of 2500 lari to the prison.
- Zugdidi commission under the NORLAG/PRI programme, implemented computer training and equipment project at Rustavi prison, as well as provided appliances for shower rooms and kitchen on monthly commission allowance funds.
- Rustavi #6 commission – on commission monthly allowance was able to supply the following medical items to the establishment: dry sterilizer, lancets, glucose meter with sticks (Roche) (925 lari), and stationery (papers, pens, glue, etc); also provided over 70 books for prison library with the help of the Georgian Young Lawyers Association.
- Ksani #7 commission purchased medications for prisoners as a response to the emergency situation in the establishment having to do with water-poisoning of some prisoners, and also technical equipment for the prison administration (combined printer, scanner, photo-copier, fax, April 2007) given the utter need. The funding was provided by PRI under the EU-funded project, specifically monthly allowance for prison commissions.
- Batumi commission is involved in the rehabilitation and re-socialisation of juvenile pre-trial detainees, probationers and those released from custody and has provided a number of missing items such as mattresses, sheets, eating implements.
- Women’s colony commission provided food and hygiene items for infants and children of prisoner mothers purchased under EU-funded commission grants, as well as cartridges for the administration.
- Rustavi #1 commission provided table tennis (with full set of balls, nets, etc) in December 2007 also within monthly commission allowance funds.

Reports produced

Although the commissions have a statutory duty to report quarterly to Minister of Justice, in practice they report with varying frequency and regularity, reflecting their different start dates and individual capacity. In their annual reports for 2007 some of the commissions stated that reporting quarterly is difficult for them and have recommended to the Ministry of Justice to increase the length in between reporting.

Batumi commission

June 2006
 October 2006
 March 2007
 June 2007

Kutaisi commission

May, 2006
 July 2006 – February 2007
 August, 2007

Zugdidi commission

February-April, 2006
 May – September, 2006
 October 2006 – March 2007
 April-August 2007

Geguti commission

March, 2007

August 2007

Prison hospital commission

May-July, 2007

Ksani establishment #7 commission –

February 2007

September 2007

Rustavi prison #1 commission

January – July, 2007

Rustavi prison #6 commission

March, 2007,

April – November, 2007

TB hospital commission

July, 2007

Women's and juvenile penal establishment commission

March 2007

July 2007

August 2007.

Additionally, at the end of 2007 annual reports were produced by all 11 prison commissions according to a unified format proposed by PRI, including all key issues for prison monitoring, they were presented at an annual meeting of prison commissions on December 14, 2007 organised by PRI under its EU-funded project “Prevention of Torture in Georgia”. On December 28 2007 a package of all these reports were submitted to the Ministry of Justice and its Penitentiary Department for review.

The reports included the following topics: information about individual commissions (date of appointment, receipt of passes, composition of the commission, commencement of work, and any problems encountered in the course of the work, dates of visits, meetings, training received by the commission, etc.) and thematic areas for monitoring. Access to prison, meeting with prisoners, relations with the prison administration, capacity limit versus actual number of prison population; categories of prisoners held in the establishment, allocation of prisoners; living conditions; healthcare; leisure and exercise; rehabilitation/re-socialisation; contact with the outside world; use of disciplinary sanctions/incentives; treatment; complaints mechanisms/procedures in place; prison personnel; emergency cases; vulnerable prisoners; release under amnesty, pardon, parole; recommendations based on international standards, recommendations by international bodies, and national legislation.

