GEORGIA
Time to abolish the death penalty

Introduction

On 10 December 1996, International Human Rights Day, Georgian President Eduard Shevardnadze sent a letter to members of the country's parliament. He wrote, among other things:

"*The protection of human rights in Georgia is based on the humane traditions of our people and is guaranteed by the new Georgian Constitution. The supreme human right is the right to life. This is given to humans by God but it should be protected by the state.*"[1]

In this spirit President Shevardnadze went on to declare an official moratorium on executions in Georgia. The following day parliament voted to abolish the death penalty for six offences in the Criminal Code, to take effect as of 1 February 1997, thereby reducing the number of crimes carrying a possible death sentence to seven.

Amnesty International greatly welcomes these steps, and hopes they will provide an example and encouragement to other states of the former Soviet Union which retain, and use, the death penalty.[2] Amnesty International further hopes that Georgia will in turn heed the example of over half the countries in the world today which have abolished the death penalty in law or practice. Commutation of all death sentences, and total abolition of the death penalty, are the only means by which the state can be certain of protecting the right to life against judicial error.

Amnesty International considers that the death penalty violates the right to life and is the ultimate cruel, inhuman and degrading punishment, opposing its use in all cases without reservation. This paper reviews the use of the death penalty in Georgia, and ends with recommendations urging moves to abolish this punishment totally and permanently.

The death penalty in law

The new Georgian Constitution, adopted in 1995, retains the death penalty "as an exceptional measure of punishment...for the commission of especially serious crimes against life".[3] Application of the death penalty is regulated by provisions in the Georgian Criminal Code. Pending the adoption of a new criminal code, Georgia is continuing to use the one inherited from its time as a republic of the USSR, with

[1] Kontakt news agency, 10 December 1996.

[2] All the states of the former USSR currently retain the death penalty in law, apart from Moldova which has abolished this punishment completely. In some, like Georgia, there have been no executions for several years although death sentences have continued.

[3] Article 15 (2) of the Constitution.

Human rights and the death penalty - why do states kill?

Amnesty International opposes the death penalty in all cases throughout the world, and without reservation, on the grounds that it is a violation of the universally guaranteed right to life and constitutes the ultimate cruel, inhuman and degrading punishment. No matter what 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. Article 3 of the Universal Declaration of Human Rights proclaims that "Everyone has the right to life". Article 5 categorically states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Amnesty International believes that the death penalty violates these rights.

Many governments share this view, and have recognized that the death penalty cannot be reconciled with respect for human rights. The United Nations has declared itself in favour of abolition. The Council of Europe has included a moratorium on executions and moves towards complete abolition among its provisions of entry for states of the former Soviet Union. Ninety nine countries in the world today have abolished the death penalty in law or practice.

Why then do other states retain the death penalty? One of the most common justifications is that, terrible as it is, the death penalty is necessary as a ***deterrent*** against crime. Countless men and women throughout the world have been executed on the assumption that their deaths will deter others from crime, especially the crime of murder. Yet study after study in diverse countries has failed to find convincing evidence that the death penalty has any unique capacity to deter others from committing particular crimes. It is wrong to assume that all those who commit such a serious crime as murder do so after rationally calculating the consequences. Murders are often committed in moments of passion, when extreme emotion overcomes reason. They are also committed under the influence of alcohol or drugs, or in moments of panic when the perpetrator is caught in the act of stealing. Some murderers are highly unstable and mentally ill. In none of these cases can fear of the death penalty be expected to act as a deterrent.

There is another serious flaw in the deterrence argument. People who plan serious crimes in a calculated manner may decide to proceed despite the risk in the belief that they will not be caught. Criminologists have long argued that the way to deter such people is not to increase the severity of the punishment but to increase the likelihood of detection and conviction.

The death penalty may even have the reverse effect to that intended. Someone who knows that they risk death for the crime they are committing may be more likely to kill witnesses or others who could identify or incriminate them.

Furthermore, crime figures from abolitionist countries fail to show that the abolition of the death penalty produces a rise in the crime rate. A study of research

findings on the relationship between the death penalty and homicide rates, conducted for the United Nations Committee on Crime Prevention in 1988, concluded that "this research has failed to provide scientific support that executions have a greater effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis". Every society seeks protection from crime, but the argument that the death penalty is a better protection than other punishments is illusory.

