

# TABLE OF CONTENTS

<b>INTRODUCTION</b>	<b>1</b>
<b>TORTURE/ILL-TREATMENT: INTERNATIONAL LAW AND STANDARDS</b>	<b>4</b>
What is torture and ill-treatment?	4
The prohibition of torture and ill-treatment in international law	4
<b>AFTER THE “ROSE REVOLUTION”</b>	<b>7</b>
Torture and ill-treatment on the increase	7
Government measures to tackle torture: the beginning of a new era?	8
<b>MORE NEEDS TO BE DONE TO ERADICATE TORTURE AND ILL-TREATMENT</b>	<b>12</b>
<b>Bringing cases to light</b>	<b>14</b>
Many cases still go unrecorded	16
<b>Legal safeguards and implementation</b>	<b>24</b>
Domestic legislation on torture and ill-treatment	26
Arrest	27
Access to the outside world and legal counsel	28
Medical examinations	30
Interrogation and questioning	32
Plea agreements	33
Remand hearing and trial	34
Witnesses	36
<b>Bringing the perpetrators to justice</b>	<b>37</b>
Conduct investigations promptly, impartially and independently	40
Improve investigative skills and adherence to procedures	48
Suspend alleged perpetrators from office pending investigation	50
Sentences must be commensurate with the gravity of the crime	54
Non-reinstatement	54
Abolish the statute of limitation for torture	54
Reparation	55
<b>Set up a mechanism to monitor investigations, courts and prosecutions</b>	<b>57</b>
<b>RECOMMENDATIONS</b>	<b>58</b>
<b>To the Georgian authorities</b>	<b>58</b>
<b>To the international community</b>	<b>62</b>



# Georgia: Torture and ill-treatment Still a concern after the “Rose Revolution”

## INTRODUCTION

The fight against torture or other ill-treatment is currently one of the key issues on the new government's agenda with regard to human rights. It is also an issue that has been a central concern of the international community and the human rights community, including Amnesty International, since Georgia became independent in 1991.

Amnesty International acknowledges that there are significant obstacles the government has had and still has to overcome in order to put in place a system that will lead to the eradication of torture or other ill-treatment. When the government came to power following the so-called “Rose Revolution” in November 2003 it inherited a system in which torture and ill-treatment were widespread and perpetrators routinely went unpunished. Like in Soviet times when the confession was regarded as the “queen of evidence” (and often the only evidence), police officers routinely extracted “confessions” and incriminating information under torture and criminal convictions were based on such “evidence”. In March 2002 the United Nations (UN) Human Rights Committee considered Georgia's second periodic report on the country's compliance with provisions set out in the International Covenant on Civil and Political Rights (ICCPR). The Committee voiced concern at the “*widespread and continuing subjection of prisoners to torture and cruel, inhuman or degrading treatment or punishment by law enforcement officials and prison officers*”.<sup>1</sup>

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

In February 2005 Manfred Nowak, the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment (Special Rapporteur on torture), conducted a fact-finding mission to Georgia and, on 16 March, issued a list of recommendations to the authorities aimed at eradicating torture and ill-treatment in the country.<sup>2</sup> Amnesty International urges the authorities to implement promptly all recommendations made by the Special Rapporteur. Key recommendations of the Special Rapporteur and other relevant international bodies pertaining to the subject of this report will be cited in the respective chapters below.

In recent months the Georgian authorities have introduced or implemented a number of measures to tackle the issues of torture and ill-treatment. These have included legal

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<sup>1</sup> Concluding observations on the second periodic report of Georgia, UN Doc. CCPR/CO/74/GEO, 19 April 2002.

<sup>2</sup> *Preliminary note by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Georgia*, UN Doc. E/CN.4/2005/62/Add.3, 16 March 2005.

amendments, extensive monitoring activities of detention facilities under the jurisdiction of the Ministry of Internal Affairs conducted in particular by the office of the Public Defender of Georgia (Ombudsman), and ten perpetrators of crimes amounting to torture or ill-treatment are serving prison terms handed down since the “Rose Revolution”.<sup>3</sup>

However, Amnesty International has continued to receive reports about torture and ill-treatment in Georgia. Many cases still do not come to light because police cover up for their crimes and detainees are often afraid to complain or identify the perpetrators for fear of repercussions. Impunity for torture is still a big problem. Amnesty International was concerned that procurators did not open investigations into all potential torture and ill-treatment cases in a systematic manner. In dozens of cases where the procuracy has opened investigations the perpetrators have not been brought to justice. Case examples featured in the report demonstrate that investigations into allegations of torture or ill-treatment have often not been conducted in a prompt, impartial and independent manner.

Part 1 of this report outlines the definition of torture and ill-treatment and lists key international treaties and human rights standards relevant to the issue in Georgia. Part 2 gives a brief overview of the main developments regarding torture and ill-treatment since the “Rose Revolution” in November 2003. Part 3 identifies several areas in which further government measures are particularly needed in order to create an effective system to end torture and ill-treatment. The report gives examples of what the government has done in these respective areas and highlights the obstacles that remain to creating an effective system to combat torture and ill-treatment. The report concludes with a number of recommendations aimed at enhancing the effectiveness of government programmes in tackling the issue of torture and ill-treatment.

The information contained in this report is mainly based on interviews and materials obtained during three fact-finding missions to Georgia from 5 to 20 March 2004, from 25 March to 5 June 2005 and from 20 to 28 October 2005. The research on this subject was conducted in the capital Tbilisi and in the town of Zugdidi in western Georgia. Sources of information during the missions included government officials and employees of the Ministry of the Interior, the Ministry of Justice, the General Procuracy, the National Security Council, the Ombudsman, representatives of intergovernmental organizations (IGOs), non-governmental organizations (NGOs), lawyers, journalists and independent experts. In addition, Amnesty International visited several detainees in the investigation-isolation prisons no. 1 in Tbilisi and no. 4 in Zugdidi who alleged they had been tortured or ill-treated. The organization also visited the preliminary detention facility no. 2 in Dighomi (Tbilisi). In addition, this report includes information obtained through correspondence with government officials, IGOs, NGOs, lawyers, independent experts as well as media reports.

Apart from torture and ill-treatment, Amnesty International has a number of other concerns in Georgia that -- due to the thematic focus of this report -- can only be outlined briefly. Since the new government has come to power the organization has become

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<sup>3</sup> The information about prosecutions was provided to Amnesty International by the Human Rights Protection Unit of the General Procuracy on 10 November 2005.

increasingly concerned about pressure on the judiciary by the procuracy and other government authorities, and allegations of government interference with freedom of the media in particular in relation to television. There were also allegations that police continued to fabricate criminal cases in numerous instances, in particular on drug-related charges. In addition, Amnesty International has urged the authorities to ensure that Georgia respects the prohibition of *non-refoulement* and does not extradite or facilitate the return of anybody who is at risk of being subjected to serious human rights violations such as torture upon return to their country of origin.<sup>4</sup> Amnesty International has also been concerned that while several perpetrators of violent attacks on religious minorities that took place in recent years have been brought to justice, hundreds continue to enjoy impunity. Some of those who have been convicted have not been tried for all the attacks they are believed to have been involved in.<sup>5</sup> The organization also urges the authorities to place special emphasis on bringing the conditions in detention facilities in line with international standards.<sup>6</sup> Many issues also remain unresolved in connection with the internationally unrecognized breakaway areas of South Ossetia and Abkhazia.

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<sup>4</sup> In recent years Amnesty International has been particularly concerned about several Chechens, who were extradited by Georgia to Russia on "terrorism" charges, and about a Kurd who is currently in detention in Tbilisi and wanted by the Turkish authorities because of his alleged membership of the Kurdistan Workers' Party (PKK). For details refer to the entry on Georgia in Amnesty International's bi-annual bulletin *Concerns in Europe and Central Asia* (AI Index: EUR 01/012/2005).

<sup>5</sup> For details refer to Amnesty International's Annual Report entries on Georgia covering the years 2000 to 2004 as well as the entries on Georgia from Amnesty International's bi-annual bulletin *Concerns in Europe and Central Asia* covering July to December 1999 (AI Index: EUR 01/01/00) and January to June 2005 (AI Index: EUR 01/012/2005).

<sup>6</sup> In the context of research undertaken for this report Amnesty International visited the preliminary detention facility in Dighomi, Tbilisi, on 1 June 2005, and observed conditions that were clearly not in line with international law and standards on prison conditions. For example, the cells were dark with no artificial light available and hardly any natural light due to metal plates in front of the windows that only had a few very small holes. The cells were stuffy and in some cells large amounts of rubbish were lying on the floor. Staff of the Department on Human Rights and Monitoring at the Ministry of Internal Affairs and of the detention facility acknowledged that conditions were problematic and said they were seeking funding to refurbish the facility.

## **TORTURE/ILL-TREATMENT: INTERNATIONAL LAW AND STANDARDS**

### ***What is torture and ill-treatment?***

The UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment (Convention against Torture), to which Georgia is a state party, deals explicitly with torture and other cruel, inhuman or degrading treatment by public officials.<sup>7</sup> Article 1 contains the following definition of torture:

*“For the purposes of this Convention, the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”*

Cruel, inhuman or degrading treatment is the term used to describe a spectrum of practices including physical or psychological abuse, confinement in a dark cell, denial of detainees’ basic needs, and other forms of abuse. Torture represents the most severe and deliberate end of this spectrum, and it is not always possible to draw a clear line between the type of abuse that amounts to torture, and that which amounts to cruel, inhuman or degrading treatment. This report uses the term “ill-treatment” as convenient shorthand for cruel, inhuman and degrading treatment.

Some of the cases that feature in this report are so severe that they unquestionably amount to torture. For example, when Geno Kulava (see below) was allegedly suspended from a pole between two tables, kicked and beaten with truncheons, dropped on the floor and a burning candle was held against his forearm, there can be no doubt that what he suffered is within the definition of torture in the Convention against Torture. But, irrespective of definitional questions, such treatment is a breach of Georgia’s obligations under international human rights law.

### ***The prohibition of torture and ill-treatment in international law***

All forms of torture or other ill-treatment are unequivocally prohibited under international human rights law. This prohibition is set out in numerous treaties and other instruments, and international customary law, which applies to all states, irrespective of whether they are party to specific treaties containing the prohibition. The prohibition of torture imposes on states obligations *erga omnes*, i.e. obligations owed towards all the other members of the

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<sup>7</sup> Georgia ratified the Convention in 1994.

international community, each of which then has a correlative right.<sup>8</sup> The prohibition of torture or other ill-treatment is *jus cogens* (peremptory) and applies to all states.<sup>9</sup> This means that no exceptions are permitted and states cannot derogate from their obligations in time of public emergency or for any other reason.<sup>10</sup> Georgia is a state party to all the treaties mentioned below and is consequently bound by their provisions.

Article 5 of the **Universal Declaration of Human Rights**, which was adopted by the UN General Assembly in 1948, signified a consensus among states that no one should be subjected to torture or ill-treatment. Since 1948, numerous international and regional human rights instruments have been adopted which include this prohibition. These instruments include legally binding treaties and conventions, as well as declarations and similar instruments which are not legally binding in the same way as treaties, but which, having been adopted by the UN General Assembly or other UN bodies, carry considerable authority and represent strong agreement by states regarding the standards set out in them. The **International Covenant on Civil and Political Rights** (ICCPR), adopted in 1966, prohibits torture and ill-treatment under Article 7. The ICCPR establishes a body of independent experts, the (UN) Human Rights Committee, to supervise states' parties' implementation of its provisions. The **European Convention for the Protection of Human Rights and Fundamental Freedoms** (ECHR), adopted in 1950, prohibits torture and inhuman or degrading treatment under Article 3. The ECHR allows individuals to submit formal complaints to the European Court of Human Rights if their rights under the Convention have been violated. The court delivers judgments which are binding on the state to which they are directed, and can instruct states to pay compensation to victims.

In addition to the prohibition in these general human rights instruments, there are a number of instruments and mechanisms which relate specifically to torture and other ill-treatment. Some of these have been adopted and refined because of public pressure through organizations such as Amnesty International. In 1972, the UN General Assembly adopted the **Declaration on the Protection of all Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**. In 1984, the UN General Assembly adopted the **Convention against Torture and Other Cruel Inhuman or Degrading Treatment** (Convention against Torture), a binding treaty, which sets out measures to be taken by states to prevent torture and other ill-treatment by public officials;<sup>11</sup>

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<sup>8</sup> Torture and other cruel, inhuman or degrading treatment or punishment, Report by the Special Rapporteur, Mr. P. Kooijmans, to the Commission on Human Rights, UN Doc. E/CN.4/1986/15, 19 February 1986, par. 3; ICTY, *Prosecutor v. Furundzija* (case no. IT-95-17/1), Trial Chamber, Judgment, 10 December 1998, par. 151.

<sup>9</sup> UN Human Rights Committee, General Comment No. 24, 4 November 1994. A peremptory norm of general international law, also known as *jus cogens*, is defined in the Vienna Convention on the Law of Treaties (Article 53) as a "*norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character*".

<sup>10</sup> Refer to Art. 7 of the ICCPR, Art. 3 of the ECHR and Art. 2 (2) of the Convention against torture.

<sup>11</sup> Art. 2, 10 and 16 of the Convention.

to conduct appropriate investigations into allegations of torture and ill-treatment;<sup>12</sup> and to provide reparation.<sup>13</sup> It also sets out the states' duty to criminalize torture and ill-treatment.<sup>14</sup> The Convention establishes the Committee against Torture (CAT), a body of independent experts which supervises states parties' implementation of its provisions. In 1985, the UN Commission on Human Rights (CHR) appointed a **Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment** (Special Rapporteur on torture), who is mandated to address the government of any state, irrespective of the specific treaties it is a party to, including by intervening in urgent cases.

At the European level and the international level there are treaties which establish monitoring bodies to visit places of detention. The **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**, adopted in 1987, establishes a committee of experts drawn from the states parties -- the **European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment** (CPT) -- which is empowered to visit places of detention with a view to strengthening the protection of detainees from torture and ill-treatment. The CPT has published a collection of standards which cover the main issues that it looks at during its visits to places of detention in states parties; these include a section dealing with police detention.<sup>15</sup> More specifically, the CPT has made three visits to Georgia, during which it has looked into, among other things, torture and ill-treatment in police detention.<sup>16</sup>

In 2002, the UN General Assembly adopted the **Optional Protocol to the UN Convention against Torture** (OPCAT). This has not yet entered into force, but like the European Convention for the Prevention of Torture (above), the OPCAT establishes mechanisms for visiting places of detention in states parties; it also requires states parties to establish their own national visiting bodies for the prevention of torture and other ill-treatment.

In addition to the instruments which deal specifically with torture and ill-treatment, there are two key international texts which set out standards relating to detention generally, and which include important safeguards against torture and other ill-treatment: the **UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment** (UN Body of Principles) and the **UN Standard Minimum Rules for the Treatment of Prisoners** (UN Standard Minimum Rules).

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<sup>12</sup> Art. 12, 13 and 16 of the Convention.

<sup>13</sup> Art. 14 of the Convention.

<sup>14</sup> Art. 4 of the Convention.

<sup>15</sup> The CPT Standards can be found on the CPT website: <http://www.cpt.coe.int/en/documents/eng-standards-scr.pdf>

<sup>16</sup> All CPT reports are available on the CPT website: at <http://www.cpt.coe.int/en/states/geo.htm>

## AFTER THE “ROSE REVOLUTION”

### ***Torture and ill-treatment on the increase***

Torture and ill-treatment continued to be a major concern of Amnesty International and other human rights organizations after the “Rose Revolution” in November 2003. The situation reportedly deteriorated in the months after the change of government.

When interviewed by Amnesty International in March 2004, Levan Ramishvili, the director of the NGO Liberty Institute, criticized the government for paying too little attention to human rights: *“Their main topics are fighting against corruption and restoring territorial integrity. Human rights don’t feature on the agenda.”*

Sozar Subari, the Ombudsman of Georgia, told Amnesty International on 5 May 2005: *“Immediately after the Revolution the new authorities decided that they wanted to go after criminals who escaped justice under Shevardnadze. Often the authorities had no evidence but everybody knew that these people were involved in corruption, so the police in many cases planted drugs or weapons and often beat them to extract confessions.”*

Corruption was long known to be rampant in Georgia and the new government declared the fight against it as one of its top priorities. In this context law enforcement agencies conducted several waves of arrests that were accompanied by allegations of torture and ill-treatment as well as procedural violations and fabrication of evidence.

Eka Beselia, a prominent lawyer who has worked on torture and ill-treatment cases for many years, told Amnesty International in March 2004: *“The police have gained through the ‘Rose Revolution’. What they did secretly in the past, they do openly now. When they use violence, when they leave the framework of the law, they don’t have to fear any punishment. Several people have been killed during police operations. Government officials usually immediately say that the force used by police was proportionate and adequate.”*

In the months following the “Rose Revolution” human rights groups documented scores of cases involving allegations of torture and ill-treatment and passed them on to the authorities urging them to open thorough and independent investigations into the allegations. However, there was little or no reaction from the authorities.

For example, the NGO Former Political Prisoners for Human Rights compiled a list covering the year 2004 of almost 500 cases involving allegations of torture and ill-treatment. Nana Kakabadze of the group Former Political Prisoners for Human Rights told Amnesty International: *“Whenever we got a new case we passed it to the General Procuracy straight away. However, we never got a reply. In order to force a reply we did a press conference last year and gave around 300 cases that we had compiled at the time to the Deputy Interior Minister, but we never got a reply.”*<sup>17</sup>

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<sup>17</sup> Amnesty International interview, Tbilisi, 24 October 2005.

## **Government measures to tackle torture: the beginning of a new era?**

In the second half of 2004 human rights activists and the Ombudsman Sozar Subari<sup>18</sup> published shocking statistics according to which over 1100 people had been subjected to torture or ill-treatment since the "Rose Revolution" in Tbilisi alone. Their efforts apparently succeeded in getting the issue of torture and ill-treatment on the government agenda.

Since around the same time senior government officials have on several occasions publicly acknowledged the problem of torture and ill-treatment and expressed their commitment to fight it.

On 18 October 2004 Zurab Adeishvili, the Procurator General of Georgia, and Irakli Okruashvili, the then Interior Minister, announced at a press conference that they had agreed on a monitoring programme of police stations and preliminary detention facilities which would be conducted under the auspices of the Ombudsman. One of the stated aims of the project was to fight torture and ill-treatment.

In August 2004,<sup>19</sup> March and June 2005 a series of legal amendments were adopted by Parliament to the Criminal Procedure Code of Georgia (CPC) and the Criminal Code of Georgia, many of which either directly addressed the issue of torture or ill-treatment or were relevant to the issue. As part of ongoing legal reforms it is planned to issue a new CPC.