Recommendations proposed by the prison commissions:

- Improvement of living conditions for prisoners (building of a new prison, and transferring of convicted prisoners from pre-trial detention place to alleviate overcrowding; other means to alleviate prison congestion (Batumi);
- Allotment of space for employment programmes and inclusion in the reconstruction works (Geguti);
- Installation of boxes for complaints;

- Closed correspondence to certain officials/bodies to avoid examination by prison administration as required by the law; procedures for complaints and appeal to be regulated in accordance with the legislation;
- Recruitment of new staff members (mainly medical personnel);
- Repair of water pipes and damaged cells;
- Provision of sufficient space and medical equipment to medical units in prisons (Kutaisi, Rustavi #6)
- Provision of adequate working conditions for prison staff, and alleviation of high turnover; provision of transportation for staff of those prisons which are located in remote areas (Rustavi 6, Ksani);
- Provision of additional space for exercise on open air, as the existing one is insufficient (Kutaisi, Rustavi 6);
- Provision of clean linen to prisoners;
- Application to the Ministry of Justice to approve new members of commissions, which otherwise hinders the effective operation of commissions due to lack of members;
- Provision of timely medical examination of prisoners and transfer to hospitals as needed;
- The need to upgrade prison library (Rustavi #1) also with books in languages of minorities;
- The need for prison administrations to mind the ill-treatment of prisoners by staff and take adequate action; be more active in meeting prisoners at their request concerning complaints, including improper conduct by staff;
- The need for the prison meal menu to include health diets for prisoners with specific health conditions;
- Medical staff of prisons to be informed of the contract provisions with Aldagi Insurance Company as regard the organisation of healthcare system, oversight, its obligation in terms of provision of medical equipment, remuneration and insurance for medical staff, etc.
- Need to review existing procedures with regard to filing applications to prison administration for family visits;
- Need to set up rehabilitation/re-socialisation schemes for inmates;
- Expedite the adoption of the Draft Imprisonment Code which would improve the situation for prisoners;
- Need to provide regular possibility for leisure and exercise for prisoners, even in cell-type penal facilities, as stipulated by the law;
- Alleviation of violations with regard to the use of disciplinary measures (Kutaisi, Rustavi 6);
- Expedite the decision-making by the standing parole commission of the Penitentiary Department;
- Need to review existing capacity limit (Rustavi 6, Women's colony);
- Need to provide adequate care for mentally ill prisoners in decent and relevant institutions other than prisons;
- Need to provide a possibility for education for pre-trial juveniles;
- Alleviation of disrespectful and degrading treatment of prisoners by prison staff (Rustavi 6, Kutaisi);
- Need to expedite the construction of new hospital for prisoners in Gldani, as many existing problems in the old institution are linked with outdated and dilapidated infrastructure;
- Policy and practice for the allocation/placement of prisoners to be reviewed;
- Relevant training to be provided for the staff of Aldagi Insurance Company on the peculiarities of prison healthcare;
- Request to be informed of the action by the Ministry of Justice on the points and issues raised by the commissions in their reports.

Ministry of Justice contact with Commissions

One meeting was held by the Minister of Justice in Kutaisi Prison in 2006, attended by the Minister, Deputy Minister and Head of Penitentiary. It had the character of the three existing commissions reporting to the Minister, rather than the Minister responding. No written response was received to the reports.

Meetings with the prison commissions were called by the Ministry of Justice in April, July and August 2007 (the latter outside Tbilisi, funded by Tacis PPRP) to hear about the work of the commissions, their problems and achievements, as well as the outstanding issues in the penal system. No written response was received and almost all issues relating to the functioning of the commissions remained unresolved.

On 14 December 2007 the first annual meeting of commissions was held, organised by PRI under its EU-funded project "Prevention of Torture in Georgia". Each commission presented its annual report. The meeting was attended by the Deputy Head of the Penitentiary Department and the Head of the Ministry of Justice Monitoring Department, as well as representatives of Georgian and international community. The officials noted concerns relating both to the functioning of commissions and to the situation of prisoners and prison staff.

Funding

The Ministry of Justice carries no official responsibility to provide funding to the prison commissions, even for travel or communication costs. This was a major factor in the failure of previously existing commissions to carry out their duties and sustain frequent monitoring visits to prisons.

Since February 2007 PRI has been providing for prison commissions monthly allowances under its EU-funded project, to cover travel and communication expenses and also to meet some urgent needs of prisoners as identified by the commissions. This has required one member of each commission to use their private bank account, as the commissions are not legal entities. Commissions have provided financial reports.

