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# Georgia

## Briefing to the Committee against Torture

### Introduction

In May 2006 the Committee against Torture is scheduled to examine Georgia's third periodic report on the implementation of its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). This briefing summarizes Amnesty International's concerns with regards to Articles 1, 2, 3, 10, 11, 12, 13, 14 and 15 of the Convention against Torture. Each chapter concludes with a list of relevant recommendations which Amnesty International has made to the Georgian authorities.

In November 2005 Amnesty International issued a report *Georgia: Torture and ill-treatment -- Still a concern after the "Rose Revolution"* (AI Index: EUR 56/001/2005) based on three fact-finding missions to Georgia in March 2004, from March to June 2005 and in October 2005. The report focuses on torture or other ill-treatment by police.<sup>1</sup> This briefing summarizes and updates the report. For more in-depth information and further illustrative examples of the issues raised in this briefing, please refer to the above-mentioned report.

Torture or other ill-treatment in Georgia has been an issue of serious concern of the international community and the human rights community, including Amnesty International, since the country became independent in 1991.

The current government that came to power following the "Rose Revolution" in November 2003 inherited a system in which torture or other ill-treatment was widespread and perpetrators routinely went unpunished. The situation deteriorated in the months after the change of government.

Since the second half of 2004, however, senior government officials have, on several occasions, publicly acknowledged the problem and expressed their commitment to eradicate torture or other ill-treatment. The fight against torture or other ill-treatment was named as one of the key issues on the new government's human rights agenda and the authorities have introduced or implemented a number of measures to address the issue. These have included introducing amendments to law; extensive monitoring activities of detention facilities under the jurisdiction of the Ministry of Internal Affairs in particular by the office of the Public

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<sup>1</sup> Since December 2005 there have been numerous reports alleging abuse of prisoners in detention facilities under the Ministry of Justice. Amnesty International had not received such allegations for several years. While the authorities generally stated special forces used proportionate force to put down a series of prison riots, several non-governmental organizations alleged that special forces used excessive force and that some prisoners were tortured or ill-treated. While Amnesty International is concerned about these recent developments this briefing focuses on the longstanding issue of torture or other ill-treatment by police immediately following the arrest as well as in detention facilities under the jurisdiction of the Interior Ministry.

Defender of Georgia (Ombudsman); at least 12 perpetrators of crimes amounting to torture or other ill-treatment serving prison terms handed down since the “Rose Revolution”; recognizing the competence of the Committee against Torture to consider individual complaints and the making of a Declaration under Article 21 of the Convention against Torture; and the accession of Georgia to the Optional Protocol to the UN Convention against Torture (OPCAT) in August 2005.<sup>2</sup>

However, notwithstanding these positive developments, Amnesty International has continued to receive reports about torture or other ill-treatment in Georgia. Likewise, in his September 2005 report following his mission to Georgia in February 2005 Manfred Nowak, the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment (Special Rapporteur on torture), concluded that “*torture persists in Georgia, perpetuated primarily by a culture of impunity*”.<sup>3</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 also continued to receive information about some cases in which detainees were reportedly tortured or otherwise 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 his 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.

According to reports received by Amnesty International since the “Rose Revolution”, the methods used to torture or ill-treat detainees include electric shocks; putting plastic bags over the head of a detainee; suspending a detainee from a pole between two tables; burning people with cigarettes and candles; 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; gagging the detainee with a piece of cloth so the detainee cannot shout; beatings, including with truncheons and butts of guns, and kicking and threatening to beat the detainee’s family.

It is not possible to make any definite statements about the number of people subjected to torture or other ill-treatment in Georgia. Despite the recommendation made by the Committee against Torture in 2001 to the effect that the authorities ensure comprehensive statistics there are no comprehensive and reliable statistics, although a lot has been done to improve registration of cases involving allegations of torture or other ill-treatment.<sup>4</sup> Shota

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<sup>2</sup> The information about prosecutions was provided to Amnesty International by the Human Rights Protection Unit of the General Procuracy in January 2006.

<sup>3</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Mission to Georgia. UN document E/CN.4/2006/6/Add.3, page 2.

