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## **AMNESTY INTERNATIONAL'S BRIEFING TO THE HUMAN RIGHTS COMMITTEE ON GEORGIA**



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## Introduction

The following briefing summarizes some of Amnesty International's concerns in Georgia, in view of the Human Rights Committee's upcoming examination of Georgia's third periodic report on its implementation of the obligations as a State Party to the International Covenant on Civil and Political Rights (ICCPR).

Since Georgia became independent following the break-up of the Soviet Union,<sup>1</sup> the country has moved gradually towards building democratic institutions and reforming its judicial and legal systems, and has become a party to a number of international human rights treaties. Amnesty International welcomes these advances and acknowledges that they have been made against a background, especially in the early years of independence, of severe economic and political dislocation and armed hostilities in parts of the country.

However, Amnesty International has continuing concerns about the failure of the authorities to respect and ensure respect for a range of human rights in Georgia. The organization has raised these concerns with the Georgian authorities in letters, meetings and in published documents, which it has sent to the authorities.

Rather than a comprehensive review of Georgia's implementation of all of its obligations under the ICCPR, this briefing focuses in particular on Amnesty International's concerns about the failure of the government to ensure the fulfilment of the rights to life, freedom from torture and other ill-treatment, security of the person, fair trial and to redress for violations of such rights, as required under Articles 2, 3, 6, 7, 9, 14, and 26 of the ICCPR.<sup>2</sup>

Although Article 2.1 of the ICCPR requires states to respect and ensure respect of the rights "to all individuals within its territory and subject to its jurisdiction", this briefing does not address Amnesty International's concerns in the disputed territories of Abkhazia and South Ossetia, relating to human rights violations over which the Georgian authorities have

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<sup>1</sup>Georgia joined the Conference on Security and Co-operation in Europe (now the Organization for Security and Co-operation in Europe) in May 1992, and became a member of the UN in July of the same year.

<sup>2</sup> For more detailed information and case examples on these concerns, refer to the following Amnesty International documents: *Georgia: Torture and ill-treatment – still a concern after the "Rose Revolution"* (AI Index: EUR 56/001/2005); *Georgia: Thousands suffering in silence. Violence against women in the family* (AI Index: EUR 56/009/2006); entries on Georgia of Amnesty International's *Concerns in Europe and Central Asia*, covering the periods of July to December 2003 (AI Index: EUR 01/001/2004), January to June 2004 (AI Index: EUR 01/005/2004), July to December 2004 (AI Index: EUR 01/002/2005), January to June 2005 (AI Index: EUR 01/012/2005), July to December 2005 (AI Index: EUR 01/007/2006), January to June 2006 (AI Index: EUR 01/017/2006), and July to December 2006 (AI Index: EUR 01/001/2007).

no *de facto* control.<sup>3</sup> Amnesty International has been addressing authorities in these two regions as those with *de facto* control (and responsibility), and not as recognition of their status *de jure*. The organization has documented its concerns relating to Abkhazia, and to South Ossetia.<sup>4</sup>

## **Article 3 in conjunction with Articles 7 and 26: Domestic violence against women**

Amnesty International is deeply concerned that thousands of women in Georgia continue to be subjected to domestic violence on a regular basis. They are hit, beaten, raped, and in some cases even killed. Other forms of domestic violence include deprivation of economic necessities and verbal and psychological abuse. Violence in the family is also often directed against elderly people and children.

A study by the non-governmental organization (NGO) Caucasus Women's Research and Consulting Network, published in 2006, reported that 5.2 per cent of women experienced frequent physical abuse by their partner, adding to the data produced by UN Population Fund studies in Georgia in 1999 and 2005 which found that five per cent of women reported physical abuse.

Amnesty International is also concerned about:

- the widespread impunity enjoyed by perpetrators of domestic violence in Georgia;
- insufficient measures and services to protect victims of domestic violence including temporary shelters, adequate and safe housing;
- the absence of a functioning cross-referral system with regard to domestic violence cases between different agencies such as health workers, crisis centres, legal aid centres, and law enforcement authorities;
- and the failure to date by key players such as law enforcement officers and the courts to record cases of domestic violence in a systematic manner and to create reliable and comprehensive statistics disaggregated by sex and indicating the relationship between victim and perpetrator.

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<sup>3</sup> The Georgian government is currently unable to exercise *de facto* control over these two areas of Georgia, as a result of hostilities in the late 1980s and early 1990s. Both these areas have their own legislative, executive and judicial structures operating independently of those in Georgia, but neither territory has been recognized internationally as a separate entity.

<sup>4</sup> See Amnesty International report *Belarus and Uzbekistan: the last executioners. The trend towards abolition in the former Soviet space*, (AI Index: EUR 04/009/2004), and entries on Georgia, in: *Europe and Central Asia: Summary of Amnesty International's Concerns in the Region* covering January to June 2005 (AI Index: EUR 01/012/2005), July to December 2005 (AI Index: EUR 01/007/2006), and January to June 2006 (AI Index: EUR 01/017/2006).

In August 2006 the UN Committee on the Elimination of Discrimination against Women (CEDAW) considered Georgia's combined second and third periodic reports under the Convention on the Elimination of Discrimination against Women. In its concluding comments issued on 25 August 2006, CEDAW, among other issues, expressed concern about "the prevalence of violence against women, including domestic violence, in Georgia" and that the implementation of aspects of the Law on Domestic Violence, "including those relating to the provision of shelters and rehabilitation centres for victims, has been postponed". It also raised concern that domestic violence "may still be considered a private matter" and that "marital rape has not been included in any proposals for new legislation".

Amnesty International considers that the adoption by Parliament in May 2006 of the Law of Georgia on Combating Domestic Violence, Prevention of and Support to Its Victims (Law on Domestic Violence) was an important step forward in meeting the government's obligations to prevent domestic violence and to protect survivors of such violence. The law introduced for the first time a definition of domestic violence into Georgian legislation. It also provided a legal basis for the issuance of protection and restraint orders. According to Article 9, part 3, of the Law on Domestic Violence, "civil law mechanisms shall apply where the damage inflicted gives rise to obligation to compensate damages in accordance with the civil law".

However, Amnesty International is concerned that a number of key provisions of the May 2006 law have not been implemented swiftly or fully and that the setting up of shelters that lawmakers obliged the Ministry of Labour, Health and Social Affairs to carry out, appears to have been further delayed.<sup>5</sup> To Amnesty International's knowledge, there are currently four small NGO-run shelters in Georgia that reportedly receive no financial or other material support from the authorities. Further shelters are urgently needed. Amnesty International has called on the authorities to establish a sufficient number of shelters across Georgia in due course, in close cooperation with NGOs experienced in working to protect women from violence.

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<sup>5</sup> The May 2006 Law on Domestic Violence stated that temporary shelters for victims of domestic violence to be established by the Ministry of Labour, Health and Social Affairs should "meet conditions of life and ensure primary and emergency medical and psychological assistance" and that activities of shelters "shall be regulated by the Charter (Regulations), defining rules for the victim's placement in the shelter and her rehabilitation". According to the Law on Domestic Violence, these provisions were due to come into force on 1 January 2008. The law did not specify when the Ministry of Labour, Health and Social Affairs should set up the first shelters. The Action Plan on Measures to Prevent and Combat Domestic Violence, approved by the government in July 2007, also did not clearly state when these shelters should be established. The fact that it only called for the "implementation of necessary measures for the creation of shelters and rehabilitation centers" in 2007 and 2008 appears to indicate that the plan to set up shelters has been further delayed.

