



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

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

GEORGIA

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

A. Introduction

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

3. The Committee notes that following the State party's independence in 1991, internal conflict has continued in part of its territory. In particular, the situation in the self-proclaimed autonomous republics of Abkhazia and South Ossetia, the latter having produced more than 215,000 internally displaced persons, is a matter of serious concern. Taking the above into consideration, the Committee wishes to remind the State party that no exceptional circumstances may be invoked in respect of the absolute prohibition of torture.

B. Positive aspects

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

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

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

7. The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular:

(a) The revision of the Code of Criminal Procedure, in particular article 144 which brings Georgian legislation in line with international norms with regard to the definition of torture;

(b) The elaboration of the Plan of Action against Torture in Georgia, the Plan of Measures to Reform and Develop the Penal Correction System as well as the National Anti-Trafficking Plan and the efforts made to strengthen State institutions, including the creation of the Department of Investigation in the Ministry of Justice in 2005;

(c) The adoption of new laws, such as the law on domestic violence in April 2006 and the drafting of a new law on trafficking, as well as the new draft Penitentiary Code for the consideration of Parliament in 2006;

(d) The allocation by the State party of additional resources to improve standards in places of detention, in particular with respect to access to health, activities, training and living conditions;

(e) The 2004 Memorandum of Understanding between the Ministry of Internal Affairs and the Ombudsman's office that enables the Ombudsman's office to authorize monitoring groups, which include representatives of non-governmental organizations, to undertake unannounced visits to any detention facility under the responsibility of the Ministry of Internal Affairs.

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

C. Subjects of concern and recommendations

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

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

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

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

11. The Committee is concerned about compliance by the State party with article 3 of the Convention, in particular the use of diplomatic assurances in adjudicating requests for refoulement, extradition and expulsion of persons accused of criminal activities (art. 3).

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

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

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

13. The Committee is also concerned by information received from non-governmental organizations asserting that in some instances detainees are not duly informed of their right to counsel or their right to be examined by a medical doctor of their own choice (art. 6).

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

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

In accordance with articles 6 and 8 of the Convention, the State party should take all the necessary measures to review the relevant terms of those agreements which prohibit the transfer of citizens from certain States who are on Georgian territory to the International Criminal Court.

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

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

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

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

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

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

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

The State party should consider: (a) further reducing the period of pretrial detention; (b) expediting the filling of vacancies in the court system; and (c) using alternative measures in cases where the accused does not pose a threat to society.

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

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

20. The Committee notes that while the Constitution and the Code of Criminal Procedure contain provisions regarding the right to compensation for victims, there is no explicit law that provides for reparations. The Committee is also concerned that there is no information available regarding the number of victims who may have received some form of assistance or rehabilitation (art. 14).

The State party should consider adopting specific legislation in respect of compensation, reparation and restitution, and in the meantime, should take practical measures to provide redress and fair and adequate compensation, including the means for as full rehabilitation as possible.

21. The State party should provide in its next periodic report detailed statistical data, disaggregated by crimes, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law-enforcement officials and on the related investigations, prosecutions and penal and disciplinary measures. Information is further requested on any compensation and rehabilitation provided to the victims.

22. The State party is encouraged to disseminate widely the reports submitted by Georgia and the conclusions and recommendations of the Committee, in appropriate languages, through official websites, the media and non-governmental organizations. Furthermore, the Committee

encourages the State party to discuss the conclusions and recommendations broadly, including with the Offices of the Ombudsman and non-governmental organizations, in particular those that submitted information to the State party and participated in the preparation of the report.

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

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