

GEORGIA

Summary of Amnesty International's concerns

Introduction

Since Georgia achieved its independence following the break-up of the Soviet Union¹, the country has moved gradually towards building democratic institutions and reforming its judicial and legal systems. It has become a party to a number of important international standards in the field of human rights², and in 1995 a new Constitution including basic rights and freedoms was adopted. This specified the creation of a Constitutional Court, and a new post of Public Defender to monitor the defence of individual rights and freedoms.

Amnesty International welcomes these advances and acknowledges that they have been made against a background, especially in the early years of independence, of severe economic dislocation and armed hostilities in parts of the country. Amnesty International remains concerned, however, that some of the guarantees and laws adopted to protect human rights are not fully implemented or observed. Within its remit Amnesty International is particularly concerned about allegations of unfair trials in political cases; the continued use of torture and ill-treatment in detention; and the continued use of the death penalty. In addition Amnesty International is concerned about various aspects of the situation in the disputed region of Abkhazia, the majority of which currently lies outside the *de facto* control of the Georgian authorities. This document presents a summary of these concerns, and includes Amnesty International's recommendations.

Allegations of unfair trials of political prisoners

In recent years a number of supporters of Georgia's former President, Zviad Gamsakhurdia,³ have stood trial, and at least three have been sentenced to death, in proceedings that appear to have fallen short of international standards for fair trials. Violations reported have included the use of torture to obtain confessions; denial of prompt and regular access to a defence lawyer; and denial of access to case materials.

In a major political trial⁴ that ended in Georgia's Supreme Court on 6 March 1995, for example, two of the defendants were sentenced to death and 13 others received prison sentences of

¹Georgia joined the Conference on Security and Co-operation in Europe in May 1992, and became a member of the United Nations in July that year.

² These include the four Geneva Conventions (to which Georgia formally acceded on 14 September 1993), the International Covenant on Economic, Social and Cultural Rights (accession on 3 May 1994), the International Covenant on Civil and Political Rights and its first Optional Protocol (accession also on 3 May 1994), and the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (accession on 26 October 1994).

³ Georgia's President at the demise of the Soviet Union was Zviad Gamsakhurdia, who was ousted in January 1992 and subsequently fled the country with many members of the then parliament and government. He returned in September 1993, in an abortive attempt to regain power, and armed supporters briefly took control of areas in the west of the country before fleeing or surrendering.

⁴ Amnesty International uses a broad interpretation of the term "political prisoner" so as to cover all cases with a significant political element, for example criminal offences committed with a political motive or within a clear political context. Amnesty International does not call for the release of all political prisoners within this definition, nor does it call on governments to give political prisoners special

up to 14 years amid persistent reports that judicial proceedings were violated from the time of detention up to and during the trial itself. The defendants in *case No. 7493810*, as it was known, were accused of involvement in violent crimes.⁵ They were in pre-trial detention for up to 17 months and on trial for a further 17 months, and throughout the judicial proceedings they reported numerous violations of due legal process. Most defendants reported that they were not informed of the charges against them at the time of their arrest, and all allege that they were tortured or ill-treated during interrogation and that their statements were extracted under duress. Communication with a lawyer was denied to some for a variable time after arrest, in one case for one week, and many interrogation sessions are said to have been carried out without a lawyer being present. Access to lawyers was interrupted during the trial, and on occasions the trial judge excluded both a defendant and his lawyer simultaneously from the court. The trial judge is also said to have denied some defendants access to materials connected with their cases, and in at least one case denied a defence lawyer access to such materials. In some instances defendants were denied free choice of counsel and were forced to accept representation from court-appointed lawyers against their will. None of the statements signed by defendants was excluded from the trial proceedings despite the allegations that they were signed under duress. At the time of writing the two men sentenced to death, *Irakli Dokvadze* and *Petre Gelbakhiani*, remain on death row.

In a more recent but similar case, political prisoner *Badri Zarandia* was sentenced to death by the Georgian Supreme Court on 17 June 1996. A former commander of the western town of Zugdidi when it was controlled by pro-Gamsakhurdia troops, he was arrested on 20 October 1994 and sentenced to death for treason and banditry in connection with the 1993 uprising. His five co-defendants received prison sentences of between 13 and 15 years. All claim that they were ill-treated in order to force a confession (see following section). *Badri Zarandia*, like *Irakli Dokvadze* and *Petre Gelbakhiani*, was sentenced to death by the Supreme Court acting as the court of first instance, and all three men are said to have been sentenced to death without right of appeal.

- ◆ Amnesty International has repeatedly urged the Georgian authorities to conduct a thorough and impartial judicial review of these cases, because of the numerous allegations of procedural violations in addition to the claims that testimony used in the trial was obtained through physical and mental duress.

Torture and Ill-treatment in detention

In the years since Georgia's independence Amnesty International has raised numerous allegations of ill-treatment with the Georgian authorities. The majority of such reports relate to the period of pre-trial detention, when detainees have described physical and mental pressure on them to sign confessions (for a more detailed examination of the issue of torture and ill-treatment please see the recent Amnesty International document *Georgia: Torture and ill-treatment - Comments on the Initial Report submitted to the United Nations Committee against Torture*, AI Index EUR 56/05/96).

conditions. Governments are, however, obliged to ensure they receive a fair trial in line with international standards, and Amnesty International opposes the use of torture and the death penalty in all cases - both criminal and political - without reservation.