The May 2006 Law on Domestic Violence requested the government to approve a special plan outlining measures and activities necessary to implement the law, within four months after the law's publication, i.e. by 9 October 2006. In this context an action plan was drafted with significant input by NGOs. It set out timeframes for the implementation of activities and specified which stakeholders, including government agencies and NGOs, would be responsible for implementing strategies to raise public awareness, protect and assist victims of domestic violence, prepare further legislation, and consider budgetary implications. With a delay of over nine months, on 30 July 2007, the government approved a shortened version of previous drafts (Decree No. 406). Among other issues, the Action Plan on Measures to Prevent and Combat Domestic Violence, which covers the period from 2007 to 2008, sets out that:

- The Ministry of Labour, Health and Social Affairs and other relevant government agencies should elaborate standards for shelters and rehabilitation centres for batterers.
- Relevant government agencies and NGOs should train staff of the Ministry of Internal Affairs, prosecutors, judges, health workers and those working in the field of education on international standards regarding domestic violence.
- NGOs should engage in public awareness raising campaigns.
- Two hotlines should be established by the Ministry of Internal Affairs and the Ministry of Labour, Health and Social Affairs, respectively.
- Financial proposals should be made to ensure that sufficient funds are earmarked in the state budget to implement activities outlined in the Action Plan.

While Amnesty International welcomes aspects of the Action Plan the organization considers that additional measures need to be taken in order to effectively combat domestic violence and protect its victims. In particular, the authorities should implement the measures listed below.

### ***Amnesty International's recommendations***

Amnesty International has urged the authorities of Georgia to:

- Compile reliable and accurate statistics disaggregated by sex and indicating the family relationship of victim/s and perpetrator/s on reports, investigations and prosecutions of violence against women in the family across Georgia and make these statistics available to the public.
- Ensure that sufficient government funding is allocated, or actively seek donor funding, to promptly set up a sufficient number of appropriate shelters across the country in collaboration with NGOs experienced in working to protect women from violence.
- Ensure the provision of and accessibility of women victims of domestic violence to vocational training, and assist them to find jobs to facilitate them in gaining economic independence from their (former) husbands or partners, and ensure the availability of adequate and safe housing.

- Ensure that women's complaints of violence by husbands, cohabitantes or other intimate partners, are promptly, impartially and thoroughly investigated, and that where there is sufficient admissible evidence that a crime has been committed, suspects are prosecuted in a fair trial. Complainants, witnesses and others at risk should be protected from intimidation and reprisals before, during and after such investigations and prosecutions.
- Ensure that legislation providing for the creation and enforcement of protection and restraint orders on violent men is fully implemented, including through the enforcement of appropriate sanctions.
- Ensure that rehabilitation programmes for offenders convicted of violence against women concentrate not just on vocational skills but also incorporate non-violent conflict resolution skills, communications skills and education on women's human rights.

## **Article 6: Lethal use of firearms by police and prison officials**

Dozens of suspects were shot dead by law enforcement officers in recent years. Amnesty International is concerned about allegations that the officers may have used excessive force in at least some of these cases.

With regard to the use of lethal force by police in 2005, Vano Merabishvili, the Minister of Internal Affairs of Georgia, stated: "In 2005 the police detained more than 11,000 people [...] Unfortunately, 21 people were killed during these arrests. Three of them were suspected of killing policemen, two had escaped from prison, six had three or more convictions, and four had two convictions. In all cases, weapons were used against the police. There was not a single case of an innocent bystander being killed or injured in a police operation. This is a clear indication of the professionalism of the police force. Twenty-one deaths in a year – is that a lot?"<sup>6</sup>

According to the report of the Ombudsman of Georgia covering the first half of 2006, "the use of force by police resulted in the loss of lives of 33 persons in the process of arrest [from January 2005 to May 2006]"<sup>7</sup>.

According to statistics provided to Amnesty International by the non-governmental Georgian Young Lawyers Association, at least 44 men were shot dead by police or prison officials from January 2005 to May 2006.<sup>8</sup>

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<sup>6</sup> Article by Vano Merabishvili in the newspaper *24 saati* (24 hours), 10 May 2005.

<sup>7</sup> According to the Ombudsman's report, 22 people died in 2005 and 11 from January to May 2006.

<sup>8</sup> Email correspondence with Sopho Japaridze, 7 September 2007.

NGOs in Georgia alleged that police and prison guards used excessive force in at least some of the cases mentioned in the statistics above.

Lethal force was also used when the authorities quelled a prison disturbance in March 2006. There were allegations that special forces troops involved in this operation may have used excessive force.

*Prison disturbance in March 2006: at least seven inmates killed by special forces*

According to the authorities, special forces entered investigation-isolation prison no. 5 in Tbilisi early on 27 March 2006 to suppress an armed riot and attempted break-out that ringleaders had allegedly organized in advance. The same day the Justice Minister of Georgia stated at a press briefing that the special forces had urged the inmates to stop the riot several times in vain, before launching the special operation. At a session of the National Security Council later that day President Mikheil Saakashvili was reported as thanking officials of the Ministry of Justice and the police “who acted highly professionally in order to save the citizens of the country from the misfortune that could have happened [...] Last night in Tbilisi more than 4000 dangerous criminals could have escaped [...] This would have meant hundreds of stolen cars, hundreds of raped people, hundreds of robbed houses, hundreds of murder cases and many other disasters and disorders.” The Human Rights Protection Unit of the Prosecutor General’s Office informed Amnesty International on 21 May 2007 that special forces officers called on the inmates to “calm down”. Their request was “followed by the counter-reaction of the inmates as they began to move towards the officers, throwing stones and pieces of metal and wood at them. In response, the special task force used the guns with rubber bullets. The prisoners responded with firearms. As a result two officers of the Department of Prisons were wounded. The decision to open a fire by the Special Force was taken only after the inmates had used firearms.”

According to local human rights activists, the special forces operation was carried out to put down a spontaneous protest by detainees against physical and verbal abuse of inmates in the near-by central prison hospital by a senior official of the Ministry of Justice and special forces earlier that night. Non-governmental sources alleged that the special forces that entered the investigation-isolation prison did not use alternative non-violent means to establish control of the prison, but instead fired automatic weapons and rubber bullets, and beat detainees with truncheons. According to Grigol Giorgadze, the Head of the Department on Investigation and Monitoring at the Office of the Ombudsman of Georgia, who was in the yard of the investigation-isolation prison at the time, the authorities gave no warning before they started shooting at the inmates.<sup>9</sup> The Ombudsman alleged that special forces were likely to have “continued to fire even when the revolt [had] actually ended and the prisoners did not resist [...] anymore”.<sup>10</sup>

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<sup>9</sup> Email correspondence with Grigol Giorgadze, 7 August 2007.

<sup>10</sup> Report by the Ombudsman, entitled *For the Prevention of Torture. Special Report of the Public*

At least seven inmates died and many others were wounded in this special operation.

The Ombudsman of Georgia and local NGOs also raised concern at the lack of adequate medical treatment of those injured as a result of the events both in the central prison hospital as well as in investigation-isolation prison no. 5 on 27 March 2006. For example, according to a statement issued by the Ombudsman's Office on 7 April, six men who allegedly sustained injuries as a result of beatings by officials in the prison hospital were transferred to investigation-isolation prison no. 7 in Tbilisi later that night without an authorization by prison doctors and were only given access to medical personnel after the Ombudsman's intervention. According to information from the NGO Empathy received by Amnesty International on 9 April 2006, many detainees who had sustained bullet wounds on 27 March 2006 and were subsequently transferred to investigation-isolation prison no. 6 in Rustavi, were left without immediate medical treatment and the wounds of some of them started to fester.

### ***Amnesty International's recommendation***

In light of the concerns noted above Amnesty International has called on the authorities of Georgia to:

- Train police and prison officials to apply force only “when strictly necessary and to the extent required for the performance of their duty” (UN Code of Conduct for Law Enforcement Officials), and “intentional lethal use of firearms” only “when strictly unavoidable in order to protect life” (1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials).

## **Article 6 in conjunction with Article 2: the Right to a remedy in cases of death resulting from excessive use of force**

### ***Failure to open prompt, thorough, impartial and independent investigations***

Amnesty International is concerned about allegations that in many cases where police used lethal force, no prompt, thorough, impartial and independent investigations were carried out into the cause and circumstances of the deaths. According to the Georgian Young Lawyers'

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*Defender of Georgia*, submitted to the Supplementary Human Dimension Meeting on the Protection and Promotion of Human Rights: Responsibilities and Effective Remedies of the OSCE in Vienna, 12 to 13 July 2007.

