

Summary

Since its election in early 2004, the government of President Mikheil Saakashvili has stressed publicly its commitment to promote human rights, including by reforming Georgia's prisons. Nevertheless, as this report documents, human rights abuses remain widespread throughout the Georgian penitentiary system. Conditions of detention and the treatment of prisoners remain appalling, and in some facilities constitute degrading treatment. Most prisons are extremely overcrowded, filthy, and poorly ventilated. Prisoners receive inadequate nutrition and substandard (if any) medical care and often have no possibility to leave their cells to exercise. Legislative and policy changes, supposedly part of a reform agenda begun in December 2005, have curtailed prisoners' rights by reducing the number of family visits and, in some facilities, infringing on prisoners' right to confidential meetings with their lawyers.

Since new government efforts were started in December 2005 to combat crime, especially organized crime (including the power of organized crime bosses within the penitentiary system), many prisoners have been subjected to beatings and other ill-treatment, sometimes rising to the level of torture. What is more, the government's latest anti-crime efforts have led to an increase in the prison population and have apparently led to government approval of a policy of quick resort to severe physical force, including lethal force, to maintain control over the prisons. During a March 27, 2006 disturbance in Tbilisi Prison No. 5, at least seven prisoners were killed and at least 17 others suffered serious injuries as a result of the use of force by law enforcement agents, including special forces. The government has failed to conduct effective investigations into the March 27 incident and other allegations of abuse.

Recent government efforts to improve prison conditions, including by building new prisons, have failed to remedy longstanding institutional problems. The majority of Georgia's nearly 13,000 prisoners, some 63 percent of whom are held on remand awaiting trial, face severely overcrowded, poorly lit, poorly ventilated cells that lack any kind of basic hygiene. In one facility, especially filthy basement cells that were closed down after being deemed unfit by Council of Europe experts in 2001 are currently in use again, apparently due to overcrowding. Overcrowding results primarily from the routine use of pre-trial detention, even for non-violent offenders. The Georgian government fails to provide appropriate conditions for suspects who should be presumed innocent: pre-trial detainees face particularly isolating conditions, with family visits for pre-trial detainees granted only with permission from an investigator, prosecutor, or a judge; even with the required permission, family visits may be arbitrarily denied. Pre-trial detainees

are not able to correspond with relatives and have little or no access to newspapers, radio, or any other source of information. Detainees may be held in pre-trial detention from four months to over one year.

Both pre-trial detainees and convicted prisoners receive inadequate food or nutrition and often get substandard or no medical care. In these conditions they are at real risk of acquiring tuberculosis or other diseases. Most detainees also lack access to daily exercise and, in many cases, cannot leave their overcrowded cells at all for weeks or months at a time. In one facility visited by Human Rights Watch, detainees had not been allowed to exercise for over five months. Most detainees do not have regular access to showers and no access to work, education, or any other meaningful activity. Conditions of detention and the treatment experienced by detainees violate Georgia's own Law on Imprisonment, as well as international standards. There is a widespread and consistent gap between what is provided for in law and what is implemented in practice.

Ill-treatment of detainees has increased since December 2005. Some detainees reported being beaten regularly and severely or being subject to other ill-treatment and inhuman punishment. In some cases, the beatings and other inhuman treatment constituted torture. There is widespread impunity for such ill-treatment. Detainees have no access to an effective complaint mechanism and in some facilities have limited ability to communicate confidentially with their lawyers. Investigations into abuse are rare and those responsible for abuse are seldom held accountable.

This report is based on interviews with over 110 detainees during visits to six penitentiary facilities, as well as with lawyers, prison experts from domestic and international nongovernmental organizations, intergovernmental organizations, and government officials.

Upon his election to the presidency in 2004, Saakashvili promised to rectify past abuses by confronting corruption and organized crime and establishing the rule of law and respect for human rights. In December 2005 the parliament passed new legislation to combat organized crime, and the government began to take practical and legislative measures to eliminate the power of crime bosses, known in Georgia as "thieves in law," (in Georgian, *kanonieri qurdebi*; in Russian, *vory v zakone*) due to their adherence to a strict set of criminal rules, or laws. Through extortion, cooptation, and threats, the thieves in law had come to control the prisons throughout Georgia and to enjoy privileges not available to other prisoners. What is more, from their prison cells, they were able to plan and coordinate criminal activity that was carried out by associates on the outside. The government announced its commitment to undoing this corrupt system as a key

component to effective prison reform. Since December 2005 it has moved all thieves in law to Prison No. 7 in Tbilisi and claims to have stripped the thieves in law of their privileges in the prisons.

While Human Rights Watch recognizes that the government's fight against lawlessness in the prison system is legitimate and necessary, the means used in this effort have not always been justified. In the first three months of 2006, government forces undertook numerous operations to quell disturbances in several prisons, which the government characterizes as riots organized to protest its new policies to combat the authority of the thieves in law. The most serious of these incidents occurred on March 27, 2006 in Tbilisi Prison No. 5, when special forces troops entered the prison to suppress an alleged riot. Much controversy exists over what exactly happened on this day, with many conflicting versions being reported, even among government agencies.