⁵For more information on this case please see the Amnesty International report *Republic of Georgia: Death penalty, torture and fair trial concerns in case 7493810*, AI Index: EUR 56/04/95.

Amnesty International's approaches on this subject have largely been without any substantive response, although in recent months the authorities have admitted publicly that torture continues in detention and that those responsible frequently go unpunished. Georgia's Initial Report⁶ to the United Nations Committee against Torture, the body of international experts set up to monitor the compliance of States Parties to the Convention against Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture), states in Point 27:

"The authorities and competent bodies of Georgia are seriously concerned about the fact that instances of torture continue in places of pre-trial detention and places where sentences are served. Law enforcement agencies do not always ensure the efficient and impartial investigation of information received about facts of the use of torture and other degrading actions, as a result of which those guilty frequently remain unpunished."

One of the main reasons for this, according to the report, is the non-observance of the law regulating contact between lawyers and their detained clients. This has created a system of permits and permissions for access not stipulated by law, leading to grave violations of the rights of detainees and hampering the work of defence lawyers⁷. The situation is aggravated by the fact that personnel of the penitentiary system are in practice not acquainted with international standards such as the United Nations Standard Minimum Rules on the Treatment of Prisoners, and other documents such as the Convention against Torture have not been translated into Georgian⁸.

Among the reports of torture raised by Amnesty International have been those of the defendants in case No. 7493810 described above, who alleged that they were beaten following arrest and during interrogation. Testimony from a number of the defendants described a recurring pattern. Typically, they were arrested by armed men in civilian clothing who did not produce arrest warrants. They were beaten on the spot, on the way to the militia station and on arrival. The beatings continued during interrogation. Questions were asked about the defendants' relationship with former President Gamsakhurdia. Further ill-treatment and intimidation followed until the defendant signed a deposition. The forms of torture described by defendants included hanging upside down, scalding with hot water, and systematic beatings resulting in fractured bones and broken teeth. Threats that their family members would be tortured or murdered were also used against the defendants.

Amnesty International knows of only three instances in which investigations were undertaken into the numerous allegations of beatings by defendants. In one a prisoner is said to have been convicted of an attack on *Gedevan Gelbakhiani*⁹, and a prison officer dismissed. With regard

⁶ United Nations Index: CAT/C/28/Add.1, 17 June 1996. Quotations translated from the original Russian.

⁷ Ibid, point 28.

⁸ Ibid, points 30 and 31.

⁹ Unofficial sources alleged that the authorities had incited other inmates to torture the defendants in this case. In a statement sent to Amnesty International in October 1994 Georgian authorities confirmed that a prisoner (whom they identified) had attacked Gedevan Gelbakhiani, but claimed that the reason for

to claims that *Zaza Tsiklauri*¹⁰ was tortured, these were not upheld in court although the state Committee on Human Rights and Interethnic Relations, which looked into the allegations, felt that there were serious grounds to suppose that the ill-treatment had indeed taken place. An investigation is also said to have been initiated into reports that *Viktor Domukhovsky* was beaten by special police officers in his cell on 13 August 1994 after he refused to hand over notes he had made relating to the trial, but Amnesty International is not aware of any conclusions made public.

In the more recent case outlined in the previous section, *Badri Zarandia* claims he was beaten with rifle butts while he was recovering from an operation to amputate his leg (as a result of a wound sustained during his arrest in October 1994), and that he confessed to a charge of murder after threats were made against his close relatives. His co-defendants allege similar treatment. *Murtaz Gulua* reports that he was ill-treated eight days after his arrest on 21 September 1995: he was first beaten with sticks and then, when he refused to confess, he was hung by his legs and had a gas mask placed over his face while the beating continued. The air supply to the mask was turned off at intervals. When he asked for something to drink, he says, water was poured into the mask. Murtaz Gulua says that such treatment continued for three days, after which he could stand no more and signed testimony which had been prepared for him in advance. *Gabriel Bendeliani* alleges that two people (whom he names) tore some of his fingernails out with pliers, and that he was regularly beaten after he had confessed by other officers in Zugdidi prison. *Zviad Sherozia* claims that he was hung by the feet and beaten, including being kicked in the abdomen, and that a man whom he named forced a grenade into his mouth and threatened to remove the safety pin. Zviad Sherozia says that all the testimony he subsequently signed was false. *Gurgen Malania* reports that he was arrested on 9 September 1994 in the village of Odishsi and that, although he had not resisted arrest, he was beaten while being taken by car to Zugdidi police department. Once there he was taken to the second floor where, he alleges, he was beaten with rifle butts, truncheons and chair legs. He was then taken downstairs, where he was hung by his feet, had a gas mask placed over his face, and was beaten again. Gurgen Malania also says that he was beaten along the length of his body while tied to a long pole fixed between a table and a chair, and had needles inserted under his nails.