Association, no officer has been brought to justice in any of the cases involving the use of lethal force.<sup>11</sup>

*The case of Zurab Vazagashvili and Aleksandre Khubulovi*

Zurab Vazagashvili and Aleksandre Khubulovi were shot dead by police as they were driving in their car in central Tbilisi on 2 May 2006. According to non-governmental sources, at least 50 police officers including senior officers of the criminal department of the Ministry of Internal Affairs, 10 masked officers of the special police unit as well as other police officers participated in the special operation. According to Malkhaz Dzhangishvili, who has been engaged by Zurab Vazagashvili's family, "there were so many bullets in the two men that the medical experts who examined their bodies were unable to actually count them".<sup>12</sup> Bondo Puturidze, who was travelling in the same car, was seriously injured and was hospitalized.

According to the news agency *Black Sea Press*, Irakli Kadagidze, head of the criminal police department of Tbilisi, stated at a press briefing later that day that the men had committed a robbery of a pawn-shop on 30 April 2006 in Tbilisi and were planning to carry out another robbery on 2 May. He added that the men opened fire at the police and that the police killed them in response. However, Gagi Mosiashvili, a lawyer of the Georgian Young Lawyers Association who also defends the interests of Zurab Vazagashvili's family, claimed that the police set up an ambush with the intention to kill the two men and that police fired the first shots.<sup>13</sup>

On 5 May 2006 the Prosecutor General's office requested that the Tbilisi City Prosecutor's Office investigate whether police used excessive force in the operation. An investigation was opened under Article 114 of the Criminal Code, for "killing resulting from excessive force used to detain criminals".

The lawyers Irma Chkadua and Malkhaz Dzhangishvili, who work on Zurab Vazagashvili's case, told Amnesty International on 9 May 2007 that the investigation into allegations of excessive use of force by police was not conducted thoroughly and impartially; that investigators ignored witness statements that incriminated the police; that the authorities had intentionally destroyed evidence; and that the authorities effectively blocked them from defending Zurab Vazagashvili's rights both with regard to the conduct of the police operation as well as with regard to the crimes allegedly committed and planned by their client.

Reportedly, for several weeks the authorities refused to satisfy a request by Tsiala Shanava, Zurab Vazagashvili's mother, to be recognized as her son's "legal successor" in the

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<sup>11</sup> Email correspondence with Sopho Japaridze, 7 September 2007.

<sup>12</sup> Amnesty International interview, Tbilisi, 9 May 2007.

<sup>13</sup> Email correspondence with Gagi Mosiashvili, 20 June 2007.

context of the investigation into allegations of excessive use of force during the special operation. However, on 7 July 2006, following numerous complaints by the lawyers and interventions by the Ombudsman of Georgia and the Chair of the Parliamentary Committee on Human Rights and Civil Integration, Tbilisi Prosecutor's Office recognized the mother as the victim's representative. However, according to the Ombudsman, even after that "the investigation did all it could to prevent [Zurab Vazagashvili's mother from getting] access to the case file". In addition, the lawyers have alleged that the Prosecutor's Office did not allow them to participate in the questioning of witnesses and did not provide them with transcripts of the witness statements.

According to Gagi Mosiashvili, investigators of Tbilisi Prosecutor's Office did not thoroughly and impartially investigate the allegations that excessive force had been used. Prosecutors reportedly only questioned several eyewitnesses who had been identified by Zurab Vazagashvili's lawyers many months after the special operation, in February 2007. The witnesses allegedly reported that police started the shoot-out and that police officers continued shooting even after the men were no longer resisting arrest. However, the prosecution reportedly ignored their statements. There were also allegations that police officers approached people who live near the place where the shootings took place and warned them not to give evidence incriminating the police.

Reportedly, according to the state ballistic investigation, the passengers of the car shot at police through the car's back window. However, the lawyers claim that video footage recorded by the press centre of the Ministry of Internal Affairs and aired on television shortly after the special operation showed that the glass of the car's back window was undamaged. The lawyers decided to commission an independent ballistic examination and, on 25 April 2007, filed a request with the Prosecutor General's Office to forward the documents of the state experts to an independent expert. However, their request was not granted. The next day Tbilisi Prosecutor's Office reportedly informed them that the case examining the allegations of excessive use of force had already been closed on 20 April and that the investigation did not find evidence that excessive force had been used.

There were also concerns about the investigation instigated into the prison disturbance that took place in March 2006.<sup>14</sup>

*Investigation into allegations of excessive force used by special forces in March 2006 prison disturbance*

On 27 March 2006, the day of the prison disturbance, senior government officials including President Mikheil Saakashvili refuted allegations that excessive force had been used by the

<sup>14</sup> For details on the prison disturbance in March 2006, refer to the chapter on Article 6 above.

authorities and affirmed that security forces had acted appropriately. According to a report by the US-funded *Radio Liberty*, on 28 March members of the pro-government majority in parliament, accusing opposition politicians of “patronizing criminals”, rejected a proposal to set up a parliamentary inquiry into the 27 March events.<sup>15</sup>

According to Human Rights Watch “the government waited until three months after the violence to open an investigation into whether special forces troops exceeded their authority”.<sup>16</sup>

The Human Rights Protection Unit of the Prosecutor General's Office informed Amnesty International on 21 May 2007 that in order “to verify the lawfulness of the measures taken by the law-enforcement officers, in particular the fact of opening fire at the inmates [...] an investigation was initiated” under Article 333, paragraph 3 (“exceeding official authority”) and that this investigation, among other issues, looked into the deaths of the seven inmates. In addition to that investigation, according to the Human Rights Protection Unit, on 23 October 2006, separate investigations were initiated under Article 108 of the Criminal Code (“premeditated murder”), to ascertain the cause of death of the inmates. The Unit also stated that 190 inmates had been interviewed as witnesses in the course of the investigations into the March 2006 events. Reportedly, 37 inmates of investigation-isolation prison no. 5 told prosecutors that staff of the penitentiary department had repeatedly called on the inmates to “stop resistance” and that the officers only started shooting with rubber bullets after one inmate had fired at them with a pistol. Then “the inmates started to move towards the officers and soon they heard [shouts] that one of the staff members was wounded. After this the officers opened fire. However, they were firing in the air and not in the direction of the inmates.” In its May 2007 letter the Human Rights Protection Unit informed Amnesty International that the investigation was still ongoing.

Grigol Giorgadze, the Head of the Department on Investigation and Monitoring at the Office of the Ombudsman of Georgia, informed Amnesty International on 7 August 2007 that his office had not received replies from the Prosecutor General's Office regarding whether preliminary investigations had been opened against staff of the Ministry of Internal Affairs; whether or not the injured prisoners had been recognized as victims; and whether the family members of the deceased prisoners had been recognized as their legal successors.

Non-governmental sources alleged that the authorities have not granted the relatives' lawyers access to the investigation. One source alleged that “access was denied by the authorities under the pretext that the force which was used by the authorities was lawful and that any injuries or damages caused to the inmates did not result from any criminal acts”.

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<sup>15</sup> *Radio Free Europe/Radio Liberty* article, *Georgia: Prison Riot Fuels Destabilization Theory*, 29 March 2006.

<sup>16</sup> Human Rights Watch report, *Undue Punishment. Abuses against Prisoners in Georgia*, September 2006.

Reportedly, appeals against this decision were unsuccessful in the courts. Subsequently, several relatives reportedly applied to the European Court of Human Rights.<sup>17</sup>

### ***Amnesty International's recommendations***

Amnesty International has recommended that the authorities:

- Investigate promptly, thoroughly, impartially and independently every incident when lethal force has been used by agents of the state in order to determine whether excessive force was used and the lawfulness of any resulting death.
- Make public the results of such investigations.
- Bring to justice those suspected of unlawful killing.

## **Article 7: Prohibition of torture or cruel, inhuman or degrading treatment**

### ***Trends and cases***

Torture, ill-treatment and the excessive use of force by law enforcement officers have been central concerns of Amnesty International since Georgia became independent in 1991. When the government of Mikheil Saakashvili came to power following the so-called “Rose Revolution” in November 2003 it inherited a system in which torture and other ill-treatment were widespread and perpetrators routinely went unpunished.

