

Open Society Georgia Foundation

Tbilisi, November 2022

Deep-rooted problem of criminal subculture conducive to ill-treatment

Policy Brief

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This policy brief is prepared within the framework of the Open Society Georgia Foundation's in-house project "Monitoring Implementation of the EU-Georgia Association Agreement by Coalition of Civil Society Organizations". The views, opinions and statements expressed by the author and those providing comments are theirs only and do not necessarily reflect the position of the Foundation. Therefore, the Open Society Georgia Foundation is not responsible for the content of the material.

Introduction

The ill-treatment and torture section of the EU-Georgia Association Agenda (2021-2027), under short-term priorities, requires the Government of Georgia to "[e]nsure the implementation of the relevant anti-torture Action Plans and continue taking further measures to combat ill-treatment and torture, and step up efforts in order to combat impunity." The Agenda (section on Justice) also prioritises "[s]tep[ping] up implementation of the crime prevention and penitentiary strategy, notably by applying rehabilitation and re-socialisation approaches in the Penitentiary, Crime Prevention and Probation Systems and after release." However, the existence of a deep-rooted criminal subculture within Georgia's penitentiaries renders both combating ill-treatment as well as any meaningful rehabilitation efforts rather ineffective. This significant challenge and an outstanding problem facing the system has not been explicitly mentioned in the Agenda, tentatively due to the failure of the Georgian authorities to acknowledge it.

Recent reports of the Ombudsman's office and the Committee for the Prevention of Torture (CPT) report cases of the problematic involvement of inmates in the running of prisons. For example, the report of the CPT from their visit in September 2018 details a "practice of delegating authority to informal prisoner leaders and using them to maintain order and security among the inmate population" at Ksani Prison 15.¹

Given the acuteness of the problem, the CPT carried out an ad hoc visit to Georgia in May 2021 to assess the extent to which its recommendations from the previous periodic visit in 2018 had been implemented "concerning steps required to combat the phenomena of inter-prisoner violence,

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intimidation and extortion and the influence of informal prisoner hierarchy in semi-open penitentiary establishments for sentenced prisoners (so-called “zonas”).”²

Criminal sub-culture and its role in ensuring order in prisons

Criminal or delinquent subcultures are defined as “systems of norms, values, or interests that support criminal or delinquent behaviour.”³ Prisoners create extra-legal governance institutions when official governance is insufficient. The size and demographics of the prison population explain why inmates produce extra-legal governance in either decentralised ways, such as ostracism, or through more centralised forms, such as gangs.⁴ According to scholars in prison systems only prison administrations cannot produce social order, and that prison staff rely on prisoner compliance and assistance in maintaining and managing prisoner populations. To what extent inmates are formally or informally given responsibility for co-governing prisons varies among different systems and among prisons in the same system.⁵

Since Georgia’s independence from the Soviet Union, the country’s penitentiary system has relied upon the use of prisoners to maintain prison order. Prior to 2004 prisoners largely managed their own environment. After the Rose Revolution, the authorities (2004–2012) adopted prison reform as part of an action against organised crime and attempted to control and dominate the prison population often through use of extreme violence. Since 2013, various reports have indicated a move to an equilibrium where prison administrations allow prisoners some autonomy in return for compliance and assistance in running prisons.⁶

Georgia inherited from the Soviet Union its predatory criminal subculture in prisons. Influential prisoners (so-called “thieves-in-law”) were at the top of the prisoner hierarchy and appointed their “watchers” to oversee the prison population. They defined informal rules of conduct and obedience by prison inmates and preyed on their vulnerability for power and income. Intimidation was used to ensure compliance and adherence to these informal rules, including enforcing a strict through informal hierarchy among prisoners, coercion, extortion of money or other commodities, and ill-treatment of those who dare disobey. As a result, the criminal subculture in Georgia’s prisons manifests itself in different forms of inter-prisoner violence.

During its visit to Georgia’s prisons in 2018, the CPT delegation explicitly noted that at Prison No. 15 the influence of the informal prisoner hierarchy was an important factor. Some prisoners reported that there were so-called “watchers” in the prison. Many others were fearful of speaking with the delegation. The delegation was “accosted by a few of the self-appointed ‘prison leaders’ who demonstrated their position with their attitude and demeanour.”⁷ The delegation also found a stark contrast in the living conditions of different cells with some being almost luxurious.

