HUMAN RIGHTS VIOLATIONS IN GEORGIA

ALTERNATIVE REPORT TO THE UN HUMAN RIGHTS COMMITTEE

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Public Health and Medicine Development Fund of Georgia

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Foreword:

Writing alternative reports is one of the primary activities of the World Organisation Against Torture (OMCT) and a vital source of information for the United Nations Treaty Bodies including the Committee Against Torture (CAT). This activity is complementary to providing direct assistance to victims.

These alternative reports are a valuable source for Independent Experts who analyse the implementation of the United Nations Human Rights Instruments. With these reports, it is possible to see the situation as objectively as possible and to take a critical look at government action to eradicate torture and other cruel, inhuman or degrading treatment or punishment.

Under the *aegis* of the European Union and the Swiss Confederation, OMCT's "**State Compliance**" Programme together with the "**Rights of the Child**" and "**Violence against Women**" Programmes present this report on human rights violations in Georgia at the occasion of the 36th session of the Committee Against Torture to be held in Geneva from 1st May to 19th May 2006 during which the third periodic Georgian Report will be reviewed.

This report was jointly prepared by three national human rights non-governmental organisations (NGOs) in collaboration with OMCT. Representatives from these NGOs will present this alternative report and point out their concerns and issues about the situation in Georgia during a briefing session with the members of the Committee Against Torture.

This report will be published and used to lobby on the national and international levels. Notice of the dialogue between the independent experts of the CAT and the official Georgian delegation the Concluding Observations and recommendations of the Committee will be added to the report.

Finally, a follow-up mission in Georgia took place in September 2006 to launch the shadow report and publicise the CAT Concluding Observations.

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1. General Introduction

Authors of the report (Brief presentation of the organisation)

Human Rights Information and Documentation Centre (HRIDC)

The **Human Rights Information and Documentation Centre (HRIDC)** was founded on 10 December 1996, as a non-profit, non-governmental organisation in Tbilisi, Georgia.

The main purposes of HRIDC are to protect and promote human rights and basic freedoms in Georgia.

The main priorities of the organisation are:

- Advocacy – a Legal Aid Centre functions at the HRIDC office where individuals can have access to free legal consultations.
- Information – www.HumanRights.ge is an online magazine and web portal on human rights in Georgia daily updated by the organisation.
- Projects – the Centre is continuously elaborating and implementing various projects to improve the human rights situation in Georgia.
- Education/Public awareness raising – the Centre organises training sessions and seminars for different target groups on human rights related topics.
- Monitoring/Reporting – the organisation monitors the human rights situations in Georgia and reports its findings to the EU, OSCE, UN and others. The Centre also publishes materials, brochures, booklets, handbooks and other materials on human rights.
- Lobbying – the Centre is involved in lobbying official bodies in the legislative and policy fields to promote human rights in Georgia.

The Centre implements the following programmes: Children's Rights, Women's Rights, Trafficking, Refugees & IDPs, Social, Economic and Cultural Rights, Police and Human Rights, Conflict Prevention/Resolution and Education in Human Rights.

HRIDC is a member of the following international networks:

International Federation for Human Rights (FIDH); SOS-Torture - OMCT Network (World Organisation Against Torture); Human Rights Without Frontiers Int.; Human Rights Information and Documentation Systems, (HURIDOCS), International Peace Bureau; Child Rights Information Network; European Network for Civil Peace Services; NGO Coalition for the International Criminal Court; UNITED for Intercultural Action - European Network Against Nationalism, Racism, Fascism and Support of Migrants and Refugees.

Georgian Young Lawyers Association (GYLA)

Georgian Young Lawyers Association (GYLA) was initiated as a union of professional lawyers dedicated to change the image of the legal profession by taking the lead in creating a just society. GYLA was officially registered in September 1994 as a non-profit, non-governmental organisation. GYLA is a professional organisation based on membership; today it is comprised of 600 members.

GYLA has been developing its capacity in two different sectors for the last 13 years: Development of the Free Legal Aid System (LAS) and of the Legal Training and

Information Centre (LTIC) in order to support rule of law through alternative legal education and increasing the accessibility of legal aid for the vulnerable population. During these 13 years, GYLA has been operating, and continues operation of its activities, through its offices in most of the regions in Georgia: Telavi, Rustavi, Gori, Kutaisi, Batumi, Dusheti and Ozurgeti.

GYLA plays an important role in establishing an effective legal basis for the protection of human rights and undertakes a major lobbying role at the Georgian Parliament. At the same time, GYLA has established a precedent for the effective use of existing means to protect human rights.

The association has expanded its activities and geographical mandate due to the increased demand for its services from various groups of society. Originally, GYLA was working for alternative legal education and the protection of civil and political rights. However, growth of the organisation and diversity of interests have expanded activity areas. Accordingly, GYLA has done substantial work in anti-corruption and in the field of social and economic rights.

The four strategic objectives adopted by the Ninth GYLA General Assembly in 2002 are:

1. Raising public legal awareness and establishment of rule of law;
2. Development of the legal basis for civil society and rule of law;
3. Protection of human dignity, rights and fundamental freedoms; and
4. Development of the legal profession; creation and establishment of professional norms of ethics.

The Public Health and Medicine Development Fund of Georgia (PHMDFG)

The Public Health and Medicine Development Fund of Georgia (PHMDFG) is an NGO established in 1999 upon its registration by the Ministry of Justice of Georgia. The Fund deals with those problems which impede the development of children or adolescents and negatively reflect on the quality of their lives.

Since 2000, the priority of the PHMDF is work in the field of child protection against abuse and neglect (CAN) and the fund delivers a programme within which it already has implemented more than 15 projects. Since 2002, through financial support of the fund CORDAID, the PHMDF has established the “Tbilisi Child Support Centre” for abused and neglected children.

Main activities of the Tbilisi Child Support Centre are: supporting children victims of abuse and neglect, educating children and specialists working with children; supporting relevant legislation harmonization and developing mechanisms of its execution; raising society awareness and erasing the stigma associated with speaking out against child abuse; changing attitudes of professionals in close relationship with children; and strengthening target groups (children) to protect their rights and conduct monitoring in children’s institutional organisations.

2. General background

In November 2003, the 12-year-long regime of Eduard Shevardnadze was ended by the “Rose Revolution”. After the Parliamentary elections in November, protest actions were set off demanding Shevardnadze’s resignation. Mikheil Saakashvili, leader of the opposition, led a group of protestors into the Parliament while security forces escorted

Shevardnadze out of the building. On 23 November, Shevardnadze resigned and an interim government was appointed under the leadership of Nino Burjanadze, Chairperson of the Parliament.

On 4 January 2004, new presidential elections were held and Saakashvili won by an overwhelming majority. Officially, the voter turnout amounted to 83%, 96% of whom voted for Saakashvili.

Legislative and constitutional changes, which challenge a republican-style balance of power, are of particular concern. These measures include constitutional changes that enhance executive authority at the expense of the legislative and judicial branches of government. The changes made by the Parliament on 6 February 2004 strengthened presidential powers by allowing the President to dissolve Parliament. Another amendment empowers the President to appoint and dismiss judges, thereby increasing the President's influence over a judiciary that already suffers from a lack of independence. Moreover, the government rushed through those constitutional changes without publishing draft amendments for public discussion as required by the Constitution.

Unfortunately, the proliferation of anti-democratic tendencies has not come to an end in 2005 and significant setbacks have been observed in several fields. Step by step, Georgia is acquiring all the signs of a police State.

The right to freedom of expression has clearly received the most serious setback. Arbitrary detentions, beatings, grenade attacks, defamation and pressure against journalists have almost become daily business. Dozens of journalists fell victim to pressure, violence, and arbitrary detention in 2005. Several media holdings have been closed down. According to Reporters Without Borders, the media freedom index of Georgia continues to drop catastrophically and has moved back 26 steps compared to the last few years. The central government not only proves to be unable to secure the rights of journalists, but sometimes even acts as the initiator of pressure and harassment.

Other areas also show problematic signs. The judiciary has finally become simply the government's "appendix". Pressure against independent minded judges is mounting, with few judges daring to speak out openly, as those who do are often punished. Impunity among law enforcement officials is widespread and no serious action has been taken to reverse this trend. Torture and ill-treatment of detainees remains an unresolved problem. The right to assembly and manifestation, guaranteed by the Constitution, has frequently been violated. Peaceful protests and demonstrations have been forcefully dispersed and demonstrators detained. This all acts to decrease the opportunity and motivation for the populace to express their discontent. Politically motivated kidnappings and murderous special operations create an atmosphere of terror in society. Political imprisonment is real in Georgia. Chechen refugees are sacrificed to pro Russian politics and suffer from negative stereotypes. Violations of socio-economic rights, including mass dismissals of civil servants, have obtained a systematic character. Civil organisations have become marginalized and neglected, and independent NGOs are ignored and suffer from pressure from different high-ranking officials.

WOMEN CONCERN

In Georgia, there are specific government institutions which promote and protect women's rights:

The **Gender Equality Advisory Council** under the chairperson of the Parliament of Georgia has been established with the financial support of the United Nations Development Programme "Gender and Policy in South Caucasus". It is composed of the representatives of government as well as non governmental organisations to discuss gender issues and elaborate relevant reccomendations. The Council meets regularly for the discussion of various draft laws in the light of gender issues and its members regularly organize meetings in the different regions with non-governmental organisations and the population.

The **State Commission on Gender Equality Issues** was established on 28 June 2005 under the Order N 109 of the Government of Georgia. It is composed of various State officials. The Chair of the Commission is the Deputy State Minister on the issues of integration to the European and Euro Atlantic structures. According to the regulation of the Commission, its objectives and aims are as follows:

* Elaborate suggestions and recommendations with respect to the enforcement of gender policy.

* Elaborate a National Concept of State gender policy and present the latter to the Government of Georgia for further consideration.

* Submit recommendations to the Government of Georgia with respect to the promotion of gender equality and harmonization of Georgian Legislation with European Standards.

In the process of gender issue discussions, the Commission actively cooperates with the Gender Equality Advisory Council under the Chairperson of the Parliament of Georgia. The State Commission also prepares suggestions for the monitoring of the activities envisaged by International Agreements and Treaties on Gender Equality. It also cooperates with international and local organisations working on gender issues.

The **National Commission on the Improvement of Women's Status** was created in the National Security Council of Georgia in 1998 with the purpose to protect women's rights and to make them more active. (see Item 8.1)

Two other institutional mechanisms of gender equality were created in Georgia in 2005: The **Parliamentary Council of Gender Equality**, which is under the supervision of the Chairman of Parliament and the State Commission on Gender Equality; and the Advisory Council composed of experts working on gender equality which cooperates with the Commission. Seventeen local experts are unified in the advisory council.

After Georgia adopted the Convention on the Elimination of All Forms of Discrimination against Women several measures were implemented pursuant to Article 2 of the Convention which obliges States parties to take measures to achieve actual equality between women and men. The Government of Georgia created: a **Special Group on Children and Women's Issues** within the institution of Ombudsman; a **State Commission on Women's Development** in cooperation with the United Nations Development Programme and the World Bank.

The goal of all above mentioned instruments and mechanisms is to improve the status of women's rights. In reality, the government did not develop the National Concept of Gender Equality. The political strategy on gender integration is not developed and the concrete mechanisms ensuring gender equality have not been created. There are no strictly determined reporting procedures on gender issues. In addition to this often the representatives of State institutions are not informed what the international obligations

are that need to be taken into consideration during the decision making process and their implementation.

3. Historical and political background

After being annexed by the Russian Empire in the 19th Century, Georgia was independent for three years after the Russian Bolsheviks Revolution (1918 -1921). However, it was then invaded by the Soviet red army in 1921 and incorporated into the Soviet Union in 1922. At the dissolution of USSR in 1991, Georgia became independent and nationalist leader, Zviad Gamsakhurdia, was elected as President. He was soon overthrown by the opposition which, in 1992, led to the appointment of Eduard Shevardnadze as the country's new leader. Although he was re-elected in 2000, Georgian people felt increasingly at the mercy of poverty, corruption and crime.

In November 2003, Parliamentary elections were organised and official results proclaimed President Shevardnadze's party as the winner of the elections. International observers alleged numerous irregularities in the elections which led to mass demonstrations. Georgians took to the streets to support the opposition in what became to be known as the "Velvet Revolution". Under public opinion, pressure and the opposition, Shevardnadze announced his resignation in 2003. The Supreme Court annulled the results of the Parliamentary elections and presidential elections were organised. The opposition leader, Mikhail Saakashvili, was elected President in January 2004.

Break – away regions

Georgia is an independent republic with two minority regions – Abkhazia and South Ossetia - where regular tensions led to conflict between Georgian troops and separatist forces.

Abkhazia

The ethnic Abkhaz people have close historical, linguistic and cultural ties with the people of the Russian North Caucasus. Abkhazia was annexed to the Russian Empire in 1864 and was then incorporated to Georgia by Stalin in 1931. When Georgia became independent in 1991, claims in favour of Abkhaz independence grew stronger. Tensions rose in 1992 and Georgia sent troops in Abkhazia to fight against separatist forces who wanted a break from Georgia. However, one year later after several thousand people were killed, Georgian troops were expelled from Abkhazia. About 250,000 Georgians became refugees and are still unable to return to the region. In October 1993, Georgia agreed to join the Commonwealth of Independent States and received help from Russian government troops. In 1994, the government and Abkhaz separatists signed a ceasefire agreement, paving the way for the deployment of a Russian peacekeeping force in the region. Subsequently, Abkhazia declared its independence but it is not recognised by other countries. Abkhazia is isolated because of an economic embargo which remains in force, except from Russia which maintains a border crossing and has re-opened the railway line to Sukhumi (capital of Abkhazia). Moscow has facilitated the process to gain Russian citizenship for people in Abkhazia, thereby creating further tension with Tbilisi. Most Abkhazi now hold Russian passports.

This fragile peace is maintained by UN military observers and CIS, who are, in effect, Russian peacekeepers. The UN patrols the buffer zone which keeps the Abkhaz and Georgian sides apart. UN efforts to mediate have gotten nowhere. Abkhazia, turning

increasingly towards Moscow, insists that there can be no settlement until Georgia recognises its independence, something which Tbilisi has sworn it will never do. There is no sign that a way out of this volatile impasse will soon be found.

South Ossetia

The region of Ossetia is divided into North Ossetia which is in Russia and South Ossetia which is in Georgia. After the independence of Georgia in 1990, South Ossetia declared its intention to secede from Georgia and in 1991 to proclaim its independence. However, the Georgian government firmly refused Ossetian separatism, seen as a threat to Georgia's territorial integrity and did not recognise South Ossetia's independence. Sporadic violence involving Georgian irregular forces and Ossetian fighters continued until the summer of 1992 when agreement on the deployment of Georgian, Ossetian and Russian peacekeepers was reached. Hundreds died during the confrontations between Georgian troops and Ossetian separatists.

When Saakashvili was elected Georgian President, he firmly asserted his refusal to recognise the independence of South Ossetia, hindering the autonomy of the separatists. In May 2004, tensions rose when South Ossetia held Parliamentary elections non-recognised by the Georgian government. Soon afterwards, an operation to combat smuggling was led by Georgian troops in South Ossetia, which was criticised by Russia. After serious and violent confrontations in August 2004 between Georgian soldiers and South Ossetian separatist forces, an uneasy ceasefire was signed. While separatists were hoping for support from Moscow which still had peacekeeping forces in the region, the Georgian Parliament called for their withdrawal. Recently in February 2006, the Georgian Parliament voted unanimously for Russian peacekeepers to be withdrawn from South Ossetia and to be replaced by international forces.

4. Relevant legal background

4.1. International legal background

Treaty body (status of ratification) Entry into Force	Report	Due	Received	Examined	Overdue Reports
CAT (26/10/94) 25/11/94	Initial Second Periodic Third Periodic	24.11.1995 24.11.1999 24.11.2003	04.06.1996 15.11.1999 04.07.2005	21.11.1996 07.05.2001 To be examined 05.2006	0
CCPR (03/05/94) 03/08/94	Initial Second Periodic Third Periodic	02.08.1995 02.08.2000 01.04.2006	21.11.1995 09.08.2000	27.03.1997 19.03.2002	1
CEDAW (26/10/94) 25/11/94	Initial Second Periodic Third Periodic[1]	25.11.1995 25.11.1999 25.11.2003	09.03.1998 16.04.2004 16.04.2004	11.06.1999 pending pending	0
CERD (02/06/99) 02/07/99	Initial Second, Third Periodic	02.07.2000 02.07.2004	24.05.2000 21.07.2004	22.03.2001 01.08.2005	0
CESCR (03/05/94) 03/08/94	Initial Second Periodic Third Periodic	30.06.1996 30.06.2001 30.06.2007	25.08.1997 19.06.2001	09.05.2000 01.11.2002	0
CRC (02/06/94) 02/07/94	Initial Second Periodic Third Periodic	01.07.1996 01.07.2001 01.07.2006	21.01.1998 29.06.2001	02.06.2000 01.10.2003	0
CRC OP on the Sale of Children, Child Prostitution and Child Pornography (28/06/05) 28/07/2005	Initial	28.07.2007			0

Status of signatures, ratifications, reservations, etc. of the United Nations and regional treaties on human rights:

Other treaties related to Human Rights	Ratification	Entry into force
Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment	(09.08.2005)	
Optional Protocol to the International Covenant on Civil and Political Rights	(03.05.1994)	03.08.1994
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the Death Penalty	(22.03.1999)	22.06.1999
Optional Protocol to the Convention on the Elimination of all forms of Discrimination Against Women	(01.08.2002)	01.11.2002
Rome Statute of the ICC	(05.09.2003)	01.07.2002

4.2. Status of international treaties in domestic law

[1] The second and third periodic reports were submitted together as one document.

According to Article 6 (2) of the Georgian Constitution :

"the State legislation of Georgia shall correspond to universally recognised principles and rules of international law. An international treaty or agreement of Georgia, unless it contradicts the Constitution of Georgia, the Constitutional Agreement, shall take precedence over domestic normative acts."

This provision is complemented by Article 7 of the Constitution pursuant to which:

"The State shall recognize and protect universally recognised human rights and freedoms as eternal and supreme human values. While exercising authority, the people and the State shall be bound by these rights and freedoms as directly acting law."

The abovementioned articles indicate that the Constitution of Georgia takes precedence over international agreements.

4.3. Domestic provisions restricting human rights including State of emergency

Specific legislation limiting human rights

The prohibition of torture[2] in the Constitution is an absolute provision excluding the possibility of any derogation during a State of emergency or martial law.

However, under Article 46 (1) of the Constitution, in case of a State emergency or martial law, the President of Georgia is authorised to restrict certain rights and freedoms guaranteed by the Constitution, including the rights guaranteed by Article 18[3] which safeguard against mental or physical coercion of persons whose liberty is restricted.

There are no provisions in the Constitution or in any other normative act, clarifying what happens in cases in which two different articles of the Constitution guaranteeing the same fundamental rights (namely, Articles 17 (2) and 18 (4)) contradict each other in substance. In the present case, Article 17 (2) is an absolute one, while 18 (4) is derogable.

If there had been no indication of Article 18 in Article 46 (1) of the Constitution, the prohibition of torture would have been an absolute provision subjected to no exceptional circumstances permitting any derogation.

The concern regarding the absolute nature of the provision prohibiting torture has also been raised by the Pubic Defender of Georgia, as well as other international organisations[4].

5. Definition of torture (Article 1 CAT)

5.1. Analysis of the legal provisions (Constitution, Criminal Code, Criminal Procedure Code, etc.) which prohibit torture

[2] Article 17 § 2 reads : "*Torture, inhuman, cruel treatment and punishment or treatment and punishment infringing upon honor and dignity shall be impermissible*."

[3] Article 18 § 4 reads : " *Physical or mental coercion of an arrested or a person otherwise restricted in his /her liberty shall be impermissible*."

[4]The Annual report of the Public defender of Georgia concerning the existing situation in the field of human rights in Georgia in 2004 (pp-15). Amnesty International – Georgia: Torture and ill-treatment is still a concern after the "Rose Revolution"-EUR 56/001/2005,(pp 29), Redress-Georgia at the Crossroads: Time to Ensure Accountability and Justice for Torture", August 2005 (pp7-9).

The prohibition of torture and other cruel, inhuman and degrading treatment or punishment is enshrined in the Constitution of Georgia. Chapter 2 of the Constitution dedicated to the Basic Rights and Freedoms of the individual contains articles prohibiting torture and coercion of an arrested person and provides for the inadmissibility of evidence obtained through illegal means.

According to Article 17(2) of the Constitution:

"Torture, inhuman, cruel treatment and punishment or treatment and punishment infringing upon honour and dignity shall be impermissible."

Furthermore, Article 18(4) of the Constitution provides:

" Physical or mental coercion of an arrested or a person otherwise restricted in his /her liberty shall be impermissible."

Pursuant to Article 42(7) of the Constitution:

" Evidence obtained in contravention of law shall have no legal force."

Prior to the amendments of 23 June 2005 made to the Criminal Code of Georgia, by virtue of Article 126(1), torture was defined as "*systematic beating or other violence that has resulted in the physical and psychological suffering of the victim*", but it did not encompass intentional serious and less serious damage to an individual's health[5], as set out in Article 117 or 118. The offence was punishable by restriction of freedom not exceeding two years or by deprivation of liberty not in excess of three years. Article 126(2)(t) of the Criminal Code set out an aggravated form of this offence for those cases where the act was committed by use of one's official position. It was subjected to a punishment of imprisonment ranging from three to six years and possible deprivation of the right to occupy an official position or pursue a particular activity for the term of three years.

Various other articles of the Criminal Code of Georgia criminalized acts containing the elements of torture as defined by Article 1 of the UN Convention against Torture[6], but none of the punishments envisaged by those articles- even in aggravated circumstances- exceeded 10 years of imprisonment. It therefore fell within the scope of the definition of serious crimes but not of especially serious crimes[7].

[5]The maximum sanction provided for article 117 is an imprisonment up to 12 years and for article 118, imprisonment up to 5 years.

[6] Article 333 (1) under the subheading of "Abuse of Power" States: " Exceeding the limits of official power by the State official or a person equal thereto that has inflicted a substantial damage to the right of a natural or a legal person, legal public or State interest shall be punishable by fine or by jail time up to four months or by imprisonment for a term not exceeding three years, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years". Article 333 (2) States: "Exceeding the limits of official power by a State-political official shall be punishable by fine or by imprisonment for up to 5 years, by deprivation of the right to occupy a position or pursue a particular activity for the term not exceeding three years". Article 333 (3) States : "The action referred to in para 1 or 2 of this article, committed repeatedly (a), by use of violence or application of arms (b) and insulting the dignity of a victim shall be punishable by imprisonment ranging from 3 to 8 years, by deprivation of the right to occupy a position or pursue a particular activity for the term not exceeding three years".
Article 335 (1) under the subheading of "Compelling to giving explanation, evidence or conclusion" States: "Compelling the person to give explanation or evidence , or an expert to submit a conclusion, by means of threats, blackmail or other illegal act committed by a State official or a person equal thereto is punishable by imprisonment from 2 to 5 years, by deprivation of the right to occupy a position or pursue a particular activity for the term not exceeding five years." Article 335(2) States: "The same act committed by means of violence dangerous to life or health or by means of threat to such violence is punishable by imprisonment from 4 to 10 years, by deprivation of the right to occupy a position or pursue a particular activity for the term not exceeding five years. Before the amendments of June 23, 2005, article 335 (2) also contained subparagraph (b) envisaging the committal of the same act by torturing victim."

[7] Article 12 (1) of the Criminal code under the subheading of "Crime Categories" States: In accordance with the maximum term of imprisonment provided as punishment by the article or part of the article of this Code, there shall be three categories of the crime : a) less serious crime; b) serious crime; c)especially serious crime. Article 12 (2) States:

The definition of torture applied in Article 126(1) of the Criminal Code fell far short of Article 1 of the UN Convention against Torture. It did not include such essential elements of torture such as:

- severe physical or mental pain or suffering;
- the intentional character of the crime;
- special purpose – obtaining information or a confession, punishment, discrimination;
- special subject of the crime –public official or a person acting in an official capacity.[8]

Based on several shortcomings of the criminal legislation of Georgia, in respect of the definition of torture, the UN Committee against Torture, as well as the Special Rapporteur on Torture recommended that Georgia: "*amend its domestic penal law to include a definition of torture which is fully consistent with the definition contained in Article 1 of the Convention, and provide for appropriate penalties*"[9].

On 23 June 2005, the Parliament of Georgia adopted amendments to the Criminal Code regarding the definition of the crimes of torture and ill-treatment.

According to the amendments, Article 144(1) of the Criminal Code now defines the crime of torture as :

> *"subjecting a person, his/her relatives or financially or otherwise dependant 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 she/ he or a third party committed or is/are suspected of having committed."*

The penalty prescribed for the crime is imprisonment ranging from five to ten years and/or a fine. The second paragraph of the same article provides for aggravated circumstances of torture, including the components contained in Article 1 of the UN Convention against Torture.[10] In aggravating circumstances the crime is punishable by imprisonment from seven to fifteen years and a deprivation of the right to occupy a position or pursue a particular activity for up to five years.

Threatening to torture (Article 144(2)) and Inhuman and Degrading Treatment (Article 144(3)) were also introduced by the amendments of June 2005.[11]

One of the differences of Article 144(1) is that it applies to both public officials and private individuals and does not define torture as an act committed at the instigation or

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less serious crime is an intentional or negligent crime for which perpetration the maximum penalty envisaged by this code is not in excess of 5 years imprisonment. Article 12 (3) States: Serious Crime is an intentional crime for which perpetration the maximum penalty provided by this code is not in excess of ten years imprisonment , as well as a negligent crime for which perpetration the penalty provided by this code exceeds five years imprisonment. Article 12 (3) States especially serious crime is an intentional crime for which perpetration the penalty provided by this code exceeds ten years imprisonment or a life sentence.