Since the second half of 2004 senior government officials have on several occasions publicly acknowledged the problem of torture and ill-treatment and expressed their commitment to fight it. Since then a number of positive measures have been implemented.

For example, Georgia acceded to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in 2006; the Constitution was amended to ensure that “physical or psychological abuse of a detainee or a person otherwise restricted in his/her liberty is prohibited” at all times, including during states of emergency. Furthermore in July 2005 articles were added to the Criminal Code specifically defining and criminalizing “torture” (Article 144<sup>1</sup> of the Criminal Code of Georgia), “threatening with torture” (Article 144<sup>2</sup> of the Criminal Code), though still not in a manner that is fully consistent with Article 1 of the Convention against Torture.<sup>18</sup> In addition,

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<sup>17</sup> Email correspondence, 9 September 2007. The source requested Amnesty International not to be named.

<sup>18</sup> On 23 June 2005 the Parliament of Georgia adopted amendments to the Criminal Code regarding the crime of torture and ill-treatment. In the past the international community and human rights groups had

provisions were added to criminalize “inhuman and degrading treatment” (Article 144<sup>3</sup> of the Criminal Code). In April 2006 parliament removed the time limit for bringing charges under these provisions. Furthermore, several other laws were amended with the aim of strengthening safeguards against torture or other ill-treatment; extensive monitoring activities of detention facilities under the jurisdiction of the Ministry of Internal Affairs were conducted, in particular by the office of the Public Defender of Georgia (Ombudsman); and at least 27 police officers have been convicted and sentenced to terms of imprisonment for beating or otherwise ill-treating detainees since the “Rose Revolution”.

Key human rights organizations in Georgia and the Ombudsman have reported that the number of cases in which detainees have been subjected to abuse in police detention facilities has significantly decreased, in particular in the past two to three years. Amnesty International continued to receive some reports of individual cases of alleged human rights violations in police detention facilities.

Police abuse during the arrest of suspects continued to be a matter of serious concern to Amnesty International. Amnesty International also continued to receive allegations that

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raised concern that the Criminal Code did not criminalize torture in a manner which was consistent with the definition of torture set out in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Following the amendments, Article 144<sup>1</sup>, part 1, of the Criminal Code now defines the crime of torture as “subjecting a person, his/her close relatives or financially or otherwise dependent persons to such conditions, such treatment or punishment which by their nature, intensity or duration cause severe physical or mental pain or suffering, and have the purpose to obtain information, evidence or a confession, to intimidate, coerce or punish a person for an act s/he or a third party committed or is/are suspected of having committed”. The crime is punishable by imprisonment of five to 10 years and/or a fine. In aggravating circumstances the crime is punishable by deprivation of liberty from seven to 15 years and temporary disqualification from occupying certain posts or performing certain professional duties for up to five years (Art. 144<sup>1</sup> part 2 of the Criminal Code). Aggravating circumstances include torture committed “by an official or a person equated to an official” or carried out “on the grounds of racial, religious, national or ethnic intolerance”. Threatening with torture is punishable by up to two years’ imprisonment under Article 144<sup>2</sup>. Article 144<sup>3</sup>, entitled “Inhuman and degrading treatment”, prohibits “humiliating or coercing a person, putting him in inhuman and degrading conditions leading to intense physical, mental or moral suffering” and makes it punishable by a fine and/or deprivation of liberty of up to five years. In aggravating circumstances -- the same as mentioned above -- the crime is punishable by three to six years’ imprisonment and/or a fine as well as temporary disqualification from occupying certain posts or performing certain professional duties for up to five years.

Comparison of Article 144 of the Criminal Code of Georgia with Article 1 of the Convention against Torture: Unlike Article 1 of the Convention against Torture which sets out an inclusive list of purposes, the definition of torture in the Criminal Code of Georgia sets out an exclusive list of purposes. Apart from that, Article 144 of the Criminal Code of Georgia does not include the same definition of the perpetrator/s as it does not state that the “pain or suffering” could, among others, be “inflicted [...] at the **instigation of or with the consent or acquiescence** [highlighted by Amnesty International] of a public official or other person acting in an official capacity”.

excessive force has been used against demonstrators in several instances in recent years. On several occasions senior government officials were reported as having encouraged the disproportionate use of force or having endorsed operations that had allegedly involved the use of excessive force.

#### *Demonstration near the town of Terdzhola*

Amnesty International was concerned that on 11 January 2004 police armed with truncheons used excessive force while breaking up an unauthorized demonstration of some 200 demonstrators blocking a main road in Terdzhola district in Imereti region. The demonstrators were reportedly peacefully protesting against the detention of Zaza Ambroladze, a resident of the region who was charged with illegal possession of firearms. Amnesty International viewed footage showing dozens of people being kicked and beaten by police. One man, for example, who was already on the ground and not resisting, was kicked by four law enforcement officers. Another man, while being detained, was hit by several police officers with truncheons.

The following day *Imedi TV* broadcast a statement by President Mikheil Saakashvili “welcom[ing then Interior Minister] Gia Baramidze’s fighting spirit and his brave steps” in the conduct of the police operation against “a certain group of local hooligans”. He added that “everyone who is defending crime bosses ... will be dealt a very hard blow in their teeth”.

It is not known whether the authorities investigated the allegations of excessive use of force by police and whether any of the officers were brought to justice. Amnesty International raised this case in a letter to President Mikheil Saakashvili, dated 9 July 2004, and included it in its November 2005 report *Georgia: Torture and ill-treatment – still a concern after the “Rose Revolution”* (AI Index: EUR 56/001/2005). However, no reply was received.

#### *Allegations of excessive use of force by police against demonstrators in May 2007*

On 26 May 2007 representatives of the NGO Equality Institute and supporters of prisoner Irakli Batiashvili gathered in the centre of Tbilisi near the military parade that was held to celebrate Georgia’s Independence Day.<sup>19</sup> They wanted to protest against the imprisonment of persons who they believed were prisoners of conscience in Georgia. Police dispersed the demonstrators and reportedly took away some of their placards. There were allegations that police used excessive force. According to Equality Institute representative David Dalakishvili, police beat him on his back and head; then they kicked him from behind so that he fell down. His supporters reported that police continued kicking him when he was lying on the ground. It is not known whether the authorities opened an investigation into the allegations that police used excessive force against the demonstrators.

<sup>19</sup> For details on the case of Irakli Batiashvili, refer to the chapter on Articles 9 and 14.

While in previous years there had been relatively few allegations of torture, ill-treatment or excessive use of force in the penitentiary system, Amnesty International observed an increase of such allegations at the end of 2005 and in 2006. Prison officials were said to have ill-treated inmates on several occasions and there were allegations that the authorities used excessive force to suppress the prison disturbance that took place in Tbilisi in March 2006.<sup>20</sup>

### ***Visit to Georgia of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment***

In his September 2005 report covering his visit to Georgia in February 2005 the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concluded that “torture persists in Georgia, perpetuated primarily by a culture of impunity”.<sup>21</sup> He also noted certain positive steps taken by the authorities to combat torture and ill-treatment, but pointed out that “credible and reliable allegations of torture and ill-treatment continued to be received”. Among other things, the Special Rapporteur recommended to the authorities of Georgia

- that “[j]udges and prosecutors [should] routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination”;
- that “[a]ny public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, be immediately suspended from duty pending trial, and prosecuted”;
- and that “[l]aw enforcement recruits undergo an extensive and thorough training curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of police equipment, and that existing officers receive continuing education”.

### ***Removal of people at risk of serious human rights violations***

Non-governmental sources in Georgia alleged that the authorities of Georgia facilitated the detention in 2004 by officers of the Russian Federal Security Service (FSB) of two Chechens (see below), who were wanted by Russia on charges relating to terrorism. Senior government officials of Georgia categorically denied facilitating their detention. Amnesty International does not know whether or not the authorities of Georgia were involved.

