

GEORGIA

Torture and ill-treatment

Comments on the Initial Report submitted to the United Nations Committee against Torture

Introduction

In November 1996 the United Nations (UN) Committee against Torture in Geneva will examine Georgia's Initial Report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture).

Since Georgia achieved its independence following the break-up of the Soviet Union,¹ the country has moved gradually towards building democratic institutions and reforming its judicial and legal systems, and has become a party to a number of important international standards in the field of human rights.

Amnesty International welcomes these advances and acknowledges that they have been made against a background, especially in the early years of independence, of severe economic and political dislocation and armed hostilities in parts of the country. However, torture and ill-treatment have continued in custody, on the admission of the Georgian authorities themselves, with those responsible frequently going unpunished. This report examines the issues surrounding torture and ill-treatment in Georgia, and presents Amnesty International's recommendations.²

Legal prohibitions against torture frequently not observed or implemented

Georgia is a party to the Convention against Torture,³ and to the International Covenant on Civil and Political Rights and its first Optional Protocol.⁴ Both these treaties prohibit the use of torture and other cruel, inhuman or degrading treatment or punishment. The Georgian Criminal Code⁵ contains a range of

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

² The report does not cover Amnesty International's concerns in the self-proclaimed republic of Abkhazia, as it is currently outside the *de facto* control of the Georgian authorities. For more information on Amnesty International's other concerns in Georgia including Abkhazia see *Georgia: A summary of Amnesty International's concerns*, AI Index: EUR 54/04/96, October 1996.

³ Georgia acceded formally on 26 October 1994.

⁴ Georgia acceded to both formally on 3 May 1994.

⁵ The Criminal Code currently in use is still that dating from the Soviet era, with various amendments.

articles punishing torture and other forms of ill-treatment, and torture is also explicitly forbidden under the new Georgian Constitution adopted in 1995.⁶

In spite of all these provisions, however, torture and ill-treatment have continued in custody, facts admitted publicly in recent months by the authorities. Georgia's Initial Report⁷ to the United Nations Committee against Torture, the body of international experts set up to monitor the compliance of States-Parties to the Convention against Torture, states in Point 27:

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

In a more specific report an official of the Prosecutor-General's office, Tenghiz Makharadze, is said to have claimed on 3 August 1996 that police officers have frequently tortured detainees and that in at least one instance two men were subjected to electric shock treatment.⁸ The case mentioned by him was that of a father and son named Banturi, who were said to have been subjected to this treatment in the city of Kutaisi (no date or other circumstances were given in the reports received by Amnesty International). A separate report on 7 August 1996⁹ described the beginning of a prosecution in Tbilisi, the capital, against a group of police officers charged among other things with the torture of suspects by using electric shocks. Gela Kavtelishvili, a former deputy chief of the Tbilisi police department for combatting drug addiction and drug trafficking, stood accused together with four other police officers from his department of, among other things, using electric shocks on suspects while investigating the murder of a man named as Lia Chovelidze-Tsamalashvili. A witness named Jumber Khidasheli told the court on 7 August that he had been insulted, beaten and tortured by the use of electric shocks in an effort to force him to confess to the killing.

Difficulties in gaining access to a defence lawyer

In most of the reports received by Amnesty International, the alleged acts of torture or ill-treatment are said to have taken place during periods of short-term detention or arrest, or during pre-trial detention with

⁶ Article 17 (2) of the Constitution proclaims “Torture of a person is forbidden, as well as treatment or punishment which is inhuman, cruel, or degrading to a person's honour and dignity.” Article 18 (4) also states that “Physical and mental coercion of a person detained or otherwise restricted in his freedom is not allowed.” Although the guarantees under Article 17 are absolute, the rights under Article 18 may be suspended under a state of emergency (Article 46 of the Constitution).

⁷ UN Doc. CAT/C/28/Add.1, 17 June 1996. Quotations translated by Amnesty International from the original Russian.

⁸ BGI News Agency, 3 August 1996. Tenghiz Makharadze, head of the Department of Supervision over Investigations by the Interior Ministry, is also said to have reported that Georgian police frequently concealed crimes and conducted illegal searches.

⁹ BGI News Agency, 7 August 1996 and 3 September 1996.

the aim of forcing a confession or extracting other information. One of the factors aggravating the possible scope for such actions to take place is the difficulty experienced by some defendants in obtaining prompt and regular access to a defence lawyer of their own choice. Denial of prompt access to relatives, a lawyer or an independent doctor is one of the “preconditions” for torture.¹⁰

Under the Code of Criminal Procedure inherited from the Soviet era, in the vast majority of cases a defendant was only allowed access to a defence lawyer once the prosecution had concluded the preliminary investigation, which could last for months after arrest; the same restriction applied to access to the defendant by his or her family. The scope for abuse was clear, and this has now been changed: both the Code of Criminal Procedure (Article 43) and the Constitution (Article 18) now permit a lawyer to participate in the case from the moment a person is detained or charged. However, it appears that in contravention of international standards access is still hindered by bureaucratic procedures which require a system of permits greatly hampering the ability of defence lawyers to gain timely entry to the various institutions where their clients may be held.