[8] On the incompatibility of article 126 (1) with article 1 of the UN Convention see Redress-Georgia at the Crossroads: Time to Ensure Accountability and Justice for Torture", August 2005, (pp 12-13)

[9] See preliminary Note by the UN Special Rapporteu on Torture, Mission to Georgia, 2005,

[10] Article 144 (1) paragraph 2 (a) "by a public official or a person equal thereto"; (f) " by means of discrimination on the ground of , race, skin color, language, sex, religion, political or other opinion, national, ethnic and social belonging, origin, property and title, place of residence, property.

[11] The punishment provided for article 144^2 is an imprisonment up to two years and and/or a fine. Article 144^3 under the subheading " *Inhuman and degrading treatment" States: ""humiliating or coercing a person, putting him in inhuman and degrading conditions leading to intense physical, mental or moral suffering*" is punishable by a fine and/or imprisonment of up to five years. In aggravating circumstances the crime is punishable by three to six years' imprisonment and/or a fine as well as deprivation of the right to occupy a position or to pursue a particular activity up to five years.

with the consent or acquiescence of a public official or other person acting in an official capacity, thus not bringing out clearly the nature of torture as defined in Article 1 of the UN Convention Against Torture[12]. The same remark applies to Article 143(3) as well, because the definition of inhuman and degrading treatment applied therein is quite vague and falls short of the one implied under Article 16 of the UN Convention Against Torture. It is noteworthy that the sanction provided for the offence is quite low and is not commensurate with the gravity of the crime.

WOMEN CONCERN

Article 14[13] of the Constitution establishes the principle of equality of all people before the law regardless of their sex. The terms - "all people/ each person/ all/ Citizen of Georgia" - contained in the Constitution of Georgia, in the chapter on human rights and freedoms, means "men and women" and applies equally to both. Hence the rights contained in the Constitution apply equally to men and women.

Moreover, the Civil and Criminal Codes of Georgia include the principle of equality or no discrimination on any grounds, including sex. (During the hearing of civil or criminal case no advantage is given to a men comparing to a woman).[14] The procedural legislation of Georgia determines legal means of protection of women's rights based on the principle of equality with men.

Despite the acknowledgement of the principle of equality in the law and the ratification of the CEDAW Convention – of which Article 2 "a" requires the establishment of the principle of equality in the Constitution and legislation of the States parties – the de facto situation with regard to gender equality is problematic.

Despite the existing legislation and legal grounds the issues of enforcement of laws arises. The Constitutional Court of Georgia did not review a case that applies to the violation of women's rights determined in Article 14 of the Constitution. The majority of women do not reveal information regarding gender-based discrimination which may constitute a form of ill-treatment.

Moreover, there is no legislation that explicitly prohibits women's discrimination based on gender or by a husband, as no special laws to facilitate the achievement of gender

[12] Some would argue that the article 144(1) is therefore weakened.

[13] Article 14 of the Constitution of Georgia
"Everyone is born free and is equal before the law, regardless of race, skin color, language, sex, religion, political and other beliefs, national, ethnic and social origin, property and positional status, place of residence."

[14] Civil Procedural Code of Georgia: Article 5 - "The administration of justice by court on civil cases is based on the principle of equality of every person before the court and the law."
Criminal Procedural Code of Georgia: Article 9 (1) - "Every person is equal before the law and the courts – irrespective of their race, nationality, language, sex, social origin, property and status, place of residence, religious affiliation, belief, or other circumstances."
Criminal Code of Georgia - Article 142 the Violation of Equality of Humans: "Violation of equality of humans due to their race, color of skin, language, sex, religious belonging or profession, political or other opinion, national, ethnic, social, rank or public association belonging, origin, place of residence or material condition that has substantially prejudiced human rights, shall be punishable by fine or by corrective labor for the term not exceeding one year or by imprisonment for up to two years in length. The same action committed: a) by using one's official position; b) that has produced grave consequences; shall be punishable by fine or by corrective labor for up to one year in length, by deprivation of the right to occupy a position or pursue a particular activity for up to three years in length or without it."

equality have been endorsed. This legislative deficiency is caused by the inadequate protection of women's rights in Georgia and vice versa. And there are no special courses for the students and lawyers regarding the prohibition of discrimination against women.

To conclude, despite the fact that the State of Georgia declares it guarantees universal human rights and freedoms regardless of sex, this principle is not implemented in reality. Georgian legislation is not discriminative; however, it is not gender sensitive either.

1) Rape and other forms of sexual violence

According to Article 137 of the Criminal Code of Georgia rape, i.e. sexual intercourse through violence, threat of violence or abusing the helplessness of the victim, shall be punishable by imprisonment extending from three to seven years in length. The same action perpetrated repeatedly shall be punishable by prison sentences ranging from five to ten years in length. Rape by a group; of a pregnant woman or other person at the previous knowledge of the offender; under extreme violence against the victim or other person; by using one's official position; that through negligence has resulted in the death of the victim; that through negligence has been corollary to the victim's contraction of AIDS, serious health deterioration or other grave consequence, shall be punishable by imprisonment for the term extending from five to fifteen years in length. Rape of a person under fourteen years shall be punishable by imprisonment for the term extending from ten to twenty years.

According to Article 139 coercion into sexual intercourse, homosexuality, lesbianism or other sexual contact under the threat of disclosing defamatory information or damaging property or by using one's material, official or other dependency, shall be punishable by fine or by corrective labour for a term of up to one year or by imprisonment for up to two years in length. Article 140 establishes that "Sexual intercourse, homosexuality, lesbianism or other sexual contact distorted in form at the previous knowledge of the offender with someone under sixteen years shall be punishable by restriction of freedom for a term of up to three years or by jail sentence for a term not exceeding three months or by imprisonment of up to three years in length.

2) Domestic Violence

There is no legislation in Georgia that criminalizes domestic violence. The Criminal Code of Georgia in its Articles 117 and 118 punishes deliberate grave and less grave damage to health, but these articles are very general. But they do not take into the account the fact that such violence may happen among family members, who depend on each other emotionally and financially. In addition, this law does not mention psychological violence towards a woman.

In Georgia, as in many other countries, roles and functions of men and women have been conditioned by "tradition". Medium and high level (male) representatives had absolute power over women, children and servants. In the working-class families, males were dominating as well. Presently, women are required to protect family reputation and to keep "family problems" inside the family. Patriarchal and "macho" attitude is still strong in society. A more systematic approach is needed to effectively change public attitude towards it. Historically, theory on domestic violence has been based on the idea that this type of act was a "family" or "private" business, which took place due to mental disabilities, abuse of alcohol or limited ability to control impulsive

behaviour. Currently, it is recognised that domestic violence entails the use of power or control by one person towards another through different forms, such as threat or coercion. However, traditional gender roles, economic hardships and religious views, among other factors, hinder the protection of women and the punishment of abusers.

The Georgian Young Lawyers Association in cooperation with other non-governmental organisations and representatives of different governmental bodies prepared a *draft law on domestic violence* with the technical and financial support of American Bar Association. This draft passed the Parliament's first hearing on 17 February 2006 (See Annex 1).

Rape within the family: There is no specific article in the Criminal Code of Georgia that regulates rape within the family. Despite the fact that Criminal Code Article 137 punishes all forms of rape the lack of special article prohibiting rape within the family means that the rape of a woman or forcing her into sexual contact by a husband is not considered to be a crime and often they are forced to live with the abuser. Naturally it is very hard for a woman to go to the police in such cases, especially when the police cannot qualify this action as a crime according to the Criminal Code of Georgia. Marital rape remains a hidden crime in Georgia.

Incest: Incest – just as marital rape – is not punishable according to the Criminal Code of Georgia. Incest is another hidden crime in Georgian society and statistical data is almost inexistent.

Bride Kidnap: Bride kidnap is a widespread form of marriage in Georgia. In most cases, it happens against the wish of the woman. It can sometimes be followed by rape, which remains unpunished as is any form of marital rape.

CHILDREN CONCERNS:

Georgian law contains provisions in many statutes guaranteeing children's rights but there is no specific statute which specifically guarantees children's rights as a whole. One of the most current issues is thus to create a legal mechanism which aims to protect children's interests, to improve their living conditions and to contribute to their self-development. In this regard, PHMDF and other Georgian NGOs have elaborated a draft law[15] that was recently presented to the Parliament which is under examination.

The Constitution of Georgia advances certain children's rights and guarantees the protection of these rights (Article 36 of the Constitution). The Civil Code of Georgia establishes the age of majority at 18 and sets up the rules of legal capacity (articles 11 and 12).

Moreover, the law of Georgia on general education has established that violence on a child, physical or psychological offences, are inadmissible; additionally school discipline must be conducted according to the methods that are based on respect for a child's liberty and dignity. However, due to the absence of any State control over parents' negligence and the lack of measures sanctioning this kind of behaviour, in practice, these provisions do not yield proper protection.

Parental rights and duties

[15] See annex 1.

The Civil Code also regulates relations between parents and children. Parents have duties to protect and raise their children. The Civil Code (articles 1205 and 1210) establishes child protection mechanisms against parents' maltreatment and abuse such as the annulment and restraint of parental rights. The extinction of parental right is the ultimate sanction and can only be ordered by the court against parents if they do not respect their parental duties relating to their upbringing, i.e. if they maltreat their child(ren) or carry out immoral behaviour and exert a bad influence on their child(ren). The extinction of parental rights does not, however, liberate parents from the obligation of alimony (article 1205).

Unfortunately, the guardianship bodies in Georgia do not implement those responsibilities imposed upon them. Further, there are no qualified specialists (social workers) who are enabled to supervise parents in the period of restraint of parental rights to establish conclusions to be used by the courts to pronounce fair verdicts.

In practice, the extinction of parental rights is rarely pronounced, even less are criminal or administrative sanctions. Family members aware of abuse encourage impunity of abusers by not reporting to law enforcement agencies or by frequently withdrawing their own applications when abuses are reported. Therefore, there are no effective mechanisms of protection in Georgian legislation although there is currently a draft law on the protection of children's rights, particularly in relation to domestic violence. If adopted, this law will set in motion mechanisms which ensure the isolation of the abuser and protection for the victim.

As already mentioned, there is no specific definition of torture where the victim is a child, neither is there a trend to accept a broad interpretation of torture by the jurisdictions where the victim is a child. A definition of abuse and maltreatment is not yet considered under any act. However, the draft law on the Rights of the Child elaborated by NGOs particularly defines what should be considered as abuse and ill-treatment.[16]

Although different forms of abuse towards children are very frequent in Georgia, this issue seems to remain taboo and Georgian legislation does not actively create a safe environment for children nor does it provide efficient protection against all forms of violence and abuse, especially when the perpetrators of abuse consist of parents or other caregivers.

Child protection from violence is regulated mainly by civil and criminal legislation and also by the law of Georgia on the Protection of Minors from Harmful Effects, though most of these rights are not respected. In practice, the rights of the child will not be fulfilled if they are not strengthened by parents' obligations with strict controls in monitoring these obligations by relevant State organs.

To attack a child is considered an aggravated circumstance in cases of torture and cruel, inhuman or degrading treatment or punishment and other forms of violence.

Severe sentences are provided for in cases where the victim is a child, according to article 131.2 d) of the Criminal Code stating that: "The same action committed: […]with respect to minors […]shall be punished by the deprivation of liberty for a period of from three to six years."[17]

[16] See annex 1, points 2, 3, 4 of article 7 of the draft law.
[17] The sentence is normally deprivation of liberty for a period of up to three years according to article 131.1. of the Criminal Code.

The Criminal Code imposes liability for committing certain acts towards a child. Where liability is generally defined for such acts, it is stricter when the act is directed against children. For example, beating or other acts of abuse committed against minors provoking physical pain in the victim is regarded as an aggravated circumstance by criminal law; rape of a minor is also regarded as an aggravated circumstance, including sexual intercourse under violence, threat of violence or exploiting the vulnerability of a victim aged under 14 (Chapter 23 of Georgian Criminal Code and particularly article 142.3 f)).

According to the Criminal Code, other offences punished with aggravated circumstances are: transmission of a venereal disease to a minor; trafficking of minors, engaging minors in abusive acts such as alcohol abuse, begging, prostitution, gaming or the commission of antisocial acts; intoxicating minors; engaging in abuse of medical products for non-medical purposes, provoking an intoxicated State.

Criminal legislation on particular types of violence against children

Sexual exploitation

According to the Criminal Code, there is no separate qualification for the sexual exploitation of children within the family, the sexual exploitation of disabled, homeless, or refugee children and children in any other special conditions, as well as sexual exploitation during armed conflicts.

The law of Georgia on Tourism and Holiday resorts does not ban sex tourism of children. The problem of abduction of minors in the border zones for their sexual exploitation is not regulated properly. This should be included in the legislation as a type of trans-national organised crime in accordance with relevant international standards. Nor does Georgian legislation regulate the issue of psychological rehabilitation and social reintegration of victimized children of sexual exploitation.

5.2 Practice of torture

5.2.1 Violations Documented in the Police Departments

Torture in pre-trial detention is still common and the criminal justice system fails to protect the victims of abuse. It should be mentioned as well that since the revolution two people have died from torture in Georgia. This report highlights the widespread torture of detainees by the police.

The Public Defender's Social Monitoring Council has documented 137 violations by Tbilisi police departments between 12 January and 9 February 2005[18]. 89 cases were classified as human rights violations and 58 as procedural ones. The monitoring process revealed that 28 detainees received body injuries, though only five of them confessed, as is often the case with police violence; seven detainees reported that the police applied psychological pressure to them.

The monitoring revealed that in most cases detainees were not given an explanation of their rights. Four prisoners were not even allowed to make a phone call and fourteen were not provided with a copy of their charges. Adult male prisoners formed the majority of the victims, but there were some violations against juveniles as well.

[18] see "Tbilisi, Media News" 11.02.04

The Monitoring Council revealed 56 cases of incorrect registering procedures by the police. The Council's monitoring included visits to approximately seven prisons a day.

Presumption of Innocence and the Statements of High Rank Officials:
Particular concern is voiced towards the Statements of President Mikheil Saakashvili and other officials on law enforcement as they seem dissuasive from encouraging lower ranking officials to respect human rights. On 12 January 2004 for instance, President Saakashvili said on Rustavi 2 TV: "*I... have advised my colleague Zurab Adeishvili, Minister of Justice - I want criminals both inside and outside of prisons to listen to this very carefully - to use force when dealing with any attempt to stage prison riots, and to open fire, shoot to kill and destroy any criminal who attempts to cause turmoil. We will not spare bullets against these people*". Yet again, on 3 February 2004 on Rustavi 2, Saakashvili added: "*I gave an order to [the Minister of Interior to] start this [anti-crime] operation and, if there is any resistance, to eliminate any such bandit on the spot, eliminate and exterminate them on the spot, and free the people from the reign of such bandits*."[19]

Likewise, on 11 March, on the occasion of attending the funeral of three police officers killed in a clash with criminals in Kutaisi, Saakashvili proclaimed: "*I declare war on criminals. Do not shoot these guys [policemen]; shoot me if you can, because I order these guys to shoot you [criminals]" The three policemen as well as one alleged car hijacker and one passer-by died on 4 March in a clash between the police and criminals*".[20]

Human rights NGOs consider that these and other high-level Statements on law enforcement encourage lower officials to violate basic rights which may lead to an increase in the already existent and excessive use of violence by the police.

5.2.2. Plan of Action against Torture

In September, top government officials agreed on a Plan of Action against Torture in Georgia. Due to be implemented in 2003-2005, this plan, which was drawn up in cooperation with the OSCE, includes, among other things; bringing the Georgian legislation on par with OSCE and other international commitments regarding torture, improving investigation mechanisms of alleged torture, enhancing the control of police and prison facilities, training officials as well as establishing regular monitoring by adequate bodies. One of the key elements of this action plan was a website launched by the Human Rights Department of Georgia's National Security Council with support from the OSCE Mission to Georgia. International organisations, including the UN Committee against Torture and the Council of Europe's Committee for the Prevention of Torture (CPT), issued highly critical reports about the use of torture and ill-treatment in Georgia in the past and demanded that the government take decisive measures. The CPT cited abuses such as slaps, punches, kicks and blows struck with truncheons, gun butts and other hard objects. The most serious cases involved the infliction of electric shocks, asphyxiation by use of a gas mask, blows struck on the soles of feet and prolonged suspension of the body upside down. Torture and ill-treatment were often accompanied by procedural violations such as the failure to bring detainees personally before a judge when deciding on detention, the failure to notify family members of detainees and the restricted access to lawyers and doctors, reports the International Helsinki Federation for Human Rights[21] in Georgia.

[19] TV Company "Rustavi 2"
[20] TV Company "Rustavi 2"
[21] : http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=3860

Though the amendments mentioned above can practically be considered as positive steps made forward, there are still concerns and doubts with regard to their application in practice. The experience of previous years and the lack of overall statistics affirm the existing doubt even more.[22]

For a clear illustration of the aforementioned, look to the chart below whose information is based on the information given by the Office of the Prosecutor General of Georgia[23] and contains the database of the criminal cases (Articles 332, 333, 335, 126) :

Years	Articles	01	02	03	04	05	06	07	08	09	10	11	12
2004	332	15	32	55	70	98	108	128	156	205	235	260	
	332,333 335												329
2005	332	19	47	60	89	141	211	40	29	40	36		
	333	9	16	24	37	73	100	27	28	35	22		
	335			1	1	3	4	1	1	1			
	126			1	1	1	3		1				

Unfortunately, due to the lack of the integrated overall statistics, it is not possible to draw up a clear and concise picture with regard to cases of torture, their investigation and results achieved.

It should be noted that the situation with respect to the database is improving. Statistics with respect to torture cases as well as cases concerning inhuman and degrading treatment are already collected, though the number of cases initiated still raise a serious doubt regarding the implementation of respective articles in practice and effective investigation of the cases concerned. According to the information provided by the Office of the Prosecutor General of Georgia[24], from June 2005, investigations were initiated on 29 cases under Article 144(1). As a result, charges were brought only against one person. As to Article 144(3), investigation was initiated on five cases, though no charges were ever brought against anyone.

5.2.3. 24-hour hotline for complaints of torture

State reports often contain paragraphs emphasizing the positive measures taken in respect of combating torture, e.g. the establishment of 24-hour hotline for complaints of torture within the Prosecutor General's Office and the Ministry of Internal Affairs, though the formal steps taken do not mean that they are effective in practice. However, currently, the Ministry of Internal Affairs does not have any information on the number of calls received on the hotline or any actions taken in response, which weakens the argument that a 24-hour torture complaint hotline is an effective torture-preventive measure.

WOMEN CONCERN

[22] The experience and the practice of previous years shows that though containing the elements of torture, criminal cases were mainly brought under article 332, 333 or article 335 respectively. According to the letter of the Ministry of Interior, dated 12 December 2004, no criminal case has been initiated under article 126 (torture).

[23] Letter from the Office of the Prosecutor General of Georgia, dated 8 December 2005. In the end of the letter there is an indication that at the stage, out of the existing format of data base, no statistics are collected with respect to articles 144(1), 144(2), 144(3).

[24] Letter from the Office of the Prosecutor General of Georgia dated 17 March 2006

The widespread unequal conditions between men and women created such a situation in Georgia when women are most unprotected from violence. Violence is a serious obstacle to the achievement of equality between men and women and an endemic social problem. Despite this women rarely go to the police to report the facts of violence because of the lack of trust towards the police and this is caused by the indifferent attitude of the police towards the problem and the severe treatment they are often subjected to, ineffective legislation, widespread corruption and lack of public knowledge about their human rights.

1) Sexual violence

The number of sexual violence related crimes has significantly increased during the last several years, which is partly linked to harsh economical conditions. Rape is a taboo issue in Georgia and it is impossible to collect real statistics. The lack of rehabilitation centres is a major concern. Moreover, there are no special divisions working on rape cases at the police and procuracy. There is a need to conduct special trainings for policemen and investigators on how to investigate rape cases and to deal with the victims. According to the information received, the investigation of such cases can be prolonged over a long period which will make problems for proving the crime in a court (medical reasons).

2) Statistical data on domestic violence

Based on GYLA's written requests to the Tbilisi City and Appellate Courts, the Supreme Court of Georgia, the Prosecutor General's Office, the Administration of the Ministry of Internal Affairs and the Patrol Department of the Ministry of Internal Affairs, the following information was provided:

The Tbilisi City Court noted that it has not got any statistical data on family conflicts and justified it as follows: it is impossible to fulfil a request of GYLA because the Criminal Code of Georgia does not envisage domestic violence related crimes.

The Tbilisi Appellate Court, like the City Court, noted that there are no separate statistics maintained for domestic violence matters, although it expressed a will and readiness to cooperate in the future.

The Supreme Court provided little data on domestic violence cases filed and reviewed at Common Courts. In particular, in 2005 some 11 cases were filed with Common Courts. In all 11 cases a woman is a victim. In 6 cases – a spouse was physically and verbally abused; in 2 cases – ex-spouse; in 1 case – mother-in-law and in 1 case – spouse and children.

The Prosecutor General's Office failed to provide any statistics on domestic violence cases as it does not account such matters so far: "The Criminal Code of Georgia does not contain any *corpus delicti* provisions on domestic violence". Also it noted that new electronic forms of statistical reporting will contain data on domestic violence, as one of the motives for crime commitment.

According to data provided by the Information and Analysis Department of the Ministry of Internal Affairs, in 2005 47 criminal cases were instituted on family conflicts, out of which 6 cases are referred to the court, and others are under investigation.

Information provided by the Patrol Police exceeded all expectations. As of August 2005 to January 1 of 2006 (4 months only) 1,466 cases of domestic violence (conflicts) were recorded, to which the Patrol Police had to react. However, it failed to affect in any way abusers, since under the current legislation there is no punishment established.

Simultaneously with Tbilisi, monitoring on domestic violence cases was conducted in Kutaisi, too. Based on GYLA's written request, the Main Regional Division of the Ministry of Internal Affairs and Kutaisi Division provided the following data on domestic violence cases:

The regional prosecutor's office informed that in 2005, 73 complaints (claims, notifications) were filed with district prosecutors' offices located in Imereti, Guria and Racha-Lechkhumi-Kvemo Svaneti, and investigative bodies:

- Out of the 73 complaints 11 concerned premeditated murders, where 9 cases were referred to courts and 2 are under investigation. 3 murders were committed in Zestaponi, 3 in Chiatura and 2 in Kutaisi, 1 in Ozurgeti, 1 in Ambrolauri and 1 in Tsageri. In 3 cases a husband killed a wife, in 3 cases a brother killed another brother, in 1 case a father murdered his child, 1 case of murdering parents, 1 case of murdering a grandmother and 1 case - a man killed his girlfriend.

- Out of the aforementioned cases, 4 concerned murder attempts, 3 cases were referred to courts and 1 is under investigation. In each case either a wife killed a husband, or vice versa; or a son-in-law killed a father-in-law or vice versa.

- 2 cases concerned deliberate physical injuries (article 117 of the CPC); one case was referred to the court, and the other one is being investigated.

- 42 cases concerned health injuries of less severity (article 118 of the CPC), out of which 4 were referred to courts, 9 are being investigated, and 29 are terminated.

- One case concerned sexual abuse (article 138 of the CPC), which was terminated.

- 6 cases concerned damage of things or their demolition (article 187, CPC), where 5 were referred to courts, and 1 is being investigated.

- 4 cases concerned threat (article 151, CPC), of which 1 is referred to the court, 1 is being investigated, and 2 are terminated.

- 3 cases concerned severe or less severe health injuries committed by carelessness (art. 124, CPC) and all three cases were terminated at the preliminary investigation stage.

- Out of indicated 73 cases, 23 (31.5%) were referred to courts; 15 (20.5%) are being investigated, and 35 (48%) were terminated.

The Imereti Regional Division of the Ministry of Internal Affairs was conducting investigations in 2 cases: 1 – a wife murdered a husband, and 2 – a son killed a mother.

According to the Kutaisi Division, 30 complaints/notifications regarding matters of domestic violence are registered. The same number of investigations is instituted. Out of this amount, 11 criminal investigations were terminated; 3 cases were referred to the District Court, and 16 are being investigated.

District Prosecutor's Office of Kutaisi informed us that as of January 1 2005 up to January 1 2006, it received 21 complaints/notifications on domestic violence cases, of which 3 investigations started on premeditated murder (article 108) and cases are referred to courts; 12 cases under the crime described in the article 118 of the CPC; 3 cases under the article 124; 1 case under the article 117; 1 case under the article 187, and 1 case under the article 151.

Results show that if the committed act of violence does not contain criminal signs, the abuser is not arrested and there is very little that can be done, which again time proves the necessity to legally regulate domestic violence cases.

3) Internally displaced women

Still today there are 280,000 Internally Displaced Persons (IDPs) in Georgia as a result of the armed conflict. The largest part of the IDPs – 266,000 are Georgian nationals from Abkhazia. The rest are IDPs from South Ossetia. Women make up 55% of IDPs.

Internally displaced women face serious human rights violations at every stage - during their escape, women are under the risk of rape or other violence that can be used as a "weapon of war". In the refugee camps women are often under threat of sexual violence or other intimidation from the side of local security personnel as well as male refugees.

Women in Abkhazia were the main targets of sexual and physical violence not only during the military activities but also when they were terminated. According to the information from the Human Rights Committee and the Committee of Abkhazian Autonomous Republic on Intra-national Relations, 800 women have been tortured and killed in Abkhazia. Based on information from the Ministry of Health of Abkhazian Autonomous Republic 346 women were frozen to death due to harsh climate while escaping through Svaneti Region during the conflict. According to the report of Women IDP association OXFAMME 16% of female IDPs have been victims of torture.