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<sup>20</sup> For details on the March 2006 prison disturbance, refer to the chapter on Article 6 and the chapter on Article 6 in conjunction with Article 2.

<sup>21</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Mission to Georgia*, 23 September 2005 (UN doc.: E/CN.4/2006/6/Add.3).

Amnesty International opposes the forcible return to the Russian Federation of Chechens who are wanted by the Russian authorities on terrorism related charges on grounds that they face a real risk of serious human rights violations including torture.

*The case of Khusein Alkhanov and Bekhan Mulkoyev*

Tbilisi Regional Court sentenced the Chechens Khusein Alkhanov and Bekhan Mulkoyev to one year's imprisonment on 6 February 2004 for resisting prison guards. However, the men were released from the courtroom as they had already served the terms of their sentences. On 16 February local groups reported the two men had "disappeared", only one week before a delegation from the European Court of Human Rights was due to interview them in Tbilisi.

According to media reports, the two men were detained by FSB officers at a control post in North Ossetia on 19 February 2004 while attempting to cross the Georgian-Russian border.

Amnesty International was concerned about a statement made by President Saakashvili in an interview with the Russian radio station *Ekho Moskvy* on 10 February 2004, nine days before the arrest of the two men. He was reported as saying that "those people who were suspected of the terrorist attacks in Moscow have been extradited ... and if anybody remained [in Georgia], give us a list and we'll find them or if we don't find them, ... come and let's find them together, and ... let's throw them out of Georgia together".

In 2005 three asylum-seekers and citizens of the Russian Federation were detained, taken across the border of Georgia and left in the territory between Georgia and Azerbaijan. To Amnesty International's knowledge, there was no extradition request for the three brothers and the organization was highly concerned that the men were expelled although the authorities had not yet considered their asylum applications. Amnesty International is unaware of any investigation into the case to identify and bring to justice those responsible for facilitating and carrying out their detention and expulsion.

*Expulsion of asylum-seekers*

On 7 March 2005 the ethnic Kists and Russian citizens Shengeli Tsatiashvili (then aged 20 or 21) and his brothers Suleiman (18) and Sosran (14) went to the Ministry of Refugees and Accommodation in Tbilisi to apply for asylum for the two younger brothers. Shengeli Tsatiashvili had already registered his asylum claim in December 2004 and was waiting for a decision regarding his application. At the Ministry they were told that the relevant official was not present at that time and that they should return later. Shortly afterwards the three young men were reportedly detained by officers of the Interior Ministry's anti-terrorism unit in the staircase of the Ministry of Refugees and Accommodation in Tbilisi. There were strong indications that an official at the Ministry of Refugees and Accommodation had informed the anti-terrorism unit of their presence in the building. After their detention, the three were

believed to have been taken to the offices of the anti-terrorism group for questioning. The same day they were taken to the Red Bridge on the border with Azerbaijan and left in the territory between Georgia and Azerbaijan. However, the brothers managed to find their way back to Georgia. On 24 March 2005 they again turned to the Ministry of Refugees and Accommodation and the Ministry registered Suleiman and Sosran Tsatiashvili's asylum claim. However, officers of the anti-terrorism unit were again present in the building and were reportedly only prevented from detaining them because the young men were accompanied by representatives of the Ombudsman's Office and a representative of the UN Association of Georgia. The young men were reportedly told they would be under surveillance until a decision was taken regarding their asylum application.

### ***Amnesty International's recommendations***

Amnesty International has urged the authorities of Georgia to:

- Pay special attention to the eradication of excessive use of force during the arrest of suspects, when dispersing demonstrations, and when suppressing prison disturbances.
- Ensure that the authorities refrain from making public statements encouraging the use of excessive force by police or endorsing operations by police or penitentiary troops that were accompanied by allegations of excessive force.
- Oblige judges to routinely ask persons brought before the court from police custody whether they were tortured or ill-treated during the arrest or their detention in police custody.
- Institute sufficient safeguards - both legislative and procedural - to ensure that no one is returned to a country where there are substantial grounds to believe that they are at risk of torture or other serious human rights violations.

## **Article 7 in conjunction with Article 2: Remedy in cases of torture or other ill-treatment**

### ***Impunity continues to be a concern***

Since the government of President Mikheil Saakashvili came to power in November 2003, at least 27 police officers have been sentenced to prison terms following convictions for beating or otherwise ill-treating detainees. The courts of first instance handed down sentences ranging from two years' to 13 years' imprisonment for crimes involving ill-treatment.<sup>22</sup> To Amnesty International's knowledge at least six of these individuals have been released on probation and the sentence of at least one of them has been reduced on appeal from six years to 18 months' imprisonment.

As mentioned above, in July 2005 new provisions were included in the Criminal Code of Georgia defining the crimes of "torture", "threatening with torture" and "inhuman and degrading treatment". "Torture" and "inhuman and degrading treatment" are punishable by up to 15 years' and six years' imprisonment, respectively.

While there have been several cases where police officers were charged under the new provisions, as of May 2007, nobody had yet been convicted for the crimes of "torture", "threatening with torture" or "inhuman and degrading treatment".

All police officers sentenced to prison terms for beating or otherwise ill-treating detainees in recent years were convicted by first instance courts under at least one of the following articles: "less Serious Damage to Health through Negligence" (Article 124 of the Criminal Code of Georgia), "hooliganism involving a weapon" (Article 239, part 3, of the Criminal Code), "abuse of official authority" (Article 332) and "exceeding official authority" (Article 333 of the Criminal Code). The maximum prison sentence that can be imposed under these articles is eight years.<sup>23</sup>

Amnesty International continues to be concerned about impunity for torture, other ill-treatment and excessive use of force (see also the chapter on Article 6 in conjunction with Article 2, above). There are indications that many cases still do not come to light because police cover up their crimes and detainees are afraid to complain or identify the perpetrators for fear of repercussions. Non-governmental sources raised concern that in many cases

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<sup>22</sup> Information provided by the Human Rights Protection Unit of the Prosecutor General's Office in letters dated 17 January 2007, 14 March 2007, and 21 May 2007.

<sup>23</sup> Article 333, part 3, of the Criminal Code is punishable by up to eight years' imprisonment. It concerns the offence of exceeding official authority, repeatedly, using violence or arms, or insulting the dignity of a victim.

investigations were not initiated promptly or they were excessively protracted and failed to bring perpetrators to justice.

*Alleged victim of ill-treatment refuses to lodge complaint*

For example, in June 2007 Amnesty International learnt of a case where a detainee alleged that he was beaten by plainclothes officers of the special operative department of the Ministry of Internal Affairs during the arrest. After that the officers reportedly took him to the Ministry's detention facility on Vazha Pshavela avenue in Tbilisi. Inside the detention facility, before the interrogation, police officers reportedly beat him again.

Amnesty International viewed photographs of the man's face, which show a light injury on his nose. His lawyer reported that six police officers had beaten him in different parts of the body including his face and the region of his ribs and kidneys.

Reportedly, police forced the individual to sign the protocol of the first interrogation on the day of his arrest, which stated that he did not need a lawyer. He was reportedly told that if he waived his right to a lawyer he would be released on bail in two days. Police reportedly urged him to warn his lawyer, who started to work on his case on the second day after his arrest, that the lawyer should "not complain to the prosecutor's office. Otherwise [he] would spend [time] in prison much longer". The man urged Amnesty International through his lawyer not to pass on his name and case details to the Prosecutor General's Office, for fear of repercussions.

Concern has been raised in Georgia in relation to the ill-treatment of Vakhtang Guchua and Zaal Akobia. While one officer was brought to justice and sentenced to 11 years' imprisonment earlier this year, other officers reportedly involved in the ill-treatment have yet to be identified and brought to justice.

*The case of Vakhtang Guchua and Zaal Akobia*

In May 2005 Amnesty International visited Vakhtang Guchua and Zaal Akobia in the investigation-isolation prison no. 4 in the western town of Zugdidi. The young men had allegedly been ill-treated by at least a dozen special police officers, some of whom were wearing masks. The forensic medical expert Roin Petelava examined the two young men later in April and found bruises and scratches on their bodies. The expert considered that the injuries, which he classified as light injuries, were caused by a blunt object.