<sup>4</sup> In paragraph 82(h) of its concluding observations issued on 7 May 2001 the Committee against Torture recommended that “[i]n view of the insufficiency of statistical information available to the Committee during consideration of the report, the State party provide the Committee in its next periodic report with appropriate, comprehensive statistics disaggregated by gender, ethnicity and geographical region, as well as by complaint, type of prosecution and results, including all criminal

Khizanishvili, 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 Ombudsman's monitoring group had found 192 cases involving physical abuse by police from January to August 2005. The General Procuracy opened 151 preliminary investigations involving allegations of police abuse in 2005.<sup>5</sup>

Many cases involving torture or other ill-treatment still do not come to light. Amnesty International learnt of several cases that were not included in government statistics indicating that there is a discrepancy between the number of cases that come to light through procedures put in place by the authorities and the real number of cases. For example, both according to data made available to Amnesty International by the Department on Human Rights and Monitoring of the Interior Ministry covering the period from 1 to 27 April 2005 and Merab Gergaia, Head of Samegrelo-Zemo Svaneti regional police in western Georgia, who was interviewed by Amnesty International in May 2005, not a single detainee complained about police ill-treatment during this period. During a fact-finding mission to the region Amnesty International visited two detainees who alleged to have been ill-treated by a special police unit in the town of Zugdidi on 18 April 2005. (For case details refer to the annex).

There are indications that many cases do not come to light because police cover up their crimes. In addition, Amnesty International learnt of several cases where people did not complain about police ill-treatment or did not follow up complaints, as they apparently feared that lodging a complaint or cooperating with the investigation might make their situation worse.

For example, K.E.<sup>6</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 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>7</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*

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offences relevant to the punishment of torture and other acts of cruel, inhuman or degrading treatment or punishment".

<sup>5</sup> Information provided to Amnesty International by the Human Rights Protection Unit at the General Procuracy in January 2006.

<sup>6</sup> Initials changed to protect his identity.

<sup>7</sup> Amnesty International interview, Tbilisi, 28 October 2005.

*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.”*

The continuing persistent reports of torture or other ill-treatment and victims' fear of reprisals for complaining about such treatment indicate that the government is still a long way away from eradicating torture or other ill-treatment. Amnesty International considers that unless all complaints are investigated promptly, thoroughly, independently and impartially; complainants and witnesses are effectively protected; and the perpetrators are brought to justice, victims will continue to have good reason to be afraid to come forward.

There are indications that many people who have been ill-treated insist, when asked about their injuries, that they were sustained before their detention, often for fear of reprisals. 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 5194 detainees. Only 40 of them alleged they had sustained the injuries as a result of police abuse.<sup>8</sup>

Impunity for torture or other ill-treatment is still a big problem. Amnesty International is concerned that procurators do not open investigations into all potential torture or other 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. Investigations into allegations of torture or other ill-treatment have often not been conducted in a prompt, impartial and independent manner. To Amnesty International's knowledge, with one exception, no victim of torture or other ill-treatment has received compensation in recent years. The Special Rapporteur on torture noted in his September 2005 report that *“there is little evidence of restitution, compensation or rehabilitation provided to victims of torture and ill-treatment by the Government”*.

While important steps have been taken, the government still has a long way to go to eradicate torture or other ill-treatment and a long-term approach is needed to achieve lasting results. It is therefore crucial that the government keep the eradication of torture or other ill-treatment as a priority on its agenda.

Amnesty International believes that in order to end torture or other ill-treatment the authorities of Georgia should pay special attention to addressing the shortcomings in the implementation of legal safeguards and the conduct of investigations into allegations of torture or other ill-treatment. Amnesty International has recommended 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 or other ill-treatment and of judicial proceedings in such cases. The organization has urged that 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 its

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<sup>8</sup> Information provided to 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.

findings and make recommendations to the relevant authorities and the powers to issue public reports.

In order to set up such a body and to implement and coordinate other steps aimed at ending torture or other ill-treatment in the country, Amnesty International has urged the authorities to draft a comprehensive, coherent action plan against torture and that adequate resource are allocated for its implementation. This plan should build on the two-year Plan of Action against Torture in Georgia, that 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), which expired in December 2005.<sup>9</sup>

### **Recommendations**

Amnesty International has made the following recommendations to the Georgian authorities aimed at eradicating torture or other ill-treatment:

- Keep the eradication of torture or other ill-treatment as a priority on the government's agenda.
- Promptly draft and implement a comprehensive, coherent action plan against torture to build on the two-year Plan of Action against Torture in Georgia that expired in December 2005. Ensure sufficient human and financial resources are allocated to implement this new plan.
- Set up an independent body to carry out a detailed review of investigations conducted by law enforcement officers into allegations of torture or other 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 public reports.
- 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.

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<sup>9</sup> The plan provided a framework for the authorities' efforts to combat torture or other ill-treatment as it included commitments by the authorities to increase efforts in the field of legislation, prosecution of perpetrators and the monitoring of detention facilities.