The draft version of the new CPC may be submitted to Parliament in December 2005.<sup>20</sup> According to Levan Ramishvili from the Liberty Institute, the new CPC will be adopted in the next year and will include the recent legal amendments from the current CPC.<sup>21</sup>

### **Places of detention from arrest until completion of the trial**

After arrest detainees are either taken to the local police station or to a preliminary detention facility. All detainees including those that are initially taken to a police station are held in the preliminary detention facility until the remand hearing. Both the police station and the preliminary detention facility are under the jurisdiction of the Interior Ministry. If detainees attend the remand hearing they spend the time until the judge announces the ruling in a cell belonging to the court. In cases where the accused wishes not to attend the remand hearing s/he remains in the preliminary detention facility until the court makes a ruling. In such cases the detainee's lawyer has to represent him/her in court. If the detainee is remanded to pre-trial detention s/he is then taken to an investigation-isolation prison under the jurisdiction of the Ministry of Justice, where s/he remains while the trial is ongoing -- except when attending the court hearings -- until a verdict is pronounced in the case.

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<sup>18</sup> In September 2004 Sozar Subari was appointed Ombudsman of Georgia.

<sup>19</sup> Many of the legal amendments adopted in August 2004 were based on rulings by the Constitutional Court in January 2003.

<sup>20</sup> Email correspondence with Giga Bokeria, Deputy Head of the Parliamentary Committee on Legal Affairs, 17 November 2005.

<sup>21</sup> Amnesty International interview, Tbilisi, 24 October 2005.

Some progress has also been made regarding prosecutions of perpetrators of torture and ill-treatment; however, more needs to be done. The first conviction since the "Rose Revolution" was handed down to three police officers in November 2004.<sup>22</sup> According to information provided to Amnesty International by the Human Rights Protection Unit at the General Procuracy on 10 November 2005, ten police officers are currently serving prison terms after having been found guilty by the courts since the new government came to power, for crimes amounting to torture or ill-treatment.

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

As part of the implementation of this Plan of Action the National Security Council, the General Procuracy, the Interior Ministry and the Ombudsman's office have conducted two joint monitoring projects. The first project involved visits by senior officials from each of the above government agencies to 25 police stations and prisons in Georgia in 2004. A similar project started again in July 2005 and will run until the end of the year. It includes five visits to detention facilities in Tbilisi and 20 visits to facilities outside the capital. "*These are not unannounced visits but the important thing about these visits is that they demonstrate political will to eradicate torture and ill-treatment to police across the country,*" said Anna Zhvania, Head of the Information and Education Department at the Ombudsman's office.<sup>23</sup> Iris Muth, Human Dimension officer at the OSCE mission to Georgia, told Amnesty International: "*Because senior officials of all relevant government institutions are present any violations that are found during the monitoring can be acted upon on the highest level straight away. This is positive.*"<sup>24</sup> As a result of the monitoring project in 2004 the authorities drew up a number of recommendations to improve the system including comprehensive cooperation of ministries on combating torture, special training courses for the relevant police personnel on record-keeping in police custody and a special programme for the renovation of preliminary detention facilities under the auspices of the Ministry of Internal Affairs.

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<sup>22</sup> President Mikheil Saakashvili said during a meeting with the Supreme Court Chairman and newly selected judges that was broadcast on television on 21 June 2005: "*For 15 years not a single police officer went on trial for human rights abuses.*" However, Amnesty International knows of several cases where perpetrators of torture or ill-treatment were sentenced to prison terms in Georgia before the "Rose Revolution". For example, refer to the entry on Georgia in Amnesty International's bi-annual bulletin *Concerns in Europe and Central Asia* covering July to December 1997 (AI Index: EUR 01/01/98).

<sup>23</sup> Amnesty International interview, Tbilisi, 26 October 2005.

<sup>24</sup> Amnesty International interview, Tbilisi, 21 October 2005.

Following a request by then Prime Minister Zurab Zhvania at the beginning of June 2004 the European Union (EU) Council adopted on 28 June a decision establishing a one-year EU Rule of Law Mission in Georgia (EUJUST THEMIS) with the aim of assisting the Georgian authorities to reform the country's criminal justice system. On 19 October 2004 President Mikheil Saakashvili decreed the establishment of a working group consisting of key government officials charged with developing a strategy for reforming the criminal legislation of Georgia within six months, supported by EUJUST THEMIS.<sup>25</sup> The President also appointed several other senior government officials, parliamentarians, the Ombudsman and two civil society activists as participants in the working group. Subsequently, nine subgroups were created to focus on relevant thematic areas including, among others, "Police authorities and crime prevention", "the Prosecution", "Reform of the Public Defender's institute" and "the Criminal Procedure Code". In July 2005 the *Strategy of the Reform of the Criminal Legislation of Georgia* was approved by President Saakashvili and made public. It outlined a number of measures which, if implemented, should have an impact on the use of torture and ill-treatment in Georgia. For example, it stipulated that the new CPC, that is currently under consideration, will introduce "*special measures for the protection of witnesses and victims*". It also stated that "*the public must be given the widest possible insight into the activities of the police and possibilit[ies] to influence the management of the police [at] all levels*". To this aim it is envisaged to set up independent public councils "*in all local police departments and for each of the main police divisions*" consisting of members of the public and NGOs. The Councils will be tasked with monitoring the state of health of detainees and conditions they are held in. According to the strategy paper, "*the public councils will take over the responsibilities outlined in the memorandum of understanding between the Ombudsman and the Ministry of the Interior about controlling detention cells and detainees.*" The strategy also stated that a Code of Ethics for police would be drawn up taking into account recommendations from the Council of Europe. Regarding the reform of the Ombudsman's office the strategy envisaged the creation of "*strong regional offices*" covering the "*whole Georgian territory*". Amnesty International was informed in October that the next step towards implementation of the strategy would be the elaboration of an Action Plan addressing each of the issues worked on by nine subgroups; it was envisaged to include in the Action Plan timelines for the implementation of each of the elements. As of 16 November 2005 the Action Plan was still being worked on.

On 8 July 2005 the Parliament of Georgia voted in favour of ratifying the Optional Protocol to the UN Convention against Torture (OPCAT) and on 9 August Georgia formally acceded to it.<sup>26</sup> The Ombudsman informed Amnesty International in his letter of 14 August 2005 that the "*mechanisms for the prevention of torture at the domestic level will be developed on the basis of our institution. The Public Defender's Office is a good ground to building the monitoring effort within the OPCAT. There are necessary legal provisions and experience and institutional capacity to implement it.*"

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<sup>25</sup> Presidential Decree no. 914.

<sup>26</sup> *Black Sea Press*, 8 July 2005.

Any national monitoring mechanism/s for the prevention of torture and other ill-treatment should be established and work according to the Principles relating to the status of national institutions for the promotion and protection of human rights adopted by the UN General Assembly in December 1993.<sup>27</sup> When setting up the national monitoring mechanism/s in Georgia following the ratification of OPCAT Amnesty International believes that it will be key to ensure that the mechanism/s has functional independence and that particular attention is paid to the selection of its members as well as to their training.<sup>28</sup> The selection of members must be conducted in a transparent manner; they must have the required capabilities and professional knowledge, and they must be independent.<sup>29</sup> In line with the requirements outlined in OPCAT, the members of the national visiting bodies should be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty and should include doctors, psychiatrists and lawyers. Members should be provided training in how to effectively monitor conditions of detention.

Several former and current police officers told Amnesty International that the significant rise in the salaries of law enforcement officers following the "Rose Revolution" was an incentive for police not to torture or ill-treat detainees. A former employee of the anti-terrorist unit told Amnesty International on 22 October 2005: "*Before the Revolution police earned so little that they weren't very afraid to lose their job, they had less to lose. Also, in the past police often used violence to extract money from the detainee or his relatives. The increase in salaries has reduced this kind of corruption in the police.*"

The Police Academy has also undergone significant restructuring under the new government. Ralf Palo, Police Adviser at the OSCE mission to Georgia, told Amnesty International: "*In the past there was no professional police training in Georgia. The Police Academy only offered legal training but did not teach specific professional skills.*"<sup>30</sup> The Tbilisi-based Police Academy is currently in the process of setting up a new study programme for police that is intended to train all types of police such as border police, patrol police, criminal and financial police. Marina Lebanidze from the International Relations and Development Unit at the Police Academy told Amnesty International: "*The first training we*

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<sup>27</sup> General Assembly resolution 48/134 of 20 December 1993. UN Doc. A/RES/48/134.

<sup>28</sup> There has been vocal criticism regarding the selection of members of the Monitoring Council under the auspices of the Ombudsman. Human rights activists from the groups Former Political Prisoners for Human Rights, the Human Rights Information and Documentation Centre, and Article 42 of the Constitution have alleged that members of the Monitoring Council were not selected in a transparent way on the basis of their expertise and that experienced activists from their NGOs were excluded because they were known to be highly critical of the authorities and the work of the Ombudsman. Several activists who requested to be included in the Monitoring Council complained they never received an explanation from the Ombudsman as to why their applications were not successful and that they had been unable to obtain information about selection criteria used to appoint monitors.

<sup>29</sup> Refer to *National human rights institutions: Amnesty International's recommendations for effective protection and promotion of human rights* (AI Index: IOR 40/007/2001).

<sup>30</sup> Amnesty International interview, Tbilisi, 28 October 2005.

conducted was for the new patrol police. Initially the training was for only two weeks last year but in April 2005 the first police officers went on our basic three-months training course. This course is mainly theoretical but we are planning to set up an additional three-months course next year that will focus on police practice."<sup>31</sup> It is envisaged that all police will be required to take the basic training course consisting of a theoretical and a practical part. In addition, the Police Academy is planning to offer specialized training courses to meet the specific needs of the different branches of the police force. "We are also planning to conduct compulsory courses for all those policemen who have worked in the police for a long time but have never had any formal training. The first such course was done this summer for criminal police," explained Marina Lebanidze. According to her, the Police Academy has included human rights components in their training such as relevant international human rights law and standards as well as education about torture, ill-treatment and the proportionate use of force and firearms and aims at further strengthening this part of the training.

## **MORE NEEDS TO BE DONE TO ERADICATE TORTURE AND ILL-TREATMENT**

While important steps have been taken, the government still has a long way to go to end torture and ill-treatment in the country. A long-term approach is needed to achieve lasting results. This chapter focuses on those issues, which Amnesty International considers require particular attention by the authorities.

Amnesty International has continued to receive reports about torture and ill-treatment in Georgia in recent months. While several government officials denied in conversations with Amnesty International that any torture cases had occurred during 2005 the organization was informed by Tamar Tomashvili, Head of the Human Rights Protection Unit at the office of the General Procurator, on 26 September 2005, that a policeman alleged to have tortured a minor in August 2005 was charged under Article 144 (1) part 2 of the Criminal Code, entitled "Torture". Amnesty International has in addition received information about other cases in 2005 where detainees were allegedly tortured.

It is impossible, however, to make any definite statements about the number of people subjected to torture or other ill-treatment in Georgia. There are no comprehensive and reliable statistics although a lot has been done to improve registration of cases involving allegations of torture or ill-treatment. Shota Khizanishvili, the Head of the Department on Human Rights and Monitoring at the Ministry of Internal Affairs, informed Amnesty International in a letter dated 3 October 2005 that his Department had forwarded 70 cases involving allegations of ill-treatment for investigation to the General Inspection of the Interior Ministry as well as to the General Procuracy since 1 January 2005. According to the *Analysis of statistics of police monitoring* issued by the office of the Ombudsman in August 2005, the monitoring group had found 192 cases involving physical abuse from January to August 2005. The general

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<sup>31</sup> Amnesty International interview, Tbilisi, 28 October 2005.

procuracy has opened 118 preliminary investigations involving allegations of police abuse in 2005.<sup>32</sup>

There were indications that many people did not complain about ill-treatment by police and, if asked about the origin of their injuries, insisted they were sustained before their detention, often for fear of repercussions. The Department on Human Rights and Monitoring at the Ministry of Internal Affairs registered 930 cases of people who had injuries when entering a preliminary detention facility for the period from April to September 2005 out of a total number of detainees of 5194. Only 40 of them alleged they had sustained the injuries as a result of police abuse.<sup>33</sup>

The numbers of defendants whose injuries were documented by medical personnel upon entering investigation-isolation prisons following their transfer from police custody have remained on a similar level since the "Rose Revolution". In 2003 doctors recorded 462 cases; in 2004 – 393 cases; and from January to March 2005 – 113 cases.<sup>34</sup>

In 2005 the large majority of injuries alleged to have been sustained through police ill-treatment were reportedly inflicted during the arrest. In the same period Amnesty International continued to receive some cases where detainees were reportedly tortured or ill-treated in cars while being taken to a place of detention, in police stations, and in the Ministry of Internal Affairs. One detainee alleged that he was ill-treated during the remand hearing. There were also allegations that several people were attacked on the street by security service agents in plainclothes or taken to unpopulated places such as cemeteries or forests and ill-treated.

The methods used to torture or ill-treat detainees, as indicated in the reports Amnesty International has received since the "Rose Revolution", include electric shocks; putting plastic bags over the head of a detainee; suspending a detainee from a pole between two tables; cigarette and candle burns; placing the barrel of a gun in a detainee's mouth threatening to shoot; blindfolding with adhesive tape; hitting a detainee's ear with open palms; threats to beat the detainee's family; gagging the detainee with a piece of cloth so they cannot shout; beatings, including with truncheons and butts of guns, and kicking.

One of the aims of the government as outlined in the Plan of Action against Torture in Georgia (2003 to 2005) is to implement special measures to "*fully protect women and minors from torture, other cruel, inhuman and degrading treatment*". However, allegations of ill-treatment of minors and women continued to be received. On 21 February 2005, for example, *Black Sea Press* reported that the Monitoring Council under the auspices of the Ombudsman's office received information that a 16-year-old male was detained in Mukhiani in the outskirts of Tbilisi and beaten in order to force him to "confess" to a robbery.

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<sup>32</sup> Information provided to Amnesty International by the Human Rights Protection Unit at the General Procuracy on 10 November 2005.

<sup>33</sup> Information provided Amnesty International by Shota Khizanishvili and Giorgi Kiknadze of the Department on Human Rights and Monitoring at the Interior Ministry on 3 and 6 October 2005.

<sup>34</sup> The figures were provided by Maia Khasia, head of the Service on Human Rights and Social Issues at the Department for the Enforcement of Punishment of the Ministry of Justice, on 30 May 2005.

Against this backdrop statements denying that torture and ill-treatment continue to be used in Georgia are counterproductive and may function as a disincentive for victims to complain about police abuse. During a meeting with the Supreme Court Chairman and newly selected judges on 21 June 2005, broadcast on the First Channel of Georgian state television, President Saakashvili stated: *"I honestly admit that last year, for several months after the revolution, there were still serious incidents involving human rights abuse, the planting of drugs and arms on people as well as beatings. In the past few months there have been no such incidents [...] Since [Merab] Baghaturia became the new chief of police in Tbilisi, not a single person has been beaten in police custody."*<sup>35</sup> Merab Baghaturia became chief of Tbilisi city police in January 2005. Official data contradicts President Saakashvili's statement. According to data provided to Amnesty International by the Ministry of Internal Affairs, between January and April more than 20 detainees complained to officials of the Department on Human Rights and Monitoring at the Ministry of Internal Affairs that they had been tortured or ill-treated. The investigations into most if not all of these cases had not been concluded when President Saakashvili gave this speech. On 28 October the President said in a speech held at a business forum in Tbilisi: *"I am proud that we are the first country in this region, where people are no longer beaten up and tortured and the police do not commit illegal acts."*

### **Bringing cases to light**

For an effective system to end torture and ill-treatment, particular attention has to be directed to removing all obstacles that prevent victims of torture and ill-treatment from complaining about their treatment by police so that all cases can be appropriately investigated.

Amnesty International notes that a number of government agencies and the Ombudsman have put substantial effort into bringing torture and ill-treatment cases to light.

The extensive monitoring of preliminary detention facilities conducted by representatives of the Ombudsman since the end of 2004 has been crucial in this regard. The Ombudsman told Amnesty International on 5 May 2005: *"We started our project in November 2004. Apart from involving my staff, I also authorized several NGO activists to get access to preliminary detention facilities. From January 2005 until the beginning of March our office conducted around-the-clock monitoring in Tbilisi and Shida-Kartli region. Now, our monitoring group goes to police lock-ups, detention facilities under the jurisdiction of the Ministry of Justice, and to the Ministry of Defence eight hours every day and twice a week for 24 hours."*<sup>36</sup>

Many human rights activists interviewed by Amnesty International in April and May 2005 believed that the monitoring played an important role in providing a deterrent for torture

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<sup>35</sup> Nana Kakabadze of Former Political Prisoners for Human Rights told Amnesty International on 24 October 2005: *"Those people who were tortured after the revolution and whose cases were fabricated and drugs planted are still in prison. Even Saakashvili admits that and so he should do something about it. What is needed now is an amnesty for all these people."*

<sup>36</sup> Amnesty International interview, Tbilisi, 5 May 2005.

and ill-treatment and in bringing cases to light. However, the level of monitoring outside Tbilisi was very low and Amnesty International believes it was not likely that it could have had a significant impact there. In July, August and September 2005 staff of the Ombudsman's office increased their monitoring in the regions of Georgia outside Tbilisi. According to Anna Zhvania, Head of the Information and Education Department at the Ombudsman's office, 25 and 23 visits were conducted in July and August respectively to those police stations and preliminary detention facilities outside Tbilisi that they believed were the most problematic. However, the level of monitoring in the regions compared to that in Tbilisi is still very low. Since January 2005 the monitoring group has conducted just under 200 visits per month on average to detention facilities in Tbilisi.<sup>37</sup> While there are representatives of the Ombudsman in several towns outside Tbilisi staffing levels in these offices are very low with usually one or two people per office and their budgets are extremely limited.<sup>38</sup>

According to Giorgi Kiknadze, Deputy Director of the Department on Human Rights and Monitoring at the Ministry of Internal Affairs that was set up in January 2005 and is directly accountable to the Minister, his department instructed heads of preliminary detention facilities across Georgia to immediately inform the Department when a detainee is brought to their detention facility with visible bodily injuries who may have been subjected to torture or ill-treatment: *"As soon as we receive information that a detainee entered a [preliminary detention facility] with injuries, we immediately go there, study the case and interview the person. It is our ambition to be the first to bring cases of torture and ill-treatment to light. We draw up a record and note down when and how, according to the detainee, he received the injuries. If he has complaints against the police we ask him to give us names or other information to help identify them. We look at the medical documents and if we find the slightest violation and the detainee says this was caused by police, then we pass on the case information to the General Inspection in our Ministry so they can start an internal investigation."*<sup>39</sup>

Giorgi Kiknadze informed Amnesty International on 27 October 2005: *"The system is working very well now. The heads of the preliminary detention facilities in the regions inform*

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<sup>37</sup> January: 131 visits; February: 105; March: 39; April: 25; May: 105; June: 397; July: 338; August: 249. Source of information: *Analysis of statistics of police monitoring* issued by the Ombudsman's office in August 2005.

<sup>38</sup> As of September 2005, there were offices in Batumi, Kutaisi, Telavi, Samtskhe-Javakheti and Zugdidi.