Difficulties in obtaining prompt and regular access to a defence lawyer are said to have contributed to instances in which prisoners have alleged that their testimony was extracted under duress, including by torture.

Statements extracted under torture reportedly not excluded as evidence

Under Georgian law evidence obtained through violation of legal proceedings has no legal force¹¹ (although it should be noted that Article 18 of the Constitution, which among other things prohibits the physical or mental coercion of a detainee, may be suspended during a state of emergency - see footnote 6). 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.¹² Nevertheless it has been alleged by some prisoners that testimony obtained from them under duress was not excluded at their trial although they repudiated it in court.

Such allegations were made, for example, in a major political trial which ended in Georgia's Supreme Court on 6 March 1995 when two defendants, Irkali Dokvadze and Petre Gelbakhiani, were sentenced to death, and 13 others to long prison terms. Most defendants in the case alleged that they had been tortured or ill-treated during interrogation and that their statements had been extracted under duress, although none of these statements was excluded from the trial proceedings despite these claims.¹³

In a more recent case six political prisoners, sentenced by the Supreme Court on 17 June 1996, claim they were tortured in order to force a confession. Badri Zarandia, sentenced to death for treason

¹⁰ See Amnesty International, *Torture in the Eighties* (AI Index: ACT 04/01/84).

¹¹ Article 42 (7) of the Constitution.

¹² Article 195 of the Criminal Code. Such actions are punishable by from three to 10 years' imprisonment if accompanied by the use of violence or taunts towards the person questioned.

¹³ For further detailed information on this case see the Amnesty International report *Republic of Georgia: Death penalty, torture and fair trial concerns in case No. 7493810*, AI Index: EUR 56/04/95.

and banditry in connection with violent events in Georgia in 1993,¹⁴ claims he was beaten with rifle butts while he was recovering from an operation to amputate his leg (as a result of a wound sustained during his arrest in October 1994), and that he confessed to a charge of murder after threats were made against his close relatives. His co-defendants allege similar treatment. Murtaz Gulua reports that he was ill-treated eight days after his arrest on 21 September 1995: he was first beaten with sticks and then, when he refused to confess, he was hung by his legs and had a gas mask placed over his face while the beating continued. The air supply to the mask was turned off at intervals. When he asked for something to drink, he says, water was poured into the mask. Murtaz Gulua says that such treatment continued for three days, after which he could stand no more and signed testimony which had been prepared for him in advance. Gabriel Bendeliani alleges that two people (whom he names) tore some of his fingernails out with pliers, and that he was regularly beaten by other officers in Zugdidi prison after he had confessed. Zviad Sherozia claims that he was hung by the feet and beaten, including being kicked in the abdomen, and that a man whom he named forced a grenade into his mouth and threatened to remove the safety pin. Zviad Sherozia says that all the testimony he subsequently signed was false. Gurgen Malania reports that he was arrested on 9 September 1994 in the village of Odishsi and that, although he had not resisted arrest, he was beaten while being taken by car to Zugdidi police department. Once there he was taken to the second floor where, he alleges, he was beaten with rifle butts, truncheons and chair legs. He was then taken downstairs, where he was hung by his feet, had a gas mask placed over his face, and was beaten again. Gurgen Malania also says that he was beaten along the length of his body while tied to a long pole fixed between a table and a chair, and had needles inserted under his nails.

To Amnesty International's knowledge no statements signed by the defendants, which they allege were made under duress, were excluded from trial proceedings. Amnesty International is also unaware of any prompt and impartial investigations of any of these complaints and reports of torture and ill-treatment.

The failure to conduct prompt and impartial investigations of complaints and reports of torture

As with prohibitions on torture in general, Georgia has in place various legal procedures for the investigation of allegations of torture in custody and the bringing to justice of those responsible. However, these procedures often are not implemented fully and rigorously, meaning that those responsible can remain unpunished.

In the so-called Domukhovsky-Gelbakhiani case (No. 7493810) mentioned above, for example, Amnesty International knows of only three instances in which investigations were undertaken into the numerous allegations of beatings made by defendants. In one a prisoner is said to have been convicted of an attack on Gedevan Gelbakhiani,¹⁵ and a prison officer dismissed, after the intervention of the state

¹⁴ 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.