The issue of integration of IDPs is a sensitive problem in Georgia. Hidden tension among IDPs and locals remains. Moreover, the majority of female IDPs were forced to leave their profession. Women with high education are employed for non-professional work. Many women are forced to be engaged in street commerce in order to make ends meet and this increases the risk of violence.

It should be noted that among IDPs the number of women with oncology related diseases is quite large. Since 2005 medical aid for IDPs has been abolished. Services to them are provided through municipal programmes. According to the law emergency help is either free of charge or the State covers 60-70% of expenses. For this reason 2 hospitals are allocated in Tbilisi. However in one of them, Republican Hospital, the chief doctor declared that only Tbilisi inhabitants should be provided with free emergency medical services and that municipal aid did not apply to IDPs. There are worse cases happening in the regions.

CHILDREN CONCERNS:

Different forms of abuse against children are committed by teachers, parents and other caregivers. However, the reporting of incidents of cruel treatment are not often encountered. With respect to street children, they have experienced all forms of abuse and ill-treatment from police and staff in State institutions. However, this kind of treatment is not reported by the police.

Cases of child torture and cruel, inhuman or degrading treatment in 2005-2006

- Marika Sulamandze, a 17 year-old girl from the Terjola Region came to Tbilisi and was living in the street. She is mentally ill and her mother refused to take care of her because they were already living in poverty. Marika currently lives at the Children's Social Adaptation Centre though the centre has no necessary resources for her rehabilitation. Marika was delivered to the centre by a patrol. Due to the non existence of a psychological department for minors, she was previously living at the women's division of the Tbilisi Psychiatric Clinic. She claims that she was raped several times but there was no follow-up by the authorities to her complaints, mainly because Marika is considered as suffering from a psychological disorder. Further, no medico-gynaecological examination was conducted. (last update in January 2006).

- Alex Bagashvili, 8 years-old, had been beaten and was found by patrol in a street hole. He does not speak. Alex does not have a father and his mother is mentally ill. He also lives at the Children's Social Adaptation Centre. According to Director of the Centre, Mr. Ketevan Kobaladze, they have referred Alex's case to the police but the case was not followed up.[25]

Methods of torture:

In 2005, the Rehabilitation Centre for Victims of Torture welcomed 40 children and adolescents victims of torture.[26] Below are details on the acts of torture committed against them.

Physical methods of torture:
1. Beating (with clubs, boots, pistols, other blunt objects, by hand, other) – 15 adolescents
2. Systematic beating - 21, beaten once – 10 juveniles
3. Oral method of torture – 1
4. With phalanx (extremities) – 2
5. "Non-physiology" dislocation – 11
6. Sexual torture – 7
7. Suffocation (by water, bag, gas – mask) – 5
8. Burning (with cigarette, hot iron objects etc) – no statistics

Psychological methods of torture:

1. Deprivation, isolation – 40 adolescents (for example the pre-trial detention of 17-year-old Aleko Kamushadze, who was held for eight months in a cell with 30 men - among them convicted murderers and rapists.)
2. Lack of the sanitary-hygienic conditions – 40
3. Other torture victims in the isolator – 22
4. Hearing voices of someone being tortured – 13
5. Torture of family members or other close relatives – 5
6. Threats to rape - 23

[25] Last update in October 2005.
[26] Annual Report of the Rehabilitation Centre for Victims of Torture.

7. Watching torture of family members – 27
8. Humiliation, inhuman treatment, oppression – 40
9. Lack of medical aid, inhuman treatment – 35

Children at risk and street children

There is an increasingly large number of street children. Their exact number is hard to define but their approximate number varies between 1200 and 3600 in the whole country.[27]

In Georgia, since the Soviet era up until July 2004, particularly in Tbilisi, the Juvenile's Reception, Orientation and Rehabilitation Centre of the Ministry of Internal Affairs functioned, located at the Gldani district. Here, unsupervised children found in the street by the police were received. The organisation resembled a type children's institution aiming to deliver case work, placing children in relevant places with the priority of returning them back to their family (after examination of the improvement of the family's conditions). In fact, the institution was an illegal agency where numerous incidents of torture and intentional debasement of children have been noted: verbal assault, physical punishment, punishment and isolation cell, etc. Children stayed at least several months and sometimes several years at this centre. Fleeing was the only way to leave the centre even if these attempts very often ended unsuccessfully and became another reason to punish children. Living and social conditions were very poor, hygiene and medical care was lacking and nutrition and education were extensively inadequate.

In July 2004, the Ministry of Internal Affairs closed the centre. Later the centre's building was renovated and converted into the Children's Social Adaptation Centre, an open institution. Though no manifestations of torture and abuse have so far been reported in the Adaptation Centre, it is still far from what a rehabilitation facility for street children should resemble. This is not only due to a lack of good will and expertise from the staff, but also on account of the weakness of Georgia's child protection system, namely, its resources and legislation.

The Centre received both street children and children accused of, or having infringed the law even if, formally, the latter should not be received by the Centre. Children are mixed independent of the reason of their presence in the centre, of their age or their sex. From May 2005 till January 2006, 110 street children were registered in the Centre.

The Centre operates under the following conditions:

1. Sanitary and hygienic conditions are satisfactory; nutrition is approaching the standard;
2. Children receive primary medical support but sometimes due to the lack of resources for full medical examinations, treatment and rehabilitation are carried out separately and cases support is provided by utilizing private contacts of the centre's personnel. Those medical programs, which the State offers to minors are not sufficient for such a category of children and children frequently flee from the hospital. Health conditions are very poor; diagnoses of conditions are often delayed;
3. Children from different parts of Georgia are placed in the Centre. Since the government does not have a strategy and system for rehabilitation of street children, their treatment is not provided appropriately mainly because the social workers'

[27] This information is not official data but comes from separate NGOs, particularly "Child and Environment".

institute is not recognised officially, and unqualified personnel occupy positions whose activity is not strengthened by the law. Family research and reintegration is still impossible to implement and only has the formal character in the organisation's statute;
4. The vast majority of the children stay at the centre over a 6 month period, which is in compliance with the statute, however, owing to the open nature of the centre, leaving children to come and go as they please, their rehabilitation process is prolonged;
5. The majority of street children are substance abusers and their rehabilitation requires specific medical therapy-programmes. The absence of such programmes largely limits the few cases in which positive results are achieved;
6. Most children suffer from different mental disorders. Their educational level for age 14-15 does not excel a basic knowledge of literacy. There are no specific appropriate educational programs to facilitate their reintegration;
7. According to research by PHMDF, an overwhelming majority of children have been victims of domestic violence, ill-treatment, and neglect. Moreover, some of them have experienced torture from the police in the past;
8. Very interesting relationships have been developed with the police. As the Director of the Centre, Mr. Ketevan Kopaladze, claims: no incident of torture by the police towards the children who live in the centre has been revealed. In the case of delinquency, the police prefer not to detain the offender and bring her/him back to the rehabilitation centre, even though the centre cannot provide them treatment and because of the absence of resources for juvenile delinquents;
9. The adaptation centre keeps no records of children's reintegration or their placement in children's institutional organisations.

Cases :

Ill-treatment by members of special forces

On 12 May 2005, the Special Task Department of the Interior Ministry, together with the Special Forces, arrested 43 year-old Givi Janiashvili at his home for alleged possession of drugs. Janiashvili was brutally beaten by 20-30 members of Special Forces of the Interior Ministry during his detention. The lawyer of the accused Stated that the drugs found at Janiashvili's flat had been planted by law enforcement officials.

According to the information provided by Zurab Rostiashvili, the lawyer of the accused, the 12 May detention of Mr. Janiashvili was conducted with extreme cruelty. He sustained severe head injuries from being struck by a gun. The investigator of the Special Task Department of the Ministry of the Interior Stated that force was indeed used against Janiashvili but justified their activities by saying that the accused resisted and opposed them during his detention.

Janiashvili's lawyer and witnesses of his detention have made contradictory Statements saying that the use of force was unjustifiable because there was no opposition. Following a search of the accused person's flat, no evidence of weapons was found which ruled out any accusations of armed resistance.

Janiashvili was first arrested by security staff a year ago while crossing the border of Vale. He was charged by law enforcement officials for buying, keeping and illegally transporting drugs. According to his lawyer, he was forced to confess to the fact of keeping drugs with law enforcers inscribing false witnesses in the search protocol.
According to Janiashvili's lawyer, Keso Tsartsidze, the District Court of Aspindza justified and released him on 3 May on the basis of the second part of Article 260 which refers to the absence of the evidence and the witnesses. Ten days later at 1:30 pm on 12 May, 20-30 masked Special Forces troops entered Janiashvili's flat and arrested him, violating a number of procedural norms during his arrest.

This time the Court ruled Janiashvili to a three-month preliminary detention however

his lawyer intends to file a claim against this decision.

Janiashvili's wife Stated that her husband is the victim of the personal interests of law enforcement officials. She explained the persecution of her husband in this way: "*My husband's friend started a business and later was informed by the security services who warned him that somebody planned to kidnap him. Following this call, my husband accompanied his friend all the time. Finally, it appeared that some employees of the security services themselves intended this kidnapping. My husband prevented them from putting their plan into practice and it was after these events that provocations began. Moreover, they required 3000USD from him as a price of the failed operation*." The case is currently being investigated by the Special Task Department of the Interior Ministry.

Beating and Torture of Giorgi Migriauli[28]

A criminal case may be brought against Archil Babajanashvili, Gori District Prosecutor and David Tsituri, Shida Kartli Regional Prosecutor.

On 9 October 2004, at the time of inspection of the Gori temporary detention centre of the Ministry of Internal Affairs, representative of the public defender in Shida Karti, Giorgi Arakishvili, met with detainee Giorgi Migriauli, who had signs of physical violence on his face. According to the detainee's explanation, he was apprehended at night in his home in Kaspi and taken to the Gori Prosecutor's Office without any explanation. The regional prosecutor of Shida Kartli, David Tsituri, and a number of policemen detained him. In the police station, Migriauli was taken to the office of the Gori prosecutor A. Babajanashvili, where he experienced physical and psychological pressure. According to his Statement, A. Babajanashvili, who was in a State of intoxication, personally participated in his beating. G. Migriashvili had the following injuries: bruised eyes, swollen face, bruises on the right ear, cigarette burns in the abdominal area and numerous bruises on his hands and feet. According to Migriauli's Statement, he received even worse psychological pressure, when Babajanashvili put a gun in his mouth and fired. Since the gun misfired, he repeated his attempt several times.
Due to the complexity of the case, the Public Defender's central office and the general inspectorate of the General Prosecutor's Office were involved. In regard to this case, the Shida Kartli Prosecutor, the Gori Prosecutor and his deputy were dismissed from their positions. General inspection filed a case against them, but the accusation was brought only against Babajanashvili, and the investigation has continued for six months (though, in the Ombudsman's opinion, there is nothing to investigate). It should also be noted that though the Prosecutor's Office applies the practice of confinement for any kind of offence, it was not used against Babajanashvili, despite the fact that he had tortured a man.

It is noteworthy that Archil Babajanashvili was appointed to the position approximately a month and a half ago.

On 15 December 2004, police of the Sighnaghi region detained Pridon Gurashvili and Gela Kikilashvili on suspicion of murder. They were taken to the police station where they were abused physically and verbally. According to the their attorney Zaza Khatiashvili, the two men were unlawfully detained, and then tortured: "the policemen (Zaur Mughrashvili, Roin Maziashvili, Khvicha Tughashvili, and Giorgi Qiqiashvili) fastened them to the window, beat them, and forced them to admit to the murder of Naskhida Alaverdashvili." The attorney adds that Ioseb Khokhonishvili, Chief of Sighnaghi Regional Police Department, Temur Qucikashvili, former Chief of the Criminal Police and Alexzander Iakobishvili, Chief of the Criminal Law Department, have also been implicated. The detainees were ultimately released after media and the Prosecutor of Sighnaghi Region became involved in the case. Following their release, Pridon Gurashvili and Gela Kikilashvili confronted the police chief and filed a suit against the policemen that tortured them. Because of their action, they are now continuously persecuted by the police. Gela Kikilashvili was attacked and severely beaten, and his attackers demanded that the case against them and the police chief be stopped. The

[28] Public Defender's Report on conditions of human rights in Georgia in 2004 www.ombudsman.ge/download/annrep04E.pdf

attorney Khatiashvili says that it was the second attack, and while the first time he was not beaten, the demand was the same. No assistance was given to the victim nor was an expert medical examination carried out, because, according to his attorney, the victim is too afraid to obtain one. "*Generally speaking, everybody is afraid of Khokhonishvili, the police chief. People are afraid of going out, and young men wear pocketless clothes because they fear that the police might put drugs in their pockets*" Khatiashvili explained.

Now a case has been filed against these police officers and, as a deputy of the district prosecutor writes in his letter, "*in the near future they will be arrested for what they did*". However, Police Chief Khokhonishvili and other policemen suspected of ill-treatment still retain their posts.

On 8 April, Eldar Konenishvili, a witness to be interrogated, was taken from Tbilisi Prison No.1 to the Gurjaani Police Department and, according to the NGO Former Political Prisoners for Human Rights, was severely tortured. On the press-conference that was held on 11 April 2005, Nana Kakabadze, the head of Former Political Prisoners for Human Rights, denounced the incident, emphasizing also that different forms of torture had been committed: he was beaten on the head with a gun, over his entire body with a chair leg, and also was threatened to be lynched.

According to Nana Kakabadze, in spite of the fact that this incident was reported to the General Prosecutor's Office, examination of the tortured prisoner by medical experts has not yet been conducted. Eldar Konenishvili says that he can identify all of his perpetrators and among them he names Gela Batsashvili, son of Jimsher Batsashvili, the head of Prison No. 1. NGOs demand that a criminal case be initiated and that all the policemen be punished for the crimes they committed.

5.3. State killings under the cover of "special operations"

After the Rose Revolution, the government declared the fight against crime and perpetrators as its top priority. Thus, as the penitentiary was reformed and new policemen were selected, so called "demonstrative detentions" were held in Georgia. The so-called special operations held by law-enforcement bodies of Georgia in most cases are characterized by excessive severity and end up with liquidation of those persons who are supposed to be detained. According to the practice in force, it can be assumed that State killings are taking place under the cover of "special operations".

The unlawful and excessive actions of the police officers are directly encouraged and supported by the official Statements of the President of Georgia- M.Saakashvili as well as the Minister of Interior V. Merabishvili.[29] For example, on 23 February 2006, during a meeting with newly appointed judges, President M. Saakashvili publicly announced – *"…Policemen have instructions to fire directly because the life of one policeman is more valued than the lives of entire world of criminals and their accomplices, to me and to the public. Therefore, here we made precedents to use arms and we intend to continue this way, same as practiced in USA, Europe, Israel and all other developed countries".*

The Minister of Interior made a similar Statement: "*I apply to all Georgian policemen not to hesitate to use arms when a person's or policemen's life is endangered.* "

Officials of law-enforcement bodies comply with aforementioned orders, thus, using excessive power for personal reasons, liquidating suspects on the spot. Arms are used not in exceptional cases as a means of a last resort, but always as a rule. Clear examples of the aforementioned are displayed in the statistics provided by the Ministry

[29] See "Georgian Young Lawyers' Association" torture and violence in Georgia , Georgia 2005

of Interior, according to which, in 2005, 15 *criminals* were *liquidated on the spot* and 1 was injured.

The use of the terms "criminal", "liquidation on the spot" and "elimination" is unacceptable for a democratic society and contradicts Article 40 of the Constitution which provides for the principle of the presumption of innocence[30]. As for the terms "liquidation" or "liquidation on the spot", Georgian legislation makes no mention of such terms and law enforcement bodies use them simply because high officials use them.

The outcome of the special operations mentioned above is fatal not only for the suspects but for the police officers as well. According to the statistics provided by the Ministry of Interior, in 2005, 16 law enforcement officers were killed and 33 injured during the special operations. Moreover, innocent citizens often become the victims of such unlawful actions.

[30] " An individual shall be presumed innocent until the commission of a offence by him/her is proved in accordance with the procedure prescribed by law and under a final judgment of conviction. "

Extrajudicial killings by special operations forces

The special operation conducted in Kutaisi on 4 March 2004 is a good example. Suspect Gaga Cheishvili was shot to death by the Police, one of the police officers was seriously injured and two of them (Roin Robakidze and Gia Khatiashvili) were killed. An Innocent bystander, Shalikiani, was also killed.

Another example is the Beglarishvili case. On 9 February 2004, a special operation aiming to arrest the Beglarishvilisi brothers was conducted by the police officers in Kaspi. At the moment of operation the brothers were in an abandoned hut. As a result of the operation both brothers were killed. According to the police Statement, the brothers offered resistance, thus it became inevitable to use firearms against them, though the witnesses submit opposite information. There are many circumstances in this case raising doubts about the arguments of the police. An expert's conclusion proves that the shot was made from a close distance and the wound under the chin is a direct result of this shot. Practically no investigative actions were conducted (no bullets were withdrawn from the scene of the crime). Beglarishvilis' mother requested the initiation of a criminal case against the police officers. The request was rejected by the investigator, thought it was later appealed in the Court. Finally, the Supreme Court of Georgia quashed the decision of the lower instance Court and the e investigator not to initiate a Criminal Case and returned the case for re-investigation. At the time of writing, the investigation was pending.

Instead of bringing criminal cases against the perpetrators, the Minister of Interior States: *"I, Minister of Interior Vano Merabishvili, order the police officers, representatives of special military units and everyone, whose obligation is to protect the Society: if you notice that the life or health of a citizen, policeman or the territorial integrity of a State, is even slightly endangered, use firearms. I bow my head before all police officers and soldiers who sacrificed themselves in special operations and killed criminals. If they acted otherwise more offences would have occurred."*

One of the recent examples of the State killings and an abuse of power by law enforcement officials is an incident taking place in January 2006, in one of the Tbilisi cafés. Data Akhalaia, the Director of the Constitutional Rights Security Department at the Ministry of Internal Affairs (MIA), his deputy, Oleg Melnikov, Vasil Sanodze, the Head of General Inspection, and Guram Donadze, the Head of the MIA press centre, are all names that have been mentioned frequently as of late. Suspicions were aroused after witnesses to the crime were questioned.

After the conflict situation with the high officials of the Ministry of Internal Affairs, representatives of law-enforcement bodies kidnapped two young persons -Sandro Girgvliani and Levan Bukhaidze. They were taken out of the town to a cemetery, where they were undressed and ill-treated. One of them (Levan Bukhaidze) managed to escape and survived, whereas Sandro Girgvliani died.

After much public outcry and active protest, the Minister of Internal Affairs, Vano Merabishvili, announced that the case was closed and on 6 February 2006, they arrested some of the officials: the Head of the Constitutional Security Department, Gia Alania and officers of that department: Avtandil Aftciauri, Aleqsandre Ghachava and Mikhail Bibiluri. However, organisers of the crime have not been officially announced yet. Sandro Girgvliani's mother is l not satisfied with these arrests, saying that they simply carried out orders, she wants those who gave the orders to be punished. The public demanded and still demand Vano Merabishvili (the Minister of the Interior) to resign for two reasons. The main reason is the fact that his employees are criminals[31] and the other is that his wife was directly involved in the incident. In spite of the fact, the President of Georgia supports the Minister.

In the first quarter of 2006, 17 persons were killed during the special operations. The number of citizens killed in only three months, has already exceeded the total number received during the last year, which demonstrates and is a direct result of a deeply enrooted impunity.

Special operations in Batumi No.3 jail

On 24 January 2006, in the No.3 Batumi jail, the head of the Penitential System Bacho Akhalaia carried out a special operation. Operative sources were claiming that weapons were kept in the prison. At the same time the

[31] There is no final court judgment yet, but all the evidence in the case, including confessions of suspects prove their guilt.

gate of prison No.3 was locked for the Adjaran Public Defender. They suspect that prisoners were beaten in prison. The head of the Batumi jail has been dismissed after the special operation, although nobody gave the motivation for his dismissal.

The head of the penitentiary department, Bacho Akhalaia, organised a special operation in Batumi prison No.3. Thirty soldiers together with the Ajaran Internal Police entered the jail at 7.30am. After that, the jail was closed the whole day. Relatives of the prisoners could not deliver parcels.

According to the Ajaran Public Defender Giorgi Charkviani, "The operation was based on the information that there were weapons in jail No.3. In spite of this, they took out only 4 mobiles and $100 of forged money."

The special operation dismissed the head of the jail Davit Gogmachadze from his post. The deputy of Bacho Akhalaya, Goga Oniani, is temporarily heading Batumi's No.3 jail.

The new head of administration did not allow the Ajaran Public Defender, Giorgi Charkviani, to enter the prison to meet the prisoners. Charkviani States: "They almost arrested me, because my documents were overdue." Charkviani's document are overdue since the 31 December, but he had no problems with the old administration because of it.

Members of the Monitoring Council suspected that prisoners were beaten which is the reason why the Public Defender was not allowed to enter. According to lawyer Nana Andguladze, prisoners are beaten: "I possess information that 10 prisoners are feeling extremely bad, but they do not allow us to enter the jail. They said that they are cleaning the cells and this moment they are carrying out bloody mattresses."

The same concerns are expressed by the prisoners' relatives: "We have heard screams from the jail, it seemed, that they were beating them."

Later, in the night, the Public Defender of Imereti, George Mshvenieradze, managed to enter the jail. He met some of the prisoners. "Only several prisoners are slightly injured. They said that the soldiers only checked."

"Successful" special operation of Georgian law-enforcement officials – two persons killed and a family rendered Homeless

On 3 July 2005, Nina Gumashvili was immensely confused when she saw about two hundred armed persons from the Special Forces. The family had no time to ask the reason of their appearance. Suddenly, a wild shooting began and the whole village was covered with the smoke of gunfire. One could hear children and women crying, men shouting, dogs barking… Later, Nina Gumashvili realized that the "visit" occurred because of her son Avtandil Gumashvili.

The bloody operation that took place on 3 July 2005 had a wide resonance in Georgia.

The family's tragic history started ten years ago when Otar Margoshvili raped Avtandil Gumashvili's spouse. The family separated, and Nana Gumashvili's daughter-in-law left for Russia with the grandchildren. Otar Margoshvili also left the region. A blood feud was inevitable according to the tradition in the mountains, and Gumashvili started to search for Margoshvili. After a long search he found him, but when he saw his children he lost his determination and just wounded the man who had dishonoured him. Margoshvili applied to the police for help and the search for Gumashvili began.

Avtandil Gumashvili, suspected of the crime, and his cousin Vakhtang Gumashvili, resisted and opened the fire against the armed forces, which in their turn responded and liquidated the two men. The house was completely burned and ruined. After the "successful operation," the old mother no longer had a house where she could cry for her dead son, whose remains was difficult to gather.
The important issue is that the severe operation caused irritation among the population, who expressed support for the family, and protested the attack by throwing stones at the armed forces. It should be mentioned that some people were arrested during the operation. Another interesting issue asks the question of why it was necessary to use the entire Georgian arsenal against two persons.

The prognosis that the situation in the region would get worse did not come true, as the situation in Pankisi remains stable. The families of Gumashvili, as well as the inhabitants of the village Duisi, who see the demolished house every day, remember the operation of 3 July.

We could not find a person who described Avtandil Gumashvili as a criminal. The neighbours remember him with tears in their eyes, and now try to aid the homeless family.

"It was terrifying. At first, they killed him and later set fire to the house as if it was a criminal hide-out. The poor mother could not even cry for her son. What is the government that ruins the homes of its citizens?" asks Kavtarashvili, the inhabitant of Duisi.

"They demonstrated their force in order to frighten us. We gathered two kilos of bullets on the nearby territory. The neighbours were in danger as well, as the fire could easily have spread to their houses, and our village is heavily populated. The government takes pride in their operation, but no one cares that the family is left homeless," comments the neighbour.

According to Nina Gumashvili, Temur Andjaparidze, the head of the police department and the "Best Policeman of Year 2005" promised to help the family. He spoke to the governor of Duisi, Djafar Khangoshvili, who noted that they had decided to help the family by purchasing building materials. However, Andjaparidze did not believe this and added that the government would never assist persons they saw as criminals.

Because it is difficult for the "criminal's" mother to speak of her son and ruined house, we talked instead to Malkhaz Gumashvili, brother of the "culprit." "We pleaded for help, but unsuccessfully. They killed my brother and set fire to the house. What shall we do? We have no shelter and must sleep on the ground. I can bear that, but the children cannot. The only hope is the President, to whom I plan to apply."

Despite the concern and sharp reprimand that the family of Gumashvili and the inhabitants of Duisi have about the government, our "independent country" could not find the time to consider the problems and violations the family had experienced. Today, fewer people in Pankisi have such illusions about the government.

Police Operation Turns Bloody in Kutaisi

Five people were killed during a recent special police operation in Kutaisi. Three of them were police officers, one a criminal, and one an ordinary citizen.

A gun battle developed during an attempt by local law enforcement officers to detain an organised criminal group wanted for car theft. According to the police the suspects fired first. Five policemen were wounded during an exchange of gunfire, two of them, Roman Robakidze and George Khatishvili, died at the scene, and another one died in hospital. One suspect, Giga Cheishvili, was also killed. He had been wanted by the police for three years. Another suspect, Mikheil Cherkezia, who had recently escaped from the second strict penitentiary facility in Rustavi, was wounded, but managed to evade police and flee.