<sup>39</sup> Amnesty International interview, Tbilisi, 25 April 2005. Giorgi Kiknadze also informed Amnesty International that -- in order to speed up the investigation -- from 1 May 2005 all cases worked on by the Department on Human Rights and Monitoring at the Ministry of Internal Affairs are simultaneously passed on to the General Inspection and to the General Procuracy. Prior to this change, the General Inspection had to first conclude its internal investigation before the case was passed on to the General Procuracy. -- According to an order issued by the Interior Minister on 5 January 2005, the head of the Department on Human Rights and Monitoring has the right to be *"granted [...] access to the local and regional administrative building of the Ministry of Internal Affairs and the preliminary detention facilities located in these buildings without special permission"*. The head of the Department can extend this right to his employees.

us by fax of any transfer of a detainee who has visible bodily injuries within a maximum of 50 to 60 minutes, so we have very strong control of the situation in the regions now." However, while representatives of the Department on Human Rights and Monitoring told Amnesty International that they have been able to promptly interview detainees who alleged they were tortured or ill-treated by police in Tbilisi, staffing levels in the Department have not allowed a similar approach to be taken across Georgia. Amnesty International was informed that there was currently no prospect that the number of staff in the Department would be increased and branch offices set up outside Tbilisi.<sup>40</sup>

In 2000 medical doctors working in the penitentiary system under the jurisdiction of the Ministry of Justice started examining defendants and documenting any visible injuries on their bodies when they first entered an investigation-isolation prison.<sup>41</sup> This procedure was introduced as part of measures that followed the transfer of the penitentiary system from the jurisdiction of the Ministry of Internal Affairs to the Ministry of Justice in 1999. In January 2002 the Department for the Enforcement of Punishment of the Ministry of Justice set up a database to register the cases and produce statistics. According to Maia Khasia, the Head of the Department's Service on Human Rights and Social Issues, information on any new case of a detainee where injuries have been recorded is immediately passed on to the Head of the Human Rights Protection Unit at the office of the General Procurator.<sup>42</sup> In addition, "*once a month our updated statistics are -- among others -- sent to the General Procuracy, the Ombudsman and non-governmental organizations,*" she said.

Despite improvements there are still significant obstacles to bringing all cases of torture and ill-treatment to light. There are strong indications that police continue to cover-up many cases and that detainees are often afraid to complain about torture or ill-treatment and prefer not to identify the perpetrators for fear of repercussions.

### **Many cases still go unrecorded**

On 1 January 2005 the Department on Human Rights and Monitoring at the Interior Ministry began to compile statistics on the number of detainees who had bodily injuries when entering the preliminary detention facilities no. 1 and no. 2 in Tbilisi on the basis of medical records provided by the heads of the detention facilities. The statistics also include information detailing when, according to the detainees, the injuries were sustained and how many detainees complained about torture or ill-treatment by police. Since 1 April the Department has also issued similar statistics covering all regions of Georgia.

On 4 May 2005 the Department provided Amnesty International with a list of 25 detainees who were interviewed by the Department and alleged to have been ill-treated since January 2005. The list does not include the case of David-ogly Jafarov, who was transferred to preliminary detention facility no. 2 in Dighomi in Tbilisi in February 2005 and who alleged

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<sup>40</sup> Letter received by Amnesty International from Shota Khizanishvili, head of the Department on Human Rights and Monitoring, 3 October 2005.

<sup>41</sup> Amnesty International interview with Maia Khasia, Tbilisi, 30 May 2005.

<sup>42</sup> Amnesty International interview, Tbilisi, 30 May 2005.

he was tortured and ill-treated by police during and following his arrest. This case demonstrates that there is a gap between the number of cases taken up by the Department and the real number of cases that involve allegations of torture or ill-treatment. Another case that was not included in the list is that of Alexander Mkheidze (see below).

According to the lawyer Avto Tkebuchava, on the evening of 24 February 2005, when his client David-ogly Jafarov, an ethnic Azeri, left his house in the village of Ponichala in Gardabani district near Tbilisi to buy cigarettes in a shop nearby, a white car stopped, six men in plainclothes jumped out and pushed him inside the car without any explanation. The men reportedly started beating him while pushing him to the car. According to the lawyer, David-ogly Jafarov was taken to the Ponichala division of the Krtsanisi district department of the Ministry of Internal Affairs where he said he was beaten and kicked in his face and on his back. After that, his lawyer reported, he was taken to the Ministry of Internal Affairs where he was beaten on his hand with a gun; a plastic bag was placed on his head to make it harder for him to breathe; and one police officer reportedly put a gun into his mouth shouting at him that he should confess he was a drug dealer. Later that day David-ogly Jafarov was transferred to the preliminary detention facility in Dighomi. According to Avto Tkebuchava, the medical doctor at the facility did not record David-ogly Jafarov's allegation that he was tortured and ill-treated by police and officers at the detention facility also reportedly ignored his allegations.<sup>43</sup> On 26 February David-ogly Jafarov was charged with "Purchase and possession of illegal drugs" (Article 260, part 3c of the Criminal Code). On 27 February 2005 Mtatsminda-Krtsanisi district court remanded him to three months' pre-trial detention and he was transferred to investigation-isolation prison no. 1 in Tbilisi. The medical examination upon arrival at the prison established that he had bruises near his right eye, on his left shoulder-blade, and cuts on his right hand. In addition, he had scratches between his eyebrows and on his back near the spine. On 4 March David-ogly Jafarov's father Jafar Jafarov sent complaints regarding the treatment of his son to several government officials and to the General Procuracy. The independent forensic medical expert Maia Nikoleishvili examined David-ogly Jafarov on 4 May and confirmed the findings of the prison doctors with the exception that she concluded the wounds on his hand were caused by a blunt heavy object.

In response to a request by Amnesty International in July 2005 to provide information about the case and respond to David-ogly Jafarov's allegations that he was tortured and ill-treated by police, the Human Rights Protection Unit at the General Procuracy provided the following information about his case. According to the record drawn up in the preliminary detention facility in Dighomi on 25 February, his injuries were sustained as a result of putting up resistance to the police. When David-ogly Jafarov was interrogated on 26 February, he alleged that the injuries had been inflicted on him by police during the arrest. On 4 March the investigator in the case requested a forensic medical examination which concluded on 23 March that he was "*practically healthy*". Following a request by an investigator of the Special Operative Department of the Ministry of Internal Affairs to conduct a forensic medical examination of police officers involved in detaining David-ogly Jafarov it was established on 11 May and 4 July respectively that two of the police officers had suffered

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<sup>43</sup> Telephone interview on 18 July 2005.

deterioration of their health for a short period of time. The investigation concluded that David-ogly Jafarov had put up resistance to the police at the time of his arrest. "After reviewing the facts of the case" the office of the Procurator General decided to "initiate [a] criminal investigation [regarding] the fact of exceeding the limits of official authority by the representatives of the police against David-ogly Jafarov". The preliminary investigation was initiated on 18 October 2005.

According to data made available to Amnesty International by the Department on Human Rights and Monitoring at the Interior Ministry covering the period from 1 to 27 April 2005,<sup>44</sup> 56 detainees out of a total number of 421 had visible bodily injuries when entering preliminary detention facilities in the regions of Georgia outside Tbilisi. However, according to the statistics, not a single detainee complained about police ill-treatment.

Merab Gergaia, Head of Samegrelo-Zemo Svaneti regional police in western Georgia, told Amnesty International on 13 May 2005: "I started working in this post in December 2004. I can say for sure that during that time there has not been a single complaint about torture or ill-treatment. I check it out myself. I pay unexpected visits to police stations at three o'clock in the morning. I honestly tell you, there hasn't been a case."<sup>45</sup> His deputy Temur Sajaia said that for one year there had not been any torture or ill-treatment case in the whole region.<sup>46</sup>

When asked what steps the police in Samegrelo-Zemo Svaneti had taken to eradicate torture and ill-treatment, Merab Gergaia replied: "Every Monday, every day when somebody is detained, then the head of the police station calls me and I tell them they mustn't beat the detainee, there mustn't be any violations."<sup>47</sup>

However, Amnesty International has received information about several cases involving alleged torture and ill-treatment in Samegrelo-Zemo Svaneti region in 2004 and 2005 that were passed on to the authorities by lawyers, the regional representative of the Ombudsman or human rights groups. Such cases demonstrate that it is likely that cases involving torture and ill-treatment allegations are still not being picked up and reported by police structures.

On 1 September 2004 seven men were reportedly detained in the western town of Zugdidi in Samegrelo-Zemo Svaneti region, accused of membership of a paramilitary group and possession of firearms and explosives.

About 30 officers of a special police unit stormed the house of one of them, named Geno Kulava, and detained him. At about 11pm he was taken to the police station in Khobi district, some 40 kilometres south of Zugdidi, instead of the closer police station in Zugdidi.

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<sup>44</sup> This was the first time police compiled and made available statistics on the number of detainees with visible bodily injuries who were registered in preliminary detention facilities in the regions of Georgia outside Tbilisi.

<sup>45</sup> Amnesty International interview, Zugdidi, 13 May 2005.

<sup>46</sup> Information provided to Amnesty International by Gia Khasia, director of the NGO Atenasi in Zugdidi, 12 May 2005.

<sup>47</sup> Amnesty International interview, Zugdidi, 13 May 2005.

There he was reportedly tortured and ill-treated. According to his lawyer Tandila Jologua, he was suspended from a pole between two tables, kicked and beaten, including with truncheons, and dropped on the floor; a burning candle was held against his forearm, and one of the police officers reportedly spat in his face.

After the lawyer complained to the court that his client had been tortured, Geno Kulava was examined by forensic medical experts on two occasions. They found marks of severe beatings and bruises on several parts of his body. The independent forensic expert Maia Nikoleishvili, who examined Geno Kulava on 13 September, established that the bruises were caused by blunt heavy objects. Examining the area of his forearm she did not exclude that the injuries were caused by heat.

One of Geno Kulava's co-defendants, Levan Dzadzua, who was also detained on 1 September, was reportedly beaten by police in the police station of Ingur Paper Mill Settlement, a district in the town of Zugdidi.

According to Bagrat Kiria, the representative of the Ombudsman in Zugdidi, other co-defendants who were also reportedly ill-treated by police during or after their arrest on 1 or 2 September included Emzar Poniava and Zurab Pirtskhelava. Police reportedly beat Zurab Pirtskhelava with a club and inflicted several cigarette burns on his chest and shoulders. A forensic examination authorized by the investigation department of Zugdidi police and conducted by the forensic expert Roin Petelava on 3 September established that Zurab Pirtskhelava had burns on his chest and on his shoulders that were caused by the application of intense heat. A bloody bruise on his left shoulder was inflicted by a blunt item.

On 2 November 2004 the regional procuracy in the western town of Poti opened an investigation into the abuse of power by police in the case of Geno Kulava. According to information submitted to Human Rights Watch by the General Procuracy on 22 March 2005, the investigation established that "*he was beaten*" at the police station in Khobi and police inflicted "*minor bodily injuries*". The investigation into this case was suspended because Geno Kulava was unable to identify the perpetrators and the police officers who were questioned in the course of the investigation denied that any torture or ill-treatment had taken place.

On 15 November Geno Kulava was released from prison following a court ruling, reportedly because of procedural violations during his detention and the investigation. However, he was immediately rearrested and taken to the investigation-isolation prison no. 4 in Zugdidi, accused of abducting a resident of Zugdidi.

In February 2005 the Supreme Court of the Autonomous Republic of Abkhazia in exile released Geno Kulava on the basis that his re-arrest in November 2004 was accompanied by procedural violations. Tandila Jologua informed Amnesty International in July that the charges against Geno Kulava and Levan Dzadzua had not been dropped and that they were ordered to report to police on a regular basis.

In another case the ill-treatment was alleged to have happened about four weeks before Amnesty International's meeting with Merab Gergaia. Vakhtang Guchua and Zaali Akobia told Amnesty International that they were ill-treated by a special police unit on 18 April 2005.

An Amnesty International delegate visited both prisoners in the investigation-isolation prison no. 4 in Zugdidi on 14 May 2005, together with the representative of the Ombudsman in Zugdidi and Vakhtang Guchua's lawyer.

According to Vakhtang Guchua, approximately 15 officers, of whom only one was unmasked, detained him in his house early on 18 April. Vakhtang Guchua reported that the men took him to the building of the special police unit in Kedia street in Zugdidi and ill-treated him for some four hours until approximately 8am. He told Amnesty International: *"They beat and kicked me and hit me with butts of their guns. I was lying on the floor most of the time. They wanted to put a plastic bag over my head but when I begged them not to do so because I have serious problems with my lungs they didn't do it."* According to Vakhtang Guchua, the officers wanted him to sign a "confession" stating that he participated in the June 2002 killing of Jamal Narmania, a former government official in the region. Later that morning Vakhtang Guchua was transferred to the Samegrelo-Zemo Svaneti regional police.

Vakhtang Guchua told Amnesty International that law enforcement officers also beat him in the courtroom of Zugdidi district court on 21 April 2005 in the presence of the judge and his state-appointed lawyer. According to the lawyer Tandila Jologua, who started working on Vakhtang Guchua's case on 23 April, the duty officer who registered Vakhtang Guchua's admission to the investigation-isolation prison no. 4 in Zugdidi on 21 April 2005 did not record his injuries although Vakhtang Guchua reportedly showed him several bruises. Tandila Jologua told Amnesty International: *"When I first saw Guchua on 23 April he had black marks on his body, bruises. I talked to the prison director and pointed out that none of these injuries were recorded by the duty officer. Then the prison director ordered a medical examination."*

Zaali Akobia was also detained in his house early on 18 April 2005 and believed to have been taken to the offices of the special police unit in Kedia street. At least a dozen masked officers were involved in his detention. Zaali Akobia told Amnesty International: *"All of them were masked. They started beating me when they detained me; they continued on the way to their office and then in the office. There at first I was standing but because of the beatings I fell on the floor. While they were beating and kicking me they put some cloth into my mouth so that I was unable to shout. Then they placed the barrel of a gun into my mouth threatening to kill me unless I signed a 'confession' and that they would fabricate another case against me if I managed to get out of this one."* Zaali Akobia insisted that he was innocent of involvement in the murder of Jamal Narmania and told Amnesty International that he would kill himself if he could not prove his innocence. In the evening of that day he was reportedly transferred to Samegrelo-Zemo Svaneti regional police. He said he saw his lawyer for the first time on 19 April.

The forensic medical expert Roin Petelava examined Vakhtang Guchua and Zaali Akobia on 27 April 2005 and found bruises and scratches on their bodies. According to his assessment, the injuries, which he classified as light injuries, were caused by a blunt object.<sup>48</sup>

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<sup>48</sup> Amnesty International interview, Zugdidi, 13 May 2005.

Both men were released on 16 July and all charges against them were dropped. Reportedly, they had been charged with "premeditated, aggravated murder" and Vakhtang Guchua also with "illegal possession of firearms".

Amnesty International submitted the case to the General Procuracy requesting information about any follow-up the procuracy has conducted regarding the allegations of torture and ill-treatment. On 10 November the Human Rights Protection Unit at the General Procuracy informed the organization that on 3 October the procuracy in Zugdidi initiated a preliminary investigation into the allegations. On 1 November a former representative of the Special Operative Department of the Abkhazian Division of the Ministry of Internal Affairs was detained and charged with "Exceeding official authority" (Article 333, part 3c of the Criminal Code). The preliminary investigation established that in the police station officers put a piece of cloth in Zaali Akobia's mouth so that his shouting could not be heard outside. Then the officer who has been charged along with three other policemen "*abused him physically in order to extract from him [a] confession*". The preliminary investigation to establish the identities of "*those other three police officers and [those] who participated in the beating of Guchua*" was still underway.

Roin Petelava, who has worked as a forensic medical expert in Zugdidi for 32 years, told Amnesty International on 13 May 2005 that he examined people with bodily injuries, that may have been caused by torture or ill-treatment, on a regular basis: "*I had a lot of cases with beatings between those of [Geno] Kulava and [Vakhtang] Guchua. Prison doctors often turn to me when defendants are transferred to the prison with injuries.*"

During its fact-finding missions Amnesty International learnt of several cases where people did not complain about police ill-treatment as they apparently feared that lodging a complaint might make their situation worse. Torture is not only inflicted in order to extract "confessions" or obtain statements from detainees, but also to instil profound fear into victims, and to demonstrate the seemingly boundless power of the perpetrators. This ensures that victims and relatives are frequently terrified into silence. The Ombudsman told Amnesty International about several cases in which he was convinced that the detainees, who had visible injuries, were beaten, but they refused to complain or later withdrew their allegations. Teimuraz Rekhviashvili from the Georgian Centre for Psychosocial and Medical Rehabilitation of Torture Victims told Amnesty International on 18 April 2005: "*People from the regions are in the worst position. When they return home after they have served their prison term the same policemen will still be there and they are afraid that the police will retaliate.*"

K.E.<sup>49</sup> was detained by police in May 2005. When he was taken to the preliminary detention facility in Dighomi, Tbilisi, the Ombudsman's monitoring group that was present at the time interviewed him and recorded his injuries. The group passed on the case material to the procuracy of the district where K.E. had been arrested to investigate the origin of his injuries. K.E.'s lawyer from the NGO Human Rights Information and Documentation Centre told Amnesty International: "*My client has refused to give any information about the beatings to*

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<sup>49</sup> Initials changed to protect his identity.

*the procuracy. He comes from a small place. Police and procuracy are in one building and they know each other well. He fears that as soon as the police find out he complained about his treatment police would fabricate a case against his son in revenge.*"<sup>50</sup> He added: "The procurator told me the case would probably be closed because the detainee did not cooperate with the investigation. As far as I know, the procuracy has not tried to inquire into the origin of the injuries by other means, such as by questioning the police and gathering other relevant evidence."

According to human rights defenders and lawyers interviewed by Amnesty International, many lawyers do not encourage their clients to complain about torture and ill-treatment. In particular, state-appointed lawyers often do not want to challenge police behaviour and their tendency to ignore the torture allegations is still believed to be high.

Amnesty International knows of a case in which the victim of torture and his lawyer, who has put up a strong defence in many torture cases, lodged a complaint about police abuse but when the procuracy started investigating the allegations the victim said he did not remember what the perpetrators looked like even though he was able to identify them. His lawyer told Amnesty International: "If he identifies the perpetrators it is quite likely that this will have a negative impact on the outcome of the criminal case brought against him."

Several UN bodies have emphasized the need to protect detainees and witnesses who lodge complaints about torture or ill-treatment. The CAT, for example, has called on governmental authorities "[t]o ensure the right of victims of torture to lodge a complaint without the fear of being subjected to any kind of reprisal, harassment, harsh treatment or prosecution, even if the outcome of the investigation into his claim does not prove his or her allegation".<sup>51</sup>

A case in which the fear of repercussions was believed to have initially stopped the detainee from lodging a complaint is the case of Sulkhan Molashvili. The first time he talked about his treatment by police was more than nine weeks after his detention in April 2004. When Nana Kakabadze from the NGO Former Political Prisoners for Human Rights visited him in prison in July and insisted on looking at his back to check for injuries he initially refused but when he eventually agreed, she saw several injuries that looked like cigarette burns. After that, he explained for the first time how he received the injuries.