Such allegations of ill-treatment have tended to appear in greater detail in political cases, although they have been made in criminal cases also. One of the most recent was reportedly raised by an official of the Prosecutor-General's office, Tenghiz Makharadze, who is said to have claimed on 3 August 1996 that police officers have frequently tortured detainees and that in at least one instance two men were subjected to electric shock treatment¹¹. The case reportedly mentioned by him was that of a father and son named Banturi, who were said to have been subjected to this treatment in the

the attack was Gedevan Gelbakhiani's refusal to help this prisoner with an appeal. Co-defendant Zaza Tsiklauri also named this prisoner as having been among the people who tortured him.

¹⁰Soon after his arrest Zaza Tsiklauri was hospitalized after sustaining fractures to the left leg and left arm and extensive burns from boiling water inflicted during interrogation. Some Georgian authorities claimed that the documented injuries were sustained when Zaza Tsiklauri jumped from a moving car to avoid arrest, but the then head of the Georgian security service stated that Zaza Tsiklauri had been tortured.

¹¹ BGI News Agency, 3 August 1996. Tenghiz Makharadze, head of the Department of Supervision over Investigations by the Interior Ministry, is also said to have reported that Georgian police frequently concealed crimes and conducted illegal searches.

city of Kutaisi (no date or other circumstances were given in the reports received by Amnesty International).

A separate report on 7 August 1996¹² described the beginning of a court case in Tbilisi, the capital, against a group of police officers charged among other things with the torture of suspects by using electric shocks. Gela Kavtelishvili, a former deputy chief of the Tbilisi police department for combatting drug addiction and drug trafficking, stood accused together with four other police officers from his department of, among other things, using electric shocks on suspects while investigating the murder of a man named as Lia Chovelidze-Tsamalashvili. A witness named Jumber Khidasheli told the court on 7 August that he had been insulted, beaten and tortured by the use of electric shocks in an effort to force him to confess to the killing.

◆ Torture and ill-treatment of persons under any circumstances are expressly prohibited both under international agreements to which Georgia is party, such as the United Nations Convention against Torture, and by the Georgian Criminal Code and Constitution¹³. Amnesty International recognises the problems that may exist within the prison system, for example those caused by lack of funding for professional staff, training and infrastructure, but these problems can never be used as an excuse for torture and deliberate ill-treatment. We believe that it is clearly within the power of the Georgian authorities to take immediate measures to eliminate these illegal practices within its prison system. Amnesty International welcomes the recent statements by Tenghiz Makharadze, if correct, admitting the seriousness of the problem in Georgia regarding torture and ill-treatment. We sincerely hope that these statements and the recent opening of prosecutions against police officers accused of torturing detainees will be the beginning of rapid and concrete measures to end the illegal treatment of persons in detention. Amnesty International is recommending that the authorities as a matter of priority:

- inform all detainees of their rights, including the right to complain to the authorities about ill-treatment;
- implement prompt and impartial investigations of all complaints of torture or ill-treatment of detainees, as well as when there are reasonable grounds to believe that torture or ill-treatment has occurred even if no complaint has been made;
- bring those responsible for torture or ill-treatment to justice in the courts;
- ensure that every victim of torture has access to the means of obtaining redress and an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible;
- ensure that information regarding the absolute prohibition against the use of torture and ill-treatment is fully included in the training of law enforcement personnel and other persons who may be

¹² BGI News Agency, 7 August 1996 and 3 September 1996.

¹³ Article 17 (2) of the Georgian Constitution, for example, states that: "Torture of a person is forbidden, as well as treatment or punishment which is inhuman, cruel or degrading a person's honour and dignity". Article 18 (4) proclaims: "Physical and mental coercion of a person detained or otherwise restricted in his freedom is not allowed".

involved in the custody, interrogation and treatment of any individual subjected to any form of arrest, detention or imprisonment;

- establish an effective system of independent inspection of all place of detention.

Amnesty International has also raised with the Georgian authorities its concerns about several reports that prisoners have been denied appropriate medical treatment. Political prisoner **Irakli Surguladze**, for example, is reported to have suffered a heart attack while in detention, but claims that he has been denied the possibility of a transfer to hospital¹⁴. According to Irakli Surguladze, he had an attack of pain in his chest and left hand on 17 May 1996 at around 6pm, lasting for 18 hours, in investigation-isolation prison No. 1 in the capital, Tbilisi, where he is detained. The prison doctor visited him three times, but was said not to have available any means of treatment. The following day the prison director paid a private external service, ARDI, to take a cardiogram. They did so again on 19 and 22 May, and recommended that Irakli Surguladze be taken to hospital. This did not happen, however, and on 23 May he was taken to a session of the trial at Didube district court where he fainted.

Irakli Surguladze reports that as a result he was diagnosed as suffering from arterial hypertension and a subendocardial infarction, but was still not taken to hospital. The deputy head of the Interior Ministry administration of prison services is said to have confirmed that Irakli Surguladze suffered a heart attack, but has insisted that any treatment can be conducted within the prison. Irakli Surguladze wishes to be transferred to a hospital, rather than the medical department within the prison, as he believes the latter lacks the necessary facilities.

- ◆ Amnesty International is concerned that Irakli Surguladze may not be receiving the medical care said to be necessary and appropriate to his state of health, and believes that a refusal to grant him such treatment would constitute cruel, inhuman or degrading treatment or punishment, and violate Article 22 (2) of the United Nations Standard Minimum Rules for the Treatment of Prisoners. This states *inter alia* that "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals". Amnesty International has urged that Irakli Surguladze be transferred to a hospital or other relevant institution where he may be afforded specialist treatment.