According to the Human Rights Protection Unit of the Prosecutor General's Office, on 10 August 2005 an investigation was opened against a former officer of the Special Operative Department of the Ministry of Internal Affairs to ascertain whether he used duress to compel the detainee or detainees to provide evidence (Article 335, part 2, of the Criminal Code). On 3 October Zugdidi District Prosecutor's Office opened another investigation into

allegations of ill-treatment under Article 333, part 3, of the Criminal Code of Georgia “exceeding official authority”. On 31 January 2006 the case opened under Article 335 was forwarded to Zugdidi District Court.

Vakhtang Guchua’s lawyer told Amnesty International in October 2006 that the officer had been released on bail. On 12 September 2007 the representative of the Ombudsman’s Office in Zugdidi reported that several weeks ago the officer had been sentenced to 11 years’ imprisonment under Articles 333 and 335 of the Criminal Code and that his appeal was pending with Kutaisi Appeal Court. Reportedly, no other officers implicated in the ill-treatment had been identified and charged. According to an official at the Ombudsman’s Office “no real action has been taken to identify [...] the men in masks”.<sup>24</sup>

In the high-profile case of Sandro Girgvliani, who died as a result of beatings by police officers in 2006, there were allegations that senior officials had ordered the beatings. According to non-governmental sources, the authorities covered up the senior officials’ crime and did not open a thorough and independent investigation into these allegations.

#### *The case of Sandro Girgvliani*

Sandro Girgvliani died in January 2006 as a result of severe beatings by officers of the Ministry of Internal Affairs at the cemetery of the village of Okrokana near Tbilisi. On 6 July Tbilisi City Court sentenced four officers to terms of imprisonment for causing his death. On 11 December Tbilisi Appeal Court upheld the sentences. NGOs in Georgia have persistently called on the authorities to conduct a thorough and impartial investigation into allegations that the beatings were ordered by senior government officials.

Among those in favour of constructively addressing doubts raised by the public about the way the authorities had dealt with Sandro Girgvliani’s death was Nino Burdzhanelidze, Speaker of Parliament and a leader of the ruling party. On 13 February 2007, she was reported by the online magazine *Civil Georgia* as stating at a session of Parliament that “it is of principled importance for us that the trial ends once and forever in a way that society expects it to be finished and the truth is revealed about this tragedy”.

A draft resolution drawn up by opposition politicians calling for a special parliamentary investigation commission into the deaths of Sandro Girgvliani and Amiran Robakidze, who was shot dead by police in November 2004, was rejected by Parliament on 16 February.<sup>25</sup>

<sup>24</sup> Email correspondence, 12 and 13 September 2007.

<sup>25</sup> For further information on the case of Amiran Robakidze, refer to Amnesty International report *Georgia: Torture and ill-treatment – still a concern after the “Rose Revolution”* (AI Index: EUR 56/001/2005).

Amnesty International was concerned that crucial evidence remained undisclosed. According to Shalva Shavgulidze, the lawyer of Sandro Girgvliani's family, although investigators of the Ministry of Internal Affairs obtained detailed lists of telephone calls made over the period of three weeks starting 10 January 2006 by a number of people allegedly implicated in the case, only fragments of these records were included in the case file. Despite repeated petitions to the courts, the material was not made available to him. Reportedly, Shalva Shavgulidze also repeatedly and to no avail petitioned the courts to make available to him video footage of a security camera installed at a house situated on the way to the village of Okrokana. Shalva Shavgulidze told Amnesty International: "The authorities are reluctant to disclose these materials as they would shed light on those that are behind the crime, those that ordered that Sandro Girgvliani be 'punished'."

### ***Identification tags for law enforcement officers***

Amnesty International has raised concern about allegations that in many operations by law enforcement officials in which excessive force was reported, some or all officers were masked and no name tags and/or identification numbers were visible. Many unmasked officers implicated in ill-treatment or excessive use of force in recent years have reportedly also not worn name tags and/or identification numbers.

An important safeguard against the use of unlawful force by law enforcement officials and to help ensure that such officials who act in violation of international standards do not enjoy impunity, is that officers should be clearly identifiable at all times, including while carrying out police operations such as the dispersal of demonstrations as well as the arrest and detention of suspects. This requires, for example, that law enforcement officers should wear clear name tags and/or identification numbers and there should be a clear method of tracking identification numbers, so that police can be identified for the purpose of investigating incidents of abusive use of force or other human rights violations where they may have been involved. Masks or other means of disguising officers' personal identities should only be used exceptionally, if such measures are necessary for the personal protection or security of the officers concerned or similar reasons of necessity; in such cases the need for each officer to be identifiable by such means as a unique traceable identification number is particularly important.

The Human Rights Protection Unit of the Prosecutor General's Office informed Amnesty International on 10 November 2005 that the Prosecutor General instructed prosecutors to wear identification cards in a visible place while visiting places of detention and deprivation of liberty, as well as during meetings with detainees when conducting an investigation. According to the Unit, similar orders had also been issued by the Ministry of Internal Affairs and the Ministry of Finance of Georgia; the orders entered into force on 1 November 2005.

On 19 February 2007 the Minister of Internal Affairs issued an order requiring that personal identification numbers be distributed to police officers across Georgia who carry out investigative actions and who, in the course of their work on criminal cases, are in direct contact with detainees or prisoners, as well as to all employees of preliminary detention facilities who are in direct contact with detainees.

On 31 May 2007 Amnesty International sent a letter to the Head of Administration of the Ministry of Internal Affairs seeking further information about the February 2007 order, including when police officers were required to start wearing the identification numbers; the manner in which they were required to wear them; and whether they were required to wear them at all times when in contact with detainees or prisoners. By mid-September Amnesty International was still awaiting a reply.

### **Special unit of the Ministry of Internal Affairs**

In recent years Amnesty International had repeatedly raised particular concern that officers of the special police unit have not been required to wear identification badges, given that this unit has been implicated in numerous cases of ill-treatment and excessive use of force. Officers of the special police unit are often masked when conducting arrests or dispersing demonstrations or other special operations.

On 11 May 2007 the Head of Administration of the Ministry of Internal Affairs informed Amnesty International delegates during a visit to Georgia that officers of the special police unit remained exempted from the requirement to wear identification badges. He added that the Ministry was considering to introduce identification badges for the special police unit "in due course" and that the Ministry was working on an order to this effect. On 31 May Amnesty International sent a letter to the Head of Administration of the Ministry of Internal Affairs asking for further details concerning the content of the order and when it was envisaged to be issued. By mid-September Amnesty International was still awaiting a reply.

### **Special unit of the Ministry of Justice**

In August 2006 the Head of the Penitentiary Department of the Ministry of Justice issued an order (No. 1949) concerning identification badges for the Special Reaction Unit tasked with dealing with law and order in the penitentiary system. The Human Rights Protection Unit of the Prosecutor General's Office informed Amnesty International that, according to the order, "members of the Special Reactions Unit should wear identification badges (breast plate)". According to the Human Rights Protection Unit, the badges have uniquely traceable identification numbers.

## ***Reparations for torture, other ill-treatment and excessive use of force***

### **CAT concerns and recommendations**

On 3 and 4 May 2006 the Committee against Torture (CAT) examined Georgia's third periodic report on its implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In its conclusions and recommendations that were issued on 19 May the CAT "noted that while the Constitution and the Criminal Procedure Code (CPC) contain provisions regarding the right to compensation for victims, there is no explicit law that provides for reparations. The Committee is also concerned that there is no information available with regard to the number of victims who may have received some form of assistance or rehabilitation." The CAT requested Georgia to "consider adopting specific legislation in respect of compensation, reparation and restitution, and that in the meantime, practical measures be taken to provide redress and fair and adequate compensation, including the means for as full rehabilitation as possible."

### **No victim has received compensation**

Although domestic legislation contains provisions regarding compensation for victims of torture or other ill-treatment, to Amnesty International's knowledge, there has so far not been any case of a victim receiving compensation.