On 22 April 2004 Sulkhan Molashvili, the former Head of the Control Chamber (state audit), was detained after he had gone to the Tbilisi city procuracy in response to a summons. There he was charged with financial crimes and "Abuse of official authority". He was transferred to the building of the Ministry of Interior in Tbilisi. After his lawyer left, police officers reportedly blindfolded him with adhesive tape and took him to an office upstairs, where several men urged him to admit his guilt. However, when he refused to comply they reportedly put him on a chair and tied his arms to it behind his back, took off his trousers and started to apply electric shocks to him. Then they reportedly took off his jumper and he

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<sup>50</sup> Amnesty International interview, Tbilisi, 28 October 2005.

<sup>51</sup> Concluding observations of the Committee against Torture: Tunisia. 19 November 1998. UN Doc. A/54/44, para. 102.

started to feel burning heat on his back, probably from cigarette butts. He alleged that they put out several cigarettes and that he could smell burnt flesh.

The police reportedly threatened him that his family would suffer if he talked to anybody about the torture. Because of this threat, he said, he did not tell anybody including his lawyer about the torture.

On the night from 2 to 3 July Sulkhan Molashvili was transferred to the investigation-isolation prison no. 7. Nana Kakabadze suspects that the transfer was a direct reaction to her announcement at a press conference on 2 July that Sulkhan Molashvili had been tortured. The cell he was taken to had especially bad conditions. On 3 July Tea Tutberidze from the Liberty Institute visited Sulkhan Molashvili together with the Head of the General Inspection of the Ministry of Justice, a medical expert of the Ministry of Justice and the Head of investigation-isolation prison no. 7. After the visit she told the press that Sulkhan Molashvili had marks of many cigarette burns on his back, and marks on his ankles where she believed the wires for the electrocution had been attached. Sulkhan Molashvili alleged that he had not undergone a medical examination when he was first transferred to the investigation-isolation prison. On 7 July a delegation of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe visited Sulkhan Molashvili in his cell. According to the December 2004 report by the Committee, Sulkhan Molashvili's cell had "*no light at all and [...] the malfunctioning plumbing in the toilet resulted in a constant very loud noise*".<sup>52</sup>

The forensic medical expert Mr Jibladze, who examined Sulkhan Molashvili on 5 July, documented several scars in the shape of dots on his back. The expert concluded that the injuries were caused by the application of intense heat and that they were sustained less than six months ago.

The independent forensic medical expert Maia Nikoleishvili, who examined Sulkhan Molashvili on 9 July, also concluded that the injuries were caused by the application of heat. She excluded that Sulkhan Molashvili had inflicted the injuries himself.

According to doctors of the Rehabilitation Centre for Victims of Torture "Empathy", who conducted a medical examination of Sulkhan Molashvili from 20 July until 27 August, Sulkhan Molashvili suffered from post-traumatic stress disorder, long term changes of personality after torture, a nervous disorder leading to emotional outbursts and panic attacks, inflammation of the gall bladder, varicose veins, angina as well as small circular burns on the back.<sup>53</sup>

On 5 July 2004 Tbilisi city procuracy opened a criminal case in connection with the allegations of torture and ill-treatment. As reported by the First Channel of Georgian state television, Giorgi Janashia, Deputy Procurator General, told the press the same day: "*If the investigation establishes that Molashvili has been tortured in prison, extremely tough*

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<sup>52</sup> Report by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) entitled *Honouring of obligations and commitments by Georgia*, 21 December 2004, Doc. 10383, para. 54.

<sup>53</sup> Amnesty International interview with representatives of the NGO, Tbilisi, 27 April 2005.

*measures will be taken against everyone implicated in this, irrespective of whether it is the justice minister or a rank-and-file employee."*

Ioseb Baratashvili, one of Sulokhan Molashvili's lawyers, told Amnesty International on 27 October 2005 that still no criminal case had been opened against any of the alleged perpetrators. "While in detention his health has seriously deteriorated. He has problems with his heart and kidneys. In addition, the independent forensic medical firm Veqtori found on 15 September 2005 that he was infected with Hepatitis C," said Ioseb Baratashvili.

On 7 September Sulokhan Molashvili was sentenced to nine years' imprisonment by Tbilisi city court. His lawyers appealed the decision. However, as of the end of October, the appeal court had not made a ruling.

Sulokhan Molashvili's lawyers Ioseb Baratashvili and Shalva Shavgulidze lodged a complaint with the European Court of Human Rights in October 2004 alleging that the case against their client was fabricated for political reasons and documenting serious violations of international fair trial standards.

The victims' fear of repercussions indicates that the government is still a long way away from eradicating torture and ill-treatment. Unless all complaints are investigated promptly, thoroughly and impartially and the perpetrators are brought to justice, victims will have good reason to be afraid to come forward.

### **Legal safeguards and implementation**

Georgian domestic legislation had already provided for a number of crucial safeguards against torture and ill-treatment and the current government has taken important steps to further strengthen legislation to protect detainees from police abuse.<sup>54</sup> However, some legal amendments introduced since the "Rose Revolution" have been criticized by many lawyers and human rights activists as they were believed to put people at risk of being subjected to torture or other ill-treatment by law enforcement officers (see below).

Enforcement is essential to the effectiveness of legal safeguards in preventing torture and ill-treatment. It is crucial that the authorities promptly and impartially investigate all allegations that law enforcement officers circumvented the necessary procedures and that police, procurators or judges were involved in covering up torture or ill-treatment or did not take appropriate action to verify and adequately react to reports involving such treatment.

Amnesty International has received numerous reports alleging shortcomings in the implementation of legal safeguards. The Ombudsman's monitoring of police stations and preliminary detention facilities revealed that out of those detainees interviewed by the Ombudsman and his staff in Tbilisi in August 2005, 31 detainees were not explained their rights as suspects; 26 were not informed of their right to legal defence; 29 were not told of

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<sup>54</sup> Amnesty International used official translations into English of legislation wherever they were available, e.g. of the Constitution. In all other cases unofficial translations were used.

their right to remain silent; and 20 were not given a copy of a leaflet outlining their rights as detainees.<sup>55</sup>

A diplomat based in Tbilisi told Amnesty International in September 2005: *"One of the key problems is that there is no clarity as to what the law is at the moment. Those people who use the Criminal Procedure Code in their work such as judges, procurators and lawyers, often don't know themselves what the current situation is. Hundreds of amendments are rushed through parliament and parliamentarians themselves often have no idea what they are voting on. It is extremely difficult to get a full picture of all new laws. Even the printing house is unable to catch up with the amendments. Apart from that, there are plans to completely rewrite the whole Criminal Procedure Code and many people wonder whether it's worth learning about all the amendments now."*

According to Marina Lebanidze from the International Relations and Development Unit at the Police Academy, *"in Akhalkalaki they don't even receive the legal amendments in time. Plus, 98 per cent of police are Armenians in that area and most simply can't read the Georgian text and there are no translations available in Armenian."*<sup>56</sup>

In addition, Amnesty International is highly concerned about continuing reports that procurators and officials in the executive act to influence judges' decisions in individual cases. *"Judges are like notaries nowadays. They fulfil the orders of the procuracy,"* stated Girshel Dzebnaruri from the Georgian Young Lawyers' Association.<sup>57</sup> A Tbilisi-based diplomat told Amnesty International: *"In sensitive cases it will be difficult for judges to ask the defendants whether their confessions were extracted under torture. If the information the detainee gave under pressure supports the version of the procuracy, then they will make sure the information will be used as evidence [...] many judges don't only receive intimidating phone calls but they increasingly report that they are threatened with physical violence and weapons."* A strong and independent judiciary is crucial to end impunity for torture and ill-treatment. Unless special attention is paid to making the judiciary truly independent, undue pressure on the judiciary is likely to undermine many of the steps the government has taken to address torture and ill-treatment.

This chapter gives an overview of domestic legislation relevant to torture and other ill-treatment. In addition, it gives several recent case examples in which legal safeguards have not been observed and comments from lawyers regarding the implementation of the safeguards, mainly received by Amnesty International during its visit to Georgia in October 2005.

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<sup>55</sup> *Analysis of statistics of police monitoring*, issued in August 2005 by the office of the Ombudsman.

<sup>56</sup> Amnesty International interview, Tbilisi, 28 October 2005. Akhalkalaki is a town in the south of Georgia in Samtskhe-Javakheti region.

<sup>57</sup> Amnesty International interview, Tbilisi, 27 October 2005.

## Domestic legislation on torture and ill-treatment

The Constitution of Georgia contains an absolute prohibition of "torture, inhuman, cruel treatment and punishment".<sup>58</sup> It also forbids the physical or mental coercion of a detainee and states that evidence obtained by breaking the law is inadmissible and has no legal force.<sup>59</sup> But these rights may be suspended under a state of emergency.<sup>60</sup>

Under international law torture and ill-treatment are prohibited at all times and in all circumstances. Article 4 of the ICCPR explicitly excludes any derogation from the obligation not to subject anyone to torture or other ill-treatment, even in times of public emergency which threatens the life of the nation. Article 2 (2) of the Convention against Torture stipulates that "[n]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture". Article 2 (2) is only relevant to torture, but customary law suggests that the prohibition on ill-treatment is also *jus cogens* (peremptory).<sup>61</sup>

Under Article 12 of the CPC of Georgia, "the application of methods endangering the life and health of participants in a proceeding as well as offending their honour and dignity are inadmissible". The Article further specifies that "in carrying out an investigative or judicial procedure, a person shall not be subjected to duress, threat, blackmail, torture or other methods of physical or mental coercion".

On 23 June 2005 the Parliament of Georgia adopted amendments to the Criminal Code regarding the crime of torture and ill-treatment. In the past the international community and human rights groups criticized the Criminal Code for not containing a definition of torture in line with the definition outlined in the Convention against Torture.

According to the amendments, Article 144 (1) part 1 of the Criminal Code now defines the crime of torture as "subjecting a person, his/her close relatives or financially or otherwise dependent persons to such conditions, such treatment or punishment which by their nature, intensity or duration cause severe physical or mental pain or suffering, and have the purpose to obtain information, evidence or a confession, to intimidate, coerce or punish a person for an act s/he or a third party committed or is/are suspected of having committed". The crime is punishable by imprisonment of five to ten years and/or a fine.

In aggravating circumstances the crime is punishable by deprivation of liberty from seven to 15 years and temporary disqualification from occupying certain posts or performing certain professional duties for up to five years.<sup>62</sup> Aggravating circumstances include torture

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<sup>58</sup> Art. 17 (2) of the Constitution of Georgia.

<sup>59</sup> Art. 18 (4) of the Constitution: "Physical and mental coercion of a person detained or otherwise restricted is not allowed." Art. 42 (7) of the Constitution: "Evidence obtained in contravention of the law shall have no legal force." Also refer to Art. 15 of the Convention against Torture.

<sup>60</sup> Art. 46 of the Constitution.

<sup>61</sup> For relevant case law, refer to the case of the Inter-American court of Human Rights (2005), *Caesar v. Trinidad and Tobago*, Inter-American. Ct. H. R. (Ser. C) No. 123, judgment of 11 March 2005, para. 70.

<sup>62</sup> Art. 144 (1) part 2 of the Criminal Code.

committed "by an official or a person equated to an official" or carried out "on the grounds of racial, religious, national or ethnic intolerance". Threatening with torture is punishable by up to two years' imprisonment under Article 144 (2).

Article 144 (3), entitled "Inhuman and degrading treatment", prohibits "humiliating or coercing a person, putting him in inhuman and degrading conditions leading to intense physical, mental or moral suffering" and makes it punishable by a fine and/or deprivation of liberty of up to five years. In aggravating circumstances -- the same as mentioned above -- the crime is punishable by three to six years' imprisonment and/or a fine as well as temporary disqualification from occupying certain posts or performing certain professional duties for up to five years.

According to information provided by the Human Rights Protection Unit at the General Procuracy on 26 September 2005, Article 144 (1) part 2 has so far only been used once. On 15 September 2005 a criminal case was opened under this Article against a police officer of Ozurgeti district police accused of having tortured Razhden Bregvadze, a minor, in August 2005.<sup>63</sup> However, all other criminal cases opened into allegations of torture and ill-treatment since the new articles came into force continued to be instigated on those charges that were usually used in such cases in the past such as "Abuse of official authority" (Article 332 of the Criminal Code) and "Exceeding official authority" (Article 333 of the Criminal Code).<sup>64</sup>

## **Arrest**

Under the CPC, police officers, investigators, other relevant officers from the Ministries of the Interior, Justice, Defence, and Finance as well as procurators are entitled to carry out arrests on the basis of a court order. Arrests can also be carried out without a warrant in a number of circumstances, for example, when a person is caught while committing a crime or immediately after having committed it.

The officials carrying out the arrest are obliged to "inform a suspect [...] for which crime he has been arrested and notify him that he has a right to counsel, to remain silent and to refuse to answer questions and that everything that he says may be used against him in court". In addition, the suspect is entitled to a copy of the record of the arrest. According to the law, all statements given by the suspect before s/he has received this information "shall be inadmissible".

As a result of several amendments to Article 145 of the CPC adopted by Parliament in March 2005, law enforcement officers are obliged to record the arrest and -- if a search was conducted -- also the search, immediately upon arrest or, if that is impracticable, immediately after bringing the detainee to the police station. The record has to include information

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<sup>63</sup> Information provided by Tamara Tomashvili, head of the Human Rights Protection Unit at the office of the General Procurator, on 26 September 2005.

<sup>64</sup> According to the newsletter issued by the Human Rights Protection Unit covering July to August 2005, Art. 125 ("beatings") and 126 ("violence") of the Criminal Code have never been used to charge perpetrators of torture or ill-treatment in Georgia.

regarding the physical condition of the person at the moment of detention and the exact time of his/her detention and delivery to the police station. If a detention is not recorded as required by the CPC and if the document is not submitted to the detainee, the detainee shall be released immediately. The suspect has to be brought to a police station or other law enforcement agency immediately after arrest.

According to the lawyer Girshel Dzebnaruri from the Georgian Young Lawyers' Association, "*it still happens quite frequently that police leave the space on the record sheet blank where they are supposed to fill in the time of detention. In those cases they fill in the time later so as to meet all deadlines as outlined in the Criminal Procedure Code, such as that charges have to be brought within 48 hours.*"<sup>65</sup>

Amnesty International is concerned about this and other similar reports as such practice could be used to cover up ill-treatment and hinder investigations into torture and ill-treatment.

### **Access to the outside world and legal counsel**

The CPT has developed three "*fundamental safeguards*" against ill-treatment which it regularly includes in its recommendations to states. They have been formulated as follows:

- The right of those concerned to have the fact of their detention notified to a close relative or third party of their choice.
- The right of access to a lawyer.
- The right to a medical examination by a doctor of their choice (in addition to any medical examination carried out by a doctor called by the police authorities).

*"The CPT considers that these three rights are fundamental safeguards against the ill-treatment of persons in detention, which should apply from the very outset of custody (i.e. from the moment when those concerned are obliged to remain with the police)."*<sup>66</sup>

Before a legal amendment adopted in August 2004 came into force, under the CPC people who were arrested by police had no legal status for up to 12 hours until they were formally declared suspects. Only those formally declared as suspects were entitled to access to a lawyer, according to the legislation. As a result of the amendment, the CPC now specifies that people have the status of suspects from the time of their arrest. They are also entitled to access to a lawyer immediately after arrest.

According to the Concluding Observations on Georgia issued by the (UN) Human Rights Committee in April 1997, "*all persons arrested must have immediate access to counsel*".<sup>67</sup>

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<sup>65</sup> Amnesty International interview, Tbilisi, 27 October 2005.

<sup>66</sup> This formulation is from the CPT's report on its second periodic visit to Malta (1995), CPT/Inf (96) 25, paras. 24-25.

<sup>67</sup> UN Doc. CCPR/C/79/Add. 74, 9 April 1997, para. 28.

However, there were cases in recent months where access to a lawyer was denied or granted only after a delay. When lawyers want to see their clients in the preliminary detention facility they need oral permission from the investigator in the case. David Managadze, a lawyer of the NGO Human Rights Information and Documentation Centre, told Amnesty International on 25 October 2005: *"When the investigator is in an interrogation he switches off his mobile phone. At the beginning of October I saw how a lawyer had to wait for a long time to be given access just because he was unable to get hold of the investigator."* According to the lawyer Eka Beselia, *"lawyers sometimes have to wait for ages until the staff of the detention facility find the investigator. Often they don't let you in straight away so the officers have enough time to complete the detention record before the lawyer comes in."*<sup>68</sup> Eka Beselia added: *"My client Irakli Sioridze who was beaten at the Interior Ministry on 3 August 2005 was subsequently released. However, he was again summoned to the Ministry and detained on 10 August. He was taken to the preliminary detention facility on Vazha-Pshavela avenue [in Tbilisi]. We were worried he might be ill-treated again but although I went there I could not get access to him because it was already in the evening and they don't let you in outside working hours."*

According to Article 14 (3) (b) of the ICCPR, in the determination of any criminal charge against a person, everyone shall be entitled, among others, to *"have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing"*. Paragraph 8 of the Basic Principles on the Role of Lawyers sets out that *"[a]ll arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality."*

Due to a legal amendment to the CPC adopted in March 2005 the time frame during which the suspect can choose defence counsel was extended to six hours from the moment of arrest. If the suspect does not choose a lawyer s/he is entitled to receive a state-appointed lawyer free of charge. Suspects and accused persons have the right to meet their lawyer in private without any kind of surveillance.

While in the past the lawyer was only permitted to visit his/her client for a maximum of one hour per day, the time limit was abolished in August 2004. The investigator is entitled to restrict access if s/he considers the frequency and length of meetings to be unreasonable. The investigator's decision can be appealed to the procurator or the judge by the lawyer.

According to the CPC, the family of the detainee has to be notified of the arrest by the investigator or procurator within five hours and, in the case of a minor, within three hours after the arrest.

Amnesty International learnt of several cases where this provision was not observed. For example, Zurab Dapkviashvili was detained at 12.30 on 4 October 2005 in a flat of an acquaintance in the Saburtalo district of Tbilisi, accused of possession of drugs. His family told Amnesty International on 24 October that although Zurab Dapkviashvili asked the police

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<sup>68</sup> Amnesty International interview, Tbilisi, 22 October 2005.

to immediately inform his family of his detention the family only found out about it when neighbours told them at around midnight that his detention was reported on the television station *Rustavi-2*. "We still had no idea where he was held. Only when a police investigator came to our house the next day to conduct a search did we find out that he was being held in a cell in the building of the Interior Ministry on Vazha Pshavela avenue," said one of his relatives.

According to the law, the administrations of the respective detention facilities are obliged to pass on -- without infringing the confidentiality of the communication -- complaints and motions of the detainee to the investigator, procurator, court and to the Ombudsman.

### Medical examinations

An August 2004 amendment to the CPC gave the detainee and his lawyer the right to request a medical examination free of charge from the moment of arrest. If the investigator turns down the request the decision can be appealed to a court, which has to consider the matter within 24 hours. The CPC stipulates that examinations are carried out by specialists from relevant institutions or organizations designated by the investigator or procurator. The doctor has to draw up a record of the examination. In cases of torture or ill-treatment the experts called upon are usually forensic doctors from the Ministry of Justice. The detainee or the legal representative may initiate an alternative expert examination at their own expense. The legal status of the conclusions made by a state forensic expert or an alternative expert is the same.

According to an August 2004 amendment, the detainee is no longer obliged to pass on a copy of the alternative examination for inclusion in the case-file if s/he prefers not to do so.