Concerns about persistent allegations of ill-treatment in detention in Georgia prompted Amnesty International to oppose the repatriation of **Elguzhda Meskhia**, a political opponent of the current government who had been seeking asylum in Russia. He had been detained on 25 December 1995 in Moscow, on the basis of a warrant for his arrest issued by the procurator of the town of Tsalendzhikha in Georgia¹⁵, and was forcibly returned to Georgia on 19 March 1996.

¹⁴ Irakli Surguladze was arrested on 13 January 1995 together with former Defence Minister Tengiz Kitovani, and both have been charged with creating an illegal armed formation in connection with the activities of the opposition National Liberation Front (now disbanded). The trial began on 25 December 1995.

¹⁵ Under this warrant the charge was given as participation in an anti-state organization aimed at overthrowing the constitutional order of Georgia, a crime under Article 73-1 of the Georgian Criminal Code.

- ◆ While Amnesty International does not oppose the right of states to extradite known or suspected criminals, it was concerned that Elguzhda Meskhia might fall victim to torture or ill-treatment in Georgia, bearing in mind many allegations such as those outlined above in relation to detained opposition supporters. Amnesty International asked the Georgian authorities for further information on Elguzhda Meskhia following his return, including whether he had access to appropriate medical care and whether he has been able to consult a defence lawyer of his own choice.

The Death Penalty

In 1991 Georgia became the first republic in the former USSR to take concrete measures to abolish the death penalty when, on 20 March that year, parliament removed this possible punishment from four economic offences in the criminal code¹⁶. The death penalty was abolished for a further two offences several months later, and in 1992 a moratorium was declared on executions pending discussion of a new criminal code. In August 1993 the death penalty was abolished for 14 military crimes.

However, to Amnesty International's regret, these welcome moves have gradually been reversed. Two new offences carrying a possible death penalty¹⁷ were introduced into the criminal code in 1993, and in November that year nine people were reportedly shot dead for looting in the western city of Zugdidi five days after head of state Eduard Shevardnadze had issued a decree authorizing, on a temporary basis, measures up to and including summary execution for cases of banditry and looting in areas of combat activity¹⁸.

The two-year moratorium on executions was lifted in March 1994, and at least 16 men have been executed since then¹⁹. In at least one case the execution took place only six months after the sentence had been passed²⁰. In others the sentences have been passed by the Supreme Court of Georgia acting as a court of first instance, with the official verdict said to record that the sentence is final and not subject to appeal. The court's verdict in the case of Badri Zarandia described above, for example, is said to state that the verdict is final and not subject to an appeal by cassation (which can be

¹⁶ For more detailed background on the use of the death penalty in Georgia please see the Amnesty International documents *Georgia: The death penalty - an update* (AI Index: EUR 56/01/94) and *Georgia: Death penalty, torture and fair trial concerns in case 7493810* (AI Index: EUR 56/04/95).

¹⁷ These are "mercenary actions in an armed conflict, or in military operations" (Article 65-I) and "genocide" (Article 66-I).

¹⁸ Several states of emergency were in force in Georgia during 1993. In September Abkhazian forces had taken control over much of the disputed region and a brief civil war involving Georgians fighting Georgians ensued following the return of former president Zviad Gamsakhurdia. The nine men shot dead in Zugdidi were reported to be two supporters of Zviad Gamsakhurdia and seven local inhabitants.

¹⁹ Amnesty International has repeatedly requested, but not received, further detailed information on the application of the death penalty since statistics from 1991 to the middle of 1994 were supplied to the organization by the State Committee on Human Rights and Interethnic Relations.

²⁰ Suliko Chikhladze was executed on 15 August 1994, six months after he had been sentenced to death by the Supreme Court.

lodged by the defendant against sentence or conviction) or by a judicial protest (which can be lodged by competent legal bodies against the decision of a court)²¹. Amnesty International understands that in such cases the sentence can be reviewed by a body within the Supreme Court, although it is not clear to what extent this is automatic or what opportunities the convicted person has, if any, to present his or her case during such a review. It is also believed that all death sentences are reviewed by the Presidential Clemency Commission, which looks at possible mitigating factors but has no power to review the actual conduct of the case.

Among those currently on death row are the three political prisoners whose cases were outlined above: Irakli Dokvadze and Petre Gelbakhiani, sentenced to death in case No. 7493810 on 6 March 1995, and Badri Zarandia, who was sentenced to death in case No. 5394853 on 17 June 1996.

According to unofficial sources there are currently some 35 prisoners on death row in Georgia²². The head of the Georgian Orthodox Church, Patriarch Ilya II, is among those who have appealed for the sentences to be commuted. At the time of his appeal, 18 April 1996, there were said to be 33 prisoners awaiting execution²³.