Implications of Ombudsman's Office staff monitoring with regard to OPCAT NPM, including comments on compliance of the current Commissions' Statute with OPCAT requirements

Mandate and visiting power

The statute of the Commissions does not specifically mandate the mechanism to conduct preventive visits, and there is no focus on prevention per se, but rather on responding to violations. However, according to the articles 1 (Para 10) and Article 8 (Para 1) commission members are entitled to conduct unannounced visits any time and any day in order to disclose violations. Commission members can regularly examine the treatment of prisoners; however this right is not specifically prescribed by the Statute, therefore not fully meeting the requirement of Article 19 (a), OPCAT.

The regularity of visits is not specified in the statute; however there is a frequency of reporting by commission members set down on quarterly basis.

Frequency of visits and duration of a visit varies from commission to commission and there is no unified mode fixed. And it mainly depends on a number of commission members and their individual motivation.

Frequency varies from as regular as three times a week to once in every three months.

As the experience of commission shows, there are both in-depth and ad hoc visits carried out by them.

Each commission has access only to a specific prison for which it is designated, according to the amendment of 14 June, 2006. Therefore, the scope of the jurisdiction of individual prison commission is rather limited.

And the mechanism has access to all facilities and installations within the respective prison. While visiting a prison, prison commission members are allowed to conduct interviews in private with any prisoner they wish and in any location. They are entitled to make unannounced visits without prior notice to their respective prisons.

Prison commissions have access to all information concerning the number of prisoners, their treatment and their conditions of detention.

As regards the protection of persons, there is no formal guarantee to prevent sanction against any prisoner for having communicated any information to a prison commission, contrary to the provision of Article 21, OPCAT.

Commissions engage in constructive dialogue with relevant prison authorities by making recommendations on improving conditions and treatment, as stipulated by Article 19 (b), OPCAT.

The Ministry of Justice has a formal obligation to consider the recommendations made by the prison commissions in their reports. However, Minister of Justice has discretion to decide whether to fulfil recommendations submitted by the commissions and they shall be informed about the outcome. (Article 9). And also there is no obligation on the part of the Ministry to publish or otherwise disseminate annual report of commissions.

Commissions are specifically mandated to receive complaints and statements from any person, including prisoners. However, not all commissions exercise this practice. In those instances, when commission members get complaints from inmates, this correspondence may be subject to examination by prison administrations⁴ and also registered in a prison chancellery on mandatory basis.

Scope of jurisdiction

As mentioned, the scope of jurisdiction of prison commissions is rather limited by each of them having access to only one particular prison, and overall at the moment the jurisdiction covers only 11 out of 18 establishments. No commission has been set up to attend the opening of the new prison in Gldani.

Functional independence⁵

As regards human resources of the prison commissions, each commission is to have at least 5 members according to Article 1 of the Statute (2005). However, some commissions lack members and do not have the minimum membership required, considerably impeding the monitoring work of the bodies.

The mechanism has serious blemishes in terms of financial resources, as the members do not get paid and there is no budget allocated from State funds even for the expenses incurred for their work. The only allowance they get is from Penal Reform International under EU-funded Torture Prevention project. The ideal budget would cover travel and communication expenses of commissions, as well as some stationery, etc as a minimum.

The mechanism has no budget, therefore has no autonomy and control over it.

The legal basis founding the mechanism is the Law on Imprisonment, which provides for the existence and functioning of public oversight commissions in prisons, and the Statute approved by Order #2190 of the Minister of Justice. The law does not state about the appointment process, terms of office, or mandate and powers, funding lines of the mechanism. It generally states about the tasks of a commission, right to present recommendations, potential eligible members and accountability to Ministry of Justice as well as central prison administration.

⁴ According to the Order ##620 of Minister of Justice (26 June, 2006) on Complaints Mechanisms, closed correspondence can only be sent to the following individuals/bodies: President, Chair and members of parliament, court, European court for Human Rights, other international/non-governmental bodies set up based on international treaties of which Georgia is a party, Ministry of Justice, penitentiary department, ombudsman, defence attorney and prosecutor.