## Articles 1, 2 and 11: Legislative and other measures to prevent torture

### ***Prohibition of torture in the Constitution***

The Constitution of Georgia contains an absolute prohibition of "torture, inhuman, cruel treatment and punishment" (Article 17 (2)). Article 18 (4) of the Constitution stipulates that "Physical and mental coercion of a person detained or otherwise restricted is not allowed" and according to Article 42 (7), "Evidence obtained in contravention of the law shall have no legal force." However, in contrast to the non-derogable nature of the absolute prohibition of torture or other ill-treatment under international law, and Article 6(2) of the Constitution which states that Georgian legislation shall be consistent with universally recognized principles and norms of international law, Article 46 of the Constitution of Georgia stipulates that Article 18 may be suspended under a state of emergency.

### ***New definition of torture/ill-treatment in the Criminal Code***

In the past the international community, including the Committee against Torture and human rights groups, raised concerns that the Criminal Code did not contain a definition of torture which was consistent with the definition set out in Article 1 of the Convention against Torture.<sup>10</sup> On 23 June 2005 the Parliament of Georgia adopted amendments to the Criminal Code regarding the crime of torture or other ill-treatment.

As a result of 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 or such treatment 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".

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

The crime of torture, under the criminal code, 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

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<sup>10</sup> In paragraph 82(a) of its concluding observations the Committee against Torture recommended that "[t]he State party amend its domestic penal law to include a definition of torture which is fully consistent with the definition contained in article 1 of the Convention, and provide for appropriate penalties".



or performing certain professional duties for up to five years (Article 144 (1) part 2 of the Criminal Code). Aggravating circumstances include torture committed “*by an official or a person equated to an official*” or carried out “*on the grounds of racial, religious, national or ethnic intolerance*”. Threatening with torture is punishable by up to two years’ imprisonment under Article 144 (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 in January 2006, one person had so far been charged under Article 144 (1) part 2 and one person had been charged under Article 144 (2). However, all other police officers charged in cases involving allegations of torture or other ill-treatment had been charged under other Articles of the Criminal Code such as “Abuse of official authority” (Article 332 of the Criminal Code) and “Exceeding official authority” (Article 333 of the Criminal Code).<sup>11</sup>

### ***Statute of limitations for torture***

The status of the prohibition of torture as a peremptory norm of general international law suggests that there should be no statute of limitations for the crime of torture. Yet, Georgian legislation has a statute of limitations regarding criminal proceedings for torture or other 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 limitations goes up to a maximum of 25 years. Amnesty International has urged lawmakers in Georgia to abolish the statute of limitations for torture.<sup>12</sup>

### ***Legal safeguards and implementation***

Georgian legislation had already provided for a number of crucial safeguards against torture or other ill-treatment and the current government has taken important steps to further strengthen legislation to protect detainees from police abuse. In August 2004, March and June 2005 the Georgian Parliament adopted a series of legal amendments to the Criminal

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<sup>11</sup> Offences under Articles 332 and 333 carry penalties of up to five and eight years’ imprisonment respectively.

<sup>12</sup> The Committee against Torture has made relevant recommendations in the consideration of state parties reports. For example, in paragraph 7(c) of the concluding observations on Turkey, issued in May 2003, the Committee recommended to the authorities to “[r]epeal the statute of limitations for crimes involving torture” (UN document: CAT/C/CR/30/5). In paragraph 6(b) of its concluding observations on Slovenia in May 2003 it recommended to “[r]epeal the statute of limitation for torture and increase the limitation period for other types of ill-treatment” (UN document: CAT/C/CR/30/4).

Procedure Code of Georgia (CPC) and the Criminal Code of Georgia, many of which either directly addressed the issue of torture or other ill-treatment or were relevant to the issue. As part of ongoing legal reforms, there is a plan to adopt a new CPC.

Examples of improvements in domestic legislation include the following. Before a legal amendment to the CPC adopted in August 2004 came into force, 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. 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 entitled to access to a lawyer immediately after arrest. In addition, an amendment to the CPC, adopted in March 2005, stipulates that “*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.*” Previously, the CPC made no provision for audio/video recording of interrogations. Amnesty International has urged the authorities to ensure that all interviews of detainees are audio/video recorded and that the authorities throughout the country are provided with the necessary equipment for this.

At the same time, however, some legal amendments which have been introduced since the “Rose Revolution”, for example those relating to plea agreements, 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. (For further details of this concern, please see paragraph 36 of the report of the Special Rapporteur on torture and refer to the chapter “Plea agreements” in Amnesty International’s November 2005 report *Georgia: Torture and ill-treatment -- Still a concern after the “Rose Revolution”* (AI Index: EUR 56/001/2005)). Subsequently, further amendments have been introduced to address concerns regarding plea agreements and it will be important to monitor the implementation of these laws to assess whether they effectively prevent torture or other ill-treatment and impunity of the perpetrators.