While the CPT highlighted semi-open large establishments, a study⁸ conducted by a civil society in 2020 that involved a survey of former prison staff as well as ex-prisoners found that prisoner hierarchy is present and enforced by those prisoners who hold power and clout with prison administrations

¹ CPT, to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, CPT/Inf (2019) 16, Strasbourg, 10 May 2019, P. 29, para. 53, available at: <https://rm.coe.int/1680945eca> [last accessed 29 October 2022]

² CPT, Report to the Georgian Government on the ad hoc visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 24 May 2021, CPT/Inf (2022) 11, Strasbourg, 16 June 2022, p. 4, para 1, available at: <https://rm.coe.int/1680a6eabd> [last accessed 29 October 2022]

³ <https://www.encyclopedia.com/social-sciences/encyclopedias-almanacs-transcripts-and-maps/criminal-and-delinquent-subcultures>

⁴ Skarbek, D. (2016). *Covenants without the Sword? Comparing Prison Self-Governance Globally*, The American Political Science Review, Vol. 110, No. 4 (November 2016), pp. 845, Published By: American Political Science Association

⁵ Slade, G. (2020). *Prisoner Self-Governance and Order in Prisons: Country Cross-Analysis*

⁶ Ibid

⁷ Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, CPT/Inf (2019) 16, p.28, para 51

⁸ Influence of Criminal Sub-culture on the Management of a Penitentiary Institution, Main Findings 2020, by Rehabilitation Initiative for Vulnerable Groups, available at: <https://osgf.ge/en/influence-of-criminal-subculture-on-the-management-of-the-penitentiary-system/>

in all penitentiaries except for the few special prisons (the low-risk facility No. 16, the women's prison and the rehabilitation centre for juveniles). The study revealed further details of the power dynamics between prison administrations and inmate leaders, as well as differential status on different levels of the hierarchy, rules for promotion and demotion within the criminal sub-culture and who are the most victimised groups of inmates.

In 2021 the Public Defender reported that as in the previous years, the main problem in the penitentiary system is its informal rule, which, in turn, creates a violent environment in the establishments and affects a large body of prisoners.⁹

Criminal sub-culture as a risk factor for ill-treatment of vulnerable prisoners

While ill-treatment of inmates by prison staff has not been reported as a problem recently (except for some de-escalation incidents and incompetent management of high-risk prisoners), and some penitentiaries even exercise good staff-prisoner relations, inter-prisoner violence and other forms of intimidation have clearly emerged as a problem associated with criminal subculture and informal prisoner hierarchies.

During its visit to Georgia's prisons in 2018, the CPT delegation disclosed incidents of inter-prisoner violence (as evidenced by allegations and recorded injuries) at Prison No. 6 and Prison No. 15, caused by low staff-to-prisoner ratio (around 30 prison staff trying to control some 1,800 inmates moving freely across the extensive territory of the prison)¹⁰ and "pernicious influence of the informal prisoner hierarchy" especially in the latter prison.¹¹ According to the CPT, the prison administrators of the No. 15 prison admitted their inability to manage the situation in prisons on their own and the need to share part of their responsibility for maintaining order and security with "strong prisoners" (so-called "watchers"), rendering vulnerable prisoners susceptible to violence and intimidation.

Inmates were reluctant to report incidents of inter-prisoner violence out of fear of retaliation, with only one inmate (at Prison No. 6) expressly alleging such violence, however there were recorded injuries in relevant prison logs that indicate a violent origin. At the other visited prison (Prison No. 15), the forensic doctor of the delegation disclosed "one recent entry describing injuries ("many bruises on the back with different dimensions, a small bruise on the back and occiput region (back side) on the neck, bruises on the right side on the neck, bruises with different dimensions on the right arm and forearm, abrasion and bruise on both eyes and nose, closed head trauma, concussion") that had very likely originated from inter-prisoner violence, and another entry ("bruises on the cheek and temple area") that had probably been the outcome of such violence. The Delegation found out that some prisoners had requested to be transferred to Prison No. 8 for their own safety.¹²

The National Preventive Mechanism (NPM) noted in their report for 2020¹³ that informal prisoner hierarchy in Georgia's prisons is characterised by physical and severe psychological inter-prisoner violence, the latter manifested as extortion, humiliation, ostracism and other actions. Consequently,

⁹ Public Defender of Georgia, Situation with Human Rights and Freedoms in Georgia, 2021, p. 9, available at: 2022070612391254904.pdf (ombudsman.ge).

¹⁰ Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf (2019) 16, p. 28, available at: <https://rm.coe.int/1680945eca> [visited on July 5, 2022]

¹¹ Ibid, p. 5

¹² Ibid, p. 28, footnote 51

some prisoners in a privileged position engage in informal ruling through repressive methods, frequently leading to violence among prisoners and to the imposition of punitive measures on those who disobey the informal rules of the criminal subculture.

