



# **Monitoring of the implementation of the Government's Human Rights Action Plan**

## **Chapter 0 Introduction**

# Chapter 0 Introduction. The 2018-2019 Monitoring Report on the Implementation of Chapters 3, 4 and 5 of the Governmental Action Plan on Human Rights for 2018-2020

**The progress of the implementation of the Chapter:** 0% (The chart indicates only the implementation progress of the action plan's specific chapter and not its compliance and relevance with its goals and activities)

The report is prepared by the Institute for Democracy and Safe Development (IDSD) with funding from the Open Society Georgia Foundation (OSGF). The content is the sole responsibility of the IDSD and does not necessarily reflect the views of the OSGF.

This report reflects the outcomes of the monitoring of chapters 3, 4 and 5 of the Governmental Action Plan on Human Rights (2018-2020) in 2018-2019.

It is commendable that the Action Plan for 2018-2020 eradicated some shortcomings of the previous plan; the present Action Plan incorporates, almost with regard to each objective, recommendations and proposals made by the international and local monitoring bodies, which should be taken into account when fulfilling the objectives and carrying out activities determined by the plan.

It should also be mentioned positively that the Action Plan for 2018-2020 determines indicators not only with regard to specific activities but also in relation to objectives. This contributes to the assessment of the performed work; however, there are still problems with regard to adequacy and sufficiency of indicators. Furthermore, many indicators still serve to measure the quality of the implementation of activities rather than to indicate the fulfilment of an objective.

Setting out broad scopes of timeframes is a considerable shortcoming of the Action Plan. The entire timeline for the Action Plan, i.e. 2018-2020, is determined as the timeframe for the majority of objectives and activities. Determining such broad timeframe for specific objectives hinders and delays its implementation until the end of the term in most cases.

It should also be pointed with regard to Chapter 4 of the Action Plan that on 22 February 2019, the Minister of Justice of Georgia approved by Order no. 385 the Strategy on the Development of the Penitentiary and Crime Prevention Systems and Action Plan for 2019–2020. The latter is mostly in compliance with the Governmental Action Plan. However, the Action Plan approved by Order no. 385 determines in more detail the interim and final (projected) outcomes and timeframes of the activities planned for achieving the sought goals, which must significantly contribute to the effective implementation of the plan.

## Cooperation with Responsible Agencies

The absence of cooperation on the part of the Special Penitentiary Service of the Ministry of Justice of Georgia considerably hampered the monitoring process of activities carried out in 2018 and 2019. Despite numerous written requests (including using the portal [my.gov.ge](https://my.gov.ge)) and oral reminders, this agency has not supplied any public information.

The only written response we received from the agency under the Ministry of Justice in 2019 was letter no. 2/111173 of the LEPL Execution of Non-Custodial Sentences and National Agency of Probation, dated 4 December 2019, which informed us about the activities aimed at former prisoners' resocialisation and rehabilitation. This information has been included in the respective section of the report. The same trend was maintained in 2020; the ministry did not respond to any of our communication.

Due to the ministry's failure to provide public information, on 2 March 2020, we filed two lawsuits with the Tbilisi City Court, requesting to order the Special Penitentiary Service on the one hand and the Ministry

of Justice, on the other hand, to provide public information. In both cases, there is a clear attempt on the part of the defendants to delay the hearing of the case. As of 1 July 2020, the Special Penitentiary Service has twice requested a postponement of the scheduled hearing. In the second case, the court shared the IDSD's position that the motion to adjourn the hearing lacked reasoning and scheduled a hearing on the merits of the case in the respondent's absence.

On 17 July 2020, the Section of Administrative Cases of the Tbilisi City Court upheld the IDSD's claim and instructed the Special Penitentiary Service to impart public information.

As for the second case, the Ministry of Justice of Georgia stated at the preparatory stage of the case that, due to the large amount of information requested, it takes some time to prepare and they are ready to impart information. It is unclear why the Ministry has not been able to collect and supply this information since February, even with the restrictions introduced due to the spread of the new coronavirus.

It is noteworthy that the 2018 and 2019 Reports of the Public Defender's National Preventive Mechanism also pointed out the problems it encountered in terms of cooperation with the Special Penitentiary Service: "It is regrettable that, despite good cooperation of the past few years with the Penitentiary System, 2018 was not the best in terms of active cooperation. On many occasions, the NPM was not provided in a timely manner or was not provided at all with materials and information necessary for discharging its mandate. This amounted to the failure to comply with the Public Defender's legal requests and constituted the ground for the imposition of a fine. The Public Defender hopes that this practice will change for the better and the active cooperation based on dialogue with the ministry will be restored."<sup>[1]</sup>

According to the 2019 report of the National Prevention Mechanism, the Special Penitentiary Service has in fact completely stopped cooperating with the Public Defender's Office. "On 11 October 2019, a letter was sent to the Special Penitentiary Service of the Ministry of Justice, requesting information on the state of implementation of the recommendations made in the 2018 report of the National Prevention Mechanism, to which no response was provided. A reply was also not provided to most of the letters sent in September, October, and November 2019 requesting the data required for the annual report. Despite numerous attempts by the National Preventive Mechanism, which was manifested in repeatedly sending letters and trying to maintain telephone communication, the Ministry of Justice did not respond to the letters, which significantly hampered the process of processing various data and evaluating the implementation of recommendations."<sup>[2]</sup>

It should be mentioned that cooperation was considerably simpler before the integration of the penitentiary agency with the Ministry of Justice<sup>[3]</sup> in terms of both provision of information and holding workshops and discussions. This fact is a clear example of a negative effect of the centralisation.