Amnesty International has received numerous reports alleging shortcomings in the implementation of legal safeguards including prompt access to a lawyer, notification of family members and prompt conduct of a forensic medical examination.

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.

However, in the case of Zurab Dapkviashvili, among others, the authorities reportedly did not notify his family of his arrest. He was detained at 12.30pm 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 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.

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 informed of their rights; 26 were not informed of their right to legal defence; 29 were not told of their right to remain silent; and 20 were not given a copy of a leaflet outlining their rights.<sup>13</sup>

Respect for the rights of detainees including to notification of their rights, to immediate access to counsel, and to notify or have their families notified, are key to preventing torture or other ill-treatment. It is crucial that the authorities ensure that allegations that the authorities at any level have failed to respect such rights are promptly and impartially investigated.

### **Medical examinations**

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.<sup>14</sup> According to the information available to Amnesty International, this system was introduced in the preliminary detention facilities in Tbilisi in January 2005. In addition, 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.

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>15</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>16</sup> If the detainee complains against the police, the doctor is obliged to pass the allegations on to the relevant government agencies for investigation.<sup>17</sup>

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<sup>13</sup> *Analysis of statistics of police monitoring*, issued in August 2005 by the office of the Ombudsman.

<sup>14</sup> 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.

<sup>15</sup> Amnesty International interview, Tbilisi, 1 June 2005.

<sup>16</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>17</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.

Several NGO activists expressed concern to Amnesty International that the medical doctors in police stations were not impartial because of their status as Interior Ministry employees. The Ombudsman stressed in his letter to Amnesty International of 14 August 2005 that *“there should be enough adequate human and 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 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (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, thus police officers can easily see the detainee while he or she is examined and overhear the detainee and medical professional. 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 detainees were transferred to the investigation-isolation prisons after their remand hearings. Amnesty International received allegations that in some cases detainees have not been examined by prison doctors due to limited human resources of medical staff. (For further information, please refer to the cases of **Vakhtang Guchua** and **Sulkhan Molashvili** which are set out in the Annex to this briefing. Please also see the case of **Irakli Sioridze** in the chapter “Article 15: No evidence extracted under torture to be used in trials” of this briefing.)

### **Code of Conduct for interviews by police / Code of Police Ethics**

Georgia has no Code of Conduct for interviews by police or other comprehensive legislation regulating the conduct of police interviews of individuals. In its reports in 2001 and 2004 the CPT called on the Georgian authorities to promptly draw up such a code. Furthermore, it should be noted that Georgia also has no Code of Police Ethics.

### **Non-reinstatement of perpetrators**

Amnesty International is concerned that the legal provisions regarding the possibility of reinstating perpetrators of torture or other ill-treatment in their previous posts or appointing

them to other positions where they are able to commit human rights violations are currently unclear and may be 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>18</sup> Judges have the discretion to decide whether or not and for how long to suspend a perpetrator of torture or other 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 other 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.

### ***Monitoring of police custody***

Amnesty International notes that a number of government agencies and the Ombudsman have put substantial effort into bringing torture or other 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. Many human rights activists interviewed by Amnesty International in April and May 2005 believed that the monitoring served as an important deterrent for torture or other ill-treatment and in bringing incidences of torture or other ill-treatment to light.

However, Amnesty International is concerned that the level of monitoring outside Tbilisi has been very low. 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, then 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>19</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>20</sup>

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<sup>18</sup> Law on Police, Chapter 6, Art. 20, part 5a.

<sup>19</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>20</sup> As of September 2005, there were offices in Batumi, Kutaisi, Telavi, Samtskhe-Javakheti and Zugdidi.

### **Transparency and publicity**

Amnesty International welcomed the fact that government officials have made several public statements indicating that perpetrators of torture or other ill-treatment will be brought to justice and/or giving information about prosecutions that have been conducted. Amnesty International considers that it is important that the authorities regularly inform the public about prosecutions of officials for torture or other ill-treatment, in a manner that is consistent with the rights of the accused. Such publicity can encourage victims to come forward and seek justice. In addition, it often has a deterrent effect on other police officers.

However, Amnesty International is concerned by statements of some government officials denying that torture or other ill-treatment continue to be used in Georgia. For example, 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>21</sup>(Merab Baghaturia became chief of Tbilisi city police in January 2005.) Amnesty International believes that such statements are counterproductive and may function as a disincentive for victims to complain about police abuse. Furthermore, 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."*

There have been noteworthy steps by the authorities to be more transparent about prosecutions of perpetrators and other work conducted to reduce torture or other ill-treatment. For example, in a positive move the Human Rights Protection Unit at the General Procuracy began to issue newsletters featuring information about prosecutions and new investigations. The first issue covered May 2005. In addition, 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 on the number of detainees in whose cases medical doctors recorded injuries and who complained about police abuse. Amnesty International has urged the General Inspection of the Ministry of Internal Affairs to also make available to the public information about investigations conducted by the Inspection into

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<sup>21</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."*

allegations of torture or other ill-treatment as well as statistics on the suspension of police officers from their duties as a result of allegations involving torture or other ill-treatment.