◆ Amnesty International opposes the death penalty in all cases, criminal and political, and without reservation, on the grounds that it is a violation of the right to life and constitutes the ultimate cruel, inhuman and degrading punishment. No matter what the reason a government gives for killing prisoners and what method of execution is used, the death penalty cannot be divorced from the issue of human rights. Many governments recognize that the death penalty cannot be reconciled with respect for human rights, and the majority of countries in the world have now abolished this punishment in law or practice. A factor in such a decision for many has been that scientific studies have consistently failed to find convincing evidence that the death penalty deters crime more effectively than any other punishments. Amnesty International also maintains that the wrong message is given when a government itself violates human rights in the process of seeking to enforce law and order. Executing people to punish serious violent crime only serves to perpetuate a cycle of violence. In practice the death penalty is an arbitrary punishment. It is irrevocable and always carries the risk that the innocent may be put to death. The irrevocable punishment of death removes not only the victim's right to seek legal redress, but also the state's capacity to correct its errors. Therefore, Amnesty International is calling on the Georgian authorities to do the following:

- Commute all pending death sentences;
- Declare an immediate moratorium on further death sentences and executions pending a comprehensive review of the death penalty in Georgia;

²¹ Human Rights Information Bulletin No. 9, 8 July 1996, produced by the Moscow-based organization "Anti-Fascist Youth Action. They have also alleged that Badri Zarandia had not, as of July, been given a copy of the verdict in his case (under Georgian law this records not only whether a defendant was guilty or not, but also provides the court's detailed reasoning for arriving at the verdict).

²² A list of 35 names was published by unofficial sources around the middle of 1996, detailing also dates of birth of those sentenced and the articles of the criminal code under which they were convicted.

²³ Georgia Profile, April 1996.

- If not yet ready to do the above, at least ensure that all legal proceedings in which a death penalty could be imposed conform to international minimum standards, including ensuring as a priority the right to appeal to a court of higher jurisdiction²⁴;
- Publish comprehensive statistics for the application of the death penalty, in accordance with Georgia's commitments as a member of the Organization for Security and Co-operation in Europe (OSCE) and other international recommendations²⁵.

Moves to tighten control over human rights abuses

Several moves have been taken recently in an attempt to increase oversight of, and accountability for, human rights abuses by officials. On 16 May 1996 President Eduard Shevardnadze signed into law a bill on the Public Defender, a new post instituted under the Constitution adopted last year to monitor the defence of individual rights and freedoms²⁶. According to the law the Public Defender is independent and subordinate only to the Constitution and the law, with interference in his or her work punishable by law. The Public Defender is charged with supervising the observance of human rights in Georgia, making known violations of these rights, and furthering the restoration of violated rights. To this end the Public Defender is entitled, among other things, to unhindered access, including to military areas and all places of detention; to demand any necessary material and receive an explanation from officials at any level; and to recommend institution of criminal or other disciplinary procedures. At the time of writing, however, parliament had not yet appointed anyone to the post.

Under the new Constitution the Procuracy (Prosecutor's Office) of Georgia is responsible for exercising supervision over criminal investigations²⁷. In a move prompted, according to reports, by the numerous reports of illegal detentions and searches and the ill-treatment of detainees, it was announced on 13 August²⁸ that the Prosecutor's Office had created a special department to monitor the observance of human rights by law enforcement officials. Contact telephone numbers for the new department were published, with calls for the public to use them for reporting alleged abuses.

A training program for law enforcement officials is also ongoing under the auspices of the OSCE²⁹. The second phase of a four-part training course for Georgian prison officers concluded on 26 April this year, with the return from Poland of a delegation, led by the General Director of the

²⁴ See for example those standards set forth in the International Covenant on Civil and Political Rights, the UN Economic and Social Council (ECOSOC) Safeguards guaranteeing protection of the rights of those facing the death penalty, annexed to Resolution 1984/50 of 25 May 1984, and ECOSOC Resolution 1989/64 of 24 May implementing those Safeguards.

²⁵ See for example ECOSOC Resolution 1989/64 and the requirements of the five-yearly studies on the use of the death penalty by the ECOSOC Commission on Crime Prevention and Criminal Justice.

²⁶ Article 43 of the Constitution.

²⁷ Article 91 of the Constitution

²⁸ Sarke Information Agency, 14 August 1996

²⁹ The OSCE has a long-term mission based in Georgia, charged among other things with "assisting the development of legal and democratic institutions and processes in Georgia".

Georgian Prison Service. There the delegates had worked alongside their counterparts in four Polish prisons, with the aim of exposing Georgian officials to realistic and attainable prison reform goals and illustrating that improvements in prison services can be made without new facilities or special funding.

The third phase of the program will involve follow-up visits to Georgian penal institutions and a locally-developed training initiative³⁰.

◆ Amnesty International welcomes the adoption of a law on the Public Defender, but emphasises that such a mechanism can never replace, nor should it diminish, the safeguards inherent in comprehensive and effective legal structures enforced by an independent, impartial, adequately resourced and accessible judiciary. Amnesty welcomes also the other moves outlined above, and hopes that all will play a constructive role in the monitoring, observance and safeguarding of human rights in Georgia. We also hope that parliament will move swiftly to place someone in the vacant post of Public Defender, so that the constitutional provisions for supervising the protection of human rights may be implemented without delay.

Amnesty International's concerns in Abkhazia

Tensions over the disputed region of Abkhazia, situated in the north-west of the country, came to a head in August 1992 after Georgian troops entered the territory, taking the regional capital of Sukhumi and precipitating fierce fighting. In September the following year Abkhazian troops broke a July cease-fire, taking Sukhumi and, swiftly, almost all the remaining territory. Both sides were said to have committed atrocities during the conflict³¹, in which an estimated 10,000 people are said to have died and which also displaced some 250,000 people (mainly ethnic Georgians).