Police Patrol Beats Man into Psychiatric Hospital

On 30 October 2005, Giorgi Mikiashvili, who was awaiting his friends in his car, became a spectator and participant of the following event; as his two friends with their wives were approaching him, a car of the Patrol Police stopped them over after which the police officers started accusing his friends of theft of the two mobile phones they were holding in their hands. Mikiashivili, who was under the influence of alcohol, got out of the vehicle to see what was going on. His interference resulted in a row which ended up in a fight.

In this confrontation Mikiashvili was very heavily injured. He was hit on his head numerous times, causing injury to the brain and possible mental disorder. The court sentenced him to three months of preliminary custody, and he currently lies in the prison psychiatric hospital for treatment. While Mikiashvili's lawyer requested that an official medical evaluation be conducted, which is necessary in this stage of investigation, this request was not satisfied. On the initiative of Mikiashvili's sister, an alternative examination was held, which confirmed that Mikiashvili suffers from a mental trauma. The findings finally launched a criminal case against the police patrol.

5.4. Victims of torture and ill-treatment

On 30 April 2005, the **Georgian Centre for Psychosocial and Medical Rehabilitation of Torture Victims (GCRT)** organised a presentation on the results of an opinion survey called "Human Rights: Focus on Torture".

According to Nino Makhashvili, the director of the Centre, Anchor Consulting conducted the survey to find out the frequency of incidents of torture in Georgia. Anchor Consulting conducted the poll within the framework of "Psychosocial and Medical Rehabilitation of the Victims of Torture and Prevention of Torture in Georgia". The GCRT has sponsored this survey since February 2002, with financial support from the European Commission. Researchers distributed the most recent poll in October 2003, just before the "Rose Revolution". The survey showed that 2% of the families, i.e. every fiftieth in Tbilisi, have a family member that is the victim of torture. This means that approximately **7,000 victims of torture live in Tbilisi**.

Police victimized one out of every twelve Tbilisi citizens with degrading treatment during the last year, and physically assaulted one out of every forty. 11% of respondents closely linked the words "police" and "torture". 90% of respondents believed that police both physically and mentally intimidate suspects and prisoners. Overall, 84% of respondents believe that police use of physical violence is a growing problem in Georgian society[32].

6. Non-refoulement (Article 3 CAT) : Chechen Extradition from Georgia

Chechen refugees have been living in Georgia since the troubles between Russia and Chechnya began. As of April last year, there were approximately 486 Chechen refugees living in Georgia. Of this number, about 46 families (142 people) are in Tbilisi and 96 families (344 people) remain in the Pankisi Gorge area.[33]

The refugees in the Pankisi Gorge face poor living conditions and suffer a lack of proper food, housing, medical care and education, as well as frequent abuse and harassment. The refugees are forced to remain in Pankisi in a virtual State of limbo; unable to return home, nor able to obtain work permits or citizenship in Georgia, nor permitted to migrate to other countries.

A problem long faced by the refugees is 'extradition' - although at times 'kidnapping' would be a more appropriate term- back to Russia, where they face possible violations of their rights.

Extradition of Chechens from Georgia to Russia

Russia has frequently been accused of 'gross, flagrant or mass violations of human rights', particularly in relation to the Chechen conflict. Therefore, to ensure Georgian obligations under the Convention Against Torture are fulfilled, the Georgian authorities must ensure Chechens or others on its territory who face violations of their rights in Russia, are not deported, extradited, refouled or kidnapped back to that country.

[32] The research work is available on the web of ***Georgian Centre for Psychosocial and Medical Rehabilitation of Torture Victims (GCRT):*** http://gcrt.gol.ge/English Version.pdf

[33] Press Release Of the Coordination Council of Chechen refugees in Georgia, 'About the problems of Chechen refugees and activities of UNHCR in Georgia', Tbilisi, 28 April 2005

When Georgia refused to cooperate with Russian demands in September 2002, it was accused of 'harbouring Chechen militants in the Pankisi Gorge' and threatened by Russian President Putin with 'military action' if Georgia failed to 'deal with them'.[34]

Bowing to Russian pressure, in October 2002, the then Georgian leader, Eduard Shevadnadze, promised to work with Moscow to carry out anti-terrorist operations in the area. This promise resulted in 'several suspected guerrillas killed, dozens of Chechens detained and several extradited to Russia.'[35]

The cooperation between the two countries has continued to the present day, although now perhaps less openly.

There are several examples of, at best, a lack of adequate protection for refugees or, at worst, outright collusion with the Russian authorities, such as the case of *Bekkhan Mulkoev* and *Husein Alkhanov*. These two Russian citizens of Chechen origin were amongst thirteen Chechens arrested by Georgian border guards in late summer 2002. Five of the thirteen were forcibly extradited to Russia; however *Mulkoev* and *Alkhanov* avoided extradition due to a successful seven month appeal to the Georgian Supreme Court.

The two men still faced charges under Georgian law for violating border regulations and entering Georgia illegally. After one and a half years of detention in Georgia, *Mulkoev* and *Alkhanov* were acquitted of these crimes by a Tbilisi district court on 6 February 2004. There troubles however were far from over.

Ten days after *Mulkoev* and *Alkhanov* were acquitted and released, they disappeared. It later transpired that the Russian Security Services had detained both of them at the Russian-Georgian border. The Chechen community in Georgia expressed fears that the two men had been abducted and secretly extradited to Russia by the Georgian authorities.

Georgian President, Mikheil Saakashvili, responded to the public outcry, stating on BBC's Hardtalk programme: "These are just allegations. We don't need secret extraditions. I was worrying about this information [the disappearance of the Chechens]. The Russians say that they [the Chechens] were captured at the Russian border, which really seems to me realistic."

Despite the Tbilisi court decision acquitting the two Chechens, the Georgian President went on to say "they definitely are the combatants, according to my information."[36]

In connection with the above extraditions, on 16 September 2003, a complaint was lodged with the European Court of Human Rights on behalf of all thirteen Chechens, referring to Article 3 (prohibition of torture) of the European Convention of Human Rights.

On 12 April 2005, the European Court of Human Rights gave a final decision regarding the case - *Shamaev and 12 others v. Georgia and Russia*[37]. The European

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[34] BBC News article, 'Timeline: Georgia - A chronology of key events', 28 March 2006, website: http://news.bbc.co.uk/2/hi/europe/country_profiles/1102575.stm

[35] BBC News article, 'Timeline: Georgia - A chronology of key events', 28 March 2006, website: http://news.bbc.co.uk/2/hi/europe/country_profiles/1102575.stm

[36] Source: Human Rights Information and Documentation Centre, Annual Report 2004, 'One Step Forward, Two Steps Back - Human Rights in Georgia after the 'Rose Revolution'' (2005), p18, website: http://66.116.100.86/humanrights.ge/eng/files/REPORT.pdf

[37] The full text of this case can be found in French at: http://cmiskp.echr.coe.int , an English summary can be found on the 'Article 42 of the Constitution' website: http://www.article42.ge/archive_cases.htm

Court partially satisfied the Chechens' demands; deeming their detention and extradition to Russia illegal and also considering the actions of the Georgian authorities to have violated Articles 3, 5 (paragraphs 2 and 4), 13 and 34 of the European Convention.

The Russian Government was found guilty of violating Articles 34 and 38(1)(a). According to the decision of the Court, the Georgian Government had to pay 80,500 EUR to the Chechen prisoners and also reimburse their legal expenses to the amount of 4000 EUR. The Russian Government was ordered to pay 42,000 EUR to the prisoners and 12,000 EUR for legal expenses.[38]

The Georgian authorities are not taking adequate steps to protect the rights of the Chechens, particularly in the Pankisi Gorge area. Only the intervention of the European Court of Human Rights seems to have had any real impact on the practices of the Georgian and Russian governments, practices which continue today[39].

The Human Rights Information and Documentation Centre calls on the Georgian government to fulfil its obligations under the Convention against Torture and refrain from permitting the extradition of people to countries where their human rights are likely to be violated.

7. Measures to prevent acts of torture (Articles 2 and 10 CAT)

Effective legislative, administrative, judicial and other measures to prevent acts of torture (Article 2.1)

The government took significant actions during the year to address torture and ill-treatment. Positive steps included: extensive monitoring of pre-trial detention facilities in Tbilisi and monitoring of police stations by non governmental organisations (NGOs); amendments to the law to bring the definition of torture in line with international standards, providing longer imprisonment and suspension from public office for abuse by officials; amendments to the Criminal Procedure Code to discourage abuse (the new law requires that confessions given by detainees during their detention must be ratified in court before being admissible as evidence); and increased general prosecutor activity to investigate and prosecute abusers. Serious abuses and police misconduct, such as the fabrication or planting of evidence, reportedly decreased.

Conditional sentence

One of the opportunities for a person to avoid a prison sentence provided by the Criminal Code of Georgia is a conditional sentence.[40] If the court decides to impose a conditional sentence, it sets a probation period for the convicted person throughout which s/he must not commit any new crime and discharge the obligations assigned. Conditional sentences are mainly used with respect to less serious crimes, taking in mind the character of the crime and the personality of the convicted individual. If during the probation period, by his or her proper behaviour, the convicted person

[38] Source: Human Rights Information and Documentation Centre, Annual Report 2005, 'Next Stop Belarus?' (2006), p64, website: http://www.humanrights.ge/eng/files/HR-REPORT-2006.pdf

[39] See Human Rights Information and Documentation Centre, website www.humanrights.ge for examples, such as: 'Chechen Refugees Await the Next Attack - Pankisi Inhabitants Ask the International Organisation for Help', website: http://www.humanrights.ge/eng/stat192.shtml

[40] If the convicted individual can be corrected without serving the awarded sentence of corrective labor, restriction of freedom, jailing or imprisonment, the court shall rule that the awarded sentence be deemed to be conditional.

proves their correction, the court will abolish the conditional sentence and annul the record of conviction.

However, there is a tendency from the government to challenge conditional sentences. On 14 February 2006, during the annual speech of the plenary session of the Parliament, the concept of "zero tolerance" was introduced to small crimes. The President Stated, *"I am introducing a new draft law "Zero Tolerance to small crimes". I am introducing amendments to the Criminal Code aiming at full abolishment of the conditional sentence, no conditional sentence, every criminal to jail. No judge will be able, based on human considerations, to release the person…… Zero tolerance to every small crime, for everybody's note, for the note of the judiciary, Parliament, executive branch and the police, this is our new, strong policy "*

The President's speech in the context of conditional sentences can also be considered as a direct order to judges not to impose conditional sentences, which once again affirms the lack of independence and impartiality of the judiciary in Georgia.

Preventive measures

In most cases torture takes place during pre-trial detention. Hence it is very important to ensure the existence of alternative non-custodial preventive measures and their application, especially for non-violent, minor or less serious offences.[41] Before the amendments introduced to paragraph 1 of Article 152 of the Criminal Procedure Code[42], it provided for several non-custodial preventive measures[43], though pre-trial detention was a measure mainly used[44]. After the amendments mentioned above, the list of alternative non-custodial measures was quite reduced and only bail and personal guarantee have remained. Keeping in mind the specific nature of these preventive measures, if a person cannot afford to post a bail or find a reliable person who will agree to be his or her guarantor, the individual will be destined for imprisonment no matter how unreasonable the application of this preventive measure is in the given case. In addition, the concept of "reliable person" is quite abstract and may have a very wide interpretation or vice-versa.

Monitoring of remand centres and penitentiary institutions

In 2004, the list of persons entitled to enter penitentiary institutions without preliminary authorisation was defined by decree of the President.[45] On the ground of the decree

[41] See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatement or punishment, Manfred Nowak , E/CN.4/2006/6/Add.3, p 16 (j)
[42] December 16, 2005.
[43] Placement under police surveillance, written undertaking not to Leave Place and behave properly, house arrest.(Although formally the house arrest belonged to the category of non-custodial preventive measures, practically it had nothing to do with the presence of an accused person at a penitentiary institution and thus it was not a custodial measure.)
[44] For a clear illustration of the practice here, statistics are available providing information on how many motions were submitted before the court to impose pretrial detention as a preliminary measure to the defendant and how many were granted. Statistics cover the period from January 2004 to January 2005:
Didube-Chugureti regional Court: From 361 motions 289 were granted
Gldani-Nadzaladevi regional Court: From 515 motions 481 were granted
Vake- Saburtalo: From 401 motions 384 were granted
Krtsanisi-Mtatsminda regional Court: From 500 motions 451 were granted.
Isani-Samgori regional Court: From 471 motions 337 were granted.
Tbilisi District Court: From 139 complaints of the persecutor 77 were granted and from 832 complaints of the lawyer on abolishing/replacing pretrial detention as a preliminary measure imposed on the defendant 61 were granted.
The Supreme Court of Georgia: Collegium of criminal cases: From 22 complains of the prosecutor 21 were granted
[45] Decree N 309, August 3, 2004.

mentioned above and by the decree of the Minister of Justice[46], the Public Monitoring Council of the Ministry of Justice was created.

It is noteworthy that such double regulation in the formation of the Council has proved essential in its survival. When the Council revealed unlawful acts by the head of the penitentiary department and demanded from the Minister of Justice to resign, the reaction was the abolishment of the Council itself. Minister of Justice, Kote Kemularia, Stated: "*Everything that contradicts the law should be changed… Some Council controlling the Ministry of Justice…is simply an absurdity. It must be changed*." [47]

The incident mentioned above is clear proof that the Council was established under the administrative act of the Minister of Justice was an impotent and ineffective unit, having no structural nor financial independence.[48] Though the Council as an organisational unit does not exist anymore, its former members still have a right to visit penitentiary institutions without special authorisation (the decree of the President, serving as a ground for the decree of the Minister of Justice, approving the organisational form of the Council, remains in force).

Georgian law on imprisonment[49] provides for standing commissions under penitentiaries. Despite the fact that the Ministry of Justice approved the Charter of the Commissions (October 2004), and NGOs submitted candidates for its membership, the composition of the Commission has not yet been defined. Hence, the commitments undertaken by the Plan of Action against Torture 2003-2005, i.e. to promote the operation of such commissions, have not been complied with.

On 18 October 2004, General Prosecutor Zurab Adeishvili and the Minister of Interior Irakli Okruashvili reached an agreement about the monitoring of police departments and pre-trial detention facilities. The project, carried out with the support of the Ombudsman, was aimed at preventing torture and inhuman treatment. The agreement envisaged the creation of public monitoring groups, in both Tbilisi and the regions. NGOs around the country submitted candidates for membership in the monitoring group. Many orders were granted in Tbilisi, where NGOs did effective work and identified a lot of violations. In the regions, however, orders were granted to only a few local NGOs and Ombudsman representatives – so public monitoring was hardly conducted in the rest of the country. Thus it is impossible to draw a precise picture of torture throughout the country.

On 8 July 2005, the Parliament of Georgia delivered a resolution[50] on acceding to the Optional Protocol to the UN Convention against Torture (OPCAT).

WOMEN CONCERN

Georgia committed itself to deal with women's issues in 1995 in Beijing (IV World Conference) and to develop national action plans for the improvement of women's status pursuant to the "Beijing Platform". The Plan on the Improvement of Women's Status was developed for the period of 1998-2000, which was approved by the

[46] Decree N1211, October 1, 2004
[47] Newspaper "Resonansi" , November 30.2005.
[48] See Annual report of the Public defender of Georgia concerning the existing situation in the field of human rights in Georgia in 2004 (pp 19,20); "Georgian Young Lawyers' Association"
torture and violence in Georgia , Georgia 2005; Country Report on Human Rights Practice -2005, Bureau of Democracy, human Rights, and Labor, March 8, 2006.
[49] Article 93
[50] N 1889

President. The Plan included 7 guidelines out of 12 of the Beijing Plan of Action but it was not implemented.

The National Commission on the Improvement of Women's Status was created in the National Security Council of Georgia in 1998 with the purpose to protect women's rights and to make them more effective. The following decrees were adopted:
- Decree 511 about Measures for Strengthening the Protection of Human Rights of Women in Georgia (1999)
- National Plan of Action for Improving Women's Conditions (1998 – 2000)
- Three Year Plan to Combat Violence Against Women (2000 – 2002)
- Plan of Action for Improving Women's Conditions (2001 – 2004)

An activity plan of the measures to be taken for combating and preventing domestic violence for the years 2006-2008 has been set. This plan contains different objectives:
- Creating the developed and exhaustive legal bases for preventing domestic violence and for protecting victims so as to eliminate the existing gaps;
- Increasing public awareness on the problem of domestic violence;
- Protection and rehabilitation of the victims: Protection of and support to the victims of domestic violence by enacting mechanisms of legislative and other type of assistance;
- To include in the State budget necessary expenses for ensuring the prevention of domestic violence and combating of and support to the victims of domestic violence;
- Creation and development of a database on the cases of domestic violence.

One of the measures taken by the government is the creation of hotlines for victims of domestic violence however there are no such services assisting women victims of rape and other types of sexual violence.

CHILDREN CONCERNS:

There is no government agency in Georgia that deals with child abuse. Particularly, no official agency is responsible to take action on following up cases of child abuse and neglect and none have policies regarding these issues (i.e. via a child protection plan or a formal set of expectations about how to respond to the problem of child abuse). There is no governmental agency maintaining 1) an official record of all child abuse cases reported in Georgia; 2) an official registry of deaths that occur as a result of child abuse or neglect.

However, some statutes addressing corporal punishment of children exist such as the Georgian law on general education (8 April 2005) and particularly chapter 2, clause 20, emphasizing that: "Violence against a pupil or any other person shall not be allowed". In clause 19 of the same law, it is highlighted that "school discipline must be observed by the methods based on the respect of the freedoms and dignity of a pupil...". Despite this legislation, one cannot say that a real strategy to fight against domestic violence against children exists in Georgia.

Moreover, a draft law on the rights of the child prepared by Georgian NGOs has been submitted to the Parliament and contain several measures to prevent acts of violence against children. The challenge will be to implement it properly.

8. Arrest, detention or imprisonment (Article 11 CAT)

With regards to the situation in the prisons and detention centres, men and women as well as juveniles are held separately. The current statistics of the prisoners is as following: there are 11604 prisoners in total. Among them there are 156 juvenile offenders serving pre-trial detention and 20 convicted juveniles.

There are 201 women prisoners serving pre-trial detention and 167 convicted women. There are 7433 men prisoners serving pre-trial detention and 3627 convicted men.

The statistics of prisoners provided by the Penitentiary department of the Ministry of Justice:

	2003	2004	2005
Women	158	184	283
Men	6037	6386	8653
Juvenile offenders	79	84	115
Totally	6274	6654	9051

8.1. Fair Trial

Recent amendment to the Criminal Procedure Code, namely to Articles 145(9), 283(1), 284(3), 311(1) and 140(5) can be assessed as very restrictive ones for the detainee/defendant. Before these amendments, the investigator, upon indictment, was obliged to question the defendant and send case files including their testimony and other documents or evidence (excluding liability or mitigating circumstances) to the Court for a decision concerning the imposition of a preliminary measure. After the amendments, the investigator is no longer obliged to question the defendant. Instead he is authorised to do so. Moreover, it is no longer compulsory to send all the documents of the case file to the Court for deliberation over the issue of imposing a preliminary measure. Only necessary documents for the consideration of the case concerned are sent to the Court. In the absence of the definition of "necessary documents" one can guess which documents will fall under that definition, especially considering that it is the Prosecuting party which defines it; most certainly the documents which substantiate the need to apply preventive measures shall be considered as "necessary documents".

As a result of the amendments mentioned above, while deciding the question of imposing preliminary measure on the defendant, the court will consider only documents presented and deemed necessary by the Prosecuting party, (i.e. the documents proving the guilt of the defendant and the need to apply preliminary measures, rather than documents challenging the groundless motion of the prosecutor and proving the innocence of the defendant). Without a doubt, this procedure is in direct contravention with the adversarial nature of the process and the principle of equality of arms.

With regards to having access to all documents of the criminal case in question, while no restrictions are set for the Prosecuting party pursuant to the Criminal Procedure Code, the defence party is largely restricted. A lawyer can become familiar with all documents of the case only after the charges are brought against his or her client and upon their interrogation. It is noteworthy that the condition mentioned above is cumulative, which in its turn requires the existence of both elements of requirement. Taking in mind the fact that the interrogation of the defendant is no longer compulsory, a lawyer can have an access to a case only after the case file, together with an act of indictment, is sent to the Court. Even considering the instance where a defendant is

questioned, the lawyer is still restricted in his or her right, because they can become familiar with a case file, though have no right to make a copy of it.

Moreover, a victim can only obtain full access to the documents of the case, as well as exhibits, after the case file, together with the act of indictment, is sent to the Court.[51]

Keeping in mind common practice in Georgia, most criminal cases do not reach the Court and are terminated at the stage of preliminary investigation for various reasons. It is therefore essential for the defence party to have full access to the case files at the initial stage, notwithstanding the direct or indirect link of the documents to the interests of his client. Restrictions imposed on the defence party contradict principles of fair trial of which one is having adequate time and facilities for the preparation of the defence.

8.2. Living conditions in penitentiary institutions, including deaths in custody.

The situation in the penitentiary system is still alarming.[52] The conditions in most of the institutions within the penitentiary system do not comply with minimum standards. Prisons are overcrowded so that three to four prisoners have to share one bed and sleep in turn. For example Batumi Jail N 3 is envisaged for 200 inmates, though at the moment, the number of prisoners there exceeds 400. Before the riot of March 2006, there were 3800 prisoners in Tbilisi Jail N 5 envisaged for 1600 prisoner. The exception, is Kutais Jail N 2, as well as the strict regime institution and Rustavi Jail N6.

There are only open sanitary facilities in the cells and prisoners have to eat at the same place were they urinate, creating horrible unsanitary conditions. Laundry is not cleaned very often and cells are not ventilated, creating an unpleasant, unbearable smell. There is not enough space for each prisoner. Cell lighting is very poor. Quite often prisoners are not allowed exercise, because of insufficient space. For example, in jail N 7 prisoners have not been afforded this right for three months.

Restrictions are common with respect to the right to visit as well. For example, inmates in Tbilisi Jail N 7 are not allowed to use their right to short term or long term visits. Despite the provisions of the law guaranteeing the right of the prisoners to take showers, this right is breached in numerous penitentiary institutions.

The feeding of prisoners does not meet minimal ration requirements. Less than 23,5 GL is spent on feeding each prisoner. Poor medical service is one of the aspects making prison conditions even more unbearable, often resulting in deaths. Only 115,500 GL is allocated to the medical service of prisoners by the State Budget, which works out to three tetri per capita per day. Prisoners' requests for medical examination and transfer to the Prison Republican Hospital are not met by adequate and immediate reaction of the prison administration. Diseased, as well as mentally ill prisoners are not separated from other inmates. Hence, prisoners with various infections and mental disorders are in the same cells. The situation existing in Ksani Colony N 7 is worth a separate examination. There are no separate cells for the prisoners. Approximately 250-300 are living together isolated only by bed linens. Unsanitary conditions, lack of water and a disgusting smell, in addition to the non-isolation of prisoners results in inhuman living conditions and degrading treatment. A notable example of the abovementioned is Zautashvili's case:

[51] Paragraph "k" of Article 69 of the Criminal Procedure Code.
[52] For the detailed information *see* the report of Public Defender 2004, pp 33-37; *and see* the report of the Public defender of the second half of 2005, pp 2-42.

On 13 March 2006, the Georgian Young Lawyers' Association received a letter from a prisoner, Tengiz Zautashvili (serving a sentence in Ksani N 7 penitentiary institution), addressed at the same time to the Ministry of Health, Ministry of Justice, head of the penitentiary department, head of the Parliamentary Committee for human right, Former Political Prisoners for Human Rights (an NGO), and the Georgian free media. In his letter, the prisoner explained inhuman conditions existing in the institution. He started his letter by indicating that he is currently sentenced to imprisonment but not to inhuman or degrading treatment. Each cell in the prison is filthy. They are full of mice, cockroaches and fleas. Prisoners try to get rid of them with their own efforts, but without success. During the seven years of imprisonment, the prisoner's health has significantly deteriorated (heart, sight and liver). Notwithstanding the provisions of the law on imprisonment, guaranteeing medical examination immediately from the moment of prisoner's entry into the penitentiary institution and examination of his/her health State at least once a year, the prisoner's State of health has never been checked. He has no opportunity to practice personal hygiene and is not provided with clean linen. There are not enough water supplies. There are only ten water taps for seven hundred prisoners serving a sentence at the institution. Moreover, the food rations are very low. After prisoners protested against unbearable conditions in prison, one of the sanctions imposed by the prison administration was the decrease of the food rations, namely excluding essential components of food. Prisoners are fed only twice a day (the food has no salt or fat). Prisoners primarily ate the food sent by their families, but according to new rules, sending packages to prisoners containing such products as oil, beans, meat, and vegetables is strictly prohibited by the prison administration. The prisoners do not receive any food that would compose a healthy diet.

All the aforementioned proves that the government fails to comply with its obligation to prohibit torture, inhuman and degrading treatment and protect life. Moreover, in most cases the government does not comply with its negative obligation to refrain from deliberate, unjustified killing. Excessive use of force is a problem persisting in Georgia. In most cases, force used against prisoners is excessive in relation to the aim pursued.

For example, during the search conducted in Batumi Penitentiary Institution on 24 January 2006, a lot of prisoners got physical injuries. According to the story told by prisoners, they were forced to remain in a prison yard for 4 hours (some of them claim that it continued even for 8 hours) in very cold, snowy weather. Moreover, some of the prisoners did not even wear shoes at the moment. They were beaten, verbally and physically assaulted. The Public Defender estimated that such action was inhuman and degrading treatment of the prisoners and recommended that the Office of the General Prosecutor initiate an investigation.