Another argument is that permanently ***incapacitating*** a prisoner - by killing them - prevents that person from repeating the crime. But there is no way to be sure that the prisoner would have repeated the crime if allowed to live, nor is there any need to take the prisoner's life for the purpose of incapacitation: dangerous offenders can be kept safely from the public without resorting to execution, as shown by the experience of many abolitionist countries. The death penalty takes the lives of offenders who might have been rehabilitated as well as the lives of the innocent. Incarceration in prisons and other institutions which isolate offenders from society also has another great advantage over the death penalty as a means of incapacitation: the mistakes which result from fallible judicial systems can be corrected, at least partially.

When the arguments of deterrence and incapacitation are discounted, there is a more deep-seated motivation for the death penalty: that of just ***retribution*** for the particular crime committed. According to this argument, certain people deserve to be killed as a repayment for the evil done: there are crimes so offensive that killing the offender is the only just response. Basing the death penalty on retribution, however, makes impossible demands on the criminal justice system. Risks of error and unfairness exist in all such systems. No criminal justice system is, or conceivably could be, capable of deciding fairly, consistently and infallibly who should live and who should die.

In its simplest form the argument for retribution is also often no more than a desire for vengeance masked as a principle of justice. The desire for vengeance can be understood and acknowledged but the exercise of vengeance must be resisted. The history of the endeavour to establish the rule of law is a history of the progressive restriction, in public policy and legal codes, of personal vengeance.

The argument for retribution is an emotionally powerful one. It is also one which, if valid, would invalidate the basis for human rights. Central to fundamental human rights is that they are inalienable. They may not be taken away even if a person has committed the most atrocious of crimes. Human rights apply to the worst of us as well as the best of us, which is why they protect all of us.

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 for wrongful conviction, but also the state's capacity to correct its errors.

numerous amendments. This code as of February 1997 will contain seven offences carrying a possible death sentence (see Appendix I for a list of these offences). A death sentence may not be passed on anyone under 18 at the time of the offence or when sentence is passed, or on a pregnant woman. In the case of a woman who is pregnant when due for execution, the death sentence must be commuted. The death penalty may not be imposed on anyone ruled to have been insane when the crime was committed or when judgment was passed. Execution is by shooting.

Those sentenced to death may appeal, although appeal by way of cassation is denied to those sentenced by the Supreme Court acting as a court of first instance. In these cases the person sentenced may submit an appeal to the Supreme Court for a judicial review, which is heard by a judge not previously involved in the case. If it is considered that there are sufficient grounds for such a review then a protest is lodged with, and heard by, the presidium of the Supreme Court. If the convicted person is not satisfied with this decision he or she may apply to the plenary of the Supreme Court for a second judicial review.

If the death sentence is upheld on appeal, and no other judicial protests are pending, the last resort against execution is a petition for clemency to the President of Georgia who has the constitutional authority to exercise pardon. All death sentences are passed automatically to a presidential clemency commission, which prepares recommendations for consideration by the President, regardless of whether the prisoner concerned has submitted a petition.

The clemency commission currently has 15 members, chosen by the President and intended to represent various sectors of society.[4] Commission members do not review judicial aspects of the case but consider various mitigating factors, and make a recommendation to the President. Decisions are made by a majority vote, with the Chairperson having the casting vote if the outcome is a tie. If the recommendation is to commute the death sentence, the commission also gives a recommended length of imprisonment instead, ranging from 15 to 20 years. The ultimate decision on whether or not to commute a death sentence rests with the President. If the petition for clemency is refused a presidential decree to this effect is issued, and execution takes place within one week.

Two steps forward, two steps back: gradual moves towards abolition

President Shevardnadze's declaration of a moratorium on executions came against a background of recent public calls for abolition, by members of parliament among others, and of chequered moves in this direction over the past five years. 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 Code[5]. The death penalty was abolished for a further two

[4] During a meeting on 6 November 1996 in Tbilisi with members of the state department servicing the clemency commission the head of this department, Mr O. Gordeladze, told Amnesty International delegates that the commission currently included three members of the Academy of Sciences, three members of parliament, two writers and one poet.