⁵ Art. 18.1 of the OPCAT

Prison commissions are accountable to Minister of Justice, which jeopardizes their independence from Executive branch. Commission members are appointed and dismissed by Minister.

There is no independent basis (contrary to Article 18, OPCAT; A2. Paris Principles) provided as the executive government body has the legal authority to dissolve or replace it, or alter its mandate, composition and powers, at will as has been the case with different statutes approved by different ministers of justice.

The procedure for recruiting members lacks openness and transparency. There have been some organisations (eg GYLA) whose members have been turned down for the membership of a commission. The criteria for membership laid down in the Statute are quite vague.

The selection of members, according to Article 1 (Para 2) occurs according to the willingness expressed, ability to work actively, qualifications and reputation. An important aspect is that those individuals, who are presently occupying positions in prisons/government cannot be members of commissions.

There is a fixed membership term of two years, which might exclude continuation of good members from a small pool of volunteers; moreover there are no staggered terms for renewal of membership to ensure continuity of membership; there is no security of tenure for members.

The lack of independence is also expressed in the fact that prison commission members get their passes to access prisons from the Ministry of Justice and any delay on the part of the Ministry to issue those results in hindering the access for the commissions and in some cases altogether denying access to respective prison as has been the case so far.

During the period of membership, the commissions enjoy no immunity whatsoever and no privileges attached to their status.

The prison monitoring mechanism so far does not have support staff, nor is this included under the Law or the Statute.

The mechanism is not formally independent; however the commissions function independently as far as visits and monitoring are concerned. In terms of appointment, recruitment and dismissal of members there is evident dependence on the executive body. In some cases, particularly as regards members from local government bodies, they were not even asked by the Ministry for their opinion whether they wished to join commissions and appointed in this manner.

Expertise

There is no training given to prison commissions and neither is previous experience of monitoring or working in related field, sought by Ministry of Justice. Also, no balance and variety of professional backgrounds/capabilities are necessarily ensured when selecting members. In some of the commissions there is a demonstrated need for members with medical and legal profile, as revealed in their reports, also interviews.

Impact / results

The impact commissions make depends on the composition of individual commissions, the number of members, commitment and understanding of individual members, certainly on the receptiveness of individual prison administrations and of course the general policy of the authorities with regard to penal reform. There is no formal obligation on the part of prison administrations to comply with recommendations provided by prison commissions.

So far the commissions have been able to make impact with regard to some physical conditions in certain prisons.

They do not act as one mechanism, lacking cohesion and coordination, and therefore are seldom able to jointly lobby and bring about systemic changes in the penitentiary sphere. Draft Imprisonment Code, which was not adopted in 2007 contrary to the Criminal Justice Reform Strategy Implementation Plan, envisions setting up of a Central Board, which would serve as a coordination body for the existing commissions.

It has been difficult (impossible) for the commission to elicit written responses to their reports from the Ministry of Justice or Central Prison Administration. (Update as of 2008: the only precedent so far has been the response by Deputy Minister T. Burjaliani to the package of annual reports for 2007 from 11 prison commissions, submitted by PRI at the end of December 2007 to the Ministry.)

Impact on Legislation

There is no formal possibility for the commissions to affect relevant penitentiary legislation, to propose and make observations as stipulated by Article 19 (c) of the OPCAT. Seemingly, neither do they understand this as part of their role.

One instance when prison commissions were able to indirectly affect draft prison legislation was through their involvement in an alternative working group set up by PRI, to work on drafting a new Penal Code in line with international standards and experts' comments. There was no invitation from the Ministry of Justice to engage prison commission members in the official working group drafting the Prison code. However, they were invited to the presentation of an official finalised draft of this code (which however has not been passed).

Recommendations for compliance with OPCAT, if these commissions are to play a role in the National Prevention Mechanism, or in relation to it

One of the key requirements of the OPCAT with regard to NPMs is their functional independence as stipulated by Article 18 (1). Therefore, the law/statute should not place the prison commissions under the institutional control of a Ministry of Justice, or any other executive government body. This would ensure that the appointment, membership, accountability of these bodies would be out of control of the Ministry of Justice.