On 27 March 2006 at 3 a.m., a special operation was conducted in jail N 5, N1 and the prison hospital. The government announced that it had prevented a nation-wide prison riot plotted by criminals. But the opposition, as well as human rights defense organisations have cast doubts over the official version and alleged that the riot was a spontaneous act of prisoners to protest against inhuman treatment exerted by prison officials, in particular by Bacho Akhalaia, chief of the Penitentiary, against inmates overnight on March 27. Non-governmental organisations and the opposition claim that there is no evidence proving the fact of a riot in prison. Hence, the police special forces used "extremely excessive" force against prisoners. The special operation to suppress a riot at Tbilisi Prison No. 5 left seven inmates dead and at least seventeen injured. Nobody, including lawyers and members of the Monitoring Council, were allowed to enter the penitentiary institution for two days, which raises serious doubts about the official version provided by the government. The members of the Monitoring

Council appealed to the Ministry of Justice and demanded the initiation of a criminal case, as well as a formation of an independent investigative commission.[53] The opposition demanded an independent parliamentary probe as well, though the ruling party voted down the investigation initiative.

There are serious doubts with respect to the number of the deceased prisoners. According to Imedi TV, Mamuka Gviniashvili, an inmate from the jail N 5, who according to official information died in the prison hospital, had multiple injuries on his body, including a gunshot wound to his head. Relatives of Gviniashvili say that the official reason given for his death was liver complications, but Gviniashvili's mother says she visited her son in prison just one day before the prison riot and he did not complain about any health condition. She also denied that her son was in the prison hospital. In the absence of clarity with respect to the incident, the motives behind violence in the Tbilisi jail N5 still remain a source of different interpretations.

Prison violence in Tbilisi also triggered international reaction. On March 31 , Karel De Gucht, the Chairman-in-Office of the Organization for Security and Co-operation in Europe (OSCE), the Belgian Minister of Foreign Affairs, expressed his concern about violent incidents that occurred in Tbilisi Jail No.5 on March 27.

"We regret the death of seven inmates and the injury of a large number of prisoners as well as several servicemen from the Government's Special Task Forces," read the Statement from the Chairman-in-Office of the OSCE on 31 March 2006.

"We note that different reports on the exact circumstances of the events have been circulated and a lack of clarity exists," the Chairman-in-Office added.

"I believe it would be appropriate to set up an independent and public enquiry to investigate the events, including allegations of a disproportionate use of force by government troops which resulted in a large number of victims," Minister De Gucht Stated.[54]

Unfortunately, the death of inmates in custody is still a reality in Georgia. In 2004, 43 individuals died within the penitentiary institutions, in 2004 the number of deceased reached 47. Some of them died as a result of various diseases and some of them as a result of suicide. But because of ineffective investigations, it is unclear whether all of the suicides reported were actually suicides.

In September 2005, convict Zurab Tsintsabadze, serving a sentence in Khoni N 9 Penitentiary Institution, was found hung. An investigation has been initiated on the fact, though it was later terminated. The prosecutor's motive for terminating investigation was the determination that no crime had been committed, the death was merely a suicide. Mentioned in the decision of the Prosecutor, one of the main exhibits existing in the case, was a letter found in Zurab's clothing in the Institution of Expertise saying that Zurab decided to commit suicide because of his feelings for someone. The decision was appealed in the City Court as well as in the Appellate Court, but the initial decision of the Prosecutor was left in force. There are a lot of procedural violations in this case. The exact time of death is not established. Evidence at the scene was not preserved. Numerous important investigative actions were not conducted (i.e. taking fingerprints from the convict's clothing and from the rope used

[53] *See* the appeal of persons authorized by the President of Georgia to monitor prisons by the Minister of Justice of Georgia Mr. Gia Kavtaradze.

[54] *Civil Georgia*, 2006.04.02.

to hang himself). When the scene was visited by the investigator (on 1 October 2005), the protocol, listing the items found in the pocket of the prisoner, was drawn up and three items were found in his pocket: a pack of cigarettes, a lighter and two pills of medicine. Later on 9 November (a month and nine days later), the abovementioned letter was found in the prosectorium of the Forensic Expertise Institution. The letter was attached to the case as important evidence, which later served as grounds for terminating the case. No tests were conducted to establish whether the handwriting belonged to Zurab or not. The lawyers of the victim (Zurab's mother) demanded the investigation be reopened, but without any results.

8.3. Right to liberty and security of person, the prohibition of arbitrary arrest or detention

Regretfully, the practice of arbitrary detention, backed up by provisions of the Code of Criminal Procedure, still prevails in Georgia. Article 162 of the Criminal Procedure Code, regulating the term of detention, in effect legalises its arbitrary nature. According to Article 162, the term of detention is suspended from the moment when the case, after the drawing up of an act of indictment, is submitted before the Court. After delivering cumulative sentences on the last case being under his or her consideration, the judge has 14 days to hear the case. Until then, though being detained, the indicted individual is not considered a prisoner and according to Article 162, has no status at all. In other words s/he is arbitrary detained.

Georgia carries out the prevalent practice of arbitrary detentions. Law-enforcement officials often detain people without court warrants, frequently violating the law on the maximum age of detention, followed by procedural violations such as failure to bring detainees personally before a judge to determine the legal nature of detention, failure to notify family members of detainees and restricted access to lawyers.

Medical examination:

In the Georgian penitentiary institutions, many of the prisoners serving time are gravely ill and require serious medical treatment. These persons are not treated in medical institutions and instead are left in prisons where their health conditions and those of the surrounding prisoners are left to deteriorate even further. One such prisoner was Piruz Jachvliani, who died on 13 May. Jachvliani was serving his time in prison for theft and was gravely ill before he was arrested. He had acute viral hepatitis and was placed in the prison's Republic Hospital. Due to the lack of appropriate medicine and medical treatment, Jachvliani's health deteriorated considerably while in prison. Despite the opinion of medical experts from the National Bureau of Legal Expertise on 25 February which Stated that the patient's condition was very serious and required treatment in a special medical institution and long-term ambulatory supervision, Jachvliani was not transferred to the hospital. The Court did not grant the petition submitted by Jachvliani's lawyers to substitute imprisonment with home custody.

As Piruz Jachvliani's condition worsened, his lawyers addressed the medical department of the Ministry of Justice and requested a medical certificate on Jachvliani's State of health. Having obtained the certificate, his lawyers got in touch with expert Maia Nikoleishvili who agreed in his conclusions that Jachvliani's imprisonment should be replaced with home custody. On the same day that this medical conclusion was made, Piruz Jachvliani's lawyers applied to the Court with a petition and three days later, on 29 April, he was transferred to the infectious diseases

section of the hospital. Regrettably, it was too late to improve the status of his health and he died on 13 May.

Nikoleishvili Stated in his conclusions of 21 April that Jachvliani was "seriously ill with acute viral hepatitis B" and his recovery would be "impossible." He wrote: "at present the patient Piruz Jachvliani's health condition is extremely serious and requires instant and adequate medical treatment without which death will be imminent." According to Keso Tsartsidze, one of Jachvliani's lawyers, the penitentiary medical hospital should be held responsible for the patient's death because, had appropriate inpatient treatment been provided in a timely manner, the patient would have survived. "Piruz Jachvliani's death is a result of professional negligence on the part of the penitentiary medical staff," commented his lawyer.

On 27 September 2003, the Plan of Action against Torture 2003-2005, developed in co-operation with the OSCE, was approved by the President of Georgia[55]. The Plan envisages five objectives, including the adoption of the amendments to existing legislation and the elaboration of new legal acts[56]. One of the strategies provided by the document was to amend Article 146(6) of the Criminal Procedure Code to ensure compulsory medical examination of a detained suspect within the first 24 hours of detention.

The Criminal Procedure Code currently in force guarantees the right of a suspect to obtain a medical examination, but according to the definition of the right included in various articles, the question whether the examination is compulsory still remains. The right to a medical examination is mainly spelled out in Articles 73 and 145 of the Criminal Procedure Code. Article 73 enumerates the rights of suspects, including the right to request, free of charge, a medical examination and respective written conclusion immediately from the moment of one's detention or the delivery of the ruling. The person is also entitled to request the appointment of the medical expert, which must be immediately granted.[57]

At first sight, it can be understood that the accused individual is granted the right to request a medical examination and if s/he does so, there is no right to deny it. However, as the initiative of the request weighs on the suspect, it is hard to prove that the form of the examination is categorically compulsory. Denial of the appointment of medical expertise can be appealed before the regional city court. Thus, the medical examination guaranteed by Article 73 is not a compulsory one by its very nature. On one hand, the initiative of the request is left to the suspect, and on the other hand, the investigation has a very simple mechanism for denying a request.

The same problems occur with Article 145(6) of the Criminal Procedure Code, stating that a suspect must be interrogated within t24 hours from the moment of his/her detention and after interrogation, if the detainee so wishes, s/he can be examined by the doctor.

As far as Article 73 of the Criminal Procedure Code is a special provision regulating the rights of suspected individuals, it has a precedence over Article 145.
By amending Article 145(6) of the Criminal Procedure Code regarding compulsory medical examination and replacing the provision by the one currently in force, the Government of Georgia did not discharge its obligation undertaken by the Plan of Action against Torture.

[55] Decree of the President of Georgia No. 468. September 27,2003.
[56] The purpose of this is to enforce the implementation of international obligations assumed by Georgia and recommendations of the respective UN treaty bodies in the field of human rights.
[57] Article 73 paragraph1 (v)

There are some concerns with respect to the independence of medical examinations and the priority of the conclusions issued by State appointed doctors/experts in relation to the conclusion of independent experts. Experts are mainly appointed by the investigator or prosecutor. In exceptional circumstances experts are invited by the party[58], though in that case the party must cover all expenses related thereto. Article 364 of the Criminal Procedure Code provides for alternative expertise: the party is entitled, at its own initiative and expenses, to conduct examinations to establish the circumstances which in their opinion could facilitate the protection of the suspects own interests. Upon the party's request, an expert's opinion shall be attached to the criminal case and assessed jointly with other evidence. Keeping in mind Article 19 of the Criminal Procedure Code [59], it can be inferred that the conclusions made by the State-appointed doctors and independent doctors have an equal legal force. However, the amendment made on 16 December 2005, to subparagraph "g" of Article 29 (1) of the Criminal Procedure Code proves the opposite. According to this article, only the conclusions of the State forensic medical examination or State forensic-psychiatric examination can serve as the basis for the suspension of the criminal case.

It is evident that priority is given to the conclusions of the State forensic medical institutions, thus rendering ineffective the articles guaranteeing alternative expertise or the right of a party to invite the doctor of his or her own choice at their own expense.

Another concern is whether the State institutions providing forensic medical service are independent, unbiased and able to issue a conclusion containing true information without fear of retaliation. The State forensic medical institution, the National Bureau of Forensic Expertise[60], is a body falling within the competence of the Ministry of Justice[61], structurally inconsistent to its requirement of independence and impartiality; it therefore cannot be deemed independent from State influence.[62]

According to the report of the Office of the Prosecutor General of Georgia[63], the amendment entered in Article 145 constitutes a significant step taken in respect of establishing firm guarantees in terms of human rights protection. Namely, amended Article 145 (5) obliges police officers or any other competent officials (dealing with detention of suspects) to draw up a detention protocol immediately upon detention, which along with other requirements must include the description of the physical condition of the suspect at the time of detention. However, the term "physical condition" used in this article is quite vague. It does not specify how detailed information has to be included in the protocol; whether it should refer to the injuries of the person, if any, or simply provide a description on first sight.

According to the information received from the Ministry of Justice, many prisoners with bodily injuries are taken to the penitentiary department of Georgia. The penitentiary department of the Ministry of Justice hides the real number of physically injured prisoners. HRIDC exposed penitentiary department of trying to deceive society by covering up the real number of tortured and beaten prisoners. According to the

[58] Article 359 of the Criminal Procedure Code
[59] No evidence shall have a predetermined force. An investigator, prosecutor, judge, court shall assess legal evidence based on their intimate belief.
[60] See the Decree of the Minister of Justice N 1549 approving the charter of the National bureau of forensic expertise.
[61] Paragraph 2 of article 6 of the charter of the National bureau of forensic expertise States: the head of the bureau is appointed and dismissed by the Ministry of Justice of Georgia. Pursuant to subparagraph "b" of paragraph 5 of article 6: the head of the bureau report to the Ministry of Justice on the activities carried out.
[62] See the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Georgia, 23 September 2005, Conclusion and Recommendations (e)
[63] See Report with respect to human rights in Georgia, Office of the Prosecutor General of Georgia. (p 4)

information received from the penitentiary department, the number of such prisoners taken to one of the jails per month is more than in the prisons of Georgia altogether. Hereinafter is provided the statistical data of the penitentiary department confirming the above mentioned information:

The following number of prisoners with body injuries entered in Tbilisi No.1 prison in 2004[64]:

January	38 prisoners	June	45 prisoners
February	39 prisoners	July	88 prisoners
March	48 prisoners	August	13 prisoners
April	43 prisoners	September	16 prisoners
May	38 prisoners		

According to the statistical data received from the penitentiary department of the Ministry of Justice, the following number of prisoners with body injuries entered the penitentiary department of Georgia in 2004[65]:

January	35 prisoners	June	44 prisoners
February	43 prisoners	July	93 prisoners
March	51 prisoners	August	20 prisoners
April	41 prisoners	September	27 prisoners
May	39 prisoners		

CHILDREN CONCERNS:

According to article 33 of the Georgian Criminal Code, criminal liability for minors begins at 14 years old. A distinction between 14 and 16 years of age is made in article 88 relating to the "imprisonment for a particular term": deprivation of liberty of a juvenile for less than 10 years should be served in an educative institution. A sentence of deprivation of liberty from 10 to 15 years can be pronounced towards a juvenile aged between 16 and 18 but only for an especially grave crime.[66]

According to the Georgian Criminal Code juvenile delinquents might be subjected to the following penalties: a) fine, b) derogation of the right to pursue certain activity, c) socially useful labour, d) corrective labour, e) restriction of liberty, f) compulsory measures of educational nature (warning, supervision, placement in special educational or medical-educational facility); g) deprivation of liberty for particular term which is awarded not in excess of 10 years imprisonment, children from 16 to 18 years old held criminally liable for any especially serious crime, must be sentenced to a minimum of 10 years and maximum of 15 years for (Chapter 17, Georgian Criminal Code).

The Georgian "Law on Imprisonment" defines the rules of treatment in detention, the sentencing, the nutrition, education, labour settings of juvenile detainees as well as the relations of juveniles with other inmates. In this regard, children deprived of their

[64] The letter of G. Alfaidze, head of the Penitentiary Department № 1 to the HRIDC, dated 26 October 2004, Letter number 10/36-4-11-8443

[65] The letter of Shota Kopadze, the head of the Penitentiary Department of Georgia to the HRIDC, dated on 28.10.04. Letter number 10/8-7386

[66] Especially serious offences include those intentional offences, for which a person shall be sentenced to more than 10 years or life imprisonment under the Criminal Code, such as premeditated murder (art. 109) and premeditated severe injury to health (art 117).

liberty should be separated from adults and in pre-trial detention from the convicted ones.

Minor witnesses might be questioned only in such cases when s/he can provide important evidence, oral or otherwise, for the case. The interrogation process of a minor is conducted with the presence of a teacher or legal representative. The interrogation of a witness under the age of 7 is possible only with the consent of a parent, guardian, or other legal representative. Before questioning those persons must be informed of the possibility to express their opinions and should give the permission to the investigator to ask the questions. Witnesses under 14 are explained why s/he should tell the truth and that s/he can refuse to give testimony.

Practice

In practice, legal guarantees are followed only infrequently. In cases where law enforcement officials are themselves lawbreakers, it remains very difficult for victims to confront them.

In temporary detention facilities, juveniles are rarely separated from other inmates and pre-trial minor detainees are often kept with convicted prisoners resulting in overcrowding.[67]

According to information from NGO Former Political Prisoners for Human Rights in 2004-2005, 278 torture cases were registered, including 5 cases regarding children from different regions in Georgia. [68]

On 31 March 2004, at the eleventh floor of the central police department, 28 years old Giorgi Zhorzholiani and his 16 years old sister, La Zhorzholiani were brutally tortured.

On 17 July 2004, Borjomi police officers, Onoprishvili and Khachidze, detained 17 year old Kakha Sanodze, who was beaten by them and received shots to his feet. Kakha was suspected of stealing several bottles of soda.

On 1 September 2004, 17 year old Rati Antelidze was kept in the Ozurgeti regional police department because he was suspected of robbery. During his custody, Rati was cruelly beaten. On 4 September, Rati was moved to Ozurgeti Hospital. Later, the police threatened him that should he complain about the incident, they would kill him.

On 16 October 2004, head of Gurjaani Police Department, Mr. Gela Mchedlishvili, and his assistant detained and beat 14 year old Giorgi Iashvili at the city cemetery. When a patrol later approached and asked why the child was near the graveyard, the police officers answered that the child had been moved there for satisfy his needs.

In all these cases, none of the perpetrators have been prosecuted.

TBILISI, GEORGIA, 10 June 2005 - Aleko Kamushadze stole an accordion and a drum from the basement of his school and he is now serving an 18-month sentence in a juvenile detention centre. Aleko looks much younger than his 17 years. He is ill-equipped to live amongst aggressive and stronger detainees. During the pre-trial detention period, Aleko spent eight months behind bars at one of Georgia's most

[67] Information found on the web site of the Bureau of Democracy of the U.S department of State.
[68] Illegal detentions and torture of detainees by Former Political Prisoners for Human Rights, http://www.fpphr.org.ge/view.php?view_id=7&id=59 ; http://www.fpphr.org.ge/

notorious adult prisons where abuse is rampant. “Prison was tough. We were only allowed outside for 10 or 15 minutes in a day. The rest of the time I was in a small room with 30 other persons. I could barely breathe," Aleko remembers.[69]

UNICEF is currently assisting the government of Georgia in reforming its juvenile justice system. UNICEF and committed lawmakers want a separate system of juvenile justice and special juvenile courts to protect the basic rights of children. Another goal is to ensure that imprisonment is seen as a last resort, especially before a child's case is brought to trial. "Most of the judges and the people who are here to enforce the law do not have any specific training to deal with minor delinquents. Imprisonment is not the exception, it is the common response. Sometimes a child remains in pre-trial period for a very, very long period of time, and this is sometimes for very minor offences," says Ismail Ould Cheikh Ahmed, Georgia’s Representative for UNICEF.

[69] http://www.unicef.org/infobycountry/georgia

Cases of arbitrary detentions:

According to the information of Thea Tutberidze, member of the NGO "Liberty Institute"[70], employees of the Ministry of Interior of Shida Kartli have illegally detained twelve persons who were also deprived access to a lawyer. "*We had to go to Gori (city in Shida Kartli) at 12pm for that reason. Some of the detainees were released before our arrival and only two of them remained in detention*," mentioned Thea Tutberidze at the press-conference.

According to her, Vladimer Jugeli, head of the regional police department, claimed that the two mentioned persons were in the police pre-detention department by their own will and did not demand any access to lawyers. "*Finally, those two persons were released but in accordance of Jugeli's orders, they sat in the car without saying a word to us."*

Sulkhan Molashvili remains an illegal prisoner

Sulkhan Molashivili, ex-chairman of the Chamber of Control was arrested in April 2004 and charged with abuse of power and with causing financial damage to the State budget. On 5 August 2005, criminal court proceedings against Sulkhan Molashvili were resumed, at a time when both his lawyers were absent on vacation. The case was handed over to Taimuraz Nemsadze who requested an adjournment of 30 days in order to study the case in detail in accordance with Article 429(2) of the Criminal Procedure Code. The judge rejected this request and granted Molashivili's lawyer only 5 days to become familiar with his case file consisting of 25 volumes, each volume containing 500 pages.

Prosecutor Manana Musulishvili commented that this request was a purposeful attempt by the defence to delay the court proceedings; stating "evidence to prove his guilt is abundant, that's why they attempt to prolong the court session." Sulkhan Molashivili expressed disbelief upon the Prosecutor's accusation, as in fact he had eagerly been awaiting the start of the court procedure since December. Moreover, he was held in pre-trial detention for 16 months, surpassing the maximum period of 9 months deemed legal by current Georgian legislation. Aggravated by the situation, Molashivili had Stated that if conditions continued in such a manner he would refuse to have a defence at all and hand over his fate to the judge and prosecutor, exclaiming "even animals are not treated like this".

Abusing the rights of Zurab Tchankotadze, illegally-imprisoned

8 April 2005, Former head of the civil aviation department, Zurab Tchankotadze, has had his rights breached from the very first days of his detention. A court hearing was held a year after his initial detention, a time lapse which goes against the core principles of the UN Declaration on Human Rights accepted by Georgia and the Constitution of Georgia.

Zurab Tchankotadze has been held in the preliminary detention centre since 16 March 2004. He is being accused of violating Article 332 of Criminal Code – abuse of official duty. A preliminary investigation of his case was finalised on 31 August 2004 and on 20 September 2004, the case was handed over to the Vake-Saburtalo District Court. However, the court hearing was held only one year later.

Article 18 (6) of the Constitution sets the maximum period for preliminary detention of individuals at nine months while in this case, nearly a year passed after Zurab Tchankotadze's arrest. Thus, he has been an illegal detainee since 20 September 2004, in contradiction to the Constitution of Georgia and international human rights standards.
Before the case was sent to the District Court, it had been studied by the Public Defender of Georgia, who concluded that it constituted an instance of human rights' abuse. On 11 February he sent a recommendation letter to the Vake-Saburtalo District Court with an appeal to put an end to the illegal detention. Only one month after his appeal did the court begin trying the case. So far, twelve witnesses have been questioned.

[70] *Tbilisi. 16.08.05. Media News.*

Giorgi Mikiashvili is kept under detention for resisting the patrol police

For resisting the Patrol Police, Giorgi Mikiashvili has been kept in detention since 30 October 2005. He was suspected of having stolen a mobile phone and thereafter arrested and beaten by the law enforcement officials.

After nine days of detention, Mikiashvili was transported to the psychiatric department. According to Mikiashvili's sister, "he was in a terrible condition. Prisoners told me that twelve persons had to hold him down in order to give him an injection. The prison doctor told me they were giving him big doses in order to make him sleep. Giorgi is still receiving medicine".

According to Mikiashvili, he was beaten several times in the pre-trial room to the point of fainting. Lawyer, Zaza Khatiashvili, asked for a medical expert. The investigator did not approve, although the results of physical abuse could be seen on Mikiashvili's face.

According to Zaza Khatiashvili "investigation is hiding the facts of the case. They are prolonging the time and treating George with strong medicine in order to hide the result of physical abuse."

According to doctor-psychiatrist Mariam Jishkarini's examination, Mikiashvili is in a grave psycho-somatic condition.
His lawyer asked the Court to order an expertise report. In principle, the Court should decide such cases within 24 hours. Mikiashvili's family waited one month for the decision. Only after Mikiashvili's sister brought a case against Judge Levan Murusidze, was the question finally decided.

Death in Custody – cases of Khvicha Kvirikashvili and Giorgi Inasaridze

Police officers detained 40 year-old **Khvicha Kvirikashvili**, charging him with committing a burglary on 22 May 2004. According to the police officers, they interrogated Kvirikashvili in the third department of the Gldani-Nadzaladevi police offices and released him after giving him a receipt. However, the next day they continued his interrogation.

On 23 May, police officers took Kvirikashvili home in a taxi. Twenty-five minutes later, Kvirikashvili died with multiple injuries on his body. It is believed that the police tortured him. The investigation is currently underway.

This is the second time after the "Rose Revolution" that a person has died shortly after having been in police custody. On 19 December 2003, 40 year-old **Giorgi Inasaridze** committed suicide while detained in pre-trial isolation at the Ministry of Interior. Allegedly a drug addict, he had been taken to a drug dispensary by the police. He, too, was released the same day after having been given a receipt. However, the next day police called him in for another session of questioning at the Ministry of Interior.

Expert testimony confirmed his drug addiction and the Didube-Chugureti Court sentenced him to ten days in detention. Police then put Inasaridze in a temporary detention isolation. The next day he was found hanged.

Conditions of detention : *carcer* cells

Mr. Shalva Ramishvili and Mr. David Kokhreidze are the cofounders and shareholders of the independent TV Company "TV 202" operating in Tbilisi, Georgia.

Mr. Ramishvili was the anchorman of the popular talk show "Debatebi" (debates). Often addressing politically sensitive issues, such as government corruption, nepotism, lack of, or ill-guided, reforms and the like, Mr. Ramishvili had admittedly become inconvenient and embarrassing for the new government of the 'Rose Revolution' which had promised the establishment of rule of law in Georgia as its main platform to come to power.

On 27 August 2005, Mr. Ramishvili and Mr. Kokhreidze were arrested on suspicion of having committed the crime of extortion.

On 11 January 2006, two days before the otherwise unexpected preliminary hearing of the cases of Ramishvili and Kokhreidze in the Tbilisi City Criminal Court, Mr. Ramishvili was moved from his regular cell at Jail No.1 of the penitentiary department of the Ministry of Justice of Georgia to the so-called *carcer*, a disciplinary solitary confinement cell, which in Soviet times was used as a cell for the confinement of those on a death row. Mr. Ramishvili spent four days in the *carcer* and was returned to his regular cell on 15 January 2006. Allegedly, Mr. Ramishvili was punished for the use of a mobile phone.

According to Mr. Ramishvili, *carcer* consists of a four to five square metre solitary confinement cell which. He was kept there together with another prisoner. The *carcer* had no windows nor ventilation and, therefore, was not exposed to natural light or fresh air. The *carcer* was illuminated by one yellow light bulb which was lit 24 hours a day. The *carcer* was an extremely damp place. Tap water was running non-stop and noise was heard 24 hours a day. A narrow pipe in the corner, located just one metre away from the bed, was the designated "toilet". On account of the narrowness of the pipe, it was difficult for the prisoners to pass body fluids and excrements right into the hole. There was no partition that might separate that "toilet" from the rest of the cell. Since there were two persons in the cell, one was obliged to use the "toilet" in the presence of the other. For all these reasons, the *carcer* was an extremely dirty and unhygienic place, infested by cockroaches and rats running through the cell. The place is described as bearing a faecal stench at all times.