Following a cease-fire brokered by Russia it was agreed in May 1994 to deploy 1,500 peacekeepers under the auspices of the Commonwealth of Independent States. The numbers of those present, mostly Russian troops, is now set to rise to around 3,000³². In addition there has been a small United Nations Observer Mission (known as UNOMIG), currently numbering some 130 personnel, in Abkhazia since 1993³³.

Amnesty International acknowledges the extreme political and economic dislocation which has resulted from the conflict in Abkhazia, and the inevitable effect this has had on the situation with regard to law and order. The security situation has made information gathering by independent sources extremely difficult, and many reports from the area need to be treated with great caution. Nevertheless Amnesty International had monitored a number of alleged human rights violations which, it believes, currently lie within the ability of the Abkhaz authorities to address. Among Amnesty International's continuing concerns in the region are attacks on civilians, including alleged

³⁰ OSCE ODIHR Bulletin Vol. 4, No. 3

³¹ See for example the Amnesty International document *Georgia: Alleged human rights violations during the conflict in Abkhazia* (AI Index: EUR 56/07/93) and *Amnesty International Concerns in Europe: May-October 1993* (AI Index: EUR 01/01/94).

³² Omri Analytical Brief No. 282, 14 August 1996

³³ UNOMIG was established on 24 August 1993 under Resolution 858 of the United Nations Security Council.

deliberate and arbitrary killings; alleged arbitrary detentions; obstacles placed in the way of displaced persons wishing to return to their pre-war homes; and the death penalty. Amnesty International addresses the Abkhazians with these concerns in their capacity of *de facto* controllers of the region, and not as a recognition of any territorial status *de jure*. Subsequent references to Abkhazian authorities refer to those in the self-proclaimed Abkhazian Republic, and not to those members of the pre-war Abkhazian legislature who have set up a temporary parliament-in-exile in the Georgian capital of Tbilisi.

Attacks on civilians, including alleged deliberate and arbitrary killings

The situation in some parts of Abkhazia remains tense, and security poor, especially in the southern district of Gali which had a large pre-war population of ethnic Georgians. Some displaced people have returned to their homes, but have often faced an uncertain future and, according to some reports, deliberate targeting by Abkhazian militia forces. In the first three months of 1995, for example, these forces were said to have been responsible for the torture and murder of at least 13 ethnic Georgians. In late January that year three members of the same family were reported to have been deliberately and arbitrarily killed by Abkhazian police based in Tagiloni, Gali district, in what was said to be a revenge attack after several of their men had been killed by unknown assailants. Neighbours are said to have discovered the bodies of Ivan Antilava, his wife and son-in-law (names not known) after seeing police enter, and then leave, the family home. All died from gunshot wounds.

Fears for the safety of ethnic Georgians were heightened after reports that at least 10 were killed and dozens of others tortured or ill-treated when Abkhazian militia swept through the Gali district from 11 to 16 March 1995. A spokesman for the United Nations High Commissioner for Refugees (UNHCR) reported that UN doctors had seen at least 10 bodies, most of which bore signs of torture including pulled fingernails, bad burns and wounds apparently caused by red-hot bayonets and knives. UN doctors had also treated at least 35 people who had suffered similar types of torture or who had been severely beaten. The attacks took place as some 400 to 600 militiamen participated in what was described by the Abkhazian authorities as an operation to register Georgian displaced people and locate "partisans" who had infiltrated the territory with them.

Civilians of various ethnic origins have fallen victim to so-called partisan activity with both the Georgian and Abkhazian sides alleging that the other sponsors, or at least tolerates, the activity of armed gangs said to be responsible for numerous acts of robbery, looting and murder against the civilian population. For example both sides accused the other of responsibility for the murder of eight ethnic Georgians in Shesheleti, Gali District, in January this year. According to reports, the incident occurred at around 1pm on 5 January when three unidentified armed men are said to have burst into the home of Iona Sanaya and tortured to death six members of the family living there. The dead were a husband and wife and four others, said to include children and grandchildren. The family were said to have recently returned to their home in the Gali region, having previously fled the hostilities there. Two other people are also said to have died in the incident - neighbours named as Mimoza Sanaya and Vakhtang Khurtsilava - who were reportedly shot dead by machine-gun fire as they went to the aid of the Sanaya family.

- ◆ Amnesty International has urged the Abkhazian authorities to carry out immediate, comprehensive and impartial investigations into all such reports of killings, torture and other ill-treatment, to make the results public, and to bring any persons found responsible to justice within the

bounds of international law. We have also urged that all appropriate steps be taken to ensure the security of all residents, regardless of ethnic origin.

Alleged arbitrary detentions

Amnesty International is also seeking further information on the situation of a number of ethnic Georgians detained, it is alleged, arbitrarily by Abkhazian police forces. In one instance a group of Georgians was detained on 15 June 1996 while travelling on a bus in Abkhazia. The bus was reportedly travelling from the Zugdidi district to the Gali district when it was stopped in the village of Zemo Barghebi, Gali district, by officials from the Okumi village branch of the District Department of Internal Affairs. Three automatic weapons, a grenade and a knife were said to have been found on board the bus. All passengers, said to number at least 17 and including women and children, were taken to the District Department of Internal Affairs in Ochamchire.