[5] 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).

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, those welcome moves were gradually reversed over the following two years. The moratorium was only on judicial executions, not death sentences themselves, which the courts continued to pass. Two new offences carrying a possible death penalty[6] were introduced into the criminal code in 1993, and in November that year head of state Eduard Shevardnadze 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 activity[7]. Nine people were reportedly shot dead for looting in the western city of Zugdidi five days later.[8]

Further bad news came in March 1994, when it was decided to lift the two-year moratorium on executions. At least 14 men were executed between then and February 1995[9]; in at least one case the execution took place only six months after the sentence had been passed. All executions were for offences involving violence, and most for premeditated, aggravated murder (Article 104 of the Criminal Code). At least 20 death sentences were commuted, however, in the years from 1994 to 1995.[10]

Just under a year after the decision to resume executions the trend reversed once more in favour of abolition, when a *de facto* moratorium on executions was put in place as of February 1995: under a tacit agreement the Clemency Commission has suspended consideration of any of the petitions for clemency coming before it in cases involving a death sentence, and so no cases have reached the President of Georgia for a final decision. As a result no executions are said to have taken place since early 1995 (correspondingly no cases are being considered for clemency either, although prisoners on death row are aware that their cases have been deferred and why).[11]

[6] These were "mercenary actions in an armed conflict, or in military operations" (Article 66-1) and "genocide" (Article 65-1).

[7] As reported by Georgian radio on 2 November 1993, point c) of the decree stated: "against servicemen, policemen and civilians detected in marauding and violence, who refuse to submit to the demands of law-enforcement bodies, all measures permitted by the law, including liquidation, shall be exercised on the spot." The decree was issued in a context of violent disorder in parts of the country, and 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. For further information see the Amnesty International report: *Republic of Georgia: The death penalty - an update*, AI Index: EUR 56/01/94.

[8] The nine men shot dead in Zugdidi were reported to have been two supporters of Zviad Gamsakhurdia and seven local inhabitants.

[9] See Appendix II for a list of those men known to have been executed.

[10] Meeting of Amnesty International delegates with officials from the state department servicing the Clemency Commission, November 1996.

[11] Ibid.

Since then a number of politicians have spoken out in favour of abolition, and some non-governmental organizations in Georgia have launched their own campaign against the death penalty.[12] On 18 November 1996 President Shevardnadze said [13]that Georgia was observing a *de facto* moratorium on executions as part of its efforts to qualify for admission to the Council of Europe.[14] His statement on 10 December 1996 has given this moratorium an official dimension, and increased the visibility of parliamentary discussions on the issue of abolition. That same day, in fact, parliament was debating a draft bill on amendments to the Georgian Criminal Code which would provide a new category - that of life imprisonment.[15] Such a step is seen by many in Georgia as one of the prerequisites for the wide acceptance of abolition, the previous maximum sentence of 15 years' imprisonment being regarded as not providing a harsh enough alternative to the death penalty for particularly heinous crimes.

Continuing the debate on this issue, parliament voted on 11 December to further reduce the scope of capital punishment by abolishing the death penalty for six offences in the Criminal Code. This legal amendment will enter force on 1 February 1997, leaving seven crimes carrying a possible death sentence - see Appendix I for details. For those six offences for which the death penalty will be abolished, the maximum punishment is now up to 20 years' imprisonment or life imprisonment (instead of the previous maximum of up to 15 years' imprisonment or the death penalty). Similarly, for the seven articles still carrying the death penalty as a possible punishment, the maximum alternative period of imprisonment is raised from 15 to 20 years, or life.

Amnesty International's concerns

While Amnesty International greatly welcomes these recent moves towards abolition, especially as they are framed as an issue of human rights, the organization still has a number of concerns about the death penalty in Georgia.

Alleged use of duress to obtain confessions in capital cases

One of the foremost of these concerns the possibility of judicial error, linked with a number of recent reports that law enforcement officials have used physical and other means of duress in seeking to obtain confessions in cases where the offence carries a possible death sentence.