### **Recommendations**

Amnesty International has made the following recommendations to the Georgian authorities in the context of Georgia's obligations under Articles 1, 2 and 11 of the Convention against Torture:

- Amend the Constitution so that torture or other ill-treatment is absolutely prohibited at all times and that no exceptional circumstances may be invoked as a justification for torture, in line with Article 2 (2) of the Convention against Torture.
- Amend the legislation defining torture so as to make it fully consistent with the definition set out in Article 1 of the Convention against Torture by introducing an inclusive list of purposes and by bringing the definition of the perpetrator/s in line with the Convention.
- Abolish the statute of limitation for torture.
- Prioritize ensuring the consistent implementation of the legal safeguards set out in domestic legislation that are relevant to preventing torture or other ill-treatment. Ensure that all allegations that legal safeguards were violated are promptly and impartially investigated and that anyone reasonably suspected to be responsible of such violations is brought to justice.
- Ensure that all detainees are informed promptly after their arrest of their rights, including information about all complaint mechanisms -- including the Ombudsman's office -- that are available to them if they are subjected to torture or other ill-treatment at any time during their detention and how to access them. This could be achieved, for example, by handing an information leaflet (which should be available in a variety of languages) to each detainee and by displaying such information prominently in all police stations and preliminary detention facilities.
- Ensure that all questioning of an individual by a police officer is audio/video recorded and that all police authorities are supplied with the equipment necessary for this purpose.
- 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.
- Ensure that medical examinations are conducted in private under the control of an independent medical professional and outside the presence of law enforcement or other government officials. In the case of allegations that a person has been subjected to rape or other forms of sexual abuse, the authorities should ensure that the

examining medical professional is of the same sex as the victim, unless otherwise requested by the victim.

- Introduce a Code of Conduct for police interviews and a Code of Ethics for the police. Conduct training on the implementation of the codes.
- Ensure that law enforcement officers who are convicted of acts amounting to torture or other ill-treatment are subjected also to disciplinary sanctions commensurate with the severity of the crime. Disciplinary sanctions available should accordingly include provision for dismissal without reinstatement.
- Ensure that additional efforts are made to end torture or other ill-treatment in the regions of Georgia outside Tbilisi including by increasing monitoring of detention facilities.
- Denounce torture or other ill-treatment and take decisive action to demonstrate to the police as well as to the general public that torture or other ill-treatment will not be tolerated.
- Make available to police on a regular basis up-to-date information about prosecutions and suspensions of police officers in connection with torture or other 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 other ill-treatment as well as statistics on suspensions of police officers from their duty as a result of allegations involving torture or ill-treatment.

### Article 3: Refoulement

Chechens sought by the Russian Federation on “terrorism” charges continue to be at risk of forcible return or extradition to the Russian Federation where they are believed to be in danger of being subjected to torture and other serious human rights violations. They are also subjected to police harassment and threats of *refoulement*. Amnesty International has in addition been concerned about the fate of an ethnic Kurd who is wanted by the Turkish authorities and who, if extradited, would be at risk of serious human rights violations because of his alleged membership in the Kurdistan Workers’ Party (PKK).

Several local human rights activists alleged that the Georgian authorities facilitated the detention of two Chechens, Khusein Alkhanov and Bekhan Mulkoyev, by officers of the Russian Federal Security Service in North Ossetia in Russia on 19 February 2004. This was categorically denied by senior government officials of Georgia. The two men had been detained by Georgian border guards when crossing into Georgia in August 2002. They were held in detention until 6 February 2004 when they were released by Tbilisi regional court. On 16 February 2004 local groups reported the two men had “disappeared”, only one week before a delegation from the European Court was due to interview them in Tbilisi.



Amnesty International also expressed concern about an incident where Georgian law enforcement officers forcibly removed three young Russian men from the territory of Georgia and left them in the territory between the borders of Georgia and Azerbaijan.