Against the background of the above difficulties, the active cooperation on the part of the Department of Monitoring Human Rights Protection and Quality of Investigation of the Ministry of Internal Affairs in terms of providing information and statistical data is to be mentioned particularly positively.

## Methodology

The present document, when assessing the activities carried out within the framework of the Governmental Action Plan on Human Rights for 2018-2018 and outcomes achieved in this regard, covers only the activities conducted in the reporting period, i.e. 2018-2019. The activities that were implemented during the preparation of this report have not affected the assessment; however, they have been mentioned in the text of the report or the footnotes.

The special methodology developed for the monitoring of the Governmental Action Plan on Human Rights for 2016-2017<sup>[4]</sup> has been used to assess the achieved outcomes. This methodology is aimed at assessing the sought outcomes both in quantitative and qualitative terms. In certain cases, where the indicators determined by the Action Plan cannot ensure adequate assessment of the outcomes, or they

are either irrelevant or insufficient, the fulfilment of objectives can be assessed with the help of additional indicators.<sup>[5]</sup>

The monitoring outcomes are based on the information and statistical data given in the reports and researches prepared by international and national monitoring bodies and organisations in the recent years, namely:

- [The 2019 Report of the National Preventive Mechanism of the Public Defender of Georgia, 2020](#)
- [The 2018 Report of the National Preventive Mechanism of the Public Defender of Georgia, 2019](#)

#### The Special Report of the Public Defender's National Preventive Mechanism on Monitoring Visits

- [to Penitentiary Establishments nos. 2, 8, 14 and 15, 2019](#)
- [Report of the Public Defender on the Situation of Protection of Human Rights and Freedoms in Georgia, 2019](#)
- [The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2018](#)
- [The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2017](#)
- [The Special Report of the Public Defender of Georgia on the Practice of Disciplinary Proceedings Against Prisoners in Georgia, November 2019](#)
- [The Special Report of the National Preventive Mechanism of the Public Defender of Georgia on The Application/Complaint Examination Mechanism in the Penitentiary System of Georgia, 2015](#)
  
- [The Special Report of the Public Defender of Georgia on the Impact of Prison Conditions on Prisoners' Health, 2018](#)
  
- [The Special Report of the Public Defender on the Practice of Conditional Early Release and Commutation of Unserved Sentence With a Lesser Penalty in Georgia, 2019](#)
  
- [Annual Report on Monitoring the Governmental Action Plan on Human Rights, 2019](#)
  
- [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, Strasbourg, 10 May 2019](#)
- [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 1 to 11 December 2014, Strasbourg, 15 December 2015](#)
- [Review of the Annual Implementation of the 2018 Budget of the Ministry of Justice of Georgia, February 2019](#)
- [Review of the Annual Implementation of the 2019 Budget of the Ministry of Justice of Georgia, 2020](#)
- [The 2018 Statistics Report of the System of the Ministry of Corrections and Probation of Georgia](#)
- [The Consolidated Criminal Law Statistics of the Ministry of Corrections and Probation of Georgia, December, 2017](#)
- [Resolution of the Parliament of Georgia on the 2016 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 30 June 2017](#)
- [The Report of the Office of the Personal Data Protection Inspector of Georgia on the Situation of](#)

[the Personal Data Protection and the Inspector's Activities, 2018](#)

- [Report on the Activities of the State Inspector's Service, 2019](#)
- [The Report on the Situation of the Personal Data Protection and the Inspector's Activities, 2017](#)
- [Institute for Democracy and Safe Development \(IDSD\), the Monitoring of the Governmental Action Plan on Human Rights, 2018](#)
- [Rehabilitation Initiative for Vulnerable Groups, Desk Research on Personnel of the Penitentiary System, 2018](#)
- [The Joint Report of the Public Defender of Georgia and the Human Rights Centre on the Situation of Female and Juvenile Prisoners in Georgia, 2018](#)

Legislative acts of Georgia, namely, the Imprisonment Code, the Criminal Code of Georgia, the Criminal Procedure Code of Georgia and secondary legislation were also used during the preparation of the report.

The report reflects the information obtained through the written communication maintained with respective agencies.

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[1] The 2018 Report of the National Preventive Mechanism of the Public Defender of Georgia, 2019, p. 10.

[2] The 2019 Report of the National Preventive Mechanism of the Public Defender of Georgia, 2020, p. 14.

[3] On 5 July 2018, under the amendment to the Law of Georgia on Imprisonment Code, as of 11 July 2018, the Ministry of Corrections and Probation of Georgia was merged with the Ministry of Justice of Georgia setting up a public subordinate agency within the system of the Ministry of Justice of Georgia. It is unknown as to what ground or precondition served as the basis for this decision. The ministries had not had any meetings and/or consultations with academia, experts or civil society regarding this change; there are no known researches or recommendations that would shed light on the reasons and necessity of the abolition of the Ministry of Corrections and Probation of Georgia. Subordinating such a large system to the Ministry of Justice is a clear example of centralisation. It is noteworthy that many European countries such as Norway, Germany, the Netherlands, France, etc., use this model of penitentiary system. Nevertheless, these are full democracies with a long-standing history of good governance. Accordingly, the work of the penitentiary system is decentralised and the Minister of Justice's functions are purely formal.

[4] The methodology document is available at: <http://hrm.org.ge/>.

[5] For instance, decrease in the number of court judgments adopted against the councils (activity 4.1.2.2 indicating the fulfilment of objective 4.1.2) on its own cannot indicate the improvement of the parole mechanism. Many factors serve as the reason for decrease in the number of court judgments adopted against the councils, inter alia, ineffective performance of courts, and low awareness among offenders about the complaint mechanism. It is noteworthy that in this second instance, small number of judgments against the councils indicates the defectiveness of the parole mechanism.