Besides, there should be an obligation of the Ministry of Justice and other relevant prison authorities to examine recommendations of prison commissions and to enter into dialogue with them on possible implementation measures, as provided under the Article 22, OPCAT. And the commissions should be able to disseminate their findings as freely and as widely as needed, and possible and not be fearful that disclosure of severe violations would displace them from favour of the Ministry or Department.

There is a clear need for a coordinating mechanism for these commissions to make their efforts more concerted and provide more synergy in terms of particularly achieving systemic changes in the penal system.

The issue of membership of the commission and the related topics are outstanding, as they greatly determine the effectiveness of the operation of commission bodies. Needless to say there should be an independent body (coordination mechanism, ideally), which would provide fixed clear criteria and transparent procedures for recruitment of members based on an open call and sufficient degree of publicity. Attention needs to be paid to personal and institutional independence of persons elected, as well as ensuring that they come from a variety of professional backgrounds (and not just NGO members, local government representatives or church-affiliated individuals, as is presently the case). Civil society in general should be actively involved and engaged in the work of these commissions.

Members of prison commissions should enjoy privileges and immunities as are necessary for the independent exercise of their functions and simultaneously be guided by a code of ethics or conduct emphasizing the principles of monitoring/monitors.

Prison commission members should either already possess necessary relevant expertise and capabilities for carrying out comprehensive prison monitoring with the aim of ensuring the protection of prisoners from ill-treatment and improving their conditions, or be trained to acquire such skills and knowledge. Also there should be a possibility of engaging outside experts as needed, and also there should be a budget for training.

Commission should be strengthened to the extent that they communicate quality information to international prevention mechanisms and bodies. And clearly there should be more degree of cooperation and information-sharing with the Ombudsman's office.

One option which would help the commissions comply with the requirements of the OPCAT is to be included under the umbrella of the Ombudsman's office, the main Human Rights Institution in the country. The work of the commissions should be guided by a Statute approved by the Ombudsman and powers for monitoring prisons could be derived from the Organic Law on Ombudsman. This would be mutually reinforcing, as prison commission members would enjoy wider degree of independence from the executive government and be more efficient in detecting and responding to violations as guided by the national human rights institution, and on the other hand, the ombudsman's office would benefit from increased human rights resources, expertise and also source of valuable first hand information obtained during regular monitoring. Providing this shared responsibility with the civil society the Ombudsman's office will gain more credibility. In fact, prison commissions could form one of the thematic NPM mechanisms around the office of the Ombudsperson.

The composition of individual Commissions could be approved by the Ombudsman, following an open recruitment against transparent criteria. During the recruitment the attention needs to be paid that individuals with relevant profile and skills be selected (including, doctors, lawyers, social workers, psychologists, human rights experts, persons with prior experience working with particular groups such as women, juveniles, persons with previous experience of monitoring places of detention such as public control commissions. Other criteria for membership could include: high moral character; demonstrable commitment to human rights; high degree of literacy; no conviction relating to torture or other cruel, inhuman or degrading treatment or punishment; legal capacity; not a member of government department, nor representative of the political leadership of the government.

The Ombudsman's office could provide for the induction and training of the commission members. And also particular attention needs to be paid that prison commission members are trained to monitor not only according to the national legislation, but also international standards and that in their reports they give findings of monitoring against these standards.

It should be emphasized that to the functions of already existing commissions should be added the prevention of torture, and degrading treatment or punishment and this should be expressly stated in the statute.

Prison commission members should also be entitled to engage in public official discussions and also to put forward proposals for legislative amendments pertinent to penal sphere and prisoners' rights, possibly through the ombudsman's office.

Tentatively, the budget for training commission members and monitoring-related costs (such as travel, per diems, communication, etc) could be covered from the budget of the Ombudsman's office, providing sufficient State funds are allocated.

These provisions in place could guarantee independence and effectiveness of prison monitoring commissions in practice.