In March 2005 Shengeli Tsatiashvili and his younger brothers Suleiman and Sosran were reportedly detained in the Ministry of Refugees and Accommodation in Tbilisi by officers of the Interior Ministry's anti-terrorism group. They had gone to the building to register asylum claims for the two younger men; the older brother had applied for asylum in December 2004. They were reportedly first taken to the offices of the anti-terrorism group for questioning and then to the Red Bridge on the border with Azerbaijan. They were left in the territory between Georgia and Azerbaijan but managed to return to Georgia. Reportedly, there was no extradition request for the three brothers and they were expelled although the authorities had not yet considered their asylum applications. After their return to Georgia they went to the Ministry of Refugees and Accommodation, accompanied by representatives of the Ombudsman's office and the UN Association of Georgia, and registered their asylum claims.

### **Recommendations**

Amnesty International has made the following recommendation to the Georgian authorities in the context of Georgia's obligations under Article 3 of the Convention against Torture:

- Ensure that no one is expelled, returned or extradited to another country where they would be at risk of torture or other ill-treatment.

## **Article 10: Training**

According to international law and standards, the force used by law enforcement officers when conducting arrests must be both necessary and proportionate. Amnesty International has received particularly many reports alleging excessive use of force by police as well as torture or other ill-treatment in connection with the arrest. In Georgia one of the reasons for police abuse at the arrest stage 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.

The large majority of patrol police officers was employed without prior knowledge or experience of police work. The new patrol police force initially received two weeks of training and in the first half of 2005 the Tbilisi-based Police Academy introduced a programme offering three months' training. When Amnesty International interviewed staff at the Police Academy in October 2005 there were plans to further increase training of police

and to introduce compulsory courses for those police officers who have served in the police for a long time but have never had any formal training. It was also envisaged to introduce training courses designed for the specific needs of different entities inside the police such as investigators, border police and others. Staff at the Police Academy stressed that it was part of the Police Academy's reform process to strengthen the human rights component of police training and certain modules such as training on relevant international human rights law and standards as well as education about torture, ill-treatment and the proportionate use of force and firearms had already been introduced. It was envisaged to further strengthen training on human rights. There are currently concerns that recent changes of personnel in the Police Academy, including the removal of its director who had been a driving force for the introduction of the new training courses, may have a negative impact on the reform process within the Police Academy.

In addition to training of police Amnesty International considers that it is also crucial to conduct regular, periodic, specialized training of procurators about protocols for the investigation of allegations of torture or other ill-treatment. At a meeting with Amnesty International in May 2005 the Procurator General acknowledged that officials investigating torture or 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."* Ana Dolidze, the director of the Georgian Young Lawyers' Association, told Amnesty International in May 2005: *"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."*

### **Recommendations**

Amnesty International has made the following recommendations to the Georgian authorities in the context of Georgia's obligations under Article 10 of the Convention against Torture:

- Train law enforcement officers in torture-free methods of investigation as well as to gain practical skills to conduct arrests using only necessary and proportionate methods of restraint.
- Train procurators/investigators conducting investigations into allegations of torture or other ill-treatment to enable them to conduct investigations in a prompt, thorough and impartial manner.
- Conduct comprehensive training for judges, procurators, law enforcement officers on their obligation to prevent and investigate torture or other ill-treatment and to bring to justice those responsible.

## **Articles 12 and 13: Prompt and impartial investigation and protecting the complainant/witness**

Some progress has been made regarding prosecutions of perpetrators of torture or other ill-treatment. The first conviction since the “Rose Revolution” was handed down to three police officers in November 2004. According to information provided to Amnesty International by the Human Rights Protection Unit at the General Procuracy in January 2006, 12 police officers were serving prison terms after having been found guilty by the courts since the new government came to power, for crimes amounting to torture or other ill-treatment.

However, impunity continues to be a problem. Amnesty International was concerned that procurators did not systematically open and carry out thorough and impartial investigations into all cases in which they received allegations of torture or other ill-treatment or had reason to believe that such an act had occurred. Rather, it appeared to the organization that often investigations were only launched following repeated complaints lodged by persistent lawyers, 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.

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

In Georgia investigations of torture allegations have often not been conducted impartially and been tainted by conflicts of interest of the investigating procurators.

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 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. Reportedly the police had to call the ambulance twice to attend to him 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>22</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.

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<sup>22</sup> Information provided to Amnesty International on 10 November 2005.

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>23</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>24</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>25</sup> Criminal proceedings against another official were terminated on 15 April 2005 *“due to the absence of [...] elements of crime in his conduct”*.

On 26 December 2005 the procuracy official was sentenced to five years’ imprisonment under Articles 118, 147 and 335 of the Criminal Code.

*“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>26</sup>

Only one week into the investigation of allegations that Sulkhan Molashvili<sup>27</sup> was subjected to torture and other 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*

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<sup>23</sup> Amnesty International interview with Giorgi Berulava, Deputy Director of the NGO Empathy, Tbilisi, 27 April 2005.