According to information received by Amnesty International, state forensic medical examinations are sometimes not conducted promptly after the lawyer has lodged a request. For example, Eka Beselia recently experienced problems when requesting a medical examination of her client Irakli Malania. According to the lawyer, Irakli Malania had a serious accident as a result of which his legs were practically paralysed and he had to undergo an operation. She argued that he was unable to walk unaided and therefore unable to commit the murder he was accused of. The investigator initially turned down her request for a medical examination. However, after complaining to the court the investigator's decision was annulled and, as a result, on 1 August 2005 he had to order that an examination be conducted. When the experts wanted to carry out the examination the investigator reportedly did not give them access to Irakli Malania. "The experts had to do their conclusions on the basis of the written case material, without actually seeing him. The whole procedure took a long time and they only came out with their conclusions on 31 September 2005," explained Eka Beselia.

In cases involving torture or ill-treatment a prompt forensic medical examination is particularly crucial to ensure that marks of injuries do not disappear by the time the examination is conducted.<sup>69</sup>

In April 2005 Giorgi Kiknadze, Deputy Head of the Department on Human Rights and Monitoring at the Ministry of Internal Affairs, informed Amnesty International that a new system was being introduced whereby medical doctors would examine every detainee entering a preliminary detention facility. To Amnesty International's knowledge, this system was introduced in the preliminary detention facilities in Tbilisi in January 2005. Zurab Adeishvili, the Procurator General, told Amnesty International on 25 May that the authorities were planning to have doctors in all preliminary detention facilities across Georgia. The doctors are employees of the Ministry of the Interior.

Principle 24 of the Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment stipulates that "[a] proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment." The CPT recommends that "a person taken into police custody has the right to be examined, if he so wishes, by a doctor of his own choice, in addition to any medical examination carried out by a doctor called by the police authorities".<sup>70</sup>

According to Mr Yuza, deputy director of preliminary detention facility no. 2 in Dighomi, medical doctors and nurses are present in the building around the clock.<sup>71</sup> The doctors are charged with examining all detainees who enter the detention facility and recording any visible injuries. In addition, they have the duty to ask the detainee whether he or she has any complaints about the treatment by police and include any such complaints in the medical record.<sup>72</sup> If the detainee has complaints against the police the doctor is obliged to pass them on to the relevant government agencies for investigation.<sup>73</sup>

Several NGO activists expressed concern that the medical doctors in police stations were not impartial. "They are employed by the Interior Ministry. They are afraid and then they don't document torture and many are corrupted. They aren't independent," said Giorgi Berulava, Deputy Director of the group Empathy.<sup>74</sup> The Ombudsman stressed in his letter to Amnesty International of 14 August 2005 that "there should be enough adequate human and

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<sup>69</sup> Amnesty International was informed by the Organizational and Analytical Unit at the General Procuracy on 19 November 2005 that a draft law is currently under consideration by Parliament according to which it is proposed to introduce "a strict one-month term [for] medical examinations of the accused/convict".

<sup>70</sup> The CPT Standards, CPT/Inf (2004) 28, para. 36, footnote.

<sup>71</sup> Amnesty International interview, Tbilisi, 1 June 2005.

<sup>72</sup> Amnesty International interview with Giorgi Kiknadze, Deputy Head of the Department of Human Rights and Monitoring at the Interior Ministry, Tbilisi, 1 June 2005.

<sup>73</sup> Letter to Amnesty International by Shota Khizanishvili, Head of the Department of Human Rights and Monitoring at the Interior Ministry, received on 3 October 2005.

<sup>74</sup> Amnesty International interview, Tbilisi, 27 April 2005.

*technical resources [and] ethical standards of the [medical] staff should be ensured by providing more independence from the detention facilities' authorities".*

In its report on Georgia published in June 2005 the CPT stated that *"for a system of compulsory medical examinations to serve as a safeguard against ill-treatment, certain conditions must be met: the doctors performing the examinations must enjoy formal and de facto independence, have been provided with specialised training and been allocated a mandate which is sufficiently broad in scope. If these conditions are not met, such a system of medical examinations can have the perverse effect of rendering it all the more difficult to combat torture and ill-treatment."*

When visiting the preliminary detention facility in Dighomi on 1 June 2005 Amnesty International was concerned about the lack of confidentiality of the medical examination. The organization was informed that detainees were required to take off their clothes during the examination. According to the medical doctor and the police officers present during Amnesty International's visit, detainees are examined in the reception area of the detention facility. The reception area is next to the office of the police officers on duty and can easily be overseen and overheard by them. The CPT recommended to the Georgian authorities that *"all medical examinations should be conducted out of the hearing and -- unless the doctor concerned expressly requests otherwise in a particular case -- out of the sight of police staff"*.

There have also been allegations of irregularities in connection with the medical examinations carried out when defendants were transferred to the investigation-isolation prisons. In interviews with Amnesty International representatives, the Liberty Institute alleged that not all detainees have been medically examined upon entering the investigation-isolation prison due to work overload of the prison doctors. (For case examples, refer to the cases of Sulkhan Molashvili and Vakhtang Guchua.)

## **Interrogation and questioning**

There is no Code of Conduct for police interviews in Georgia. In its reports in 2001 and 2004 the CPT called on the Georgian authorities to promptly draw up such a code. Georgia also has no Code of Police Ethics.

According to the CPC, the suspect has the right to be questioned/interviewed in the presence of defence counsel. If the immediate participation of a lawyer cannot be secured, the investigator and procurator are obliged to take steps to ensure the lawyer's participation and -- in the meantime -- inform the suspect of his/her right to keep silent until counsel is present.

The lawyer Girshel Dzebniauri told Amnesty International on 27 October 2005 that there were cases where police forced detainees to sign a statement relinquishing their right to a lawyer at certain times during the investigation, in particular during interrogations. *"When the lawyer gets involved in the case we discover these deficiencies but it's too late because the detainee indeed signed that he did not want to make use of his right to have a lawyer present,"* he added.

Amnesty International was seriously concerned about this and similar reports as police obstruction of detainees' access to a lawyer increases the risk of torture and ill-

treatment. The CAT has recommended "that counsel be permitted to be present during interrogation."<sup>75</sup> According to Principle 1 of the Basic Principles on the Role of Lawyers, "[a]ll persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings".<sup>76</sup>

According to the CPC, the interrogation of the suspect has to start within 24 hours after the arrest.<sup>77</sup> According to an amendment to Article 303 of the CPC adopted in March 2005, "relevant audio or video recording facilities may be used during interrogation. Interrogation shall always be recorded by means of the above-mentioned technical facilities if the interrogated person solicits such recording and provides all necessary technical facilities for it." It remains unclear to Amnesty International whether detainees are informed of this right. As of October 2005 it was not included in the lists of rights of suspects and defendants that police are obliged to pass on to them. Amnesty International urges the authorities to ensure that audio/video recording during the interrogation is made available at the interviews of all detainees and that the technical equipment be provided by the authorities.<sup>78</sup>

Following a decree by the Interior Minister, at the beginning of April 2005 all preliminary detention facilities in Georgia were directly subordinated to the Ministry in Tbilisi. Before that they had been subordinated to local police structures. "In the past heads of police could take a person out of the cell for many different reasons. This is not possible anymore as now local police cannot give direct orders to the heads of the preliminary detention facilities," said Alexander Nalbandov from the National Security Council in an interview with Amnesty International on 19 May 2005. He added that investigators are now only entitled to take detainees out of the preliminary detention facility, for example, when it is essential to inspect the crime scene.

## Plea agreements

In 2004 Georgia introduced a plea agreement system whereby procurators were authorized to offer the detainee a reduction of the sentence or his/her unconditional release in exchange, for example, for pleading guilty and disclosing information about a grave offence that helps solve a crime. In many cases since the introduction of the system monetary payments have been part of the plea agreement. Procuracy officials have apparently used the plea agreement system in some cases to conceal torture and ill-treatment and cover up for police officers.<sup>79</sup>

<sup>75</sup> UN Doc. A/50/44, para. 176, referring to Jordan.

<sup>76</sup> UN Doc. A/CONF.144/28/Rev.1 at 118 (1990).

<sup>77</sup> Amnesty International was informed by the Organizational and Analytical Unit at the General Procuracy on 19 November 2005 that a draft law is currently under consideration by Parliament abolishing the 24 hour limit. According to the draft law, interrogations can start later, however, the detainee has to be brought in front of a judge no later than 48 hours after the arrest.

<sup>78</sup> The Special Rapporteur on torture has stated: "All interrogation sessions should be recorded and preferably video-recorded. Evidence from non-recorded interrogations should be excluded from court proceedings." UN Doc. A/56/156, para. 39 (f).

<sup>79</sup> For a more detailed study of the relationship between plea agreements and torture and ill-treatment, refer to Human Rights Watch's briefing paper *Georgia: Uncertain Torture Reform*, 11 April 2005.

A client of the lawyer Tamuna Japaridze whose identity has to be withheld for safety reasons was reportedly beaten by police in Vake-Saburtalo district police station in Tbilisi in September 2004. When his parents came to the police station they reportedly heard how their son was being beaten. Reportedly, police officers also hit his father. When Tamuna Japaridze visited her client the next morning she saw that he had bruises on his neck, arms, back and his forehead and took photographs to document the injuries. Subsequently, a forensic doctor from the Ministry of Justice examined her client but the lawyer was refused a copy of the medical report. Tamuna Japaridze believes that her client was released on bail following the remand hearing "*because I had started to create a lot of noise around his case and that he had been beaten. I sent letters to the General Procuracy, the Ombudsman, everywhere.*"<sup>80</sup> Two or three months later her client told her that the procurator had proposed a plea agreement; he would have to plead guilty to the "Hooliganism" charge, pay 3,000 Georgian Lari (approx. US\$1,600) and refrain from pursuing his complaints about police ill-treatment. Her client accepted the procurator's offer. "*It was clear the procuracy covered up for the police here*", said Tamuna Japaridze.

An amendment was introduced to the CPC in March 2005 stipulating that the courts are obliged 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*".

Following lobbying by Human Rights Watch and other organizations, further steps were taken to address concerns about the link between plea agreements and torture and ill-treatment. At the time of writing a number of legal amendments were being considered by Parliament with regard to plea agreements. The draft laws currently under consideration stipulate that "*the plea agreement shall be deemed null and void if it infringes the right of the accused to request criminal proceedings against relevant person/s in case of torture, inhumane or degrading treatment*"<sup>81</sup> and that courts are obliged to ascertain "*that 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 before approving the plea agreement. The judge is also under an obligation to explain to the accused, that his/her suit regarding the fact of torture, inhumane or degrading treatment shall not affect approval of procedural arrangement that has been adopted in accordance with the law.*"<sup>82</sup>

## Remand hearing and trial

At any time following the arrest the suspect is entitled to appeal against decisions of the investigator or procurator concerning the termination of a criminal prosecution and/or pre-trial investigation as well as the refusal of an investigator to carry out a medical examination.

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<sup>80</sup> Amnesty International interview, Tbilisi, 18 May 2005.

<sup>81</sup> Draft amendment to Art. 679 (1) to be considered at the autumn session of the Georgian parliament. The text of the draft was provided by Tamar Tomashvili, Head of the Human Rights Protection Unit at the General Procuracy, on 26 September 2005.

<sup>82</sup> Draft amendment to Art. 679 (1) to be considered at the autumn session of the Georgian parliament. The text of the draft was provided by Tamar Tomashvili on 26 September 2005.

In cases where the procurator turned down appeals against decisions made by the investigator, they can be appealed to the court or they can be lodged with a court immediately.

Within 48 hours from the moment of detention, charges must be brought and the detainee must be brought before a judge. The detainee has the right to request in court "*the examination of the validity and legality of all coercive measures applied against him/her*". The judge may ask how s/he was being treated by police but is not obliged to do so. If the court fails to rule on the further detention or the application of other interim measures within the following 24 hours, the person shall be released immediately. The court can impose a variety of interim measures including further detention, house arrest, committal of the defendant to police supervision and release on bail.<sup>83</sup> If the court decides to impose further detention the defendant is taken to an investigation-isolation prison, where s/he usually remains until the trial has come to an end.

Article 15 of the Convention against Torture stipulates that "*[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.*"

According to the CPC, "*evidence taken in contravention of the law has no legal effect*". In March 2005 lawmakers adopted a legal amendment aimed at eradicating the use of torture in order to obtain "confessions". According to the new law, testimonies given by a detainee in pre-trial detention must not be read out and audio recordings of testimonies are not admissible in court unless s/he does not object to their use in court.

Amnesty International continued to receive reports that detainees were physically pressurized in order to force them to extract information incriminating others.

Irakli Sioridze, a court officer of the Ministry of Justice, was summoned to the building of the Ministry of Internal Affairs in the Vake-Saburtalo district of Tbilisi on 3 August 2005. When he arrived he was reportedly arrested, charged with "Abuse of official authority" and interrogated for eight hours. A senior security service officer and several other officers reportedly beat and kicked him severely in order to force him to give incriminating evidence against the lawyer Giorgi Usupashvili. Irakli Sioridze's lawyer Eka Beselia told Amnesty International on 22 October 2005: "*Three people witnessed the ill-treatment. However, people close to the security service pressurized the witnesses as well as Sioridze urging them*

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<sup>83</sup> In the *Preliminary note by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Georgia*, the Special Rapporteur recommended that "*[r]ecourse to pre-trial detention in the Criminal Procedure Code be restricted, particularly for non-violent, minor or less serious offences, and the application of non-custodial measures such as bail and recognizance be increased*". UN Doc. E/CN.4/2005/62/Add.3, (j), 16 March 2005. Akaki Minashvili from the Liberty Institute told Amnesty International on 24 October 2005 that the application of bail has increased in recent months. According to him, bail was used in 1.5 per cent of all cases from January to June 2005. Following Internal Guidelines issued by the General Procuracy on 5 July promoting the use of bail it was used in 7.5 per cent, 12.6 per cent and 17.7 per cent of all cases in July, August and September respectively.

*not to report about the ill-treatment. Two witnesses who were also themselves beaten described to me how Sioridze was beaten but now they won't put their statements in writing. Sioridze has also been told he should find a more 'compliant' lawyer."* According to Irakli Sioridze, the officers wanted him to sign a statement saying that Giorgi Usupashvili had misappropriated 200,000 Georgian Lari (approx. US\$ 111,000) which his clients had received from Telasi Company, and used the money to finance the electoral campaign of the Republican Party. They also accused Irakli Sioridze of having received tens of thousands of Lari from Giorgi Usupashvili out of the misappropriated sum.

The forensic medical experts Nugzar Topuridze and Mikheil Mzhavanadze from the independent firm Veqtori examined Irakli Sioridze on 6 August. Alexander Gedzhadze, the head of the firm, told Amnesty International on 25 October: "*Our experts found injuries on his body that were caused by a blunt, heavy object [...] Sioridze complained to us about nausea, difficulty in hearing in his right ear and dizziness; and on 4 August he felt nauseous.*" Irakli Sioridze was again summoned to the Ministry of Internal Affairs on 10 August and placed in the Ministry's preliminary detention facility. According to Eka Beselia, he was not examined by a medical doctor when entering the facility.

Reportedly, an investigation was opened into the allegations of ill-treatment. However, according to Eka Beselia, as of October, the senior security service official who reportedly beat and kicked Irakli Sioridze had not been questioned and no criminal case had been opened against any officer allegedly involved in the ill-treatment. Irakli Sioridze is currently held in investigation-isolation prison no. 1, awaiting trial.

According to a March 2005 amendment to the CPC, the complete term of pre-trial detention shall not exceed four months from the moment of arrest unless the relevant judge agrees to a well-founded motion by the procuracy to prolong the pre-trial detention period by up to 60 days. These amendments are due to come into force on 1 January 2006. In the meantime, the maximum duration of pre-trial detention is nine months.

## **Witnesses**

Article 13 of the Convention against Torture obliges states to take steps to "*ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given*".

According to the CPC, witnesses and victims are entitled to request protection from the state in connection with the proceedings, including protection of life, health, honour and dignity. However, in practice there have been complaints that witnesses did not receive adequate protection in many cases.

Many lawyers and human rights activists were alarmed by a recent amendment to the Criminal Code as they believed it increased the vulnerability of witnesses to police pressure. The amendment that came into force in July 2005 stipulates that "*deliberately impeding the administration of justice by means of deposing of substantially discrepant evidence by a witness or a victim is punishable with a fine or deprivation of liberty of up to five years*".

The lawyer Ioseb Baratashvili told Amnesty International: *"This legal amendment gives an ideal tool to police to put pressure on the witness in pre-trial detention to testify the way that suits the police. And then, if the witness wants to tell the truth during the trial police can easily silence him. Surely the witness doesn't want to be detained himself."*<sup>84</sup> According to Gela Nikoleishvili from Former Political Prisoners for Human Rights, *"this law is a big problem. I know of several cases where police threatened witnesses that a case may be opened against them if they changed their testimony. It is possible that police also uses physical violence to put pressure on witnesses."*<sup>85</sup>

The CPC stipulates that witnesses may invite a lawyer to attend questioning. However, if the lawyer cannot be present this is no obstacle to carrying out the questioning.

In many cases people have been summoned to the police as witnesses but following questioning have been arrested and charged. Amnesty International believes that witnesses are in a particularly vulnerable position and that further safeguards need to be introduced to protect their human rights.<sup>86</sup>

### ***Bringing the perpetrators to justice***

*"Police officers still don't feel the axe hanging over them"* (EU legal expert, Tbilisi, May 2005)

*"When I prove that my client was ill-treated I often manage to get him released but whether a policeman is punished, that's another thing."* (Zurab Rostiashvili, Tbilisi, 20 April 2005)

*"[The 'culture of violence'] can and must be stopped immediately, through systematic, transparent, credible and efficient investigations of alleged abuses and harsh sentencing of proven cases."*  
(Committee on the honouring of obligations and commitments by member states of the Council of Europe, 15 December 2004)

Bringing perpetrators to justice is key to the eradication of torture and other ill-treatment. In order to end impunity in Georgia, the old system that provided for rampant impunity has to be fundamentally reformed to ensure that all allegations of torture and ill-treatment are promptly, thoroughly and impartially investigated by a body independent of the alleged perpetrators. The scope, methods and findings of such investigations should be made public. Officials suspected of committing torture or other ill-treatment should be suspended from active duty

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<sup>84</sup> Amnesty International interview, Tbilisi, 27 October 2005.

<sup>85</sup> Amnesty International interview, Tbilisi, 21 October 2005.

<sup>86</sup> Amnesty International was informed by the Organizational and Analytical Unit at the General Procuracy on 19 November 2005 that a draft law currently under consideration by Parliament envisages the introduction of an *"entire chapter on protective measures for witnesses and victims"* to the CPC. According to the Unit, the measures include the use of a *"pseudonym for the testifying witness"* and *"transferring the witness to another resident, ensuring physical protection"*. During questioning in court his/her identity would be revealed, according to the Unit.

during the investigation. Complainants, witnesses and others at risk should be protected from intimidation and reprisals.