[12] See for example the "Appeal against Capital Punishment" by the organizations Former Political Prisoners for Human Rights, Anti-torture Committee, Georgian Committee of the Helsinki Citizens' Assembly and the Georgian Prisoners Commonwealth, Issue 1-2 (September-October) 1996 of the Bulletin of Former Political Prisoners for Human Rights.

[13] Radio Tbilisi, 18 November 1996, Interfax news agency, 19 November 1996.

[14] Georgia was granted special guest status at the Council of Europe in May 1996, and formally applied for full membership in July. As a condition for admitting new members, the Council of Europe has required of such countries that they impose a moratorium on executions as part of moves towards total abolition within a specific time frame.

[15] *Akhali Taoba*, No. 214, 11 December 1996.

Under Georgian law evidence obtained through violation of legal proceedings has no legal force.[16] It is also a criminal offence for investigators and others to force a person to give testimony by use of threats or other illegal actions.[17] Nevertheless it has been alleged by some prisoners facing charges carrying a possible death sentence that testimony was obtained from them under duress, and also that such testimony was not excluded at their trial although they repudiated it in court.

In a major political trial[18] 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 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.[19] 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 varying lengths 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 instance 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 case with similar allegations political prisoner Badri Zarandia, sentenced by the Supreme Court on 17 June 1996, claims he was tortured in order to force a confession. Convicted of treason and banditry in connection with violent events in Georgia in

[16] Article 42 (7) of the Constitution.

[17] Article 195 of the Criminal Code.

[18] 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 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.

[19] For 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.

1993,[20] 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 five co-defendants allege similar treatment.

Similar claims have also been made in criminal cases. The non-governmental organization "Former Political Prisoners for Human Rights", for example, reported last year that they had a statement from a man - named only as Labadze - in which he claimed that he had been sentenced to death after false testimony was extracted from witnesses as part of the case against him..[21] Arrested in December 1993, Labadze is said to have claimed that an investigator - whom he named - came to him in the prison and offered concessions if he would confess, saying: "You have a bad past, you will be unable to prove the truth; take the blame on yourself and I shall arrange meetings with your family and, if you like, I shall supply you with drugs before you are shot." Labadze refused, and further alleged that his former wife had been pressured to give testimony against him after the investigator told her, falsely, that Labadze had implicated her in theft. Labadze is quoted as saying: " When my wife wrote everything she knew about the investigation [the investigator] tore her evidence up and forced her to write what he dictated."

More recently, in August 1996[22] a prosecution opened in Tbilisi, the Georgian capital, against a group of police officers charged among other things with the torture of suspects to force confessions 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 charges which included using electric shocks on suspects while investigating the murder of a woman named as Lia Chovelidze-Tsamalashvili. A witness named Jumber Khidasheli told the court on 7 August that he had been verbally abused, beaten and tortured by the use of electric shocks in an effort to force him to confess to the killing.[23]

The United Nations Committee against Torture expressed concern at such allegations when it met in November 1996 to examine Georgia's initial report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Among its subjects of concern the Committee listed the volume of complaints

[20] For further information on this case, and Amnesty International's concerns in general in Georgia, please see *Georgia: A summary of Amnesty International's concerns*, AI Index: EUR 56/04/96.

[21] See the organization's *Bulletin* No. 1-2, September-October 1996. The first name of Mr Labadze was not given in this report, although a man named as Aleksandre Labadze (born 1960) was among those listed by unofficial sources as being on death row in 1996, sentenced for murder and robbery. This Aleksandre Labadze is presumably also the same person as the man, again only referred to as Labadze, who died on death row in January 1997 of tuberculosis (*Resonansi*, No. 9, 14 January 1997): he had been sentenced for robbery, which he admitted, and murder, which he consistently denied.

[22] BGI News Agency, 7 August 1996 and 3 September 1996.

[23] For more information on Amnesty International's concerns about allegations of ill-treatment see the organization's report *Georgia: Comments on the Initial Report submitted to the United Nations Committee against Torture*, October 1996 (AI Index: EUR 56/05/96).

of torture, particularly related to the extraction of confessions; the failure properly to investigate claims of torture and to prosecute alleged offenders; and the unwillingness of many law enforcement officers to respect, in the exercise of their duties, the rights of people under investigation.