<sup>24</sup> Information provided to Amnesty International on 10 November 2005.

<sup>25</sup> Information provided to Amnesty International by the Human Rights Protection Unit at the Procurator General’s office on 10 November 2005.

<sup>26</sup> Amnesty International interview, Tbilisi, 5 May 2005.

<sup>27</sup> For more information on the case of Sulkhan Molashvili refer to the annex.

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>28</sup> Such statements suggest a lack of impartiality on the part of the Tbilisi procurator.

Amnesty International has urged the authorities to ensure that procurators and other officials refrain from making public statements which might prejudice the result of investigations. 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”.

Some forms of torture and other ill-treatment 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>29</sup>

The doctor who conducted the first medical examination of Alexander Mkheidze noted that he did not have obvious marks pointing to the impact of physical violence and concluded Alexander Mkheidze was “healthy”. Nevertheless, on the basis of Alexander Mkheidze’s allegation that he was ill-treated by police immediately following his arrest, Amnesty International considers that the authorities should have promptly launched an investigation.

Alexander Mkheidze 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 taken to the building of the Ministry of Internal Affairs in the centre of Tbilisi on Chitatzze 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

<sup>28</sup> *Imedi TV*, 12 July 2004.

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

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.

According to information provided by the Human Rights Protection Unit at the General Procuracy on 16 March 2006, Tbilisi city procuracy opened an investigation into allegations that officers of the general inspection of the Interior Ministry exceeded their official authority (Article 333 of the Criminal Code) when arresting Alexander Mkheidze.

The Committee against Torture 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>30</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>31</sup>

As noted previously in recent years, Amnesty International has continued to receive information about a large number of cases in which detainees reportedly sustained injuries as a result of ill-treatment by police during the arrest. According to the information available to Amnesty International, many investigations into allegations of ill-treatment during the arrest have not been opened promptly.

For example, 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 reported 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 2005, 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

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<sup>30</sup> *Encarnación Blanco Abad v. Spain*, Communication No. 59/1996, UN Doc. CAT/C/20/D/59/1996 (1998), para. 8.2.

<sup>31</sup> The CPT Standards, CPT/Inf (2004) 28, para. 25.

allegations that law enforcement officers inflicted bodily injuries to Givi Janiashvili. According to Human Rights Protection Unit at the General Procuracy, the investigation established that Givi Janiashvili put up resistance against the law enforcement officers and “*they had to use force, in full compliance with Georgian Law on Police*”.<sup>32</sup>

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 order to encourage victims of torture or other ill-treatment to come forward and as one step in the government’s strategy to combat impunity Amnesty International believes that judges and procurators should be obliged to routinely ask persons brought before the court from police custody about their treatment by police. This recommendation is in line with the recommendation 60 (b) made by the Special Rapporteur on torture in his September 2005 report on his visit to Georgia earlier in the year.

### ***Identification tags to combat impunity***

Amnesty International believes that the anonymity of police officers increases the risk of torture or other ill-treatment and perpetuates impunity. Name tags and/or visible identification numbers are important safeguards against torture or other ill-treatment and are a crucial element in governments’ efforts to end impunity for torture or other ill-treatment.

In a positive move, as of 1 November 2005 law enforcement officers in Georgia were obliged by decrees to wear identification cards at all times, when visiting places of detention and deprivation of liberty as well as during meetings with detainees and prisoners. However, the special police unit of the Interior Ministry was excluded from this requirement.

Officers of this special police unit have been implicated in ill-treating detainees in numerous cases when conducting arrests. Officers of the special police unit are often masked when carrying out arrests or dispersals of demonstrations and do not wear any form of visible, unique and traceable identification. Amnesty International believes that masks or other means of disguising officers’ personal identities should only be used exceptionally, if such measures are necessary for the personal protection or security of the officers concerned or similar reasons of necessity; in such cases the need for each officer to be identifiable by such means as a visible and unique traceable identification number is particularly important.

A typical case where Amnesty International received allegations that masked special unit police ill-treated a detainee is the case of Malkhaz Talakvadze.

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

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<sup>32</sup> Information provided by the Human Rights Protection Unit at the General Procuracy in its newsletter covering November and December 2005.

including with the butts of their guns and he lost consciousness.<sup>33</sup> According to Malkhaz Talakvadze, his wife, mother-in-law and little daughter were also beaten. Nugzar Topuridze, 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>34</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>35</sup> As of October 2005 Malkhaz Talakvadze was 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).

### ***Suspend suspected perpetrators of torture or other ill-treatment 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>36</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 September 2005 report 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".