In spite of the extremely small space, Mr. Ramishvili had to share the *carcer* several days with another prisoner. They were inevitably subjected to a high degree of discomfort. Firstly, because of the non-existence of partition between the "toilet" and the rest of the cell. Secondly, the only bed in the cell – which by itself was unfit because it was made of iron rails – was not wide enough to accommodate two people.

Under such conditions- lack of fresh air and elementary hygiene, constant noise of water, non-stop lighting 24 hours a day and the unsuitable narrow bed- Mr. Ramishvili was deprived of normal sleep. In addition, owing to the permanent stench of the toilet, and infestation by vermin, Mr. Ramishvili was unable to eat the food that, as he points out, was much worse than ordinary food provided to prisoners in regular cells. The applicant did not enter into a hunger strike.

During the whole period of his confinement to the *carcer*, Mr. Ramishvili was never let out of the cell for a regular daily walk in the prison yard. He was never visited by a doctor nor did he receive any other particular care.

Less than 24 hours later, on 14 January 2006 at about 11.00 pm, some intoxicating smoke (later explained by authorities to have been caused by the burning of a mattress in the adjacent cell) leaked to the *carcer* where Mr. Ramishvili and his roommate were placed. Due to the lack of ventilation in the *carcer*, the smoke filled Mr. Ramishvili's *carcer* very quickly. During half an hour, Mr. Ramishvili and his roommate were knocking loudly on the *carcer* door. However, nobody came to their aid. During half an hour, Mr. Ramishvili and his roommate were exposed to physical suffering -smoke inhalation, tearing eyes, the inability to breath- and also to the real risk of death, provoking in them feelings of extreme anxiety and anguish.

Eventually, the prison guard opened the *carcer* door and let both inmates out for a short while until the smoke was gone. The next morning, Sunday 15 January 2006, Mr. Ramishvili was returned to his regular cell after several news stations had reported the incident.

Due to blatant violations of a number of articles of the European Convention on Human Rights, including Article 3 (prohibition of torture or ill-treatment), the case was presented to the European Court of Human Rights. The Court has already received arguments concerning just satisfaction.

Cases :

Increased incidents of beating detainees

The incident involving Gocha Fatsuria, a person beaten up at the Department of Prisoners with Tuberculosis, was regarded as torture by Sozar Subari, the Public Defender. On his recommendation the detained person should be moved to the Prison's Hospital. Gocha Fatsuria, however, remains in Prison No.1.

Before obtaining the position of head of the penitentiary system, Bacho Akhalaia was the Deputy Public Defender. At that period he was known for his critical comments concerning the harassment and torture of prisoners. He was constantly criticizing the former Head of the Penitentiary Shota Kopadze. It is one month since he has changed positions, for this period the Public Defender's office has been silent about the beating of prisoners on hunger strike in the Qsani and Kutaisi prisons. Sozar Subari's comment above is the first about torture of detained persons. He made this comment after visiting Gocha Fatsuria. According to the prisoner he was beaten twice, first at the Department of Prisoners with Tuberculosis and then at Qsani's second colony.

"I assess these two facts of physical abuse as torture, and it will be difficult for investigation to give it another qualification. His face was injured and he had signs of abuse on his body. I made a recommendation to the Prosecutor's Office to investigate this fact and punish the responsible people" said Sozar Subari.

According to penitentiary system's administration, Gocha Fatsuria was drunk and he had a handmade knife with him and abused administration members. The family of the prisoner categorically refutes this information. Gocha Fatsuria was beaten up in the presence of his sister. According to her, they made her mother leave the room and subsequently members of the Special Forces ran into the room and began beating up Gocha, in the presence of his sister and two nieces.

" He was beaten before my eyes. Then he was moved to another building to an isolation ward. He cannot talk on the phone. At 3am somebody called me and said not to worry, that Gocha was alive and he just could not talk because he was beaten," said his sister, Tea Fatsuria.

The members of the Penitentiary System Monitoring Council were also interested in the health condition of Gocha Fatsuria. According to them, the prisoner's condition is very poor and he has to be transported to the prison hospital. Despite numerous appeals, the head of the penitentiary system, Bacho Akhalaia, still refuses to provide him with medical treatment.

9. Investigation, remedy and redress (Articles 12 to 14 CAT)

9.1. Investigation (Articles 12 & 13)

The main stumbling block in the fight against ill-treatment seems to be the 'impunity syndrome' – police officers perceive themselves to be untouchable. Police officers continue to protect one another and no effective remedy to combat this solidarity has

yet been implemented. Although figures in this field are notoriously unreliable, it can be Stated with some certainty that an infinitely smaller amount of investigations and prosecutions have been initiated against perpetrators, than the most conservative estimations of the number of cases of torture.

It is believed that in 2004, more than 1000 instances of ill-treatment occurred, but only 12 cases were launched and 6 perpetrators sentenced. In this regard, Saakashvili's speech of 28 October at the Tbilisi's business forum are rather striking: "I am proud that we are the first country in this region where people are no longer beaten up and tortured and where the police do not commit any illegal acts."

Ministry of Interior Punishes Guilty Policemen[71]

According to the General Inspection Department of the Ministry of Interior, investigations have been conducted on several cases of allegations of torture:

1) On 19 December 2003, as a consequence of **Giorgi Inasaridze**'s hanging himself, Colonel Robinzon Dugadze, Inspector on duty of the Duty Service for the Temporary Detention Isolator at the Ministry of Interior, and other policemen of the Isolator Maintenance Group, Junior Sergeant Fridon Pataridze as well as Private Shengeli Mamulashvili, were dismissed from the Ministry. Police Major Kakhaber Tarugishvili, head of the Isolator, was demoted. All evidence and material, including a copy of the inspection conclusions, have been sent to Mtatsminda-Krtsanisi District Court for legal review. The final decision is pending.

2) On 23 May 2004, in relation to **Khvicha Kvirikashvili**'s death, Roland Minadze, Junior Lieutenant of police, inspector of Subdivision III of Gldani-Nadzaladevi Department of the Ministry of Interior, was dismissed from the Ministry. Vice Colonel Iuri Mikanadze, head of the same subdivision was demoted. Also, Senior Lieutenant Paata Tatunashvili, deputy head of the subdivision for criminal police and Major Djemal Sanaia, head of the Criminal Investigation Department both received severe reprimands. All material, including a copy of the inspection conclusions, has been sent to the Tbilisi Prosecutor's Office for legal review. The final decision is pending.

3) In 2004, **Giorgi Lobjanidze**, whose torture has been confirmed by experts, refused to give explanations, nor did he sign the protocol. The relevant materials of the office inspection have not been included in his case.

4) Regarding the fact that police officers inflicted injuries on **Gocha Djanelidze** in Tskaltubo on 19 March 2004, the District Court refused to launch a criminal case because it found no illegal conduct.

5) In 2004, according to **Bondo Tutashvili**, police did not insult him. It follows that he did not have any complaints against them.

7) The case brought against **Akaki Abzianidze** on 10 June 2004, has been sent to Kutaisi Civil Court for review.

In 2004, plea bargaining was introduced to the Criminal Procedure Code of Georgia.[72] This allows a judge to pass a sentence without hearing the case on merits, upon the agreement of a prosecutor and the accused of the guilt or a sentence (without confession of crime) and on further cooperation. Since its introduction, plea bargaining has become a means for the illegal extraction of property (money) from the defendants, as well as a means for the perpetrators of torture to avoid conviction. The

[71] Information of the Agency Media News available on HRIDC on-line magazine www.humanrights.ge
[72] Chapter LXIV from the Criminal Code or Criminal Procedure Code ?[1]

plea bargaining system existing in Georgia has been criticised by the lawyers, as well as by international organisations.[73]

Though the legislative construction of the system does not envisage the payment of any sum by the accused person as a condition of plea bargaining between the prosecutor and the accused persons, in practice the parties also agree on the sum that has to be paid for the reimbursement of the damage occurred. The sum has to be transferred either to the State budget (if a damaged is inflicted upon a State) or to the accounts of the so called "Georgian Armed Forces and Law Enforcement Bodies' Development Funds," as a voluntary contribution.[74] Moreover, the sums mentioned above are not reflected in the court sentence approving the plea bargaining agreement, hence enabling the State to administer them without transparency and public control. One of the serious deficiencies of plea bargaining, to the detriment of the victim, is that his agreement is not necessary for concluding agreement. The victim has no right to appeal the agreement on "plea bargaining."

Moreover, unfortunately the ability to lodge a plea bargaining agreement with the defendant is often abused by Prosecutors as a means of remedying their own mistakes committed during an investigation. Namely, in cases when serious procedural mistakes were committed by investigators at the initial stage or prosecution lacks solid evidence to support its case, Prosecutors advance a proposal to sign a plea bargaining agreement with the defendant. In such cases, defendants are given a chance to leave detention earlier than expected, and hence in a majority of cases they do sign agreements.

Many positive amendments in relation to torture were made to the chapter of the Criminal Procedure Code regulating plea bargaining. Namely, before approving an agreement on plea bargaining, the court has to ascertain that "*the agreement is reached without signs of violence, threat, deception or other kinds of illegal promise, voluntarily, and with the ability of the accused to receive qualified legal aid*". Additionally it must also determine "*there has been no case of torture, inhuman or degrading treatment have not been used by police or other law enforcement officials against the accused*". "*It is prohibited to conclude an agreement if it restricts the right of an accused to request criminal proceedings against relevant persons in case of torture, inhumane or degrading treatment*".

Problems linked to weak victims and witness protection

Protection for witnesses and victims is very important for encouraging them to provide true information concerning the names of perpetrators of torture, without fear of

[73] *See* Human Rights Watch, "Uncertain Torture Reform," April 11, 2005 and Doc. 10383, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr. Eörsi and Mr Kirilov).
Text adopted by the Assembly on 24 January 2005 (1st Sitting) (paragraph 48-50): "The co-rapporteurs consider that the specificities of Georgian version of the plea-bargaining system, especially the introduction of the financial component and the seemingly arbitrary way in which it is applied to some cases and not to others, make this practice incompatible with Council of Europe standards. Consequently, the rapporteurs call on the Georgian authorities to immediately and substantially review the present plea-bargaining procedure, in order to bring it in line with Council of Europe standards."

[74] Despite the fact that the information related to the funds is public, the Georgian Young Lawyers' Association could not gain access to it. Notwithstanding numerous letters to respective institutions, requiring information, no response was ever received. Therefore, it is still an open question whether the information is public and whether the considerable sum of money transferred to the account of the fund was properly spent.

retaliation. In light of the latest amendments to the Criminal Procedure Code, the insertion of Chapter XIV, regulating the special measures adopted for the protection of parties to criminal procedure is a positive step forward.

On the other hand, the provision introduced to the Criminal Code[75] under the title of "*Giving inconsistent adversarial testimony by a witness or a victim*" represents a dangerous article for victims themselves. The fact that, in most cases, presenting evidence is controversial, giving rise to a fear of retaliation, and that there is a lack of trust in law enforcement bodies, witnesses and victims fear testifying. Their lack of cooperation should not be misinterpreted as an intention to mislead the investigation. In fact, there was no real necessity for introducing this article since the Criminal Code, in Article 370, already prohibits the giving of false testimony by witnesses. The amendment is just another obstacle for defendants and witnesses to amend their initial Statement, often made under the pressure of the police.

In most cases witnesses are pressured or otherwise abused during the process of interrogation, thus the attendance of a lawyer is very important at the initial stage. Very significant guarantees in this respect was introduced to the Criminal Procedure Code in 2001. Article 305 (5) provides:

> "With a request of a witness, a lawyer may attend the interrogation. Non-appearance of the lawyer does not prevent the investigation from conducting investigative action"

In spite of this positive amendment, when there is no restriction on carrying out the interrogation in the absence of a lawyer, such guarantees remain ineffective.

9.2. Redress (Article 14)

One of the problematic areas of Georgian legislation with respect to victims of torture is the question of reparation which includes "restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition"[76] The Constitution provides no explicit right to reparation, however, includes some guarantees with respect to compensation. Article 42 (9) States:

> *"Everyone having illegally sustained damage by the State, self-government bodies and officials shall be guaranteed to receive complete compensation from State funds through the court proceedings".*

While the Constitution does not include the explicit right to compensation, one of its provisions[77] States that:

> *"the Constitution of Georgia shall not deny other universally recognized rights, freedoms and guarantees of individuals and citizens, which are not referred, but stem inherently from the principles of the Constitution".*

Even if it is inferred that the right to reparation is a constitutional principle within the meaning of Article 39 of the Constitution, as long as domestic legislation does not provide any guarantees, it fails to correspond to universally recognised principles and rules of international law.
The right to compensation can be exercised through civil as well as criminal litigation. Chapter IV of the Criminal Procedure Code is dedicated to the civil complaint within

[75] Article 371 of the Criminal Code, 30 June 2005
[76] See UN Basic Principles and Guidelines on the right to a remedy and reparation for victims of breaches of international human rights law and international humanitarian law adopted by the Commission on Human Rights . UN Doc E/CN.4/RES/2005/35, 20 April 2005.
[77] Article 39 of the Constitution.

the criminal case. A person who sustained material, physical or moral damage as a direct result of a crime has the right to claim compensation and submit a civil complaint within the course of criminal proceedings[78], although the outcome of the complaint will be finally related to the result of the criminal case in question.[79] Moreover, if the civil claim within the criminal proceedings has been rejected, it cannot be lodged to the civil court.[80] However, the failure to identify the perpetrator is not a hindrance for a victim to bring an action before the civil courts on the basis of State liability.[81]

As a practice, perpetrators of torture are not identified, mainly out of the failure on the part of the victim, which in turn, results out of fear of retaliation. Thus this article is a strong guarantee for receiving compensation even in the absence of an identified perpetrator. Unfortunately, the enactment of this provision has been postponed by the Parliament four times. Each time the date for the entry into force of this article approaches, new amendments are made suspending its application time and time again.[82]

Therefore, the State avoids its responsibility to ensure compensation for the victims, including torture survivors.

As mentioned above, victims of torture can directly apply to the civil court with a claim demanding compensation. However, as the plaintiff carries the burden of proof, the success of the claim is directly connected with proving the fact of torture.

Another guarantee for the reparation of the victim is rehabilitation and compensation for unlawful action of investigative bodies. However rehabilitation and compensation can only provide redress to a limited extent for unlawful detention or conviction and cannot be considered an effective remedy alone for survivors of torture. As for compensation for unlawful action of the investigative bodies, its positive aspect is that it is not dependant on the result of the criminal case in question, though in practice, judges often refrain from awarding respective sums referring to budgetary constraints.[83]

Prohibition of the use of Statements made under torture as evidence (Article 15 CAT) : the police actively use testimonies of false witnesses

[78] If a victim dies, the right to compensation is handed down to his legal successors.
[79] According to Article 41 of the Criminal Procedure Code, court can fully content or reject the civil claim out of the termination or a suspension of a criminal case.
[80] The same principle applies when the civil court has rejected the claim.
[81] Article 33(4) of the Criminal Procedure Code
[82] Pursuant to article 681 (2) the application of this article is postponed till January 2007
[83] See Redress-Georgia at the Crossroads: Time to Ensure Accountability and Justice for Torture", August 2005 (pp 21-23)

Cases :

Relying on information received from their public hotline, employees of the Public Defender's Office have been informed of the arrest in April 2005 of a law student, Giorgi Aphkhaidze, who is being held in preliminary custody. He was arrested for the possession of heroin. Suspicion exists that a man named Gamyrelidze, formerly criminally convicted, may have been sent by the police to plant drugs on Aphkhaidze.

Officials of the Public Defender's Office discovered that during detention he gave testimonies under pressure and threats of the police.

According to Giorgi Aphkhiadze, he was beaten at the moment of detention and then again in his cell when put in custody. Employees of the Public Defender's Office have examined his injuries and drawn up a report describing them. Besides this, other procedural norms were also violated during his detention. He was not informed about his rights and was not permitted to call a lawyer. Instead, a finance lawyer was appointed and attended only the first interrogation.

A few days later, Mamuka Songulashvili, head of the Tbilisi-Mtatsminda Regional Court, did not take into account the procedural violations that occurred during the process of his detention and Giorgi Apkhaidze was sentenced to a three-month preliminary detention period. Despite the leading of cases on the ground of false testimonies by the law enforcement officials and similar unlawful activities, the police officers, who tried to simplify their work in this way, have not been punished.

False Testimony Keeps Fanchulidze in Prison

Twenty-two year-old **Dato Fanchulidze** has been detained for over one year for the murder of 17 year-old Goga Fanchulidze. The death took place on 21 April 2004. He was accused on the basis of witness testimony. The day after testifying, the witness applied to the Public Defenders Office and declared that the declaration was written under physical and moral pressure and that he had not seen anything. "*The police forced me to write everything, they were beating me and made me write that I saw how Dato injured Goga with a knife and then ran away. I left the wedding where the incident happened early and did not see anything*." - said Shota Mefaridze.

The fact that the witness was physically abused has been established by a commission of medical experts.

After Shota Mefaridze's testimony, Fanchulidze was detained. The mother of the accused said that on the third day her son called; "*One of the policemen allowed him to make a phone call. They saw that those could possibly be his last words with his family. Dato called me, crying, "Mother, they are killing me, please hire a lawyer!*"

The following day, his lawyer asked for a medical examination to be conducted, but the investigator did not allow this. Only with the help of the public defender was the examination held. The examination showed that there were marks of severe physical abuse on his body. He was severely injured on the head, leading to the development of epilepsy. He was moved to the prison hospital. Despite the physical abuse, the police were unable to obtain a confession.

Advocate Dali Sulakvelidze spoke of other errors in the investigation procedure. She says that the police work under the impression that Dato Fanchulidze injured Goga and ran away. She says that investigators purposely neglected to take into consideration important facts and did not try to find the real murderer. "*There were five quarrels during the wedding. These persons were not questioned. The investigator did not ask for the reason of those quarrels. Before dying, Goga Fanchulidze said he was injured when he was parting fighters, which a relative confirms*."

It was impossible to receive a comment from the police and the Prosecutor's Office. The Head of the Terjola Police Department, Temur Isakadze, has been dismissed from his post. He is accused of supporting criminal gangs. Investigator Mamuka Khitarishvili was dismissed as well. The regional prosecutor who is meant to be monitoring the case refuses to give comments. The persons who are responsible for the fact that Dato Fanchulidze is detained no longer retain

their posts. Dato Fanchulidze is still imprisoned; he is in a poor State which necessitates treatment with strong medicine. He hopes that justice will be delivered during his trial.

Recommendations

The coalition of NGOs recommends to the State party to:

1. Ensure full and effective implementation of the Concluding Observations and Recommendations already adopted by the international and regional human rights treaty bodies;

2. Amend article 144 [1] and 144 [3] of the Criminal Code in order to ensure its consistency with the definition of article 1 of the UN Convention Against Torture and the specific nature of torture provided therein. Increase the sanction provided for article 144 [3.];

3. Foster the creation of an autonomous and independent Police Ombudsman and guarantee its independent operation;

4. Provide statistical data on extrajudicial, summary or arbitrary executions, torture and ill-treatment as well as police violence, and initiate full, prompt and impartial investigations into such allegations;

5. Ensure that the General Prosecutor and / or Ministry of Interior keep the civil society updated and make statistics on detainees available to them, complaints about torture and the number of investigations into such complaints and their results;

6. Take firm measures to eradicate all forms of ill-treatment by law enforcement officials, and to ensure prompt, thorough, independent and impartial investigations into all allegations of torture and ill-treatment, to prosecute and punish perpetrators, and provide effective remedies to the victims

7. Ensure full and prompt reparation and compensation to victims of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement officials;

8. Immediately denounce the so-called “anti shoot-to-death policy”, and to thoroughly investigate each case involving a law enforcement officer in view of prosecuting and punishing the perpetrators;

9. Ensure that immediate action is taken to guarantee that prison conditions meet the minimum international standards as laid down in the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, and the Basic Principles for the Treatment of Prisoners.

10. Ensure that persons deprived of their liberty are guaranteed the right to have access to an independent doctor during the entire period of its detention. Amend article 73 (1) and article 145 (6) of the Criminal Code accordingly in order to make medical examination compulsory;

11. Encourage the judiciary to impose alternative forms of punishment more frequently such as suspended sentences

12. Amend chapter LXIV of the Criminal Code defining offences (among them torture, inhuman and degrading treatment) in which the conclusion of plea agreement will be prohibited in order to ensure its compliance with the UN Convention against Torture

Regarding the promotion and protection of women's human rights, the Coalition of NGOs recommend to the State Party to:

13. Set up programmes improving the socio-economic condition of women and public education programmes about the public roles of women and men with the purpose of eliminating existing stereotypes. This should include the mainstreaming of relevant gender issues in the planning and implementation of development projects (for instance: the Strategy of Poverty Overcome, Millennium Development Goals).

14. Develop the National Concept on Gender Equality, based on which adequate legislation should be adopted to strengthen legally the newly created State structures for gender equality.

15. Ensure that adequate laws on trafficking and domestic violence (including marital rape, incest, psychological violence, kidnaps) are adopted along with preventive and protective measures, including shelters for victims.

16. Ensure that human rights training programmes for representatives of police, penitentiary, judges, investigators, medical personnel and others are carried out with a particular focus on the elimination of gender based violations, so that they acknowledge that violence toward a woman is a human rights violation and act accordingly.

17. The portfolio and staff of the State Minister of Gender Equality should be created. Before the portfolio of the State Minister on Gender Equality is created the competences and mandates of the Ministry and the State Commission on Gender Equality under the Deputy State Minister of the European Integration and Parliamentary Council of Gender Equality should be effectively divided and constructive cooperation established.

18. Make available and disseminate translated publications of international instruments of women's human rights protection.

19. Make the necessary amendments to legislation in order to improve the condition of IDP women in accordance with international instruments and standards (Rome Statute, UN Security Council Resolution 1325, etc).

Regarding child rights, the Coalition of NGOs recommend to the State Party to:

20. Apply its legislation on torture and other acts of violence in a way favourable to child victims;

21. Reinforce legislative measures to address all forms of sexual abuse, trafficking and sexual exploitation of children;

22. Provide appropriate legislation and mechanisms to prevent child abuse and a complete protection of the rights of the child (see PHMDF's draft law), and particularly (a) formalize a comprehensive strategy to prevent and combat domestic violence and other forms of violence, including bullying in schools, and provide counselling and support services to all children victims of violence, and (b) expressly prohibit corporal punishment in the family in legislation and fully implement the prohibition of the use of violence, including corporal punishment, in schools and institutions, inter alia, by promoting positive, non-violent forms of discipline, especially in families, schools and care institutions;

23. Take concrete measures to enable children victims of abuses and violence to denounce cases and groups of professionals or individuals to report and to investigate cases of abused children;

24. Ensure full protection of children from all forms of violence, proper interrogation, prosecution and sentencing of perpetrators, and the provision of care, recovery and compensation for all child victims.

ANNEX 1 : Trafficking in human beings

Georgian Legislation

Georgia does not have a separate law on trafficking in human beings. The amendments to the Criminal Code of Georgia were adopted on 6 June 2003. The Criminal Code of Georgia, as amended, includes articles 143 1 and 143 2 criminalizing trafficking in human beings and trafficking in children.

Pursuant to Article 143 1 of the Criminal Code of Georgia:

"Trafficking in human beings means the selling or buying of a human being or making any other unlawful transaction in relation to him/her as well as recruitment, transfer, hiding or harbouring a human being by means of coercion, blackmail or deception for the purpose of his/her exploitation. "

Purpose of the crime, similar to that contained in the Palermo Protocol definition, is exploitation of a human being. However, the term "exploitation" is defined differently. In particular, the Criminal Code of Georgia defines exploitation as the use of a human being for the purpose of forced labour, involvement into criminal or other anti-social activity or prostitution, sexual exploitation or other kind of service, placing into contemporary forms of slavery or for the purpose of transplantation or other use of human organ, part or organ or human tissue.

As is seen, the Georgian definition of exploitation is silent regarding such crimes as slavery-like conditions and servitude. Instead of the classical definition of slavery, it uses the term contemporary forms of slavery" which implies *deprivation of identification documents, restriction of the freedom of movement, prohibition of communication with the family, including correspondence and telephone conversation, cultural isolation, or forcing to work in conditions degrading human honour and dignity or without any reimbursement or with inadequate reimbursement.* Pursuant to the Criminal Code of Georgia, human trafficking may be committed by use of coercion, blackmail or deception. Furthermore, the Code envisages other means of committing trafficking too, regarded as aggravating circumstances to the crime of trafficking. This is the case if the crime is committed:
- by use of official powers;
- by use of violence dangerous for life and health or by threat of such violence;
- by use of vulnerable position of the human being or his/her material or other dependence on the offender.

The same article prescribes the following additional aggravating circumstances if the crime of trafficking in human beings is committed:
a) repeatedly;
b) in relation to two or more persons;
c) knowingly in relation to a pregnant woman;
d) by taking the victim outside the country;
e) By an organised group or if it resulted in the death of the victim or other grave result. Conducts indicated in the Georgian definition such as the selling or buying a human being or making any other unlawful transaction in relation to him/her is not mentioned in the Palermo Protocol definition. Instead, these actions in the Protocol definition are expressed by another formulation "by means of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person", which is the same as the selling or buying a human being. The Georgian definition of trafficking has repeated the shortcomings of the Palermo Protocol definition. In particular, it incorporated such terms as "involvement into prostitution"

and "sexual exploitation", which are defined neither by international law nor by the domestic legislation. Under the Georgian Criminal Code, perpetration of trafficking in human beings is punishable with deprivation of liberty for 5 to 12 years, if not committed in aggravating circumstances. If committed in aggravating circumstances, traffickers risk imprisonment for 8 to 15 years. Trafficking in human beings committed by an organised group or if it caused the death of the victim or other grave result is punishable with deprivation of liberty for 12 to 20 years.