In some areas government measures to bring perpetrators to justice have brought noticeable results, most significantly the sentencing to prison terms of several police officers.<sup>87</sup> The charges brought against them included "Exceeding official authority" (Article 333, part 3) and "Intentional damage to health with less severe consequences" (Article 118, part 2). According to information provided to Amnesty International by the Human Rights Protection Unit of the General Procuracy on 10 November 2005, 38 criminal cases were opened in relation to torture or ill-treatment allegedly committed by law enforcement officers in 2004 and 118 cases and/or preliminary investigations were opened in 2005. Charges were brought against 22 and 25 law enforcement officers in 2004 and 2005 respectively.

Amnesty International also welcomed several public statements by government officials pointing out that perpetrators of torture or ill-treatment will be brought to justice and/or giving information about prosecutions that have been conducted. It is important that the authorities regularly inform the public about prosecutions of officials for torture and ill-

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<sup>87</sup> The General Procuracy provided the following details about those cases where police officers were found guilty by the courts in connection with torture or ill-treatment:

- The first conviction since the "Rose Revolution" involved the ill-treatment of Merab Iasagashvili, inspector of the population registration service of Dmanisi district police in Tbilisi, by three other officers of Dmanisi district police -- **Besik Devnozashvili, Aleksii Mujirishvili and Zakaria Dautashvili** -- in April 2004. The three officers were sentenced to three years' imprisonment by Tbilisi circuit court on 5 November 2004 for "Intentional damage to health with less severe consequences" (Art. 118, part 2) and "Exceeding official authority" (Art. 333, part 3 b, c). The sentences were reduced to 18 months' suspended sentences to be served on probation. In addition, they were deprived of the right to hold an official post for the period of one year.
- **Ramaz Mumladze**, an inspector of Rustavi district police, was sentenced to three years' imprisonment by Tbilisi circuit court for "Hooliganism" (Art. 239, part 3) and "Less serious damage to health through negligence" (Art. 124, part 1). He was released on probation.
- On 5 May 2005, five police officers of Samegrelo-Zemo Svaneti regional police, **Sergo Chachibaia**, head of the criminal police, **Merab Tsaava**, senior inspector of the criminal police, and the policemen **Rozman Gogenia, Ruben Kalandaia and Jemal Isoria** were sentenced to prison terms ranging from three to seven years' imprisonment. They were convicted on charges including "exceeding official authority" and "intentional illegal arrest or detention" (Art. 147, part 1).
- **Gogi Kharebava, Iliia Nachkebia and Paata Jgharkava**, policemen of Martvili district police, were sentenced to prison terms of four and five years by Kutaisi circuit court on 26 May 2005. They were convicted of "Exceeding official authority" and "Intentional damage to health with less severe consequences" (Art. 118, part 2).
- **K. Kesauri**, senior inspector of Akhlagori district police, was sentenced to five years' imprisonment by Akhlagori district court on 27 May 2005. He was convicted of "Exceeding official authority" and "Intentional illegal arrest or detention" (Art. 147, part 1).
- **Levan Levidze**, a senior inspector of the Ministry of Internal Affairs, was sentenced to six years' imprisonment by Tbilisi circuit court on 31 May 2005. He was convicted of "Exceeding official authority" and "Forgery" (Art. 341). The procuracy appealed the judgment requesting that the length of his prison sentence be increased to eight years.

treatment. Such publicity can encourage victims to come forward and seek justice. In addition, it often has a deterrent effect on other police officers.

There have also been noteworthy steps by the authorities to be more transparent about prosecutions of perpetrators and other work conducted to reduce torture or ill-treatment. For example, in a positive move the Human Rights Protection Unit at the General Procuracy began to issue monthly or bi-monthly newsletters featuring information about prosecutions and new investigations. The first issue covered May 2005. The Department on Human Rights and Monitoring at the Ministry of Internal Affairs has provided Amnesty International with the results of its monitoring including statistics of the number of detainees in whose cases medical doctors recorded injuries and who complained about police abuse. Amnesty International urges the General Inspection of the Ministry of Internal Affairs to also make available to the public information about investigations conducted by the Inspection into allegations of torture or ill-treatment as well as statistics on suspensions of police officers from their duty as a result of allegations involving torture or ill-treatment.

However, there is continued impunity for human rights violations. Levan Ramishvili from the Liberty Institute told Amnesty International on 24 October 2005: "*Currently there is a very small probability that you'll be caught if you mistreat a detainee.*" Government officials interviewed by Amnesty International have generally acknowledged that impunity is still an issue of concern and that further measures have to be taken to fundamentally improve the situation.

Amnesty International was concerned that procurators did not open investigations into all potential torture and ill-treatment cases in a systematic manner. It appeared that often investigations were launched following complaints lodged by lawyers who were persistent, by domestic and international NGOs or media attention to the case.

In addition, in dozens of cases where the procuracy has opened investigations the perpetrators have not been brought to justice.

Other factors also contribute to the persistence of impunity for human rights violations including torture and ill-treatment. They are discussed below.

**Domestic legislation: opening investigations into torture/ill-treatment allegations**

In Georgia the procuracy is in charge of investigations into allegations of torture and ill-treatment.

Investigators and procurators are obliged to initiate criminal proceedings within their competence when they obtain information about a crime. Such information can, for example, originate from sources including government agencies, NGOs, mass media.

When considering an appeal against actions and decisions of investigators, procurators or judges, the procuracy or the court are obliged to comprehensively examine the arguments laid out in the appeal and to obtain additional materials and information where necessary.

The investigation may either result in the bringing of charges against the suspect/s or closing the file due to lack of sufficient evidence or other reasons. The victim or the lawyer are entitled to challenge such a decision as well as appeal against other actions and decisions taken by investigators, procurators and courts. Appeals against actions or decisions of investigators / procurators are lodged with the relevant procurator / superior procurator respectively. If the procuracy again decides not to bring charges, this decision can be appealed in the same way. The right to bring private prosecutions is not applicable to torture cases.

If charges are brought against a suspect/s, then s/he or their lawyer are entitled to "*acquaint himself with all case materials [...] following completion of the preliminary investigation*", to "*tender evidence and to examine the evidence tendered by other parties to the proceedings*", to attend and participate in the trial, the appeal and cassation hearings.

### **Conduct investigations promptly, impartially and independently**

According to Article 12 of the Convention against Torture, "[e]ach State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."

The ability to conduct an impartial investigation is closely linked to the independence of the investigative body. The Special Rapporteur on torture has stated: "*Independent entities are essential for investigating and prosecuting crimes committed by those responsible for law enforcement.*"<sup>88</sup> The CPT has pointed out that "*it is essential that the persons responsible for carrying out [an investigation into allegations of ill-treatment] are independent from those implicated in the events [...] It is important to ensure that the officials concerned are not from the same service as those who are the subject of the investigation.*"<sup>89</sup>

In Georgia investigations of torture allegations have often not been conducted impartially and been tainted with conflicts of interest of the investigating procurators. Tea Tutberidze from the Liberty Institute stated: "*There are a lot of incentives not to prosecute. Procurators don't want to arrest other procurators and police don't want to target their colleagues.*"<sup>90</sup>

The General Procurator acknowledged that personal considerations can stand in the way of an independent investigation: "*There are some very influential policemen in the regions and this can make it very hard for a regional procuracy to investigate.*"<sup>91</sup>

In the case of Giorgi Migriauli procuracy officials were themselves implicated in reportedly torturing and ill-treating the detainee.

Giorgi Migriauli was detained in his house in Kaspi district in eastern Georgia early on 9 October 2004 by masked law enforcement officers. Reportedly, he was taken to the procuracy

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<sup>88</sup> *Ben M'Barek v. Tunisia*, paras. 11.8-11.10.

<sup>89</sup> The CPT Standards, CPT/Inf (2004) 28, para. 32.

<sup>90</sup> Amnesty International interview, Tbilisi, 1 June 2005.

<sup>91</sup> Amnesty International interview, Tbilisi, 25 May 2005.

in the town of Gori and beaten by senior police and procuracy officials for more than two hours to force him to "confess" to having bribed officials. Officials were said to have burnt him with cigarettes, and hit his ears with open palms. Reportedly, one official put the barrel of a gun in his mouth threatening to shoot. After that he was kept in the preliminary detention facility in Gori for two days where police reportedly had to call the ambulance twice and he lost consciousness several times.

According to information provided by the Human Rights Protection Unit at the General Procuracy, Giorgi Migriauli said when questioned by procuracy officials on 11 October 2004 that he was not ill-treated but that his injuries resulted from a fight with unknown persons before his arrest.<sup>92</sup> *Black Sea Press* reported on 12 October 2004 that, according to Bacho Akhalaia, the Deputy Ombudsman, officials of Gori procuracy were harassing members of Giorgi Migriauli's family and, as a result, Giorgi Migriauli refused to talk about the ill-treatment publicly. According to the same news report, the Ombudsman's office stated that a procurator of Shida Kartli region played a role in covering-up the case.

When Giorgi Migriauli was transferred to investigation-isolation prison no. 1 in Tbilisi on 12 October prison guards refused to take him because of his injuries and he was transferred to the prison hospital in Tbilisi. According to a medical examination conducted by doctors of the prison hospital on 13 October, he had "*widespread bruises over the whole of his body*". Medical experts from the NGO Empathy concluded on the basis of examinations conducted on 24 October and on 9 and 10 November that he suffered from post-traumatic stress disorder in its acute phase, concussion with raised fluid pressure in the skull, traumatic perforation of his left ear-drum, compressed fracture of the first vertebra in the lumber area of his spine, and scattered injuries over the abdomen caused by heat. The team of doctors concluded that Giorgi Migriauli "*was a victim of torture. His description of what happened corresponds with our findings.*"<sup>93</sup>

On 15 October Giorgi Migriauli was released on bail. According to the Human Rights Protection Unit at the General Procuracy, the office of the Procurator General the same day opened an investigation into the crime of "Compulsion to provide evidence" (Article 335, part 2).<sup>94</sup> According to the Unit, on 21 April 2005 one procuracy official was charged. He was not detained but had to sign "*a written undertaking not to leave the place and behave properly*". On 13 June 2005 the case was forwarded to the court on charges of "Intentional damage to health with less severe consequences" (Article 118) and "Intentional illegal arrest or detention" (Article 147).<sup>95</sup> Criminal proceedings against another official were terminated on 15 April 2005 "*due to the absence of [...] elements of crime in his conduct*".

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<sup>92</sup> Information provided to Amnesty International on 10 November 2005.

<sup>93</sup> Amnesty International interview with Giorgi Berulava, Deputy Director of the NGO Empathy, Tbilisi, 27 April 2005.

<sup>94</sup> Information provided to Amnesty International on 10 November 2005.

<sup>95</sup> Information provided to Amnesty International by the Human Rights Protection Unit at the Procurator General's office on 10 November 2005.

*"At the beginning the procuracy didn't want to investigate anything. We forced them to do a medical examination. We heard that the procuracy wanted to release Migriauli if he promised not to pursue the torture allegations. Without our involvement nothing would have happened. Even though it was absolutely clear who the perpetrators were, no criminal case was opened against them. Some five or six months later one of them was charged. At least they all lost their jobs,"* reported the Ombudsman.<sup>96</sup>

Only one week into the investigation of allegations that Sulkhan Molashvili was tortured and ill-treated in detention, Tbilisi city procurator Valeri Grigalashvili was reported as saying at a press conference at the Procurator General's office on 12 July 2004: *"Sulkhan Molashvili lied when he said that he had been tortured at the Tbilisi remand centre of the [Interior Ministry's] main directorate [...] It seems that certain people [not Interior Ministry employees] committed violence against him to extort money after he was moved into the cell [...] It is also possible that he inflicted the injuries on himself to wage a PR campaign against our state and our law enforcers."*<sup>97</sup> Amnesty International urges procurators and other officials to refrain from making public statements which might prejudice the result of investigations. Such statements suggest a lack of impartiality on the part of the Tbilisi procurator.

Amnesty International learnt of several cases where investigations were reportedly not conducted thoroughly. For example, the lawyer of the detainee K.E. (see above) alleged that the procurator only questioned K.E., who had allegedly been ill-treated, and did not question relevant police officers or gather material evidence. According to paragraph 33 of the CPT Standards, *"all reasonable steps [have to] be taken to secure evidence concerning the incident, including, inter alia, to identify and interview the alleged victims, suspects and eyewitnesses (e.g. police officers on duty, other detainees), to seize instruments which may have been used in ill-treatment, and to gather forensic evidence"*.

Torture and ill-treatment often do not leave obvious marks, for example, when electric shocks are applied and even blows to the body may leave only slight physical marks, difficult to observe and quick to fade. The CPT pointed out that *"when allegations of such forms of ill-treatment come to the notice of prosecutorial or judicial authorities, they should be especially careful not to accord undue importance to the absence of physical marks [...] Adequately assessing the veracity of allegations of ill-treatment may well require taking evidence from all persons concerned and arranging in good time for on-site inspections and/or specialist medical examinations."*<sup>98</sup>

The first medical examination of Alexander Mkheidze appears to indicate that he did not have obvious marks pointing to the impact of physical violence; the doctor concluded Alexander Mkheidze was *"healthy"*. Nevertheless, the authorities should have promptly launched an investigation following his allegation that he was ill-treated by police.

Alexander Mkheidze, a 27-year old architect, was detained by police in the village of Tsqneti near Tbilisi on 6 April 2005. He alleged that he was beaten and kicked while he was being

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<sup>96</sup> Amnesty International interview, Tbilisi, 5 May 2005.

<sup>97</sup> *Imedi TV*, 12 July 2004.

<sup>98</sup> The CPT Standards, CPT/Inf (2004) 28, para. 29.

taken to the building of the Ministry of Internal Affairs in the centre of Tbilisi on Chitatzé street, where police allegedly continued to beat him. Later that day he was transferred to the preliminary detention facility no.1 in Tbilisi.

The medical doctor who examined him upon entering the detention facility recorded that Alexander Mkheidze complained about ill-treatment by police during the arrest. According to the doctor, his skin was "slightly red" on both shins and the right thigh. The doctor diagnosed him as "healthy".

When Alexander Mkheidze was transferred to the investigation-isolation prison no. 1 in Tbilisi on 8 April he was again examined, as is standard procedure. The doctor found a dark blue bruise on his right shin, a scratch mark on his right hand covered with a dark red scab and a dark blue-yellow coloured bruise on the inner surface of his right thigh near his groin. He added that Alexander Mkheidze complained about pain in his head, neck and spine and stated he sustained these injuries by police officers in the village of Tsqneti.

On 20 April, two weeks after his arrest, Vake-Saburtalo district procuracy ordered a forensic medical examination. The examination was conducted the next day and the expert concluded that Alexander Mkheidze had bruises and abrasions on his body that were caused by a heavy blunt object and that the time period the injuries were sustained did not contradict the allegations made by Alexander Mkheidze.

The CAT has observed that "*promptness [of investigations into allegations of torture] is essential both to ensure that the victim cannot continue to be subjected to such acts and also because in general, unless the methods employed have permanent or serious effects, the physical traces of torture, and especially of cruel, inhuman or degrading treatment, soon disappear*".<sup>99</sup> The requirement of promptness applies both to the time it takes for the authorities to examine the allegations initially, and to the pace of the investigation thereafter. The CPT Standards point out that "*[i]f the emergence of information indicative of ill-treatment is not followed by a prompt and effective response, those minded to ill-treat persons deprived of their liberty will quickly come to believe -- and with very good reason -- that they can do so with impunity*".<sup>100</sup>

Amnesty International received a large number of cases where the detainees reportedly sustained injuries as a result of ill-treatment by police during the arrest. Tea Tutberidze from the Liberty Institute told Amnesty International: "*According to our information, in most cases police use violence during the arrest or on the way to the police station in police cars. If the detainee has injuries the police will always say that they had to use force because the detainee was putting up resistance.*"<sup>101</sup> According to the Ombudsman, police violence during the arrest is on the increase. "*Most injuries inflicted on detainees occur when they are first apprehended. Whether the detainee had resisted arrest or whether the police used disproportionate force is difficult to verify. Yet according to the large number of*

<sup>99</sup> *Encarnación Blanco Abad v. Spain*, Communication No. 59/1996, UN Doc. CAT/C/20/D/59/1996 (1998), para. 8.2.

<sup>100</sup> The CPT Standards, CPT/Inf (2004) 28, para. 25.

<sup>101</sup> Amnesty International interview, Tbilisi, 1 June 2005.

*injuries and the claims of the detainees, it seems that the police are, in fact, using disproportionate force.*"<sup>102</sup> To Amnesty International's knowledge many investigations into allegations of ill-treatment during the arrest have not been opened promptly.

There appear to be several reasons for police abuse during the arrest. Levan Ramishvili from the Liberty Institute pointed out that *"police often think physical violence is the way justice should be administered. We punish them because they deserve it."*

Another reason appears to be the lack of or very limited training of police to enable them to carry out arrests using only lawful and proportionate methods of restraint. From July to November 2004 some 16,000 policemen were dismissed from police structures such as the traffic police, the transport police and the Tbilisi-based Abkhaz Interior Ministry and the new patrol police force was created. It was first introduced in Tbilisi in August 2004. Other cities of Georgia followed and in Zugdidi, for example, the patrol police started working in April 2005. According to the authorities, this reform was conducted to dismiss redundant staff and to fight against corruption in the police.

According to a local expert on policing, *"only about 15 per cent of the current patrol police served in the police before. The new officers generally had no prior expertise. The new patrol police force received two weeks' training before they started working and in spring 2005 a training programme was introduced for them that lasted several weeks."*<sup>103</sup>

While Amnesty International received several cases involving allegations that the patrol police ill-treated detainees during the arrest, the organization received especially many cases involving the special police unit (or: Special Operative Department).

Giorgi Abkhaidze, Givi Janiashvili and Malkhaz Talakvadze alleged that they were ill-treated during the arrest. Giorgi Abkhaidze alleged that he continued to be beaten in the building of the Interior Ministry. There were strong indications that investigations into the cases of Givi Janiashvili and Malkhaz Talakvadze were not opened promptly. The investigation into Giorgi Abkhaidze's allegations is still ongoing and no alleged perpetrator has yet been charged.

On 19 April 2005, while driving in a taxi, Giorgi Abkhaidze, a law student in his early twenties, and two of his friends were stopped by police in the Isani-Samgori district of Tbilisi, accused of possession of drugs in large quantities and taken to the preliminary detention facility of the Interior Ministry in the Vake-Saburtalo district of Tbilisi.

On 21 April 2005 staff of the ombudsman's monitoring group interviewed Giorgi Abkhaidze in the preliminary detention facility. He stated that he was beaten by police during his arrest as well as in the building of the Interior Ministry. The monitoring group reportedly recorded bruises on his face and back and scratches on his legs. There were allegations that one of Giorgi Abkhaidze's co-defendants was also beaten during the arrest.

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<sup>102</sup> Letter to Amnesty International, dated 14 August 2005.

<sup>103</sup> Amnesty International interview, Tbilisi, 6 May 2005.