Possible sources of error and inconsistency are inherent in any criminal justice system devised and administered by fallible human beings. Judicial errors which deprive people of their liberty are unacceptable and should be corrected. Judicial errors which can deprive people of their lives are intolerable and without remedy. If accepted standards for a fair trial are set aside or ignored, the risk of executing the innocent is further increased.

Continued passing of death sentences

Courts have continued to pass death sentences during the two periods in recent years during which moratoria on executions have been in place, with some 30 death sentences said to have been handed down in the two years to November 1996.[24] Indeed, just over a week after President Shevardnadze's 10 December announcement of an official moratorium, the press reported a further death sentence - passed on a man named Gela Gogichaishvili for murder.[25] Other recent death sentences have included that passed on 19 November on Vakhtang "Loti" Kobalia, a prominent supporter of former President Zviad Gamsakhurdia who was found guilty of treason, banditry and premeditated murder, and that passed on Davit Otiashvili, a member of the now disbanded paramilitary organization *Mkhedrioni* (Horsemen), who was sentenced for banditry on 26 November 1996.

Until the death penalty is formally abolished completely in law, courts will continue to impose this punishment in circumstances determined by legislation (as the overwhelming majority of death sentences in recent years have been for premeditated, aggravated murder, which remains a capital offence, abolition for six offences as of 1 February 1997 is unlikely to change radically the overall statistics on the application of the death penalty).

If courts continue to pass death sentences, and the presidential clemency commission is not considering petitions for clemency in such cases, the number of people on death row will continue to increase. There are now said to be some 51 men held on death row in Tbilisi's Ortachala prison,[26] held in conditions which have been described as very difficult owing among other things to isolation and overcrowding. In August 1995, for example, Aleksandr Kavsadze, Chairman of the State Committee on Human Rights and Inter-ethnic Relations, was reported as saying that prisoners' living conditions on death row

[24] Figure given by President Shevardnadze during his weekly broadcast on Radio Tbilisi, 18 November 1996.

[25] *Akhali Taoba* No. 221, 19 December 1996.

[26] Elene Tevdoradze, Chairwoman of the Parliamentary Subcommittee on Penal Reform and Prisoners, quoted a figure of 50 men on death row in an interview with *Droni*, No. 84, 29 October - 1 November 1996. By December 1996 the number had risen to 52, according to the non-governmental organization "Former Political Prisoners for Human Rights", then fell by one in January after a man named Labadze died of tuberculosis while waiting on death row (*Rezonansi* No. 9, 14 January 1997).

"defied description" with temperatures reaching 40 degrees Celsius[27]. He had visited the prison after 27 prisoners had declared a hunger-strike in protest at the lack of air in the cells on death row. More recently inmates are said to have gone on hunger strike in November 1996 demanding an improvement in prison conditions[28], and in December 1996 the Georgian non-goverenmental organization "Former Political Prisoners for Human Rights" reported that prisoners on death row were kept in overcrowded conditions, with on average six to eight people held in cells meant for only two, and that the cells themselves were poorly lit and had insufficient airflow.[29]

In addition to the physical difficulties of confinement, there are also the mental rigours of waiting for execution. Although aware of the current moratorium on executions, inmates on death row - some held there for several years - face continued uncertainty as to their ultimate fate. Several studies have indicated that the cruelty of the death penalty is not restricted to the actual moment of execution - the waiting period with its prolonged periods of isolation and enforced idleness can lead to severe depression, apathy, and both physical and mental deterioration.[30]

Public opinion and the death penalty

One reason sometimes given for retaining the death penalty - and put forward even by officials who say that they personally oppose the punishment - is that public opinion demands it. They cite polls apparently showing strong support for the death penalty, then argue that the time is not ripe for abolition, and even that it would be undemocratic in the face of such support for the punishment.

The first response to this argument is that respect for human rights must never be dependent on public opinion. Torture, for example, would never be permissible even if there were public support for its use in certain cases.

Secondly, public opinion on the death penalty is often based on an incomplete understanding of the relevant facts, and the results of polls can vary according to the way questions are asked. Amnesty International believes it is incumbent on officials responsible for policy on this matter not only to listen to the public but also to ensure that the public is fully informed. Many more people might well support abolition if they were properly informed of the facts surrounding the use of the death penalty and the reasons for abolition.