Under Article 42 (9) of the Constitution of Georgia, "[a]ny person having unlawfully sustained a damage inflicted by state agencies, self-government bodies and officials shall be guaranteed full compensation at the expense of the state and determined through court proceedings".

The CPC sets out that "material damage shall be compensated in full", including direct damage and possible loss of earnings/income (Article 30, part 3, of the CPC); "physical injury shall be redressed by compensating the money paid for funeral, medical treatment, the acquisition of medicines and prosthetic appliances" (Article 30, part 4, of the CPC); and moral damage should be compensated through money or other material resources taking into account the gravity of the damage and the material state of the accused (civil defendant).

Elene Tevdoradze, chairwoman of the Parliamentary Committee on Human Rights and Civil Integration, informed Amnesty International on 21 June 2007 that there was no case in Georgia where a victim of torture or other ill-treatment had received compensation.

An official of Tbilisi Appeal Court informed Amnesty International on 9 June 2007 that there was only one case where a court had been approached for compensation in connection with torture or other ill-treatment. The official added that Poti District Court and Kutaisi Appeal Court rejected the application because it was reportedly not submitted in line

with the requirements of the CPC of Georgia. The courts reportedly explained to the complainant that the complaint should be pursued in a civil suit. Amnesty International has no further information about the case.

Public awareness about the possibility to claim compensation for torture or other ill-treatment is very low. To Amnesty International's knowledge, even experienced lawyers including those working on cases involving allegations of torture or other ill-treatment are often not aware that and how victims of torture or other ill-treatment can claim compensation.

According to Principle 24 of the Basic Principles, "[s]tates should develop means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Basic Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access."

## **OPCAT**

Georgia acceded to OPCAT on 22 June 2006. Under the OPCAT, Georgia was to designate or establish one or more independent national preventive mechanisms for the prevention of torture within a year. While the authorities have established an Inter-agency Coordination Council to implement activities directed against torture, inhuman, cruel and degrading treatment or punishment (Inter-agency Coordination Council), tasked with providing assistance to the National Preventive Mechanism, Amnesty International is concerned that they have yet to designate or establish a National Preventive Mechanism.

On 20 June 2007 President Mikheil Saakashvili issued a decree establishing the Inter-agency Coordination Council. The President decreed that apart from representatives of the government, representatives of intergovernmental and non-governmental organizations, and of the Ombudsman's Office, should take part in the work of the Inter-agency Coordination Council. According to the statute of the Council, the main objectives of the body include monitoring; assistance to and coordination of the work of relevant government agencies with regard to prevention of and the fight against torture or other ill-treatment and rehabilitation of victims; and the submission of recommendations to the President. The statute also stipulates that the newly-formed body should provide "assistance to the activities of the National Preventive Mechanism established according to [OPCAT]". Amnesty International is not aware of when the authorities plan to establish or appoint the National Preventive Mechanism.

Any national monitoring mechanism/s for the prevention of torture and other ill-treatment should be established and work according to the Principles relating to the status of national institutions for the promotion and protection of human rights adopted by the UN

General Assembly in December 1993.<sup>26</sup> When setting up the national monitoring mechanism/s in Georgia Amnesty International believes that it will be key to ensure that the mechanism/s has functional independence and that particular attention is paid to the selection of its members as well as to their training. The selection of members must be conducted in a transparent manner; they must have the required capabilities and professional knowledge, and they must be independent. In line with the requirements outlined in OPCAT, the members of the national visiting bodies should be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty and should include doctors, psychiatrists and lawyers. Members should be provided training in how to effectively monitor conditions of detention.

### **Government Action Plan on torture**

Amnesty International is concerned that the Plan of Action against Torture in Georgia covering 2003 to 2005 expired in December 2005 with no new Action Plan in place. On 6 September 2007, at the first meeting of the Inter-agency Coordination Council that was attended by representatives of the authorities, as well as intergovernmental and non-governmental organizations, the authorities reportedly tabled a draft action plan on torture and invited input from the participants at future sessions. At the time of writing the content of the draft Action Plan was not known to Amnesty International.

In June 2004 the current government took up the implementation of the Plan of Action against Torture in Georgia (2003 to 2005) that had been enacted in September 2003 by then President Eduard Shevardnadze. The Plan of Action had been developed by the National Security Council of Georgia in consultation with the Mission to Georgia of the Organization for Security and Co-operation in Europe (OSCE) and the OSCE Office for Democratic Institutions and Human Rights (ODIHR). In the Plan of Action the authorities committed themselves to conduct reforms to address the issue of torture and ill-treatment including by taking legislative steps, monitoring detention facilities and taking measures against impunity for the perpetrators.

Amnesty International believes that a comprehensive, coherent and appropriately resourced Action Plan against torture, ill-treatment and excessive use of force should swiftly be drafted in consultation with NGOs, and implemented, to ensure that recommendations made by intergovernmental bodies including UN Committees and the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, as well as by NGOs are adequately addressed.

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<sup>26</sup> General Assembly resolution 48/134 of 20 December 1993. (UN Doc. A/RES/48/134).

## ***Amnesty International's recommendations***

Amnesty International has called on the authorities of Georgia to:

- Ensure the initiation of prompt, independent, impartial and thorough investigations into all allegations of torture or other ill-treatment.
- Ensure that detainees who lodge complaints about torture or ill-treatment are granted adequate protection so that they can lodge a complaint without the fear of being subjected to any kind of reprisal or prosecution.
- Ensure that law enforcement officers who are placed under investigation for serious human rights violations are suspended pending the outcome of the disciplinary and judicial proceedings against them.
- Make available to the public information about investigations conducted by the General Inspection of the Ministry of Internal Affairs into allegations of torture or other ill-treatment as well as statistics on suspensions of police officers from their duty as a result of allegations involving torture or other ill-treatment.
- Ensure that those charged with conducting investigations into allegations of torture or other ill-treatment are adequately trained and resourced so as to enable them to conduct investigations in a prompt, thorough, independent and impartial manner.
- Ensure that all law enforcement officers including special unit police wear identification tags at all times when conducting arrests, when visiting places of detention and deprivation of liberty as well as during meetings with detainees and prisoners.
- Prohibit the use of masks or other means of disguising officers' personal identities. Only make exceptions if such measures are necessary for the personal protection or security of the officers concerned or similar reasons. In such cases the need for each officer to be identifiable by such means as unique traceable identification numbers is particularly important.
- Ensure that every victim of torture and other ill-treatment as well as relatives of those who have died as a result of such treatment have unhindered access to the means of obtaining redress and an enforceable right to reparation including fair and adequate compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition, and that all persons including detainees are informed of this right.
- Consider adopting specific legislation regarding compensation, reparation and restitution, in line with a recommendation (no. 20) made by the Committee against Torture in May 2006.
- Inform the general public and, in particular, victims of torture or other ill-treatment of their rights and available remedies and of all legal, medical, psychological, social, administrative and all other services to which victims may have a right of access. The authorities should consider handing out a leaflet to each complainant explaining their rights and relevant proceedings.
- Establish promptly a national mechanism/s for the prevention of torture, fulfilling all requirements outlined in the Optional Protocol to the Convention against Torture and

other Cruel, Inhuman or Degrading Treatment or Punishment. Pay special attention to ensuring that the mechanism has functional independence; that the members of the mechanism/s have the required capabilities and professional knowledge; that they are independent; and that their selection is conducted in a transparent manner.

- Swiftly draft – in cooperation with NGOs – a comprehensive, coherent and appropriately resourced action plan against torture, ill-treatment and excessive use of force to ensure that recommendations made by intergovernmental bodies including UN Committees and the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, as well as by NGOs are adequately addressed.

## **Articles 6 and 7 in conjunction with Article 2: Impunity for crimes within the jurisdiction of the ICC**

Amnesty International notes the view expressed by the Human Rights Committee in its General Comment No. 31 on Article 2, *"The nature of the General Legal Obligation Imposed on States Parties to the Covenant"*, that states parties "should also assist each other to bring to justice persons suspected of having committed acts in violation of the Covenant that are punishable under domestic or international law."<sup>27</sup>

In this respect Amnesty International points out that while it welcomed Georgia's ratification, on 5 September 2003, of the Rome Statute of the International Criminal Court (ICC), the organization remains concerned that Georgia made a bilateral agreement with the United States of America (USA) not to surrender US nationals accused of genocide, crimes against humanity or war crimes to the ICC. Amnesty International regards such agreements as being in breach of states' obligations under international law.