In the report covering 2021, the Ombudsman reported about the injury of two prisoners and the death of one more in a violent inter-prisoner incident at Prison No. 17 in Rustavi and the delayed response by the administration. Yet another violent death as a result of inter-prisoner conflict and violence and neglected by the prison administration was reported at Batumi Prison No. 3. The report by the Ombudsman also stressed that no effective investigations were ongoing into the cases and, in general, injuries caused by inter-prisoner violence were poorly documented. Another problem was the lack of reporting by victims of violence about causes of their injuries, out of fear of retaliation.¹⁴

Official statistics indicate that over the years the incidence of traumatic injuries sustained by inmates (ostensibly through violence) has been rather high, though lately the rate is on the decline.¹⁵

Incidence of traumatic injuries sustained by inmates				
2018	2019	2020	2021	2022 (Jan – Jul)
1750	1420	894	656	247

Source: Monthly criminal justice statistics by the National Statistics Office of Georgia¹⁶

Vulnerable groups particularly subject to victimisation

Prisoners in dominant positions of hierarchy can victimize just any inmate, particularly those who either violate the informal rules or disobey orders. However, the criminal sub-culture particularly victimises vulnerable groups of prisoners: those on lower ranks of the hierarchy, LGBTQI, and those unable to pay into the “common fund” (Obshyak) operated by criminal leaders of the subculture, as reported by the Ombudsman’s Office.

Criminal subculture undermines complaints system

The criminal subculture undermines the effective operation of complaints mechanisms in the penitentiary system. In 2021, as a similar finding to the previous year, the Ombudsman reported that the persistence of informal governance by prisoners presented serious challenges to the system, effectively silencing inmates to prevent them from complaining about their problems. This creates the illusion of order in penitentiaries.¹⁷

Declarative political will without proper actions planned or taken

According to the accounts given by the CPT and the PDO, it is clear that the phenomenon of the criminal subculture is at least tolerated and at worst

¹³ Public Defender of Georgia, The Report of the National Preventive Mechanism 2020, p.42, available at: <https://ombudsman.ge/eng/spetsialuri-angarishebi/preventsiiis-erovnuli-mekanismis-2020-tslis-angarishi> [last visited on 5 August, 2022]

¹⁴ Report of Public Defender, On the Situation of Protection of Human Rights and Freedoms in Georgia, p. 33

¹⁵ Monthly criminal justice statistics by the National Statistics Office of Georgia, available at www.geostat.ge

¹⁶ Available at www.geostat.ge

¹⁷ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, p. 30

sanctioned by prison administrations.

According to the NPM,¹⁸ privileged prisoners enjoy the support of the prison administrations who use them for coping with the prisoner population at large (for instance dissuading them from hunger strikes, appeals, expressing other forms of dissatisfaction or resolving conflict situations among prisoners). The privileged enjoy free movement within prison facilities, controlling inmates, accessing cells and physically assaulting those who dare to disobey.

The CPT reported that during their ad hoc visit the Ministry of Justice was receptive to the findings about the influence of informal prisoner hierarchy and inter-prisoner violence in semi-open prisons, and acknowledged the need to close down “zonas” and replace them with smaller prisons, referring to the Strategy and Action Plan.¹⁹ The Minister assured the delegation that all these measures, temporarily delayed by the need to address the consequences of the Covid-19 pandemic in the prison system, were to be fully implemented by 2025 at the latest. However, the CPT also noted with concern that since its previous visit in 2019 “little or no progress has been made to implement the Committee’s long-standing recommendations.”²⁰

High-ranking officials from the Ministry of Justice and the Special Penitentiary Service have stated that the incidence of inter-prisoner violence is at an all-time low and that they are responding to every such incidence.²¹

Despite the stated commitment to fight the subculture and inter-prisoner violence, there might be some reasons why the prison authorities tolerate and rely on this phenomenon. Georgia’s prison population is still sizeable despite the reductions over the years, and it ranks among the top incarcerator countries in Europe as per rate of imprisonment.²² During its latest two visits, the CPT noted inadequate staff-prisoner ratios particularly in big and overcrowded facilities (semi-open and closed institutions) where the staff are unable to provide meaningful supervision and support to inmate populations and have to rely on prisoner leaders for order in these establishments.²³ According to the NPM, overcrowding in prison facilities prevents prison administrations from properly allocating prisoners considering their individual characteristics and compatibility with cell-mates, leading to heightened confrontation and disputes.²⁴

Possible ways forward

Necessary measures include those which specifically target prisoner hierarchies and criminal subculture, in addition to those addressing systemic problems, as recommended by both the CPT and the Public Defender/its NPM.