[27] Radio Russia, 9 August 1995.

[28] Iberia news agency, 27 November 1996.

[29] Proceedings of a seminar on the death penalty held in Tbilisi on 17 December 1996, from a press release of the organization "Former Political Prisoners for Human Rights".

[30] See for example the Amnesty International publication *When the State Kills... The death penalty v. human rights*, AI Index: ACT 51/07/89 (ISBN 0 86210 164 6), 1989.

One of the strongest reasons often put forward in opinion polls for retaining the death penalty is its supposed deterrent qualities, especially in the crime of murder. Yet study after study in diverse countries has failed to find convincing evidence that the death penalty is a more effective deterrent against crime than other punishments (see page 3 above). Criminologists have long argued that the way to deter would-be criminals is not to increase the severity of the punishment but to increase the likelihood of detection and conviction. Increased public confidence in such measures in Georgia would greatly help to combat what many fear - in the absence of the death penalty - would otherwise be a tendency to take the law into one's own hands. Indeed the Interior Ministry was recently quoted as saying that that there are in any case five to six incidents a year in which people are murdered by their fellow citizens who suspect them of committing grave offences: one of the most recent reports was of a woman from the Telavi region who was killed by a crowd who held her responsible for a murder.[31]

[31] *Kavkasioni* No. 228, 25 December 1996. It is said that but for the police the crowd would have killed the woman's husband also. Earlier that year a man named as Beglar Beglarishvili was said to have been stoned to death, and his body set on fire, on 1 July after a mob broke into a police station in the town of Kaspi. He had been detained earlier that day on suspicion of raping a 14-year-old girl (BGI news agency, July 1996). In addition President Shevardnadze, in a weekly interview broadcast on Georgian radio on 18 November 1996 during which he urged caution against hasty decisions with regard to capital punishment, is quoted as saying: "We also have to reckon with the fact that among our people there still exists the age-old urge to stone a perpetrator and the right to vendetta...".

The death penalty in Abkhazia and Ossetia

While part of the Soviet Union, the Georgian Republic had on its territory three autonomous units with different degrees of legal autonomy: the two Autonomous Republics of Abkhazia and Ajaria, and one Autonomous Region, South Ossetia.

At present Ajaria is the only one of these three regions fully integrated into the Georgian state. It has its own Supreme Court, but decisions passed by this body can be appealed to the Georgian Supreme Court. Thus, in a recent case in which the Ajarian Supreme Court sentenced brothers David and Tamaz Asanidze to death,[32] their cases may be sent to the Georgian Supreme Court if appealed and, in any case, would be subject to the clemency procedure before the Georgian President.

The moratorium on executions has therefore applied to those sentenced to death in Ajaria, and any decision by Georgia as a state on abolition would extend there also. The situation with regard to South Ossetia and Abkhazia differs, however, as both regions as a result of armed hostilities are currently out of the *de facto* control of the central Georgian authorities.

Amnesty International is not aware of any death sentences passed or carried out in recent years by the self-proclaimed authorities in South Ossetia. There has been at least one death sentence passed in self-proclaimed Republic of Abkhazia, however, and with the current round of peace talks at an impasse it is extremely unlikely that the authorities there will accept as binding on them any decisions the Georgian state takes with regard to the death penalty.

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.

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 passed since 1994. In another case the prosecutor is said to have called for the death penalty for three men.

The death sentence known to Amnesty International was passed on 5 December 1995[33] 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),

[32] David and Tamaz Asanidze were sentenced to death on 20 September 1996 by the Supreme Court of Ajaria in Batumi, accused of various terrorist acts including an attempt to assassinate the head of the Ajarian parliament.

[33] 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.

"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 report[34] 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 violations, 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.[35] Amnesty International has also urged the Abkhazian authorities to heed the worldwide trend, and take concrete steps to abolish the death penalty completely.

Amnesty International's recommendations

The death penalty requires the state to carry out the very act which the law most strongly condemns. In virtually every legal system the severest sanctions are provided for the deliberate and premeditated killing of a human being; but no killing is more premeditated or cold-blooded than an execution, and just as it is not possible to create a death penalty system free of caprice, discrimination or error, so it is not possible to find a way to execute a person which is not cruel, inhuman and degrading. Under Soviet-era regulations still in force in a number of former republics, for example, family visits to those on death row are severely restricted, there is no advance notice given to the prisoner or his family of the date of

[34] BGI News Agency, 4 May 1996.