Though the crime of trafficking in human beings has been criminalized, the Georgian legislation is still far from being perfect in this regard. In order to create an effective legislative base for fight against trafficking, it is necessary to elaborate a single and comprehensive law that would establish the legislative and organizational base for the prevention of and fight against trafficking in human beings, rights and obligations of State bodies, public associations and officials in measures against human trafficking, rules of coordination of their activity, legal status of victims of trafficking and guarantees for their social and legal protection.

Such draft law is already being prepared by the Georgian Young Lawyers' Association in coordination with the Ministry of Interior, Ministry of Justice, International Organization of Migration and all other State agencies and non-governmental organizations having links with the relevant issues. The draft law will pay a special attention to the protection of human rights of victims of trafficking and will harmonize the current Georgian legislation with the aforesaid United Nations Protocol and other relevant international legal standards.

Georgia and the TVPA (Trafficking Victims Protection Act)

Since early 1990s, trafficking in human beings has emerged as a serious problem in Georgia. According to the results of a recently conducted survey of various national and international institutions (like the International Organization for Migration), the number of persons emigrating from Georgia is high reaching nearly 1 million out of the entire 5 million population. Thousands of these are trafficked into forced labor and prostitution abroad. Georgia is a country of origin and transit for trafficking in human beings. It also faces a growing number of domestic trafficking, especially trafficking in children.

In June 2005 the US Department published a report, which Stated that Georgia moved to Tier 2 from Tier 3 watch list given its achievements in combating trafficking.[84] The Department places each of the countries into one of the three lists. This placement is based on the extent and effectiveness of a government's actions to combat trafficking. The Department first evaluates whether the government fully complies with the TVPA's (Trafficking Victims Protection Act) minimum standards for the elimination of trafficking. That do are placed in Tier 1. For other governments, the Department considers whether they made significant efforts to bring themselves into compliance.

Governments that are making significant efforts to meet the minimum standards are placed in Tier 2. Those countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so are placed in Tier 3. Finally, the Special Watch List criteria are considered and, if applicable, Tier 2 countries are placed on the Tier 2 Watch List. Governments of countries in Tier 3 may be subject to certain sanctions. The U.S. Government may withhold non-humanitarian,

[84] Trafficking in Persons Report - released by the Office to Monitor and Combat Trafficking in Persons - June 3 2005, chapter III - Tier placements;

non-trade related assistance. Countries that receive no such assistance would be subject to withholding of funding for participation in educational and cultural exchange programs. Consistent with the TVPA, such governments would also face U.S. opposition to assistance (except for humanitarian, trade-related, and certain development- related assistance) from international financial institutions such as the International Monetary Fund and multilateral development banks such as the World Bank. The Government of Georgia does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so.[85]

Statistical Data :

Prosecutor-General's Office 2003-2004:
Out of 25 persons arrested, 19 were women, 6 were men
Out of 29 people accused 21 were women and 8 were men
Out of 66 victims 62 were women, 11 minors (under 18), 1 man and 3 infants

Cases in court: 8
Cases in prosecution: 12
Number of people sentenced and imprisoned: 3

Prosecutor-General's Office 2005:
Out of persons arrested, 6 were women, 2 were men
Out of 14 people accused: 11 were women 3 were men
12 victims: 7 women, 4 men and 1 child

Ministry of Interior 2005:
Number of cases initiated: 15 - women's trafficking abroad 9; infant trafficking 3; minors forcibly engaging in prostitution 2; man's labour exploitation 1
number of people accused 20
number of people arrested 12

Analysing this statistical data, we can match some important issues
75% of accused persons are women;
- 91% of victims are women engaged in sexual exploitation;
- 45% of crimes are organized in Tbilisi;
- All of accused persons are unemployed
- Abovementioned criminal offences are parts of organized crime.

The National Action Plan for Combating Trafficking in Persons NAPCD (2005-2006)

On December 29, 2005, the President of Georgia approved the Action Plan against Trafficking (2005-2006) and to ensure the efficient implementation of this plan, established *ad hoc* Interagency Commission against Trafficking under the auspices of National Security Council of Georgia. The main goals of the Commission are:
a) to draft proposals regarding effective anti-trafficking activities and the ways of eliminating the factors stimulating trafficking and to present these proposals to the National Security Council of Georgia;
b) to submit to the President the proposals regarding amendment of the legislation pursuant to the anti-trafficking Action Plan for 2005-2006 and enforcement of international treaties;

[85] Trafficking in Persons Report - released by the USA Office to Monitor and Combat Trafficking in Persons - June 3 2005, chapter III - Tier placements;

c) to prepare a full list of international and regional treaties and agreements concerning trafficking for presenting at the session of the National Security Council, to draft proposals on expediency of Georgia's joining these documents;
d) to prepare analytical reports on the condition of the Georgian migrants seeking employment and human rights for presenting before the session of the National Security Council, to work out proposals on improvement of the migrants' condition;
e) to discuss the issues related to trafficking in close cooperation with NGO sector, international and local organizations dealing with trafficking in order to work out joint proposals for submitting to the President;
f) to submit to the President the proposals on illegal labour emigration, also on establishment and strengthening of anti-trafficking institutional mechanisms;
g) to monitor the situation with regard to illegal labour migration and anti-trafficking activities;
h) to submit to the National Security Council the information on the activities performed during the year;
i) to study the information prescribed by the action plan and based on this information to prepare respective reports for submitting to the National Security Council.[86]

The Inter-Agency Commission consists of representatives of the following agencies:
a) National Security Council;
b) Prosecutor General's Office;
c) Ministry of Internal Affairs;
d) National Interpol Bureau;
e) Ministry of Justice;
f) Ministry of Foreign Affairs;
g) Ministry of Labour, Health and Social Security;
h) Ministry of Economic Development;
i) Ministry of Finance;
j) Ministry of Education and Sciences;
k) Special Office of Foreign Intelligence;
l) Department of Frontier Defense;
m) Human Rights and Civil Integration Committee - Parliament;
n) Ombudsmen's Office;
o) Georgian Young Lawyer's Association;
p) Open Society Georgia Foundation;
q) Human Harmonious Development Society;
r) Human Dimensions Office - OSCE;
s) International Organization for Migration.
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Investigative and Prosecutorial Agencies:

1. Ministry of Internal Affairs

a) Special Operative Department's Unit Against Human Trafficking And Illegal Migration;
Until May 2005, Investigation of TIP was undertaken by three agencies – Ministry of Interior, Ministry of State Security and the Prosecutor's Office.[87]
In May 2005, upon amendment in the Criminal Procedure Code[88], investigative functions have been undertaken by Ministry of Internal Affairs,[89] where the Special Operative Department's Unit #5 Against Human Trafficking and Illegal Migration have

[86] President's Decree No 50 Issued on February 1, 2005;
[87] Criminal Procedure Code, article #62;
[88] law # 1204, March 25 - 2005;
[89] Law #1204, March 25 - 2005, article 50, amendment in article #62;

been established.[90] The Unit consists of 30 persons, out of which there are 4 investigators and 26 operative staff, and among them 17 persons are working in the territorial offices of the Ministry.[91]
The main function of this Unit is combating human trafficking and illegal migration and pre-trial investigation of these offences.[92] At this moment anti-trafficking unit has 19 cases in investigation.[93]

b) National Interpol Bureau in Georgia;
As trafficking is a crime which most frequently contains an international element, functions of the National Interpol Bureau are relevant to effective investigation and structural unit of Ministry of Internal Affairs[94] and also is a member of the General Interpol Agency:

* to support permanent contact with General Interpol Agency and National Bureaus of other countries;
* to collaborate and coordinate Georgian law enforcement agencies and other relevant units with competent offices of other countries to combat crime on international level;
* to compare information about crime on international scale.

National Interpol Bureau's main principles are the rule of law and protection of Human Rights and Freedoms.[95] The National Interpol Bureau's role in case of combating human trafficking is highly important, because mostly this crime has transnational character, so its successful prosecution without coordination between national police agencies is very difficult, even impossible. Less of coordination and collaboration is the most actual problem for investigative bodies and during the sessions of Anti-trafficking Interagency Commission, our attention was focused on this case.

2. General Prosecutor's Office[96]

a) Department of Procedural Supervision on Prosecution in:
- Public Security Offices of Ministry of Internal Affairs[97], Special Office of Foreign Intelligence and Ministry of Defense.

The main functions:
- Procedural supervision on operative-detective activities and on pre-trial investigation;
- To confirm the State accusation in court on those criminal cases, which have been investigated by abovementioned agencies;

Until amendment in Criminal Procedure Code[98], the first action in criminal procedure was initiation of criminal case, which was essential for beginning of pre-trial investigation. Investigation and prosecution of human trafficking was the Prosecutor's prerogative. Ministry of Interior's function was inquiring - which was the "beginning" level of pre-trial investigation. Now initiation of criminal case and inquiring are

[90] Decree #685 of Minister of Internal Affairs - 30 December 2004;
[91] Information from Ministry of Internal Affairs - letter # 7/7-2716, 29.07.2005;
[92] This unit does not have its own statute, so information is brought from statute of Ministry of Internal Affairs - December 27, President's Decree # 614, article # 17;
[93] Information from Ministry of Internal Affairs - letter # 7/7-2716, 29.07.2005;
[94] Article 17 Statute of Ministry of Internal Affairs;
[95] National Interpol Bureau's statute, article 6;
[96] statute of Prosecutor General's Office, April 28, 2005;
[97] in statute of Ministry of Internal Affairs we can not find the unit with this name, so government should make amendment in statutes its agencies, or there would be misunderstandings;
[98] 18 law # 1204, March 25 - 2005;

repealed from criminal legislation and first procedural step is pre-trial investigation, which became as a main goal of Ministry of Internal Affairs.

b) Department of Procedural Supervision on Prosecution in Ministry of Internal Affairs; (Its functions are the same as Stated above, but include Agencies, except Public Security Offices and Department of Frontier Defense)

c) Department of Legal Support's Unit of Human Rights Defense. They compare information about human trafficking and officially represent Prosecutor Generals' office in this case. (Statute of this unit is not approved at this time[99], so we cannot definitely say which are its official duties.)

Within the framework of the National Action Plan for Combating Trafficking in Persons (NAPCT), the Office of the Prosecutor General of Georgia organised a meeting with representatives of Ministries of Internal and Foreign Affairs related to the formation of the united database of the offenders (one of the goals set forward by the NAPCT).

On the basis of the analysis of such statistical data, in case of necessity Prosecutor General of Georgia may issue guidelines of obligatory nature.

International Organization for Migration (IOM)

The Office of the Prosecutor General of Georgia actively cooperates with International Organization for Migration (IOM). Within the framework of this cooperation 38 employees of the Prosecutor's Office are participating in the series of special trainings related to conducting criminal proceedings against persons involved in trafficking and illegal transportation. The training format includes 5 one-week courses that started on 12 September 2005 and will continue until 27 January 2006.

During the first 6 months of 2005, five employees of the Office of the Prosecutor General of Georgia attended special trainings for trainers and subsequently four of them participate as instructors in the ongoing trainings.

Georgian Young Lawyers' Association (GYLA)

The Office of the Prosecutor General of Georgia actively collaborates with Georgian Young Lawyer's Association (GYLA) in the sphere of fighting against Trafficking. The representatives of Human Rights Protection Unit directly participate in the implementation of the project – Improving Georgian Legislation on Human Trafficking as a Follow up to the Draft Law on Trafficking in Human Beings.

On 27 October 2005 a meeting was held the at Office of the Prosecutor General of Georgia with the participation of officers of the Ministry of Internal Affairs and the Prosecutor's Office and Mari Meskhi, the director of the Project "No Trafficking in Persons" - GYLA. The definition of the crime of trafficking, problems created in the course of its application and possible ways for solution were considered within the framework of the meeting.

ANNEX 2: Draft law on the Rights of the Child

[99] 19 as we said above, its necessary to establish statutes of every State agency, because often it is reason of disagreement about competence between units, beside this, it is important for society - to know, which unit have responsibility on each job;

Chapter 1
General Provisions

Article 1. The main aim of the law

1. The main goal of the law is to define and protect children's rights and liberties, taking into consideration that child is physically and psychologically vulnerable person.
2. This law defines the State policy towards children, children's rights and responsibilities; also responsibilities of governmental organisations, civic organisations, juridical and private persons, in relation to child protection issues.
3. Protection of Children's rights is an inseparable part of State policy. The State and local authorities must organise and monitor protection of children's rights in the country.

Article 2. The scope of the law to cover

The present law covers: Georgian citizens, residents and citizens of foreign countries, orphans, social orphans and the children left without parental care, those registered according to Georgian law.

Article 3. The State protection of the children

1. State protection of children's rights implies lawmaking, investment and supervisory activities financed by the State budget.
2. The State shall provide protection of the rights and liberties of all children regardless of sex, race, colour, language, religion, political or other opinion, ethnic or social origin, belonging to a minority, property, birth or other circumstances connected with children.

Article 4. The purpose of the Child Protection Policy

Children's rights are to be protected in order to:
1. Develop children's orientation in compliance with the interests of the society;
2. Live in a healthy environment and to live a healthy lifestyle which is the precondition for the nation's survival;
3. Safeguard the health and life of the child especially in case of armed conflicts or natural disasters.

Article 5. The Children Rights Principles

1. In all legal actions concerning children, the best interests of the child shall be a primary consideration.
2. In all actions concerning children, whether undertaken by State or local authorities, child protection public organisations, or other physical and legal persons, by court or other law enforcement agencies, the best interests of the child shall be a primary consideration.
3. Children's rights protection must be undertaken by means of collaboration with family, State and local authorities, public organisations, and other private and legal persons.
4. During the period of care for children left without parental care, all actions must be directed towards interaction with the parents.
5. All action or inaction, that may cause violation of children's rights (Leaving children without guardianship, shelter, or age appropriate nutrition) or other actions that limit child's personal and property rights and freedoms, shall be considered as immoral and unlawful.

Article 6. Child protection organisations

1. Child protection must be ensured and undertaken by:
a) State's central and local authorities;
b) parents, guardians and biological families;
c) educational, medical, social institutions, and public institutions, including the staff of the above mentioned organisations;
d) public organisations and other physical and legal persons, who perform child protection duties.

2. Under no circumstances shall the staff of child protection/educational organisations, children-trusts or social institutions include those who have been:
a) accused of violation of children's rights;
b) dismissed for the violation of children's rights;
c) imprisoned for violence.

Article 7. Definition of terms

1. Child - person under 18, who, in accordance with the current law has not reached the age of majority.
2. Physical abuse - different forms and degrees of bodily injuries caused by physical force
3. Emotional abuse - non-physical, verbal, and behavioural humiliation that harms a child's emotional or psychological wellbeing.
4. Sexual abuse - rape, incest, discrimination by using sexual assault, molestation and etc.
5. Neglect – non-fulfilment of duties by parents and guardians.
6. Childcare institutions - legal persons of either public or private sphere, where 8 or more children live together and are provided twenty-four-hour care by persons who are not related to them and are paid for their work.
7. Person involved (or interested) - physical or legal person, bearing personal qualities to be involved in child protection.
8. educational institution/ school - legal person of the public sphere or private person of entrepreneurial or non-entrepreneurial sector, that carries out the educational activities in accordance with the national education syllabus and covers at least one stage of the general education.
9. House - place of child's permanent residence.

Chapter II
Children's Rights

Article 8. Right to life and development

1. Every child has the inherent right to life. A child's life and healthy development must be protected and ensured.
2. Every child must be ensured to have living conditions necessary for his or her physical, mental, spiritual, moral, psychological and intellectual development. Every child must be ensured to have the adequate means for his or her growth, food, clothing, and living space.
3. Parents carry the main responsibility for creating the appropriate living environment for children.

Article 9. Private life protection

1. In accordance with legislation, a child shall be registered immediately from the moment of birth and from birth shall have the right to a name, surname and the right to acquire citizenship. Every child shall be registered in accordance with the law.
2. Children must be protected from unlawful interference in his or her personal life, family relationship, residence place and confidentiality of his or her correspondence, also unlawful humiliation of his or her dignity and reputation.

Article 10. Right to Education

1. The State must ensure for all children equal rights and the possibility of acquiring education appropriate for his/her abilities. The education process must not include physical or mental pressure, or be ideologically biased and must not carry out propaganda of violence and hatred.
2. Children have the right to acquire education appropriate to his or her mental and physical abilities which supports children's healthy development:

- Teaching children respect for their parents, other people, and themselves;
- Teaching children respect for their own country, language, and culture in which they resides;
- Preparing children for responsible life, to preserve equality and a humane attitude towards members of society;
- Teaching children to protect the natural environment, others and their own health.

Article 11. Right to work.

Children who have received primary education and who do not wish to, or do not have the capacity to continue their education, according to the law, has the right to be employed. Employed children must be protected from carrying out work which causes damage to their health and hinders the possibility for them to undertake education and to develop properly.

Article 12. A Child's Freedom

1. Children have the right to freely express their ideas and disseminate information, to establish or become a member of different unions, take part in educational, cultural, or sporting activities, unless the aforementioned endanger their health and life.
2. Children have the right to freedom of thought, conscience and religion.
3. According to the child's legal interests, he or she has the right to freely relocate within the country and also possess the right to leave Georgia in the company of parents or legal representatives. This right can be granted by a court decision based on the interests of the child.

Article 13. Food

The State is obliged to provide children with clean drinking water, high quality and ecologically clean food. The food designated for children should be labelled with the list of ingredients, expiry date, and any warnings.

Article 14. Right to leisure and entertainment

Children have the right to leisure and entertainment, which support his/her mental development. Children have the right to enjoy leisure time and rest, engage in games and entertainment activities.

Article 15. Discrimination

All the rights given in this law are active for all children without any exception. The State is obliged to protect children from discrimination of any kind, and undertake all measures to protect children's rights.

Article 16. Upbringing in the family

1. Children have the right to be raised in the family. Both parents have equal responsibilities for the upbringing and development of the child. The best interests of the child must be the principal concern of parents and legal representatives.
2. The State shall protect especially the child, who is left without home care and ensure the alternative environment like to home environment or place the child in the appropriate facility.

Chapter III
Children's Obligations

Article 17. Children's obligation to parents and family

1. Children must respect their parents and the people who take care of their upbringing and development; also they themselves must respect other children.
2. Children are obliged to help their parents, grandparents, their siblings and the people who are taking care of them, to do the housework, unless it hinders their development.

Article 18. Children's obligations at home

1. In accordance with the child's age, he or she is responsible to take care of his or her health and participate in housework.
2. Children must behave with dignity to his/her parents or members of the family.

Article 19. Child's obligations to society

1. Children enjoy the full rights of society. His or her obligations to society increase accordingly with their age.
2. A child is obliged to study in accordance with his or her physical and mental ability. Children must obey the bylaw of educational institutions to which they belong.
3. In accordance with a child's age, s/he must protect his or her health.
4. Children must respect and behave with dignity to the country and State symbols, and obey legislation.
5. Children must follow the rules within the society. Children must not misuse his or her rights and must protect other children's and adolescent's rights.

Chapter IV
Children and Family

Article 20. The obligations of child protection

1. Parents are jointly responsible for bringing up a child and in this respect they should be receive State support. The State is obliged to provide parents with all kinds of support in raising children.
2. The State ensures the principle of equal responsibility of both parents' for the upbringing and development of the child. Parents or legal trustees carry the main

responsibility for the upbringing and development of the child, for the child's protection from any kind of ill-treatment. The best interests of children are their basic concern.

Article 21. Parents obligations to the child

1. Parents with their property capacity and social status are obliged to take care of their children's life and wellbeing, supply them with food, shelter, clothing, to give them appropriate education and to use humane methods of child upbringing and to protect them from all forms of maltreatment.
2. The obligation of the parents is to prepare children for the independent life.
3. Parents are the legal representatives of their children. Their obligation is to protect children's interests and rights.
4. Parents shall be held accountable for the violations of children's rights, for physical punishment of the child, for cruel behaviour and abuse manifestation towards a child as determined by law.
5. Parents influence over their children can be limited regardless their faith or religious convictions if it is discovered that they physically or morally harm child's development.

Article 23. Restriction of the Rights of the child

1. The restrictions on the rights of the child shall be only imposed in conformity with the law if such restrictions are necessary for the interests of national security or, public order, for the protection of public health and morals or the protection of the rights and liberties as well as for the purpose of primary protection of the child.
2. The child shall be immediately notified of and explained such restrictions.

Article 23. Procedures of deprivation of the parent's rights

Deprivation of parental rights is subject to the Georgian Civil Code

Article 24. Rights of children living separately from their parents

A child who resides separately from either one or both parents in Georgia or any other country shall have the right to maintain a personal relationship and have direct contact with both parents provided that such contact will not bring harm to his/her health and development.

Article 25. Responsibilities of the family before the child

1. Parents and persons who are in charge of a child, have the primary responsibility for raising the child as a full-valued and independent person and creating an appropriate environment for his or her development, support their accessibility to education and healthcare. They should support and prepare the child for an independent life in society.
2. Parents or legal guardians shall bear responsibility under the Georgian legislation in case of violation of child rights on property or any legal interests and freedoms.

Article 26. Restriction of the relations between parents and the child outside - family care.

1. The child being under the guardianship or is bringing up outside his/her family or is placed in child institution has the right to meet with parents and close relatives, if such meetings do not harm the child's health and development

2. Decision on termination of such relations can be applied in court.

Article 27. Separation of the child from his/her family

Separation of the child from his/her family is authorised if:

1. the child's life, health and development is under the risk because of inappropriate care and family environment;
2. the child's health is under risk due to the use of alcoholic, narcotic and other toxic substances;
3. the child suffers from neglect, sexual, physical and emotional abuse from his/her parents;
4. In cases anticipated in the paragraphs a) and b) of the present article, the child shall be separated from the family if inappropriate circumstances for the development of the child cannot be avoided by remaining within the family;
5. While separating the child from his/her family the child's opinion shall be considered regarding choosing an alternative family.

Article 28. Termination of external family care

1. Outside family care can be terminated if the biological family can provide appropriate conditions for the development of the child.

2. The decision on restoration of parental rights shall be made by the court in accordance with legislation.

Article 29. Working with parents while the child is in external family care

1. Central and local governing authorities shall provide the family of the child who is subject to external family care with appropriate social and healthcare assistance to create the conditions for the return of the child to their own family.
2. Foster families and children care institutes should inform families on the development of their children and support the reinforcement of family bonds.

Article 30. Relations with parents residing in different countries

A child whose parents reside in different countries shall have the right to have relations and direct contact with both parents.

CHAPTER V

Abuse/ ill-treatment

Article 31. Prohibition of publicising information on the child

1. Publication of confidential information obtained by employees of central or local governing bodies, educational, foster care or other childcare institutions which harm the child's development and psychological wellbeing is strictly prohibited.
2. Publicising information obtained through personal contacts with the child who is either a witness or a victim of a criminal act and which may immediately or in the long term harm the child is strictly prohibited.
3. Using information provided by the child for malicious purposes is strictly prohibited.
4. Under no circumstances is it allowed to question the child in the presence of the press and mass media, to reveal any information on a child who has infringed a law, or reveal information on a child who is either a victim or a witness of a criminal act,

excluding cases in which the child has the desire to inform the society about his/her feelings and parents and lawyers do not object them in so doing.

Article 32. Protection of the child from smoking and alcoholic beverages

1. Children should be protected from the influence of smoking and alcoholic beverages.
2. Children shall be brought up with warnings against smoking and alcoholic beverages. Under no circumstances shall a child work or be identified with the production or popularisation of tobacco products and alcoholic beverages.
3. Children shall not be given the right to purchase tobacco products containing nicotine and alcoholic beverages in conformity with existing legislation.
4. Forcing the child to consume alcoholic beverages shall be subject to punishment under existing legislation.
5. Children suffering form the illicit use of alcoholic beverages shall be provided with compulsory medical treatment. Funds shall be allotted for this in the State budget.

Article 33. Games, films and mass media

1. Under no circumstances shall toys, videotapes, newspapers, magazines or other forms of printed media intended to popularise cruel behaviour, eroticism or pornography, be given, rented, sold or advertised to children thus causing danger to their psychological development
2. Radio and television programs may be restricted in accordance with existing legislation in order to protect child rights.
3. Under no circumstances shall the child be allowed to be present at a place where erotic or pornographic products are displayed or produced.
4. Under no circumstances shall the child become involved in the production, dissemination, and exposition of erotic and pornographic materials.
5. For the violation of the restrictions provided by this article, guilty persons involved shall be held accountable as determined by law.

Article 34. Restrictions on the involvement of children in entertainment activities

Under no circumstances shall children become involved in entertainment activities (competitions, model agencies) which aim to judge the child’s appearance.

Article 35. Protection of children from unlawful activities

1. Child abuse, encouragement and forceful engagement in sexual activities or his/her exploitation or engagement in prostitution is subject to criminal law liability, as determined by law.
2. The child who is a victim of a criminal act, exploitation, sexual violence or any other illegal, cruel or humiliating treatment shall be subject to appropriate medical assistance in accordance with applicable procedures in order to restore physical and psychological health and reintegration into society. Such reintegration and medical treatment shall take place in the environment appropriate for the child's health and development with respect to a child’s personal dignity.