The CPT recommended that Georgian prison authorities exercise their duty of care and protect inmates from harm inflicted by others through proactive approaches to preventing violence. For example, prison staff should be alert to conflicts and trained to intervene when necessary. They advised that a sufficient number of staff should be trained in interpersonal skills to exercise effective and positive staff-prisoner relations. Addressing effectively the problems posed by inter-prisoner violence requires the implementation of an individualised risk and needs assessment of prisoners. The rec-

¹⁸ NPM reports from 2019 and 2020

¹⁹ Report of the CPT on its visit to Georgia in 2021, para 23

²⁰ Ibid, p. 7

²¹ Statements made at the Public Discussion on Findings and Recommendations of CPT Report on Ad Hoc Monitoring Carried out in Georgian Penitentiary Establishments, 11 July 2022, available at: <https://ombudsman.ge/eng/akhali-ambebi/tsamebis-preventsiiis-evropuli-komitetis-cpt-mier-sakartvelos-penitentsiur-datsesebulebebshi-gankhortsielebuli-sagangebo-monitoringis-angarishis-mignebebi-darekomendatsiebi>

²² SPACE, Council of Europe Annual Prison Statistics, 2021, https://wp.unil.ch/space/files/2022/05/Aebi-Cocco-Molnar-Tiago_2022_SPACE-I_2021_FinalReport_220404.pdf

²³ Report of the CPT on its visit to Georgia in 2018

²⁴ Report of the National Preventive Mechanism, 2020

ommendations also included depriving informal prisoner leaders and their close circle of unearned privileges and segregating them from the prison population based on security classifications.²⁵

According to the Public Defender, prisoners need to be incentivised to pursue rehabilitation activities by linking the participation in such programs to eligibility for parole. However, the existing flawed parole mechanism and decision-making have resulted in prisoner dissatisfaction and reluctance to engage. If parole decision-making could improve by focusing on individual characteristics of eligible inmates, this would encourage prisoner participation in rehabilitation schemes and also reduce the influence of the criminal subculture.²⁶

Conclusions and recommendations

The criminal subculture in Georgia's prisons with the associated prisoner hierarchy and informal rules presents risk factors for the ill-treatment of inmates by privileged prisoners who enjoy support of prison administrations. According to reports of the independent bodies, the ill-treatment ranges from physical violence through psychological pressure manifested as intimidation, bullying and money extortion. This ill-treatment is directed at those who disobey or violate the informal rules imposed by privileged prisoners. Thus far the respective authorities have not officially acknowledged the problem and have not taken any decisive measures to address it. Some of the reasons why they close their eyes to the problem might be linked to systemic problems and shortcomings in Georgia's penitentiaries which prevent prison administrators from effectively running the prisons and having to resort to the help of prisoner leaders. These include staff shortage and poor staff-to-prisoner ratios; large prisons with Soviet-style "zona" facilities accommodating high numbers of male prisoners who lack purposeful engagement in programs of work and study during the day; and large, overcrowded penitentiaries.

This problem is not easy to solve, as it is multi-dimensional and linked with a host of systemic challenges facing penitentiary administrations, however if political will is harnessed it will be manageable, especially as most of the measures to address the problem are already prescribed in the policy documents.²⁷

Some of the recommendations would include:

- Acknowledge and prioritise the problem by designing a strategy and plan of action outlining the official approach to addressing the challenge
- Gradually reduce the prison population through alternative sanctions and measures, so that the incarceration rate corresponds to the European average
- Recruit more staff to ensure decent staff-to-prisoner ratio and allow for proper supervision of the prisoner population
- Train staff in conflict resolution and mediation and management of inter-prisoner violence

²⁵ Report of the CPT on its visit to Georgia in 2018, p. 28-29

²⁶ Speech by Giorgi Burjanadze, Deputy Public Defender, at the Public Discussion on Findings and Recommendations of CPT Report on Ad Hoc Monitoring Carried out in Georgian Penitentiary Establishments, 11 July 2022, available at: <https://ombudsman.ge/eng/akhali-ambebi/tsamebis-preventsiiis-evropuli-komitetis-cpt-mier-sakartvelos-penitentsiur-datsesebulebebshi-gankhortsielebuli-sagangebo-monitoringis-angarishis-mignebebi-darekomendatsiebi>

²⁷ Strategy and Action Plan on the Development of the Penitentiary and Crime Prevention Systems, adopted in 2019.

- Dismantle “zonas” and replace them with small prison premises, allowing for a balance of security and rehabilitation and creating a better regimen with more organised and individualised activities (with a focus on rehabilitation and resocialisation)
- Segregate “leader” inmates, who propagate informal rules of criminal subculture and prisoner hierarchy and exert negative influence on other prisoners, from the rest of the inmate population, to eliminate their influence on fellow prisoners
- Introduce incentives or positive reinforcers for encouraging good conduct and participation in programs (including eligibility for parole)
- Improve individual risk and needs assessment systems to facilitate the proper classification and allocation of prisoners, especially the separation of first-time offenders from recidivists, and those with explicit criminal mentality from the rest of prisoner population.