[35] For further information on Amnesty International's concerns in Abkhazia see *Georgia: Summary of Amnesty International's concerns*, AI Index: EUR 56/04/965, October 1996.

execution, and the family is not entitled to the body, or even to know where their loved ones are buried.[36]

Scientific studies have consistently failed to find convincing evidence that the death penalty deters crime more effectively than other punishments. For example, the most recent survey of research findings on the relation between the death penalty and homicide rates, conducted for the United Nations in 1988 and updated in 1996, concluded that:

"*Research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment and such proof is unlikely to be forthcoming.* ***The evidence as a whole still gives no positive support to the deterrent hypothesis*** [emphasis added].[37] "

Similarly, the South African Constitutional Court, whose judges were appointed by President Nelson Mandela, in its judgment of June 1995[38], expressly rejected the contention that the death penalty was an effective specific deterrent.

The majority of the countries in the world have now abolished the death penalty in law or practice. In addition, the United Nations Security Council, when it established the International Criminal Tribunals for the former Yugoslavia and Rwanda, expressly ruled out the death penalty for the gravest of crimes: genocide, other crimes against humanity, and serious violations of humanitarian law. The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions has also stated that "the abolition of capital punishment is most desirable in order fully to respect the right to life."[39]

In the light of this, Amnesty International welcomes President Shevardnadze's announcement of a moratorium on executions and further calls on the relevant Georgian authorities to:

♦Commute all existing death sentences, as well as any that may be imposed in the future;

♦Prepare public opinion for abolition of the death penalty;

♦Sign the second Optional Protocol to the International Covenant on Civil and Political Rights. Signing this instrument, the first treaty of worldwide scope aimed at abolition

[36] This was the procedure followed in Georgia prior to the 1992 moratorium on executions - see the Amnesty International report *Georgia: The death penalty - an update*, AI Index: EUR 56/01/94, January 1994.

[37] See the Amnesty International report *When the State Kills...The death penalty v. human rights*, AI Index: ACT/51/07/89 and Roger Hood, *The Death Penalty: A World-wide Perspective*, Oxford, Clarendon Press, 1996.

[38] State v. MaKwanyane and Mchunu, Case No. CCT/4/94.

[39] Extrajudicial, summary or arbitrary executions: Note by the Secretary-General, UN document No. A/51/457, 7 October 1996, paragraph 107.

of the death penalty, would be a very significant sign of Georgia's commitment to abolition;

♦Prepare and enact legislation to remove the death penalty completely as a possible punishment from the Georgian Criminal Code and Constitution;

♦Publish timely, accurate and 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 as requested by international bodies[40].

[40] See for example United Nations Economic and Social Council (ECOSOC) Resolution 1989/64 (extract in Appendix III).

APPENDIX I - Offences carrying a possible death sentence

The following seven offences currently carry a possible death sentence under the Georgian Criminal Code:

Article 65-1	Genocide
Article 67	Terrorist acts
Article 68	Terrorist acts against the representative of a foreign state
Article 69	Sabotage
Article 104	Premeditated, aggravated murder
Article 209-1	Attempt on the life of a police officer

and the military crime:

Article 258Offering resistance to a superior or forcing him or her to violate official duties

The death penalty will be abolished as a possible punishment for the following offences as of 1 February 1997, after an amendment to the Criminal Code passed by parliament on 11 December 1996:

Article 65:	State treason
Article 66	Espionage
Article 66-1	Participation by mercenaries in armed conflict or in combat action
Article 78	Banditry
Article 78-1	Activities causing disruption to the work of corrective labour institutions
Article 117	Rape

APPENDIX II - DETAILS OF THOSE MEN EXECUTED SINCE 1994

Information provided to Amnesty International by Aleksandr Kavsadze, the Chairman of the State Committee on Human Rights and Interethnic Relations (in November 1994), and O. Gordeladze, the Chairman of the Clemency Department of the Office of State (in November 1996).