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

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<sup>33</sup> Amnesty International interview, Tbilisi, 24 October 2005. Amnesty International was unable to obtain the medical examination of Malkhaz Talakvadze.

<sup>34</sup> Email correspondence with the firm Veqtori, 15 November 2005.

<sup>35</sup> Amnesty International interview, Tbilisi, 24 October 2005.

<sup>36</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.



criminal proceedings. The General Inspection has the right to suspend suspected perpetrators of torture or other ill-treatment from their duties.

According to the information available to Amnesty International, most if not all police officers who have been charged with crimes amounting to torture or ill-treatment have been suspended from duty. However, in order to protect detainees from police abuse and to send a clear signal to police that torture or other ill-treatment is not tolerated, Amnesty International considers that law enforcement officers who are placed under investigation for serious human rights violations should be immediately suspended pending the outcome of the disciplinary and judicial proceedings against them.

### ***Recommendations***

Amnesty International has made the following recommendations to the Georgian authorities in the context of Georgia's obligations under Articles 12 and 13 of the Convention against Torture:

- Ensure that all allegations of torture or other ill-treatment are promptly, independently, impartially and thoroughly investigated. Among other things, the victim and any witnesses should be interviewed and all relevant material evidence should be obtained.
- Ensure that the results of investigations into allegations of torture or other ill-treatment are made public and that the perpetrators are brought to justice.
- Ensure that prompt specialist medical examinations are carried out by independent experts in all cases where torture or other ill-treatment (including ill-treatment of a predominantly psychological nature) has been alleged.
- Prohibit the use of masks or other means of disguising officers' personal identities. Only make exceptions if such measures are necessary for the personal protection or security of the officers concerned or similar reasons. In such cases the need for each officer to be identifiable by such means as unique traceable identification numbers is particularly important.
- Ensure that procurators and other public officials refrain from making any public statements which may prejudice the result of an investigation.
- Ensure that law enforcement officers who are placed under investigation for serious human rights violations are suspended from their duties pending the outcome of the disciplinary and judicial proceedings against them.
- Ensure that judges and procurators routinely ask persons brought from police custody whether they were tortured or ill-treated during arrest or detention in police custody.

## Article 14: Remedies

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>37</sup> distinguish five forms of reparation: restitution,<sup>38</sup> compensation,<sup>39</sup> rehabilitation,<sup>40</sup> satisfaction<sup>41</sup> and guarantees of non-repetition.<sup>42</sup>

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

However, Amnesty International is concerned that where the perpetrators of torture or other ill-treatment have not been identified or brought to justice, victims are not currently entitled to reparation. While the authorities acknowledge that there are major shortcomings in

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<sup>37</sup> CHR Resolution 2005/35. UN Doc. E/CN.4/2005/L.10/Add.11, 19 April 2005.

<sup>38</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>39</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>40</sup> According to Art. 21, “[r]ehabilitation should include medical and psychological care as well as legal and social services”.

<sup>41</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>42</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”.

the system preventing them from establishing the identity of perpetrators, it is the victim of torture or other 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 or other 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. Amnesty International has called on the authorities to amend the legislation to ensure that all victims of torture or other ill-treatment are entitled to obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

In addition, Amnesty International is concerned that, according to the organization's knowledge, there has only been one case in recent years in which a victim of torture or other ill-treatment has been awarded compensation in Georgia. 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.

### ***Recommendations***

Amnesty International has made the following recommendation to the Georgian authorities in the context of Georgia's obligations under Article 14 of the Convention against Torture:

- Take all necessary measures to ensure that every victim of torture or 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, regardless of whether the perpetrator has been identified and brought to justice, and that every detained person is informed of this right.

## Annex

### **The cases of Vakhtang Guchua and Zaali Akobia**

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>43</sup>

Both men were released on 16 July 2005 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 or other 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 of Georgia 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.

### ***The case of Sulkhan Molashvili***

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 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

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<sup>43</sup> Amnesty International interview, Zugdidi, 13 May 2005.

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>44</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>45</sup>

On 5 July 2004 Tbilisi city procuracy opened a criminal case in connection with the allegations of torture or other 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 measures will be taken against everyone implicated in this, irrespective of whether it is the justice minister or a rank-and-file employee."

On 7 September 2005 Sulkhan Molashvili was sentenced to nine years' imprisonment by Tbilisi city court. The appeal court reduced the sentence to eight years' imprisonment on 6 March 2006.

Ioseb Baratashvili, one of Sulkhan Molashvili's lawyers, told Amnesty International in January 2006 that no criminal case had been opened against any of the alleged perpetrators.

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<sup>44</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>45</sup> Amnesty International interview with representatives of the NGO, Tbilisi, 27 April 2005.