The women and children are said to have been released the same day, followed on 16 June by several others of those initially held. Ten passengers are said still to be detained, however. All are said to be ethnic Georgian males who had previously resided in Abkhazia. According to press reports from Abkhazia³⁴ they are accused of being members of a bandit group allegedly formed to carry out terrorist acts in the Gali District and elsewhere in Abkhazia; three are also accused of fighting on the Georgian side during the armed conflict prior to September 1994. The 10 are said to be held at present in the investigation-isolation prison in Ochamchire, and their names have been given by a Georgian news agency as Paata Zukhbaya, Gela Nadaraya, Zhora Lukava, Manuchar Nadaraya, Robert Sordia, Tamaz Kvekveskiri, Tamaz Zakaraya, Demur Kavshbaya, Lasha Kardava and Pridon Basaria³⁵. Georgian press reports³⁶ had linked the detentions with the forthcoming trial in Georgia of two Abkhazian brothers named Nugzar and Zurab Pachulia, suggesting that the bus passengers were being held as hostages to influence the outcome of criminal proceedings. The brothers' trial, originally set for 19 June in Zugdidi, went ahead after a postponement. The two were eventually sentenced to 14 and 15 years' imprisonment respectively, charged with treason and banditry during the armed conflict. In a related incident two journalists, a Briton and a Georgian, were detained in Sukhumi on 2 July by the head of the Abkhaz Security Service, Astamar Tarba, who reportedly stated that he wanted to exchange them for the Pachulia brothers³⁷. The two men were released shortly afterwards, the same day.

In a second instance, a number of ethnic Georgians are said to have been detained in villages of the Gali district on or around 21 August 1996. One report stated that on that date Abkhazian police detained 27 ethnic Georgians in the village of Otobaya³⁸. Russian peacekeeping forces halted the police officers with the detainees at a check-point near the village of Zemo Barghebi, and after talks three elderly Georgians were released. The remaining detainees were taken to a prison in the

³⁴ Republic of Abkhazia radio broadcast of 18 June 1996, as monitored by the BBC.

³⁵ Sarke Information Agency, 2 July 1996.

³⁶ See for example Iberia News Agency, 22 June 1996.

³⁷ BGI News Agency and ITAR-TASS News Agency, both of 3 July 1996.

³⁸ Sarke Information Agency, 22 August 1996.

town of Gali. Another report speaks of 20 ethnic Georgians detained in the village of Dikhazurgia, accused of laying a mine which exploded under a vehicle driven by Russian peacekeeping forces³⁹. Thirteen were reportedly released after a ransom was paid, and the rest taken to a prison in the town of Gali. Those held in these two incidents were said to have been eventually released in stages, with the last remaining men set free on 9 September⁴⁰.

◆ Amnesty International has requested to be informed of the exact charge or charges against any of those mentioned above who are still detained, along with details on their state of health and conditions of detention, and if they have access to their family and a defence lawyer of their own choice in line with international standards.

Obstacles to displaced people seeking to return home

An estimated 35, 000 ethnic Georgians have returned to their homes in the Gali district, mostly spontaneously, although the exact number is disputed. Many others seeking to return, however, have been deterred from doing so by the security situation or by Abkhazian bureaucracy. Many remain, in very difficult economic circumstances, in areas of western Georgia adjoining Abkhazia.

Moves to facilitate the return of these displaced people have figured prominently in talks on resolving the conflict. A Quadripartite Agreement (between Georgia, Abkhazia, Russia and the UN) on the voluntary return of displaced people was signed in Moscow on 4 April 1994, and set out the right of such people to return to their homes in secure conditions. Officials of the United Nations High Commissioner for Refugees (UNHCR) have been involved in setting up a registration system and monitoring the return of people, but have had markedly little success in returning people through registration. By the end of that year, for example, only 311 displaced persons had been returned to Abkhazia under the auspices of the UNHCR⁴¹.

Under the registration system people wishing to return must fill in a form which is submitted to the UNHCR, and then forwarded to the Abkhazian authorities who are supposed to review the application within a set period of time (initially four weeks, reduced to two). In spite of agreements, however, the process has been considerably slowed by Abkhazian bureaucratic moves. The criteria for return set by the Abkhaz have been described as "arbitrary, discriminatory and highly restrictive", with "byzantine stipulations" for filling out the forms correctly⁴². As a consequence, significant numbers of those who have returned to Abkhazia appear to have done so spontaneously, outside of the registration system.

The vast majority of those displaced, however, continue to await the full implementation of agreements which would allow them to return home. Such an implementation is linked inevitably with a political settlement to the dispute, which has long been deadlocked, but has been obstructed in the meantime by the Abkhazian authorities. The UN has increasingly expressed its frustration at the

³⁹ Sakinform News Agency, 21 August 1996.

⁴⁰ BGI News Agency, 9 September 1996.

⁴¹ *The Commonwealth of Independent States: Refugees and Internally displaced persons in Armenia, Azerbaijan, Georgia, the Russian Federation and Tajikistan*, Human Rights Watch/Helsinki, May 1996.

⁴² Ibid.