No.	Name	Date of birth	Article of CriminalCode	Offence	Court of first instance and date of sentence	Date of execution
1	Sergo TIBILOV	1953	104	Premeditated, aggravated murder	Tbilisi Court, 23 February 1993	4 May 1994
2	Givi TVAURI	1967	104	Premeditated, aggravated murder	Supreme Court of Georgia, 5 April 1993	4 May 1994
3	Avtantil GAMILAGDISHVILI	1955	104	Premeditated, aggravated murder	Supreme Court of Georgia, 30 April 1993	4 May 1994
4	Koba IMNAISHVILI	1972	209	Attempt on the life of a police officer	Supreme Court of Georgia, 28 July 1993	16 May 1994
5	Kikusha MATSONADZE	1945	104	Premeditated, aggravated murder	Supreme Court of Georgia, 10 August 1993	4 May 1994
No.	**Name**	**Date of birth**	**Article of CriminalCode**	**Offence**	**Court of first instance and date of sentence**	**Date of execution**
6	Temuri MIRESASHVILI	1962	104	Premeditated, aggravated murder	Supreme Court of Georgia,	15 August 1994

					28 September 1993	
7	Anushaval PARAVJAN	1956	117	Rape of a minor	Tbilisi Court, 6 December 1993	4 May 1994
8	Suliko CHIKHLADZE	1948	104	Premeditated, aggravated murder	Supreme Court of Georgia, 24 February 1994	15 August 1994
9	Tamaz TSATAVA	1957	78, 104	Banditry, premeditated, aggravated murder	Supreme Court of Abkhazia, 5 August 1992	1994[41]
10	Romul GOGISVANIDZE	1942	104	Premeditated, aggravated murder	Supreme Court of Georgia, 21 March 1994	4 November 1994
11	Mamuka CHIKAIDZE	1968	104	Premeditated, aggravated murder	Supreme Court of Georgia, 8 April 1994	December 1994
No.	**Name**	**Date of birth**	**Article of CriminalCode**	**Offence**	**Court of first instance and date of sentence**	**Date of execution**
12	Mindia TSOTSORIA	1974	104	Premeditated, aggravated murder	Supreme Court of Georgia, 11 July 1994	December 1994

[41] Dates given in this column for Nos. 9-14 are those of when the Presidential Clemency Commission recommended that clemency be denied, rather than that of the execution itself, which followed shortly afterwards.

13	Besik KHALAJA	1972	104	Premeditated, aggravated murder	Supreme Court of Georgia, 11 July 1994	December 1994

APPENDIX III - Extracts from international human rights standards relating to the death penalty

1. *Universal Declaration of Human Rights (selected articles)*

Article 3
Everyone has the right to life, liberty and security of person.

Article 5
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

2. *International Covenant on Civil and Political Rights (selected articles)*

Article 6
1.Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his right.
4.Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
6.Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

3. *United Nations Economic and Social Council (ECOSOC) Resolution 1984/50: Safeguards guaranteeing protection of the rights of those facing the death penalty (selected articles)*

Annex
4.Capital punishment may be imposed only when the guilt of the person charged is based on clear and convincing evidence leaving no room for an alternative explanation of the facts.
6.Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.
8.Capital punishment should not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.

4. *ECOSOC Resolution 1989/64: Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (selected articles)*

Article 1
Recommends that Member States take steps to implement the safeguards and strengthen further the protection of rights of those facing the death penalty, where applicable, by:
b) Providing for mandatory appeals or review with provision for clemency or pardon in all cases of capital offence:
c) Establishing a maximum age beyond which a person may not be sentenced to death or executed;

Article 5
Urges Member States to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted.

5. ***United Nations General Assembly Resolution 32/61 of 8 December 1977 (selected article)***

Article 1
[The General Assembly] Reaffirms that...the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment.

6. ***Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty (selected extracts)***

The States parties to the present Protocol,

Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights;

Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life,

Have agreed as follows:

Article 1
No one within the jurisdiction of a State party to the present Optional Protocol shall be executed.
Article 2
Each State party shall take all necessary measures to abolish the death penalty within its jurisdiction.

7. ***Council of Europe: Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty (selected article)***

Article 1
The death penalty shall be abolished. No one shall be condemned to such penalty or executed.