Following a request by his lawyers a forensic medical examination was conducted on 22 April 2005 in the building of Mtatsminda-Krtsanisi district court. The state forensic expert found bruises on his face, chin, on his back, his right shoulder, his hands and legs that, he concluded, were caused by a blunt, heavy object. Giorgi Abkhaidze complained about headache, dizziness, pain around his heart and loss of balance. Reportedly, Tbilisi city procuracy opened an investigation into the allegation that he was ill-treated. However, according to Tamuna Japaridze, one of his lawyers, nobody had been charged as of 18 November.

His lawyers Alexander Aladashvili and Tamuna Japaridze raised doubts about the lawfulness of his detention. According to the record of the search, large quantities of heroin were found in his pocket. However, Tamuna Japaridze told Amnesty International: "*The two 'witnesses' who were present during the search were actually hired by police for this job. We found out from the Ombudsman that one of them had played the 'witness' in some ten cases since 2003.*" At the remand hearing in April Giorgi Abkhaidze was sentenced to three months' administrative detention. On 1 August 2005 Elene Tevdoradze, Head of the Parliamentary Committee on Human Rights and Civil Integration, sent a letter to the Deputy General Procurator urging him to "*take the case under his personal control*" as she suspected that the search was conducted unlawfully. Giorgi Abkhaidze is still in pre-trial detention awaiting trial.

Givi Janiashvili was arrested by over 30 masked special unit police officers in his house in the town of Rustavi on 12 May 2005. He affirms that when police stormed the house he was in bed and did not put up any resistance to the arrest. He was believed to have been unarmed. Givi Janiashvili told his lawyer that police beat him severely including with the butts of their guns. His wife, his 11-year old child and several neighbours reportedly witnessed the beatings. When examining him on 16 May, the independent forensic expert, Maia Nikoleishvili, found bruises around his eyes and on his forehead and he was hardly able to walk due to pain in his right leg. According to the expert, the injuries were caused by repeatedly hitting him with a blunt object. Only some six weeks after Givi Janiashvili's arrest, on 29 June, Tbilisi city procuracy opened an investigation into the allegations that law enforcement officers inflicted bodily injuries to Givi Janiashvili. As of 10 November none of the alleged perpetrators had yet been charged.<sup>104</sup>

Malkhaz Talakvadze was detained on 2 September 2005 at about 5am after some 30 special unit police officers, some of whom were masked, broke into his house in Tskhantubo district near the town of Kutaisi. According to his lawyer Zurab Rostiashvili, police beat him including with the butts of their guns and he lost consciousness.<sup>105</sup> According to Malkhaz Talakvadze, his wife, mother-in-law and little daughter were also beaten. Nugzar Topuridze,

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<sup>104</sup> Information provided by the Human Rights Protection Unit at the General Procuracy.

<sup>105</sup> Amnesty International interview, Tbilisi, 24 October 2005. Amnesty International was unable to obtain the medical examination of Malkhaz Talakvadze.

an independent forensic medical expert of the firm Veqtori, who examined Malkhaz Talakvadze's wife Irma Kanteladze on 7 September, found many bruises on both shoulders. She complained about headaches and dizziness. According to the expert, the time period when the bruises were sustained -- as established in the medical examination -- did not contradict the allegations made by Irma Kanteladze.<sup>106</sup> According to Zurab Rostiashvili, the judge ignored the allegations of ill-treatment raised by the lawyer at the remand hearing at Tbilisi city court and no investigation into the allegations has yet been opened.<sup>107</sup> Malkhaz Talakvadze is currently being held in the investigation-isolation prison no. 1 in Tbilisi awaiting trial on charges of "illegal possession of drugs in particularly large quantities" (Article 260, part 3) and "illegal production or sale of weapons" (Article 236).

In order to determine whether injuries have been sustained before or during the arrest and whether they resulted from police abuse Amnesty International urges the authorities to ensure that investigations are launched promptly in all cases where detainees have visible bodily injuries after they are detained by police and/or allege that they have been tortured or ill-treated.

In the disputed killing of Amiran Robakidze, police officers apparently attempted to cover up the shooting by a police officer. There are strong indications that the procuracy did not conduct its investigation into Amiran Robakidze's death in an impartial manner.

On 24 November 2004 approximately at 2.30am patrol police stopped the car in which 19-year-old Amiran Robakidze and five of his friends were travelling in the Didube district of Tbilisi.

According to Alexander Aladashvili, one of his lawyers, the six men left the car with their hands up and then put their hands on the car, as requested by the police.<sup>108</sup> The young men reportedly affirmed that the hand of one of the police officers was shaking while he was pointing his gun at one of the young men and that he appeared to be drunk. Then the police demanded that they lie down on the ground. The young men reported that while they were going down, they heard a shot and then realized that a police officer had killed Amiran Robakidze. The young men insist that they did not have any weapons and that police planted weapons on them when Amiran Robakidze was already dead.

The police officers, however, affirmed that when they stopped the car Amiran Robakidze jumped out with a gun and shot at the police twice; however, the bullet did not hit anyone. In reaction to that, a police officer shot and killed him. After that, according to the police, they searched the other men and the car and found several machine guns and hand grenades.

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<sup>106</sup> Email correspondence with the firm Veqtori, 15 November 2005.

<sup>107</sup> Amnesty International interview, Tbilisi, 24 October 2005.

<sup>108</sup> Amnesty International interview, Tbilisi, 18 May 2005.

The five young men were taken to Didube-Chugureti district police, accused of "Resisting the police" (Article 353, part 2) and "Illegal possession of firearms" (Article 236, part 1 and 2). On 19 April 2005 the charge of "Resisting the police" was dropped.<sup>109</sup>

Alexander Aladashvili told Amnesty International: *"The police made a lot of illogical statements when they were questioned on 24 and 30 November. For example, they said he got out of the car through the right back door. However, the forensic examination later revealed that he was sitting on the left side in the back of the car. He would have had to climb over three of his friends to leave the car through the right hand door."* He added: *"A forensic examination conducted by the Ministry of Justice concluded on 20 January that the bullet wound was under Amiran's left arm. This could only happen if he was holding his arm up. How could he have held a gun and still be shot in this place under his arm? It's impossible. On 7 March we got the results of another forensic examination which concluded that Amiran was standing left of the car, not on the right, as the policemen had said."*

According to the Ombudsman's report covering the human rights situation in Georgia in 2004 that he submitted to Parliament in April 2005, *"it is likely that Interior Ministry officials were interested in hushing up [the policeman's] crime, because it was the period when patrol police were taking their first steps to gain citizens' trust. This is why the authorities did not want to endanger the newly gained trust."*

Amiran Robakidze's grandfather told Amnesty International: *"An official from Didube-Chugureti procuracy told me that they were waiting for instructions from above because this case was so sensitive"*.<sup>110</sup> The lawyer Tamuna Japaridze, who also works on Amiran Robakidze's case, said: *"An investigator told me he wouldn't open a case against the police because he would be dismissed for that."*<sup>111</sup> There were allegations that after the television station *Rustavi-2* reported about the death of Amiran Robakidze in its programme "Twelve hour courier" a representative of the Ministry of Internal Affairs put pressure on the television station to stop reporting on this case.

After over six months of persistent work by Amiran Robakidze's lawyers, who lodged a series of complaints and built up a strong case based on several forensic examinations, a criminal case was opened against one of the police officers on 14 June. He was charged with "Manslaughter". Amiran Robakidze's lawyers argued that, based on the testimonies of five men who were present when Amiran Robakidze was killed, the policeman in fact committed murder. They also raised concern that the alleged perpetrator was released on bail by Tbilisi city court on 20 June despite the seriousness of his crime. According to the Human Rights Protection Unit at the General Procuracy, the police officer was released on bail after he had *"admitted his guilt"*.<sup>112</sup>

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<sup>109</sup> According to information provided to Amnesty International by the Human Rights Protection Unit of the General Procuracy on 10 November 2005, two of the men were subsequently released on bail; two were released but kept under police supervision and one was released on a *"personal guarantee"*.

<sup>110</sup> Amnesty International interview, Tbilisi, 18 May 2005.

<sup>111</sup> Amnesty International interview, Tbilisi, 18 May 2005.

<sup>112</sup> Information provided in a letter on 10 November 2005.

The General Procurator told Amnesty International that "*in order to ensure that investigations are conducted impartially and with the necessary expertise*" he intended to set up a team of "*about 30 expert investigators and prosecutors who would specialize in and conduct all investigations into [allegations of torture and ill-treatment] in the country. They need training in the necessary skills and human rights law.*"<sup>113</sup> According to the first issue of the monthly newsletter by the Human Rights Protection Unit at the General Procuracy covering May 2005, "*in the nearest future, the Unit will [...] acquire investigative functions and accordingly conduct investigation into the facts of torture.*"

At the same time it was also under discussion whether the Ombudsman would be given the right to conduct investigations including collecting evidence and interrogating witnesses in cases involving human rights violations.<sup>114</sup> According to Anna Zhvania from the Ombudsman's office, the office would be entitled to conduct certain investigative functions but not to open criminal cases.<sup>115</sup>

Amnesty International believes it to be crucial that a body conducting investigations into allegations of torture and ill-treatment has functional independence. Investigators must be independent from any institution, agency or person that may be subject to the investigation. They must also be competent and impartial. The investigative body needs to have the authority and obligation to obtain all the information necessary to the inquiry. It is important that investigators have at their disposal all the necessary budgetary and technical resources required to conduct effective investigations. The investigative body must be vested with the authority to oblige the alleged perpetrators of torture or other ill-treatment as well as any witnesses to appear and testify. To this end, the investigative body must be entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence. The primary investigator in each case should have prior training or experience in documenting torture and in working with victims of torture and/or other trauma.<sup>116</sup>

### **Improve investigative skills and adherence to procedures**

Even when the procuracy has a genuine will to investigate torture and ill-treatment allegations promptly, thoroughly, and impartially there are a number of obstacles to successful prosecutions. Government officials have themselves acknowledged many of them. For example, in a meeting with Amnesty International on 25 May 2005 Zurab Adeishvili, the Procurator General of Georgia, pointed out that "*in many cases we cannot identify when and*

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<sup>113</sup> Amnesty International interview, Tbilisi, 25 May 2005.

<sup>114</sup> Refer to the *Strategy of the Reform of the Criminal Legislation of Georgia*, approved by President Saakashvili in July 2005.

<sup>115</sup> Amnesty International interview, Tbilisi, 26 October 2005. For further information refer to the *Strategy of the Reform of the Criminal Legislation of Georgia*, approved by President Saakashvili in July 2005.

<sup>116</sup> For further information refer to the Istanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc. HR/P/PT/8/Rev. 1, chapter 3.

*by whom somebody was tortured or ill-treated. We are working hard to improve the system of registration, record-keeping and medical checks. Once the system will work well we will know where the violations took place. This will give us good evidence to bring charges against police officers.*"<sup>117</sup> Perpetrators of torture and ill-treatment have in many cases taken advantage of the poor standards of record-keeping in order to conceal evidence of their crimes.<sup>118</sup>

Another contributing factor to impunity remains the lack of skills and expertise of investigators. The Procurator General acknowledged that officials investigating torture and ill-treatment allegations were in need of training. He said: *"In order to investigate torture allegations you need people who have the skills to do that but the investigators we have are not used to investigating cases of torture. It wasn't part of their work under the previous government."*<sup>119</sup> Ana Dolidze, the director of the Georgian Young Lawyers' Association, told Amnesty International: *"Our investigators don't take the mental condition of the victim into account. They investigate cases of torture as they would investigate any other case. Torture victims often fluctuate in their statements and police often look at them with suspicion."*<sup>120</sup>

Amnesty International noted the recently issued decrees stipulating that law enforcement officers must wear identification cards as of 1 November 2005 at all times when visiting places of detention and deprivation of liberty as well as during meetings with detainees and prisoners.<sup>121</sup> Name tags and/or visible identification numbers are important safeguards against torture and ill-treatment and are a crucial element in governments' efforts to end impunity for torture and ill-treatment. Amnesty International believes that the anonymity of police officers increases the risk of torture and ill-treatment and perpetuates impunity.

Amnesty International urges the Ombudsman's office to pay special attention to monitoring the adherence of law enforcement officers to the above decrees as part of their monitoring of police detention facilities.

The organization is concerned that officers of the special police unit have apparently been exempted from the requirement to wear ID tags even though they have been implicated

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<sup>117</sup> Amnesty International interview, Tbilisi, 25 May 2005.

<sup>118</sup> On 1 May 2005 the Department on Human Rights and Monitoring introduced new registration journals to be used by police in all police stations and preliminary detention facilities. Whether or not the new measures will fundamentally improve record-keeping remains to be seen. According to Anna Zhvania from the Ombudsman's office, after the introduction of the new journals the Ombudsman's monitoring group has found many cases in which the journals were not filled in correctly, in particular in the regions outside Tbilisi. Although the Interior Ministry has been organizing training courses for police on how to fill them in, not all regions have yet been covered. (Interview with Anna Zhvania conducted on 26 October 2005).

<sup>119</sup> Amnesty International interview, Tbilisi, 25 May 2005.

<sup>120</sup> Amnesty International interview, Tbilisi, 5 May 2005.

<sup>121</sup> Amnesty International was told that there will be two types of identification cards: one will be worn like a necklace and the other will be attached to the clothes with a pin. All identification cards contain an ID number, the name of the official and his/her position.

in ill-treating detainees when conducting arrests in numerous cases. Masks, frequently used especially by special police, or other means of disguising officers' personal identities should only be used exceptionally, if such measures are necessary for the personal protection or security of the officers concerned or similar reasons of necessity; in such cases the need for each officer to be identifiable by such means as a unique traceable identification number is particularly important.

### **Suspend alleged perpetrators from office pending investigation**

According to the UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, "[t]hose potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation".<sup>122</sup> They should also be removed from any position where they could ill-treat anyone else. The suspension should be without prejudice to the outcome of the investigation: suspension does not mean that the official is presumed to be guilty.

In his March 2005 preliminary note on his visit to Georgia earlier in the year the Special Rapporteur on torture urged that "*any public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in or ignoring evidence, be immediately suspended from duty pending trial, and prosecuted*".<sup>123</sup>

The Procurator General told Amnesty International on 25 May 2005: "*If we have evidence that a person has injuries, if he points to the one responsible and if we are sure that that policeman was in that cell or office at the time when the detainee sustained the injuries, then we'll charge the officer and suspend him from his duties while carrying out the investigation.*"

The General Inspection at the Interior Ministry has overall responsibility for investigating complaints concerning police misconduct, opening disciplinary proceedings and forwarding appropriate cases to the office of the General Procuracy, which can institute criminal proceedings. The General Inspection has the right to suspend alleged perpetrators of torture or ill-treatment from their duties.

Compared to the frequency of complaints about torture and ill-treatment by police there appear to be very few cases in which police officers are suspended from their jobs during the investigation.

Eldar Konenishvili was reportedly ill-treated in police custody in the town of Gurjaani in eastern Georgia on 8 April 2005 where he had been taken from investigation-isolation prison no. 1 in Tbilisi. As of 10 November, no one has yet been suspended or

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<sup>122</sup> Principle 3 (b), Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA resolution 55/89, 4 December 2000.

<sup>123</sup> *Preliminary note by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Georgia, UN Doc. E/CN.4/2005/62/Add.3, (f), 16 March 2005.*

charged in connection with the allegations of ill-treatment although he can identify the alleged perpetrators.

Amnesty International visited Eldar Konenishvili in the investigation-isolation prison no. 1 in Tbilisi on 13 April 2005. Eldar Konenishvili, who is serving a six-year sentence for "Theft" and "Evading investigation" and works as a cook in the prison, was taken from the prison to a court in Gurjaani in eastern Georgia on 8 April 2005. According to him, he had been told he was testifying at a trial as a witness. However, after he had spent a short amount of time in a cell in the court building he was transferred to a police station in Gurjaani. There he was reportedly taken to an office on the first floor and interrogated for four hours until seven o'clock in the evening. Eldar Konenishvili told Amnesty International: "*There the police officers started to beat me. They even hit me on my head and my face. They took the leg of a chair and hit me on the fingers of my left hand. During the beatings another police officer and a procurator entered and started to accuse me of a murder that had taken place in Gurjaani. One of the officers insulted me verbally and said he would hit me with his gun. He also threatened to beat my wife, mother and children unless I confessed to the murder. Then he took me to the balcony and said 'I'll throw you off the balcony and if you die I'll say you tried to escape'. During the beatings I lost consciousness several times. Blood was coming from my mouth and I couldn't see properly. I had difficulties moving.*" Reportedly, in the evening the police brought an old man to the office and urged him to say that he recognized Eldar Konenishvili as the murderer. Eldar Konenishvili denied any connection with the murder. He told Amnesty International that he would be able to identify at least one of the perpetrators of the ill-treatment.

In the evening Eldar Konenishvili was returned to investigation-isolation prison no. 1. "*I did not ask for a doctor at first because I was afraid. When I was back in the cell I was vomiting and coughing blood. Then my cellmates and a prison guard called a doctor. I had a bad headache and for a few days I couldn't keep any food down and I was bleeding. I am still not able to move around unaided.*"<sup>124</sup> The prison doctor on duty took down Eldar Konenishvili's complaint that he was ill-treated at the police station in Gurjaani. According to Tea Tutberidze of the Liberty Institute, medical personnel at the prison told her on 9 April that Eldar Konenishvili was unable to walk to the medical examination unaided and was not able to write his statement of allegations because of his injuries.

On 9 April, a Saturday, Gela Nikoleishvili, Eldar Konenishvili's legal representative, was at first denied access to him. Several hours later, after telling senior staff of the

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<sup>124</sup> In reaction to the Konenishvili case, on 23 June 2005, the Law on Imprisonment was amended (Art. 92 (2)) to the effect that "*The medical examination of prisoners is obligatory in each case when a person is taken to or returned to a penitentiary establishment, except for those cases when s/he is taken or returned to/from the court hearing.*" (Information provided to Amnesty International by the Human Rights Protection Unit of the General Procuracy on 10 November 2005). Reportedly, Eldar Konenishvili had been removed from the investigation-isolation prison following a request by a police investigator, not a court. Before the amendment medical doctors were only tasked to examine those defendants who entered the investigation-isolation prison for the first time.

penitentiary system that he would call a press conference, he was allowed to see Eldar Konenishvili. Lawyers usually do not have access to prisoners outside working hours.

On 13 April the General Procuracy announced at a public briefing that a criminal case had been opened two days before, into the allegations that Eldar Konenishvili had been beaten, for "Exceeding official authority". "No one has yet been charged or suspended from his duties. We need more information to do so," said Lasha Magradze, then Head of the Human Rights Protection Unit at the office of the General Procurator. He stated that there was a possibility that Eldar Konenishvili could have been beaten by other prisoners when returned to the investigation-isolation prison late on 8 April. He explained that staff of the General Procuracy were sent to Gurjaani to investigate the allegations and that the prison guards who took him to Gurjaani had been questioned. Another prisoner who was in the same vehicle on the way back to Tbilisi told officials of the General Procuracy that Eldar Konenishvili had told him that he was beaten but did not have serious injuries.

At the briefing Elene Tevdoradze, Head of the Parliamentary Committee on Human Rights and Civil Integration, urged the General Procuracy to suspend the police officer named by Eldar Konenishvili from his duties while the investigation was ongoing.