In the conclusions and recommendations adopted by the Committee against Torture (CAT) following its review of Georgia's state report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in May 2006, CAT has also expressed concern about information regarding the existence of such agreements and recommended Georgia to take "all necessary measures to review the relevant terms of those agreements which prohibit the transfer of citizens from certain States who are on Georgian territory to the International Criminal Court".<sup>28</sup>

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<sup>27</sup> Adopted on 26 May 2004, paragraph 18. (UN doc. CCPR/C/21/Rev.1/Add.13).

<sup>28</sup> 25 July 2006, paragraph 14. (UN doc. CAT/C/GEO/CO/3).

### ***Amnesty International's recommendation***

In light of the concerns noted above Amnesty International has called on the authorities of Georgia to:

- Revoke the bilateral impunity agreement with the US, that has been in place since 2003, considering that the agreement not to surrender US nationals accused of genocide, crimes against humanity or war crimes to the ICC is in breach of states' obligations under international law.

## Articles 9 and 14: Right to a Fair Trial

Amnesty International continues to receive allegations about trials that reportedly did not fully conform to international standards.

Among other things, NGOs in Georgia and the Ombudsman have alleged that judges are often biased in favour of the prosecution and that prosecutors and the executive have acted to influence judges' decisions in individual cases.

The two high-profile cases described below are among those about which such reports have emanated.

### *The case of Irakli Batiashvili*

On 29 July 2006 Irakli Batiashvili, leader of the Forward Georgia opposition group and former Security Minister, was detained by police and charged with "complicity", "high treason", "conspiracy or uprising to overthrow the constitutional order by force" and "failure to report a grave crime".

Irakli Batiashvili's arrest was related to a conflict between the central authorities and Emzar Kvitsiani, who served until 2004 as former President Eduard Shevardnadze's representative in the Kodori Gorge area of Georgia. He also was the leader of the armed group Monadire (Hunter), which initially existed as a paramilitary group and was later formally subordinated to the Ministry of Defence. Under the government of President Mikheil Saakashvili there have been attempts to disband Monadire or to restructure it, and the Ministry of Defence has reportedly proposed subordinating it to the Ministry of Internal Affairs of Abkhazia in exile.

On 22 July 2006 Emzar Kvitsiani was quoted by *InterPressNews* as saying that the Minister of Defence of Georgia "announced war against us and is planning to attack the gorge on 27 July". Later that day he was quoted in a broadcast by *Rustavi-2* television as saying that "any armed force, which will enter the gorge, will be repelled". On 25 July the authorities sent troops to the gorge in what they termed an "anti-criminal operation". The government announced it had re-established control over the gorge by the end of July. There was conflicting information regarding casualties resulting from the special operation. While many of Emzar Kvitsiani's supporters were arrested, Emzar Kvitsiani escaped.

On 23 May 2007 Irakli Batiashvili was sentenced to seven years' imprisonment on charges of "complicity" and "conspiracy or uprising to overthrow the constitutional order by force". During the trial the charges of "high treason" and "failure to report a grave crime" had been dropped. On 13 September Tbilisi Appeal Court upheld the verdict of Tbilisi City Court.

The judgment of Tbilisi City Court, among other things, stated that “Irakli Batiashvili decided to render assistance to E. Kvitsiani through providing him with instructions, advice and necessary information whereby he facilitated him to achieve the outlined objective. I. Batiashvili informed E. Kvitsiani and assured him that through his public appearances and those of representatives of some political parties he would assist him in the formation of public opinion supporting the insurrection [...] I. Batiashvili provided favourable assessment to their public movement and actions against the authorities whereby he inspired them and called for prolongation of the insurrection.”

In the course of the trial and since Tbilisi City Court issued its verdict, there have been allegations that there was insufficient evidence to prove that Irakli Batiashvili intended to facilitate a violent overthrow of the government. On the contrary Irakli Batiashvili and others claim that, in an attempt to avoid bloodshed in the region, Irakli Batiashvili's aim was to act as a peace broker between Emzar Kvitsiani and the Georgian authorities.

Amnesty International was concerned about allegations that the criminal proceedings against Irakli Batiashvili failed to comply with Georgian law and international human rights standards. Among other things, Irakli Batiashvili's lawyers have appealed against the refusal of the trial court to agree to the defence's request to summons some witnesses, including an expert witness, to the court, in violation of Georgian law and the internationally guaranteed rights to a defence and to obtain the attendance and examination of witnesses on behalf of the accused under the same conditions as witnesses against the accused. At trial and on appeal, the lawyers have also argued that the CD that was included in the case file as evidence and was relied on in the judgment was not the original nor was it a complete recording of the telephone conversations between Irakli Batiashvili and Emzar Kvitsiani and with Emzar Kvitsiani's sister. It was alleged that in some places the Ministry of Internal Affairs used a buzzer to make certain words unrecognizable. The original recording was not made available to the lawyers. In addition, it is alleged that Irakli Batiashvili was detained in violation of Georgian law and international human rights standards after November 2006, as no court had extended his preliminary detention beyond that date.

#### *Alleged coup plotters*

On 6 September 2006 police detained at least 29 members of the opposition Justice Party and other supporters and alleged supporters of Igor Giorgadze, a former chief of State Security and leader of the Justice Party, who is wanted by the Georgian authorities on suspicion of involvement in the 1995 assassination attempt against former President Eduard Shevardnadze. All but 13 defendants were released the same or the next day.<sup>29</sup>

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<sup>29</sup> The 13 defendants were: Guram Papukashvili, Teimuraz Zhorzholiani, Maia Topuria, Vakhtang Talakhadze, Varlam Galdava, Ramaz Samnidze, Maia Nikoleishvili, Zaza Davitaia, Giorgi Akhobadze, Revaz Bulia, Yakob Kvinikadze, Giorgi Metreveli, Kakha Kantaria. An arrest warrant was also issued for Gela Archvadze, who was reportedly hiding from the authorities.

On 8 September Tbilisi City Court ordered 12 defendants to be placed in preliminary detention while Maia Nikoleishvili, chairperson of the Anti-Soros Movement, was released on bail after pleading guilty to plotting a coup and stating that a conspiracy meeting had taken place in Tbilisi on 4 May 2006. The other defendants insisted they were innocent.

The charges against the defendants included “conspiracy or uprising to overthrow the constitutional order by force” and “high treason”. Kakhaber Kantaria and Maia Topuria were additionally charged with offences concerning the “illegal purchase and storage of firearms, explosives or ammunition”.

The trial started in Tbilisi City Court on 26 March. The judge ordered the entire trial to be closed from the public, for the purpose of protecting the identity of witnesses for reasons of their security and because the trial would deal with classified documents. Amnesty International sought information on why the entire trial was closed, but did not receive an adequate reply.

On 24 August Tbilisi City Court sentenced the 12 defendants to prison terms ranging from three years and six months to eight years and six months. Maia Nikoleishvili was given a suspended prison sentence of two years. At the time of writing, the defendants’ lawyers were reportedly preparing appeals to be submitted to Tbilisi Appeal Court.

The lawyers claimed that in the proceedings evidence emerged of the alleged planting of evidence; of changing the date of the alleged conspiracy meeting after evidence had emerged that some defendants had an alibi for the date that they had initially been arrested for; the possible coercion of at least one prosecution witness; and alleged unreliable evidence of state witnesses.

### ***Amnesty International's recommendations***

Amnesty International continues to call on the authorities of Georgia to:

- Ensure that everyone who stands trial in Georgia is granted a fair and public hearing by a competent, independent and impartial tribunal.
- Ensure that everyone charged with a criminal offence is presumed innocent until proved guilty according to law.
- Ensure that everyone charged with a criminal offence is able to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.