Article 36. Protection of the child from sexual abuse/harassment

1. Children shall be protected from any form of sexual exploitation. Under no circumstances shall children be engaged in sexual activities.

2. Under no circumstances shall children be exploited through engaging in prostitution.

Article 37. Child Neglect

Child Neglect and dependency shall mean the following:
1. When the child is abandoned by either parents or legal guardians, treated cruelly, not provided with necessary attention and conditions for development;
2. When the child suffers from the lack of appropriate care for his/her development and has no place of dwelling.

Article 38. The child as a victim of violence or any other unlawful act

1. Child abuse and neglect to the child shall mean any action or inaction that might endanger child's life, health, and well-being.
2. If the body of the child has signs of bruises, bleeding, fractions or the child suffers from physical or mental development delay which cannot be the result of accidents, and either parents or legal guardians cannot provide reasonable explanations for the abovementioned injuries, this can be identified as child abuse and neglect.
3. Any case in which a child is subjected to sexual assault or molestation, sexual exploitation is considered as violence to the child.

Article 39. Obligations in terms of protection of children's rights

Parents and legal representatives, administration of educational and child care institutions, staff of medical facilities, social workers and police employees are responsible to protect the child from physical and sexual abuse, neglect, threat or any criminal act that has been committed against the child and are under the obligation to immediately notify the police, social service agency or any child protection agency.

Article 40. Rehabilitation of the child as a victim of violence

1. Special departments shall be established within medical facilities and special resources shall be allotted to ensure medical treatment and rehabilitation of the child who has been the victim of abuse. The State shall ensure the provision of necessary resources for medical treatment and rehabilitation.
2. Children who have been infected with a STD shall be provided with special medical care. Adults responsible for infecting children shall be punished in accordance with the applicable legislation and pay the costs of treatment.
3. Under no circumstances shall a child victim of abuse:
a) remain alone, except those cases, when the child wishes to do so and his/her choice is considered as the appropriate by psychologists who work with the child;
b) be deprived of psychological assistance or any forms of care;
c) confront a possible perpetrator when the child is not appropriately prepared for such a confrontation;
d) undergo any forceful act for the purposes of seeking information;
e) be questioned without the presence of a psychologist.
4. The child who is the victim or a potential victim of abuse shall be provided with external family care if isolation of the perpetrator from the child is not possible under current circumstances.
5. Under no circumstances shall a child who has been given assistance be treated without respect or with emphasis on his/her inability or dependence on others.

CHAPTER V

Abuse

Mechanisms of protection of child from abuse

Article 41. Mechanisms of eradication and violence

1. For the purposes of disclosure and the elimination of physical and sexual abuse to the child, mechanisms provided by the criminal, civil and legal administrative codes are utilised.
2. The mechanisms provided under the Criminal Code shall be applicable in child abuse cases which contain signs of criminal action.
3. The mechanisms provided under the Civil Code shall be applicable in cases where there are issues of reimbursement of damage caused by acts of domestic violence in conformity with the Civil Code procedures.
4. The mechanisms under the Administrative Code shall be applicable in cases where criminal acts tend to cause minor damage and which do not invoke criminal liability and can thus be dealt with by means of the administrative code procedures.

Article 42. Protective and Restrictive orders

1. As an urgent response to acts of either physical or sexual child abuse, a competent body or official representative of such body may issue protective or restrictive orders as a temporary action to ensure protection of the victim and provide restrictions to the batterer.
2. A protective order is an act to be issued by a judge of the court of the first instance which determines temporary measures for a victim's protection in cases of domestic violence.
3. A restrictive order is an act to be issued by the competent body working in the police department which determines temporary measures for protection of victims in case of violence to the child and which shall be introduced to the court for further approval within 24 hours.
4. In case of the batterer's disobedience of the demands underlined in the restrictive order, the latter shall be accountable under the Criminal Code.

Article 43. Right to request protective orders

Parents and legal representatives, social workers (institutions involved in the childcare and guardianship) shall be entitled to have the right to request the granting of a protective order.

Article 44. Issues underlined under protective and restrictive orders

1. Protective and restrictive orders may address the following issues:
a) measures of protection for the victim and person(s) rendering her/him protection from the perpetrator;
b) removal of the batterer from the victim's place of residence;
c) perpetrator's obligation not to restrict and prevent the victim from utilising personal belongings and any property that is necessary for their daily existence;
d) regulations of those issues that concern the perpetrator's relations and contacts with children;
e) permission to the batterer to approach the victim or institutions and places which the victim frequents most often;
f) reimbursement of the victim's medical treatment, costs of the shelter and any other reasonable expenses that the perpetrator might be responsible for;

2. The issued order may address one or all of the issues underlined in the present article whichever is found relevant to the act of violence.
3. Protective and restrictive orders are issued in three copies and the victim, the perpetrator and the competent body shall be given the signed copy.
4. Protective and restrictive orders enter into force from the moment of they are granted.

Article 45. Separation of the child from the family in cases of child abuse

1. Traces of abuse to either parents or children will unconditionally raise questions regarding the separation of the child from abusive parent(s) in accordance with the procedures underlined by the applicable law. Before the adoption of a final decision by the competent bodies, the court shall regulate the question of separation of the child from the abusive parent(s) as a temporary measure.
2. While discussing the issue of the right to legally represent the child, it shall be considered that entitling abusive parents the right to legally represent the child may be harmful for the child. Under no circumstances shall parents be given the right for guardianship if there is proven evidence of violence on the part of either of the parents.
3. In cases of domestic violence including the violence to the child, if parents abstain from referring the issue to the court, institutions of guardianship or childcare shall refer to the court.

Article 46. Provision of the child's security

1. The decision by the court shall set the terms of visitation of the child by the abusive parent. The abusive parent shall only have the right to see the child provided that all reasonable precautions are taken.
2. When such measures are not taken, the right of the abusive parent to see her/his child may be subject to restrictions. The parent shall have the right to appeal to the court with the request of reviewing such decisions.

Article 47. Rules for applying for and granting protective orders

Issues such as the granting, duration and timeframe of the protective order shall be regulated under the Georgian law on the prevention of domestic violence and protection of, and assistance to, the victims of domestic violence.

UNITED NATIONS

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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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List of issues to be considered during the examination of the third periodic report of GEORGIA (CAT/C/73/Add.1)

Article 1

1. Please elaborate on the amendment to article 144 of the Code of Criminal Procedure of 23 June 2005 in which the definition of torture is said to have been brought into line with the definition in the Convention against Torture. How is the term torture defined in this article and what policies have been developed to enforce this standard? Please elaborate specifically on how each of the elements of the definition of torture are covered, e.g. torture based on discrimination of any kind and with the consent of a public official or other person acting in an official capacity.

Article 2

2. In the framework of the Plan of Action against Torture in Georgia and the amendments to the Code of Criminal Procedure of 25 March 2005, please indicate what specific type of preventive legislative measures have been taken with regard to:

(a) The right of an arrested person to contact a doctor of his/her choice. In this respect, please elaborate on the drafting of a law on amendments to article 146, paragraph 6, of the Code of Criminal Procedure according to which a compulsory medical examination of a detained suspect should be carried out within the first 24 hours of detention. Has such a law been adopted and if so, how is it applied in practice?

(b) Please also elaborate on the right of an arrested person to contact members of his/her family and inform them of his/her situation.

3. Please elaborate on concrete measures taken to make Georgia a “torture-free zone”. What exactly is being done and who is responsible for the programme? Please explain how the effectiveness and independence of those responsible for this

programme is ensured. Please describe any recent amendments made to legislation that are considered to be of a preventive nature.

4. In light of the information received to the effect that in many instances detainees are not promptly informed of their right to counsel, what measures have been taken to communicate to law enforcement officials the decision of the Constitutional Court on 29 January 2003 that certain provisions of the Code of Criminal Procedure are unconstitutional?

5. How often are unannounced departmental inspections carried out by the Rapid Response Force established by the Office of the Ombudsman? Have any further improvements been noted regarding a reduction in violations of the maximum 72-hour period of short-term detention in the period 2003-2005?

Article 3

6. Please elaborate on the amendments made to the Code of Criminal Procedure regulating extradition, expulsion and return. Which department of Government is responsible for making decisions on such matters, and what are the procedures for challenging such decisions? How is this done in law and in practice?

7. Please inform the Committee of how the State party ensures compliance with the Convention in extradition cases such as the one mentioned in paragraph 27 of the State party report. Please also elaborate on the reasons for requesting diplomatic assurances from the State requesting the extradition.

8. Please provide examples of cases (if any) where the authorities did not proceed with extradition, return or expulsion because of fear that the persons might be tortured. On the basis of what information were such decisions taken?

Article 4

9. Please describe the concrete steps being taken to investigate, prosecute and punish law enforcement personnel in light of numerous and widespread allegations of torture and other acts of cruel and inhuman or degrading treatment or punishment, particularly in pretrial detention and during interrogation as a technique to obtain information or extract confessions.

10. Please provide updated statistics on the number of offences committed by officials in the period since the submission of the State party report (2003-2005), including any penalties imposed and any disciplinary measures ordered.

11. Please elaborate on the existing internal disciplinary processes within the police force, including how they are enforced. Are officers under investigation suspended from duty, including being barred from promotion? Please describe how such inquiries are conducted and their average length. Are they made public?

Article 5

12. Please update the Committee on any progress made during 2003-2005 in ensuring full respect for the Convention in all territories under the State party's jurisdiction, including the autonomous republic of Ajara as well as the self-proclaimed autonomous republics of Abkhazia and South Ossetia.

Articles 6, 7, 8 and 9

13. In relation to the case referred to in paragraphs 27 and 28 of the report, please elaborate on the custody arrangements prior to the extradition, including whether the detainees had the possibility of communicating with representatives of their country.

14. In light of the Agreement in May 2003 between Georgia and the United States of America regarding the Surrender of Persons to the International Criminal Court, please clarify how Georgia intends to comply with article 7 of the Convention.

Article 10

15. With respect to the training activities organized in 2002, please provide information on the number of Ministry of Internal Affairs staff that participated, disaggregated by level and function. Please also provide updated information on any training conducted in the period 2003-2005.

16. While the curriculum of the Ministry of Internal Affairs Academy includes lectures and seminars on human rights for young recruits, what provisions have been made for senior police officers to be trained on this subject?

17. Please provide information on the status of the residency programme for specializing in forensic examinations. Please provide statistics on the number of forensic doctors and other medical personnel that have been trained in techniques to detect signs of torture and other forms of ill-treatment, and clarify the relationship between the forensic experts and the police. In light of paragraph 64 of the report, please elaborate on which medical units have been transferred from the Ministry of Justice to the Ministry of Health.

Article 11

18. In the framework of the Plan of Action against Torture in Georgia, please indicate what specific types of preventive measures have been taken with regard to:

(a) The conditions of pretrial detention, including the implementation of legal provisions and administrative instructions with respect to the registration of a person from the time of arrest to the time of his/her imprisonment as a result of a judicial decision;

(b) The right of an arrested person to contact a lawyer of his/her choice and the need to ensure that the chosen lawyer is present during interrogation. In this context, please elaborate on the measures taken to address difficulties related to access to court-appointed lawyers.

19. Please inform the Committee of any specific measures taken to ensure that torture and ill-treatment does not occur during interrogations.

20. Please comment on the allegations received by the Committee regarding the use of plea bargaining during investigations of misconduct by officials and its impact on the current rate of convictions. Please also provide information on how the State party intends to address the question of impunity with regard to violations committed by public officials.

21. Has there been any further review of rules, instructions, methods and practices or custody arrangements in relation to the Deprivation of Liberty Act? Does the State

party ensure that bodies appointed to monitor detainees are independent and that proper coordination exists between them?

22. Which NGOs have been approached by the Ministry of Internal Affairs for closer cooperation in the context of the independent monitoring councils? How do these councils operate and how often do they conduct unannounced inspections to places of detention?

23. Please provide information on the total number of persons deprived of their liberty in Georgia, disaggregated by age, sex and ethnic origin, as well as the occupancy rate of the places of detention for 2002, 2003, 2004 and 2005.

24. What measures have been taken by the State party to improve the conditions of detention in police and prison establishments, especially where they have been identified as falling far below international standards?

25. Please elaborate on the procedures for dealing with complaints from inmates in prison. Please provide information on the number of complaints received in the reporting period (2000-2003), disaggregated by type of prosecution and results, gender, ethnicity and geographical region.

Article 12

26. In view of the amendment to article 335 of the Code of Criminal Procedure in June 2003 redefining torture, how many officials have been found guilty of crimes as defined in this article and what penalties did they receive?

27. Please indicate exactly which authority can order the initiation of a criminal investigation in cases of torture or cruel, inhuman or degrading treatment or punishment. Please provide concrete examples of cases investigated and indicate the results of the proceedings, both at the penal and disciplinary levels.

28. In the context of the Plan of Action, has legislation now been enacted to make torture of women a qualifying and aggravating circumstance? What specific measures have been taken to prosecute and punish violence against women, including trafficking, among law enforcement officials and other relevant professional groups? How many cases of rape or sexual assault in custody were investigated in 2000-2005? What were the punishments pronounced against the persons convicted of such offences? What mechanisms have been established to counter such crimes?

29. Please provide the Committee with updated statistics on the number of deaths of persons deprived of their liberty registered in the period 2003-2005, including suicides and deaths from disease. Please elaborate on how these deaths are investigated and by whom.

30. How are complaints received through the 24-hour hotline for complaints of torture established within the Prosecutor-General's Office and the Ministry of Internal Affairs, followed up, and what type of financial and other support has been provided for such follow-up actions?

Article 13

31. Please inform the Committee about whether the amendments to be made to the Code of Criminal Procedure in the context of the Plan of Action against Torture in Georgia regarding the right of an accused person to complain directly to a judge

concerning matters of ill-treatment, including before a case is presented to the court, have been enacted. How does the State party ensure that all persons deprived of their liberty are able to exercise this right?

32. Please provide information on the measures in place to guarantee the confidentiality of complaints and to protect complainants from possible reprisals, including information on any witness protection programme for victims of torture, ill-treatment and related violations.

Article 14

33. Please provide information on any compensation measures ordered by the courts and actually provided to victims of torture or cruel, inhuman or degrading treatment or punishment since 2002. In this regard, please elaborate on the information provided in paragraph 87 of the report.

34. What are the arrangements for payment of compensation to successful complainants? Who pays this compensation? What safeguards are in place against further harassment or intimidation of complainants?

35. What services exist for the treatment of trauma and other forms of rehabilitation of torture victims? What financial allocations have been made for this purpose?

Article 15

36. Please inform the Committee of the concrete measures taken to ensure that testimony obtained under duress, including through the use of physical or mental coercion, is not used as evidence in court proceedings. Please provide examples of cases that have been dismissed due to the introduction of such evidence or testimony.

37. Regarding the practice of detaining witnesses, please inform the Committee of the measures taken to ensure that the provisions of article 305 (5) of the Code of Criminal Procedure are applied by all officials charged with the interrogation of detainees.

Article 16

38. In view of reports highlighting the alarmingly poor State of medical treatment and related services in penitentiary institutions in Georgia, what concrete plans exist for improving such services and for the provision of medicines and equipment? Do all institutions systematically screen persons upon arrival, including for tuberculosis, HIV/AIDS and other infectious diseases?

39. What safeguards are in place to prevent cruel, inhuman or degrading treatment in schools, orphanages, military academies and other public institutions?

40. Please update the Committee on implementation of the Plan of Measures to Reform and Develop the Penal Correction System for the period 2002-2007. What are the purposes of this plan and what programmes have been put in place to date?

Other

41. In light of its accession to the Optional Protocol to the Convention against Torture on 9 August 2005, what mechanism does the State party envisage to conduct

periodic visits to places of deprivation of liberty? In this respect, please comment on any plans to establish a national human rights institution in accordance with the Paris Principles.

42. Please inform the Committee of any legislative, administrative and other measures the Government has taken to respond to the threat of terrorism, and please indicate if, and how, these measures have affected human rights safeguards in law and practice.

43. Please indicate whether there is legislation in your country aimed at preventing and prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. If so, please provide information about its content and implementation. If not, please indicate whether the adoption of such legislation is being considered.

Possible oral questions

44. In relation to the case of *Shamayev and 12 Others v. Georgia and Russia* brought before the European Court of Human Rights in 2002 concerning the extradition of a group of citizens of the Russian Federation of Chechen nationality, please elaborate on the action taken with regard to the persons who were later found to be Georgian citizens.

45. In view of the ruling of the European Court dated 12 April 2005, please elaborate on follow-up action taken with regard to the 11 applicants whose rights were found to have been violated under article 3 (prohibition of torture) of the Convention for the Protection of Human Rights and Fundamental Freedoms.

46. Please provide the Committee with information on the composition and competence (in addition to preparing State party reports to United Nations treaty bodies) of the National Security Council, a constitutional advisory body headed by the President of Georgia.

47. With regard to the declaration made by the State party under article 22 of the Convention (30 June 2005), please inform the Committee of any action taken to inform practitioners and the general public of the availability of this mechanism.

48. With regard to the information provided in the bimonthly newsletter issued by the Office of the Prosecutor-General of Georgia (Human Rights Protection Unit), please provide updated information on the cases mentioned in the July-August 2005 edition, section II (Criminal cases submitted to the Court) and section III (Criminal cases under investigation). Have there been any convictions so far in any of these cases?

49. Referring to the ongoing projects mentioned in section VI of the same newsletter, please provide more information on the findings of the monitoring visits that were made to places of deprivation of liberty during the reporting period, in particular as regards the living conditions of persons deprived of their liberty as well as registration records.

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36th session
1 – 19 May 2006

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Conclusions and recommendations of the Committee against Torture

REPUBLIC OF GEORGIA

1. The Committee considered the third report of the Republic of Georgia (CAT/C/73/Add.1) at its 699th and 702nd meetings (CAT/C/ 699 and 702), held on 3 and 4 May 2006, and adopted, at its 716th meeting, the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the timely third report of the Republic of Georgia and the information presented therein. The Committee expresses its appreciation for the large high-level delegation, which facilitated a constructive oral exchange during the consideration of the report. The Committee also appreciates the comprehensive written and oral replies provided to questions posed during the dialogue.

3. The Committee notes that following the State party's independence in 1991, it has continued to experience internal conflict in part of its territory. In particular, the situation in the self-proclaimed autonomous republics of Abkhazia and South Ossetia, the latter having produced more than 215,000 internally displaced persons, is a matter of serious concern. Not withstanding the above, the Committee wishes to remind the State party that no exceptional circumstances maybe invoked in respect of the absolute prohibition of Torture.

B. Positive aspects

4. The Committee welcomes the State party's accession to the Optional Protocol to the Convention against Torture on 9 August 2005 as well as the declarations made under articles 21 and 22 of the Convention and encourages the State party to inform practitioners and the general public of the availability of these measures.

5. The Committee also notes that in the period since the consideration of the last report, the State party has ratified the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and the Rome Statute of the International Criminal Court.

6. The Committee further notes the accession to or ratification of regional instruments, among them the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the European Convention on the Extradition and Transfer of Proceedings in Criminal Matters.

7. The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular:
a) The revision of the Code of Criminal Procedure, in particular article 144 which brings Georgian legislation in line with international norms with regard to the definition of torture.
b) The elaboration of the Plan of Action against torture in Georgia, the Plan of Measures to Reform and Develop the Penal Correction System as well as the National Anti-Trafficking Plan and the efforts made to strengthen State institutions, including the creation of the Department of Investigation in the Ministry of Justice in 2005.
c) The adoption of new laws such as the law on domestic violence in April 2006 and the drafting of a new law on trafficking as well as the new draft Penitentiary Code for the consideration of Parliament in 2006.
d) The allocation by the State party of additional resources to improve standards in places of detention, in particular with respect to access to health, activities, trainings and living conditions.
e) The 2004 Memorandum of Understanding between the Ministry of Internal Affairs and the Ombudsman's office which enables the Ombudsman's office to authorize monitoring groups, which include representatives of non-governmental organizations, to undertake unannounced visits to any detention facility under the responsibility of the Ministry of Internal Affairs.

8. The Committee takes note with satisfaction of the existence of the 24-hour hotline for torture related complaints and encourages the State party to further disseminate information on its availability.

C. Subjects of concern and recommendations

9. The Committee remains concerned that despite extensive legislative reforms, impunity and intimidation still persist in the State party, in particular in relation to the use of excessive force, including torture and other forms of ill-treatment by law enforcement officials, especially prior to and during arrest, during prison riots and in the fight against organized crime. (article 2)

The State party should give higher priority to efforts to promote a culture of human rights by ensuring that a policy of zero tolerance is developed and implemented at all levels of the police force hierarchy as well as for all staff in the penitentiary establishments. Such a policy should identify and address the problems, and elaborate a code of conduct for all officials, including those involved in the fight against organized crime, as well as introduce regular monitoring by an independent oversight body.

10. The Committee notes that currently, there is an apparent contradiction between Articles 17 and 18(4) of the Constitution whereby the former stipulates that the right to protection from torture is non-derogable, however Article 18(4) allows for the derogation of certain rights. (article 2)

The State party should bring article 18 (4) of its Constitution in line with the Convention. The Committee further recommends that any exceptional measures adopted during emergencies are in line with the provisions of the Convention.

11. The Committee is concerned about the compliance by the State party with article 3 of the Convention and in particular the use of diplomatic assurances in adjudicating

requests for *refoulement*, extradition and expulsion of persons accused of criminal activities. (article 3)

The State party should consider each case on its individual merit and that it resort to the practice of requesting diplomatic assurances with great caution. The State party should provide the Committee with details on how many cases of refoulement, extradition and expulsion subject to receipt of diplomatic assurances or guarantee have occurred since 2002, what the State party's minimum contents are for such assurances or guarantees and what measures of subsequent monitoring it has undertaken in such cases.

12. The Committee is also concerned about the relatively low number of convictions and disciplinary measures imposed on law enforcement officials in light of numerous allegations of torture and other acts of cruel and inhuman or degrading treatment, as well as the lack of public information about such cases. (article 4)

The State party should strengthen its investigative capacity, including that of the Prosecutor-General's office, in order to promptly and thoroughly examine all allegations of torture and ill-treatment and that statistics on convictions and disciplinary measures be regularly published and made available to the public.

13. The Committee is also concerned about the information received from non-governmental organizations that in some instances, detainees are not duly informed of their rights to counsel or to be examined by a medial doctor of their own choice. (article 6)

The State party should take all necessary steps to ensure that all detained persons are duly informed of their rights immediately upon arrest and that they are provided with prompt access to a lawyer and to a doctor of their own choice The State party should inform the Committee on the specific measures taken in this respect.

14. The Committee is concerned about information concerning the existence of agreements which provide that citizens from certain States who are on Georgian territory cannot be transferred to the International Criminal Court in order to be tried for war crimes or crimes against humanity (articles 6 and 8)

In accordance with articles 6 and 8 of the Convention, the State party should take all the 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.

15. The Committee is concerned that there is no specific information available on the impact of the training conducted for law enforcement officials, and how effective the training programmes have been in reducing incidents of violence, ill-treatment and torture in penitentiary establishments. (article 10)

The State party should continue its cooperation with OSCE, the United Nations and other international and national organizations in elaborating educational programmes for law enforcement and penitentiary establishment officials and that a methodology to assess the effectiveness and impact of such programmes on the reduction of cases of violence, ill-treatment and torture be developed and implemented.

16. The Committee is concerned about the high number of complaints received from inmates as well as about reports that law enforcement officers wear masks during raids and carry no identification badges which makes it impossible to identify them should a complaint of torture or ill-treatment be made by an inmate. (articles 2 and 11)

The State party should ensure that all penitentiary personnel, as well as special forces, be equipped with visible identification badges at all times to ensure the protection of inmates from acts in violation of the Convention.

17. The Committee is particularly concerned about the high number of sudden deaths in custody and the absence of detailed information on the causes of death in each case. The Committee is also concerned about the high number of deaths reported from tuberculosis. (articles 6 and 12)

The State party should provide detailed information on the causes and circumstances of all sudden deaths occurred in places of detention, as well as information in respect of independent investigations in this connection. It further encourages the State party to continue its cooperation with the ICRC and non-governmental organizations with regard to the implementation of programmes related to the treatment of tuberculosis and distribution and monitoring of the medicines taken in penitentiary facilities throughout its territory.

18. The Committee is concerned about the poor conditions of detention in many penitentiary facilities, particularly in the regions, as well as about the overcrowding that exists in many temporary detention centres, in particular pre-trial detention centres. (article 11)

The State party should consider: a) further reducing the period of pre-trial detention, b) that the filling of vacancies in the court system be expedited and c) that the use of alternative measures be considered in cases where the accused does not pose a threat to society.

19. The Committee is also concerned that adequate protection may not be afforded to women in places of detention and that no information is available with regard to violence against women in detention or the existing procedures for lodging a complaint. (article 11)

The State party should ensure the protection of women in placed of detention, and that clear procedures for complaints be established.

20. The Committee notes that while the Constitution and the Criminal Procedure Code 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. (article 14)

The State party should 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.

21. The State party should provide in its next periodic report detailed statistical data, disaggregated by crimes, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related

investigations, prosecutions and penal and disciplinary measures. Information is further requested on any compensation and rehabilitation provided to the victims.

22 The State party is encouraged to disseminate widely the reports submitted by the Republic of Georgia and the conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations. Furthermore, the Committee encourages the State party to discuss the conclusions and recommendations broadly, including with the Offices of the Ombudsman and non-governmental organizations, in particular those that submitted information to the State party and participated in the preparation of the report.

23. The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 9, 13, 16, 17 and 19, above.

24. The State party is invited to submit its next periodic report, which will be considered as its fifth report, by 24 November 2011.