Gela Nikoleishvili told Amnesty International on 29 April 2005: "The General Procuracy questioned Eldar several times about the beatings without informing me. They told me they didn't know I was his legal representative but I had submitted the relevant documents to the prison, so they should have been in the case file." Gela Nikoleishvili told Amnesty International on 21 October 2005: "Those people who beat him are still in their jobs and no one has been charged."

The Human Rights Protection Unit at the General Procuracy informed Amnesty International on 10 November 2005 that the investigation into Eldar Konenishvili's allegations of ill-treatment by police in Gurjaani had involved the questioning of 30 witnesses and the examination of the scene where he was allegedly ill-treated. However, "due to the passage of time [the] extraction of [...] evidence of abuse has become complex", according to the Human Rights Protection Unit.

The case of Nikolos Okruashvili demonstrates how crucial it is to suspend police officers from their duty when there are strong indications that they tortured or ill-treated a detainee. None of the police officers identified by Nikolos Okruashvili as having allegedly tortured him in April 2003 were suspended from their posts or charged in relation to his allegations and complaints. However, one of the police officers was reportedly charged in 2005, accused of ill-treating another detainee after Nikolos Okruashvili had made his allegations.<sup>125</sup>

Police detained Nikolos Okruashvili on 22 April 2003 and accused him of committing burglary in a shop in Gorgasali street in Tbilisi on 12 April. Police officers took him to the sixth floor of the Ministry of Internal Affairs in Tbilisi. His lawyer Zurab Jorjiashvili told Amnesty International: "Six officers of the Ministry's department tasked with combating especially dangerous crimes tortured him with electric shock, put a gas mask over his head

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<sup>125</sup> Telephone conversation with Nikolos Okruashvili's lawyer Zurab Jorjiashvili, 13 September 2005.

*and closed the air supply. As a result, he lost consciousness several times.*” Reportedly, no lawyer was present during the first interrogations and when he signed a “confession”.

At the hearing of Nikolos Okruashvili’s case by Mtatsminda-Krtsanisi district court in Tbilisi on 24 April 2003 the judge asked Nikolos Okruashvili where he sustained the injuries that were still visible and he explained that he was tortured at the Ministry of Internal Affairs and that he could identify four of the six officers who tortured and ill-treated him. The judge ruled that an investigation should be opened into the allegations. According to the medical examination conducted when Nikolos Okruashvili was transferred to investigation-isolation prison no. 5 on 24 or 25 April 2003, he had several injuries including bruises around his left eye, the back of his head, and on his left knee. According to the lawyer, Mtatsminda-Krtsanisi district procuracy did not open a criminal case stating on 26 June that their preliminary investigation established that “*no crime had taken place*”.

On 16 June 2004, some eight months after Nikolos Okruashvili’s lawyer had appealed the procuracy’s decision not to open a criminal case into the torture allegations, Mtatsminda-Krtsanisi district court granted the appeal and the district procuracy opened a criminal case on 10 August for “*exceeding official authority [...] in connection with the fact of inflicting bodily injuries*”<sup>126</sup> on Nikolos Okruashvili. However, no charges were brought against any police officer and the investigation was suspended on 10 November 2004 “*since the identity of the person to be brought [...] criminal responsibility [...] had not been established*”.<sup>127</sup> Reportedly, Nikolos Okruashvili and his lawyer did not get permission to view the documents of the investigation into the torture allegations.

On 12 July 2004 Nikolos Okruashvili was sentenced to six years and six months’ imprisonment by Mtatsminda-Krtsanisi district court. According to his lawyer Zurab Jorjashvili, the statements he made about the burglary while he was tortured were used as evidence at the trial, in violation of Georgia’s obligations under the Convention against Torture.

On 13 January 2005 the procuracy informed Nikolos Okruashvili’s lawyer that an investigation into the torture allegations had been conducted but the perpetrator could not be found. The lawyer appealed the decision and, according to him, on 7 March 2005 the General Procuracy reopened the investigation into the torture allegations. The Human Rights Protection Unit at the General Procuracy informed Amnesty International that the case was forwarded to Tbilisi city procuracy for further investigation on 22 June 2005.<sup>128</sup>

In June 2005, at an appeal hearing, Tbilisi circuit court reduced Nikolos Okruashvili’s sentence to three years and six months’ imprisonment. The “confession” he said he had given under duress in pre-trial detention was excluded from the evidence used in court. According to Zurab Jorjashvili, Tbilisi circuit court reduced the prison sentence because of the torture

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<sup>126</sup> Information provided to Amnesty International in a letter from the Human Rights Protection Unit of the General Procuracy, 10 November 2005.

<sup>127</sup> Information provided to Amnesty International in a letter from the Human Rights Protection Unit of the General Procuracy, 10 November 2005.

<sup>128</sup> Information provided to Amnesty International in a letter received on 10 November 2005.

and ill-treatment his client was subjected to in pre-trial detention. However, as of October no police officer has been suspended or charged in connection with the case.

### **Sentences must be commensurate with the gravity of the crime**

Several of the 14 police officers who, since the "Rose Revolution", have been found guilty by the courts of physically abusing detainees have been sentenced to significant terms of imprisonment. However, while four of the 14 were initially sentenced to three years' imprisonment they were subsequently released on probation with suspended sentences.<sup>129</sup> Three of them were deprived of the right to hold official position for a period of one year.<sup>130</sup> It is not clear to Amnesty International what the reasons were to apply suspended sentences on probation in these cases. However, the organization urges the authorities to ensure that sentences imposed for acts of torture or ill-treatment should in all cases be commensurate with the crime.

### **Non-reinstatement**

The legislative situation regarding the possibility of reinstating perpetrators of torture and ill-treatment in their previous posts or appointing them to other positions where they are able to commit human rights violations is currently unclear and possibly contradictory. While the Law on Police, which came into force in 1993, stipulates that persons with a criminal record are not eligible to join the police force, Article 144 of the Criminal Code, which came into force in August 2005, allows for the possibility. It says that if "Torture" or "Inhuman and degrading treatment" are committed by officials the crimes are punishable by suspension of the right to occupy certain posts or perform certain professional duties for up to five years in addition to a prison term and/or a fine.<sup>131</sup> Judges have the discretion to decide whether or not and for how long to suspend a perpetrator of torture or ill-treatment from occupying certain posts and carrying out certain duties.

Amnesty International believes that law enforcement officers who are convicted of acts amounting to torture or ill-treatment should be subjected also to disciplinary sanctions commensurate with the severity of the crime. Disciplinary sanctions available should accordingly include provision for dismissal without reinstatement.

### **Abolish the statute of limitation for torture**

Amnesty International draws attention to the fact that the status of torture as a peremptory norm of general international law suggests that there should be no statute of limitation for the crime of torture.

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<sup>129</sup> The penalty was changed under Art. 63 of the Criminal Code ("Conditional Sentencing") and Art. 64 ("Probation").

<sup>130</sup> Information on these cases was provided by the Human Rights Protection Unit at the General Procuracy on 10 November 2005.

<sup>131</sup> Law on Police, Chapter 6, Art. 20, part 5a.

Georgian legislation has a statute of limitation regarding criminal proceedings for torture and ill-treatment. The length of time depends on the gravity of the crime committed. If a law enforcement officer is charged with "Torture" the statute of limitation goes up to a maximum of 25 years. Amnesty International urges lawmakers in Georgia to abolish the statute of limitation for torture.

## Reparation

Article 14 of the Convention against Torture stipulates that "[e]ach State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation." In its April 2002 concluding observations on the second periodic report of Georgia, the (UN) Human Rights Committee specifically urged the authorities to ensure "*victims [of torture and ill-treatment] are appropriately compensated*".

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law<sup>132</sup> distinguish five forms of reparation: restitution,<sup>133</sup> compensation,<sup>134</sup> rehabilitation,<sup>135</sup> satisfaction<sup>136</sup> and guarantees of non-repetition.<sup>137</sup>

The Georgian Constitution incorporates only some aspects of requirements and guidelines set out in international law and standards. According to Article 42 (9), "*Any person having unlawfully sustained a damage inflicted by state agencies, self-government bodies and*

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<sup>132</sup> CHR Resolution 2005/35. UN Doc. E/CN.4/2005/L.10/Add.11, 19 April 2005.

<sup>133</sup> According to Art. 19 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, "*[r]estitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.*"

<sup>134</sup> Art. 20 stipulates that "*[c]ompensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law*".

<sup>135</sup> According to Art. 21, "*[r]ehabilitation should include medical and psychological care as well as legal and social services*".

<sup>136</sup> As outlined in Art. 22, satisfaction should include, where applicable, steps such as "*[e]ffective measures aimed at the cessation of continuing violations*", "*[p]ublic apology, including acknowledgement of the facts and acceptance of responsibility*".

<sup>137</sup> Guarantees of non repetition should include, where applicable, measures such as "*[s]trengthening the independence of the judiciary*", "*[p]romoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises*".

*their representatives shall be guaranteed full compensation at the expense of the state and determined through court proceedings.*" The Constitution does not contain a specific mention of torture as a form of damage inflicted, nor a requirement of rehabilitation and other forms of reparation. Individuals have the right to file a complaint with the Constitutional Court of Georgia if they believe that a law applied against them was unconstitutional. However, the Court is not entitled to award reparation for fundamental rights violations. The right to litigation can be pursued in criminal or civil proceedings.

The CPC stipulates that a person suffering from property, physical or moral damage resulting from unlawful acts including arbitrary detention and "*other unlawful or arbitrary acts of the bodies of criminal procedure*" is entitled to compensation.

Amnesty International calls on the authorities to amend the legislation to the effect that victims of torture or other ill-treatment and their dependants are entitled to obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

Amnesty International is not currently aware of any cases where victims of torture or ill-treatment were awarded compensation. The NGO Redress concluded in its report entitled *Georgia at the Crossroads: Time to Ensure Accountability and Justice for Torture*, issued in August 2005, that "*torture survivors are [...] commonly left without any form of official remedies or reparation including rehabilitation, forcing them to rely on the support provided by non-governmental rehabilitation centres instead*".

Amnesty International is concerned that victims of torture and ill-treatment in whose cases the perpetrators have not been brought to justice and convicted are not currently entitled to any kind of reparation. Compared to the number of investigations opened into torture allegations or to the number of cases recorded by NGOs the number of convictions of perpetrators is very small. While the authorities acknowledge that there are major shortcomings in the system preventing them from establishing the identity of perpetrators, it is the victim of torture and ill-treatment who has to bear the consequences. As long as no system is in place that ensures prompt, thorough and impartial investigations into all allegations of torture and ill-treatment leading to successful prosecutions where the allegations are confirmed, Amnesty International believes that the authorities should take responsibility for the gaps in the system and provide an effective legal avenue to victims to obtain appropriate remedies.

While the CPC stipulates that the "*failure to establish the accused shall not interfere with the bringing of civil action*" and that in such a case "*an action for compensation of damage can be brought before the state under civil procedures*," the coming into force of this provision has so far been postponed by Parliament three times. To Amnesty International's knowledge, as of October 2005, the above-mentioned provisions are due to come into force on 1 January 2006 and the organization urges lawmakers to ensure that the current time frame is adhered to.

### ***Set up a mechanism to monitor investigations, courts and prosecutions***

In the above chapters Amnesty International has identified shortcomings in the implementation of legal safeguards and the conduct of investigations into allegations of torture or other ill-treatment.

Amnesty International recommends that the authorities set up a body independent of the police, procuracy and the judiciary to carry out a detailed review of investigations conducted by law enforcement officers into allegations of torture and ill-treatment and of judicial proceedings in such cases. The body should be given effective access to remand and court hearings, the investigations and other relevant processes. In addition, the body should be provided with authority to present their findings and make recommendations to the relevant authorities and the powers to issue a public report.

## **RECOMMENDATIONS**

### ***To the Georgian authorities***

- Keep the eradication of torture and ill-treatment on the government's agenda as a priority issue.
- Promptly and fully implement the recommendations by intergovernmental bodies such as the United Nations (UN) Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, the UN Committee against Torture, the (UN) Human Rights Committee and other UN bodies and the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment.
- The authorities and the Ombudsman should pay special attention to ending torture and ill-treatment in the regions of Georgia outside Tbilisi.
- Establish promptly a national mechanism/s for the prevention of torture, fulfilling all requirements outlined in the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Pay special attention to ensuring that the mechanism has functional independence; that the members of the mechanism/s have the required capabilities and professional knowledge; that they are independent; and that their selection is conducted in a transparent manner.
- Ensure the respect for the full independence of the judiciary.

### **Bring torture and ill-treatment to light**

- Ensure that detainees who lodge complaints about torture or ill-treatment are granted adequate protection so that they can lodge a complaint without the fear of being subjected to any kind of reprisal or prosecution.
- Increase monitoring of detention facilities under the jurisdiction of the Ministry of Internal Affairs outside the capital Tbilisi, in the regions of Georgia.
- Monitors should interview and record the allegations of all detainees who allege that they were tortured or ill-treated including those whose bodies do not show obvious marks. Information about all such cases should be promptly passed on to the appropriate authorities for investigation.
- Monitors should ensure that all interviews they conduct with detainees in detention facilities are carried out in private.

### **Legal safeguards and implementation**

- Amend the Constitution so that torture is absolutely prohibited; and that no exceptional circumstances may be invoked as a justification for torture, in line with Article 2 (2) of the Convention against Torture.
- Prioritize the implementation of the legal safeguards provided for in domestic legislation that are relevant to the issue of torture and ill-treatment. Investigate all allegations that legal safeguards were violated and bring anyone reasonably suspected to be responsible to justice.
- Ensure that up-to-date legislation is available to legal professionals and law enforcement officers throughout Georgia as well as accessible to the public throughout the country. In this context it is important to promptly translate legislation into relevant minority languages.
- Ensure that detainees are informed promptly after their arrest of all complaint mechanisms -- including the Ombudsman's office -- that are available to them if they are subjected to torture or ill-treatment at any time during their detention, for example, by handing an information leaflet in a variety of languages to the detainees and by displaying prominently in all police stations and preliminary detention facilities information to this effect.
- Ensure that all detainees have prompt access to a lawyer from the moment of arrest and during all stages of the criminal proceedings.
- Ensure that all detainees are promptly examined by medical staff when entering preliminary detention facilities in all preliminary detention facilities in Georgia.
- Ensure that the doctors examining detainees in preliminary detention facilities enjoy formal and *de facto* independence and are provided with specialized training.
- Conduct prompt specialist medical examinations in all cases where torture or ill-treatment (including ill-treatment of a predominantly psychological nature) has been alleged.
- Conduct medical examinations in private under the control of the medical doctor and outside the presence of law enforcement or other government officials. In the case of rape and other forms of sexual abuse, the examining health personnel should be of the same sex as the victim unless otherwise requested by the victim.
- Make audio or preferably video recording available during all interrogations and provide the technical equipment.
- Introduce a Code of Conduct for police interviews and a Code of Ethics for the police. Conduct training on the implementation of the codes.

- Oblige judges to routinely ask persons brought before the court from police custody whether they were tortured or ill-treated during the arrest or their detention in police custody.
- Train law enforcement officers in torture-free methods of investigation as well as to gain practical skills to conduct arrests using only lawful and proportionate methods of restraint.
- Conduct comprehensive training for judges, procurators, law enforcement officers on their obligation to prevent and investigate torture and ill-treatment and to bring to justice those responsible.

### **End impunity**

- Investigate all allegations of torture or ill-treatment in a prompt, thorough and impartial manner, including by interviewing the victim and any witnesses and obtaining relevant material evidence.
- Publish the results of the investigations and bring the perpetrators to justice.
- Further improve record-keeping by police to ensure accurate records that, among others, specify the identity of every person present during any interrogation, of all persons who had access to a detainee, as well as the exact times regarding their movements and contacts with the detainee.
- Ensure that all law enforcement officers including special unit police wear identification tags at all times when conducting arrests, when visiting places of detention and deprivation of liberty as well as during meetings with detainees and prisoners.
- Prohibit the use of masks or other means of disguising officers' personal identities. Only make exceptions if such measures are necessary for the personal protection or security of the officers concerned or similar reasons. In such cases the need for each officer to be identifiable by such means as unique traceable identification numbers is particularly important.
- Immediately suspend law enforcement officers who are placed under investigation for serious human rights violations pending the outcome of the disciplinary and judicial proceedings against them.
- Denounce torture and ill-treatment and take decisive action to demonstrate to the police as well as to the general public that torture and ill-treatment will not be tolerated.
- Procurators and other public officials should refrain from making any public statements prejudicing the result of an investigation.

- Make available to police on a regular basis up-to-date information about prosecutions and suspensions of police officers in connection with torture and ill-treatment.
- The General Inspection at the Interior Ministry should make available to the public information about investigations conducted by the Inspection into allegations of torture or ill-treatment as well as statistics on suspensions of police officers from their duty as a result of allegations involving torture or ill-treatment.
- Ensure that all sentences imposed on perpetrators of torture or ill-treatment are commensurate with the gravity of the crime.
- Subject law enforcement officers who have been convicted of acts amounting to torture or ill-treatment also to disciplinary sanctions commensurate with the severity of the crime. Disciplinary sanctions available should include provision for dismissal without reinstatement.
- Abolish the statute of limitation for torture.
- Ensure that every victim of torture and other ill-treatment as well as relatives of those who died from torture have unhindered access to the means of obtaining redress and an enforceable right to reparation including fair and adequate compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition, and that every detained person is informed of this right.
- Parliament should ensure that the coming into force of Article 33, part 4 of the Criminal Procedure Code concerning compensation is no longer delayed but comes into force on 1 January 2006, as currently scheduled.
- Train procurators/investigators conducting investigations into allegations of torture or ill-treatment to enable them to conduct investigations in a prompt, thorough and impartial manner.

**Monitor the implementation of legal safeguards and investigations into allegations of torture and ill-treatment**

- Set up an independent body to carry out a detailed review of investigations conducted by law enforcement officers into allegations of torture and ill-treatment and of judicial proceedings in such cases.
- Ensure that the body be given effective access to remand and court hearings, investigations and other relevant processes.
- Provide the body with the authority to present its findings and make recommendations to the relevant authorities and the powers to issue a public report.

### **To the international community**

- In all appropriate bi- and multilateral fora, urge the Georgian authorities to implement the recommendations outlined above.
- Provide financial support for the training of police in torture-free methods of investigation as well as to gain practical skills to conduct arrests without the use of excessive force.
- Provide financial support for the training of procurators on international standards concerning prompt, thorough and impartial investigations into allegations of torture and ill-treatment.
- Provide financial support for necessary technical equipment needed to conduct thorough investigations, including forensic, into allegations of torture and ill-treatment.

### **To the Organization for Security and Cooperation in Europe (OSCE):**

- Ensure that supporting the government of Georgia in ending torture and ill-treatment remains a priority of the OSCE's work on Georgia.
- Increase monitoring of human rights cases, in particular those involving torture and ill-treatment and/or serious violations of legal safeguards that are crucial for the prevention of torture.
- Raise concerns about human rights violations with the authorities on a regular basis.

### **To the European Union (EU):**

- Ensure that recommendations regarding the eradication of torture and ill-treatment and ending impunity for the perpetrators are included in the European Neighbourhood Policy Action Plan that will be agreed jointly with the Georgian authorities.