Abkhaz position. In Resolution 933 (1995)⁴³, for example, the UN Security Council deplored the continuing obstruction of such return by the Abkhaz authorities, and in point six “[reiterated] its call to the Abkhaz side to accelerate significantly the process of the voluntary return of refugees and displaced persons by accepting a timetable on the basis of that proposed by the Office of the United Nations High Commissioner for Refugees, and to guarantee the safety of spontaneous returnees already in the area and regularize their status in accordance with the Quadripartite Agreement”. Three months later the Secretary-General of the UN emphasized the high levels of frustration and distress among those denied the possibility of return⁴⁴. Little had changed almost a year later. In July 1996⁴⁵ the Security Council noted with deep concern the failure of the parties to resolve their differences on a political settlement “due to the uncompromising position taken by the Abkhaz side”, and again condemned the continued obstruction by the Abkhaz side of the voluntary return of refugees and displaced persons. The Security Council further stressed “the unacceptability of any linkage of the return of refugees and displaced persons with the question of the political status of Abkhazia”.

◆ Amnesty International is concerned that the ethnic Georgian population of Abkhazia fled virtually en masse before advancing troops under Abkhaz control in 1993 as they feared reprisals solely on ethnic grounds (and atrocities were subsequently reported⁴⁶), and that their return appears to be hindered on the grounds of their ethnicity and suspected political sympathies rather than on bona fide security or public order grounds. Amnesty International is therefore urging the Abkhazian authorities to take all appropriate and timely measures to ensure the voluntary return of refugees and displaced persons, under conditions in which their safety, and that of those who have already spontaneously returned, will be guaranteed.

The death penalty

Abkhazia retains the death penalty, imposing it in accordance with the Soviet-era criminal code still in use there as it is, with various modifications, in Georgia as whole. During a visit to London in 1994 the Prosecutor of Abkhazia told Amnesty International that five or six people were under sentence of death in Abkhazia at that time, all convicted of murder. The hostilities had meant the demise of the previous system, whereby appeals and petitions for clemency were heard by Georgian bodies of higher instance, and at that time there was no specific, separate body in Abkhazia to hear petitions for clemency.

⁴³ UN Security Council index: S/RES/993 (1995), 12 May 1995.

⁴⁴ *Report of the Secretary-General concerning the situation in Abkhazia, Georgia*, UN Security Council Document ref. S/1995/657, dated 7 August 1995.

⁴⁵ Resolution 1065 (1996), adopted by the Security Council on 12 July 1996, document index: S/Res/1065 (1996).

⁴⁶ See for example *Amnesty International Report 1994*.

Communications problems with Abkhazia have made it difficult to obtain current information on the application of the death penalty there, although at least one death sentence has been reported since 1994. In another case the prosecutor is said to have called for the death penalty for three men.

The confirmed death sentence was passed on 5 December 1995⁴⁷ on a Georgian citizen named Ruzgen Gogokhiya. Lt.-Col. Ruzgen Gogokhiya (born in 1953 and from the Salindzhitsky district of Georgia) had been detained in Abkhazia in May 1994, in connection with alleged acts of terrorism and sabotage committed in the Gali district. He was charged with "violating national and racial equality" (Article 75 of the Criminal Code of the Republic of Abkhazia), "abuse of authority in wartime" (Article 278), "violence against the civilian population in a region of military operations" (Article 285) and robbery (article not known). Among other things he was accused of personally taking part in the murder of the Pagava family from Ochamchire: parents Rudik and Valya Pagava together with their young daughters Zhanna and Teya, and a neighbour named Leonid Avilov.

The case was heard, and the sentence passed, by a military tribunal. According to the Abkhazian Prosecutor General Ruzgen Gogokhiya had the services of a lawyer throughout the trial, has lodged an appeal to be heard by the Supreme Court of Abkhazia, and in addition has the right to petition for clemency. The procedure for such petitions was not elaborated, however.

Since then three further death sentences may have been passed. According to a press report⁴⁸ the Abkhazian prosecutor had called for the death penalty to be passed on three Abkhazians accused of murder in a trial that began in Sukhumi on 30 April. The three men (named only as Tarba, Tania and Ketsba) are said to have been accused of murdering five people in a shooting spree on Peace Avenue in Sukhumi at the end of January, killing the owner of a Turkish cafe who refused to serve them free of charge, and four passers-by.

◆ Amnesty International has urged the *de facto* Abkhazian authorities to commute the death sentence passed on Ruzgen Gogokhiya, and on any other persons awaiting execution. While Amnesty International welcomes attempts to bring to justice alleged perpetrators of human rights violation, as outlined earlier the organization opposes the use of the death penalty in all cases on the grounds that it is a violation of the right to life. Amnesty International has also sought assurances that all those sentenced to death are afforded the right to appeal to a court of higher jurisdiction, and the right to seek pardon or commutation of the sentence, in accordance with internationally-agreed human rights standards. Amnesty International has asked in addition for details on the number of offences currently carrying a possible death sentence in Abkhazia, and for statistical information on the application of the death penalty in Abkhazia in recent years.

⁴⁷ Information supplied to Amnesty International by the Chairperson of the Abkhaz Parliamentary Commission on Human Rights, quoting the Prosecutor General of Abkhazia, in a letter dated 3 May 1996.

⁴⁸ BGI News Agency, 4 May 1996.