The government maintains that the riot was carefully designed and planned by several alleged thieves in law. Other evidence suggests that the disturbance erupted more spontaneously in response to the beating of some of the crime bosses in the Republican Prison Hospital, and then spread to the nearby Tbilisi Prison No. 5. In Prison No. 5, detainees shouted, banged dishes, and set fire to linens and threw them out the windows. At least some detainees escaped from their cells. The government claims that some detainees had guns (Human Rights Watch could not confirm this and was not provided with evidence supporting the claims). When government troops entered the facility to end the disturbance, they began their operation by opening fire using both rubber bullets and regular automatic weapons, making no attempt to use nonviolent means of control. No attempts at other less extreme uses of force were made. Government troops also allegedly beat many detainees. As a result of the use of force, at least seven detainees died. The government maintains that the force used was justified, but it has failed to conduct an effective investigation to evaluate whether the force used was proportionate. Although it was impossible for Human Rights Watch to make a full analysis and evaluation of the operation and whether in general the force used during this operation complied with international legal standards, Human Rights Watch nevertheless documented several specific instances in which special forces troops appear to have engaged in excessive and illegal use of force against detainees on March 27.

Despite immediate calls for an independent investigation into the March 27 incident, the government waited until three months after the violence to open an investigation into whether special forces troops exceeded their authority. For the first two months, the Ministry of Justice pursued an internal investigation into the alleged riot plot, opened two days before the actual disturbance. There has been no separate investigation into the deaths of the seven detainees.

In addition to the March 27 incident, Human Rights Watch documented several other examples of ill-treatment of detainees. Detainees reported being severely beaten during other alleged riots or attempted riots, and after such incidents as punishment. Detainees also reported ill-treatment when they were being moved from one facility to another or upon arrival at a new facility, apparently to intimidate them. In one facility, Tbilisi strict regime Prison No. 7, where the alleged or convicted thieves in law are now held, detainees were subjected to repeated beatings as well as frequent strip searches and other degrading treatment over the course of many weeks and months in early 2006. In some instances this treatment, taken together with the abysmal conditions of detention, amounted to torture. There have been no investigations or prosecutions related to these allegations of abuse.

As a state party to the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (Convention against Torture), and the European Convention on Human Rights (ECHR), Georgia has an obligation to ensure that its criminal justice and penitentiary systems conform with international human rights standards, to ensure that detainees are treated with appropriate dignity and full respect for their human rights, and above all, to prevent all forms of torture, cruel, inhuman, or degrading treatment. This last obligation includes the duty to conduct an effective investigation into any allegations of ill-treatment. In their reports on Georgia, the European Committee for the Prevention of Torture (CPT), the Parliamentary Assembly of the Council of Europe (PACE), the United Nations special rapporteur on torture, and the United Nations Committee Against Torture (CAT) have all reported on the abuses and institutional deficiencies in the penitentiary system and have made detailed recommendations for improving the situation. However, the Georgian government has yet to comply with most of these recommendations.

For many years the Georgian government has stated its intention to reform the penitentiary system and put an end to abuse. The government opened two new penitentiary facilities in late 2005 and early 2006 with greatly improved conditions, one with the assistance of international donors. It interacts with a number of international and intergovernmental organizations to develop and implement reforms. In June 2006 the government published its “Action Plan of the Implementation of the Strategy on Criminal Justice Reforms in Georgia,” and plans to implement important new legislation, including a new Penitentiary Code, new Criminal Code, and a new Criminal Procedure Code. Yet, at the same time, it has passed amendments to the existing versions of these laws that run counter to human rights standards and exacerbate the poor conditions for prisoners. For example, the number and length of family visits for convicted prisoners have been curtailed. This regressive measure was undertaken without justification, and

results in a government failure to ensure regular family contact and promote rehabilitation, as required under international law.

While recognizing that some reforms take time to implement, Human Rights Watch recommends several immediate steps that would help rectify a number of abuses. The Georgian government should refrain from initiating legislative or policy changes that undermine prisoners' rights. In an effort to end immediately the abuse of detainees by law enforcement agents, the government should investigate all allegations of abuse, and announce, at the highest levels of government, a policy of zero tolerance for abuse perpetrated by law enforcement agents. In this regard, the Georgian government should, as a matter of urgency, allow for the establishment of an independent commission of inquiry into the events of March 27. Human Rights Watch also calls on the Ministry of Justice and the Penitentiary Department to guarantee immediately detainees' rights to confidential meetings with their lawyers, to regular meetings with their family members, and to exercise at least one hour per day, without exception. The General Prosecutor's Office should utilize, to the greatest extent possible, alternatives to pre-trial detention to reduce the number of defendants remanded to pre-trial detention.

The European Union (EU) should utilize the European Neighborhood Policy (ENP) Action Plan to require specific progress from Georgia in the field of penitentiary and criminal justice reform. The EU should also utilize its Guidelines to EU Policy towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Torture Guidelines) to ensure that Georgia's legislation and practice are consistent with European human rights standards. The EU and the United States should encourage Georgia's criminal justice and penitentiary system reforms and emphasize the importance of effective investigations into the actions of law enforcement agents, reminding the Georgian authorities that the lack of such investigations undermines public confidence that the government is committed to the rule of law.