¹⁵ Unofficial sources alleged that the authorities had incited other inmates to torture the defendants in this case. In a statement sent to Amnesty International in October 1994 Georgian authorities confirmed that a prisoner (whom they identified) had attacked Gedevan Gelbakhiani, but claimed that the reason for the attack was Gedevan Gelbakhiani's refusal to help this prisoner with an appeal. Co-defendant Zaza Tsiklauri also named this prisoner as having been among the people who tortured him.

Committee on Human Rights and Interethnic Relations. With regard to claims that Zaza Tsiklauri¹⁶ was tortured, these were not upheld in court although the state Committee on Human Rights and Interethnic Relations, which again looked into the allegations, felt that there were serious grounds to suppose that the ill-treatment had indeed taken place. An investigation is also said to have been initiated into reports that Viktor Domukhovskiy was beaten by special police officers in his cell on 13 August 1994 after he refused to hand over notes he had made relating to the trial, but Amnesty International is not aware of any conclusions having been made public.

Amnesty International welcomes the involvement of the state Committee on Human Rights and Interethnic Relations in these and other cases.¹⁷ However, this body does not have the right to conduct investigations independently, and it is a matter of concern that the Committee apparently needed to take the initiative and prompt others to action only because of the failure of the relevant competent judicial organs to pursue themselves the allegations of torture (in other cases with a less high profile, many detainees reportedly have not submitted complaints either because they fear reprisals or else because they have no faith in the will of the authorities to conduct an impartial investigation). Moreover, Amnesty International is concerned that prompt, impartial and professional medical examinations do not appear to be conducted in all cases.¹⁸

Under the new Constitution the Procuracy (Prosecutor's Office) of Georgia, as before, is responsible for exercising supervision over criminal investigations.¹⁹ In a move prompted, according to reports, by the numerous reports of illegal detentions and searches and the ill-treatment of detainees, it was announced on 13 August 1996²⁰ that the Prosecutor's Office had created a special department to monitor the observance of human rights by law enforcement officials. Contact telephone numbers for the new department were published, with calls for the public to use them for reporting alleged abuses.

The new post of Public Defender

Another layer of supervision over the activities of official bodies and others was instituted on 16 May 1996 when President Eduard Shevardnadze signed into law a bill on the Public Defender (Ombudsman), a new post instituted under the Constitution adopted last year to monitor the defence of individual rights and

¹⁶Soon after his arrest Zaza Tsiklauri was hospitalized after sustaining fractures to the left leg and left arm and extensive burns from boiling water inflicted during interrogation. Some Georgian authorities claimed that the documented injuries were sustained when Zaza Tsiklauri jumped from a moving car to avoid arrest, but the then head of the Georgian security service stated that Zaza Tsiklauri had been tortured.

¹⁷This body has the right to coordinate the activity of state, social and other organizations in the defence of human rights in accordance with the provisions of international treaties

¹⁸The standards for such investigations are described in the Amnesty International document *Prescription for Change: Health professionals and the exposure of human rights violations* (AI Index: ACT 75/01/96).

¹⁹Article 91 of the Constitution.

²⁰Sarke Information Agency, 14 August 1996; BGI News Agency 13 August 1996.

freedoms.²¹ According to the law, the Public Defender is independent and subordinate only to the Constitution and the law, with interference in his or her work punishable by law. The Public Defender is charged with supervising the observance of human rights in Georgia, making violations of these rights known, and furthering the restoration of violated rights. To this end the Public Defender is entitled, among other things, to unhindered access, including to military areas and all places of detention; to demand any necessary material and receive an explanation from officials at any level; and to recommend institution of criminal or other disciplinary procedures. At the time of writing, however, parliament had not yet appointed anyone to the post of Public Defender.

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

Prison conditions reportedly amounting to ill-treatment

Conditions in penal institutions in Georgia²² are difficult, falling short of international standards and, if reports are accurate, amounting in themselves to ill-treatment.²³ Conditions in pre-trial detention, where non-convicted prisoners are held, are among those said to be most severe. Prisoners there are often held in grossly overcrowded conditions, meaning that they have to sleep in two or three shifts. Inadequate food, insanitary conditions and lack of medicines compound the problems, providing fertile ground for the spread of parasitic infections and disease: tuberculosis is said officially to have been one of the main causes of death among the 122 prisoners who died in custody in 1995. Defendants in the Domukhovskiy-Gelbakhiani trial, for example, reported that meals were frequently nothing more than bread and water; heating and electricity were irregular; the facility was vermin-ridden with rats, lice and cockroaches; tuberculosis was widespread among inmates and little attempt was made to control its spread through treatment or isolation; and medical attention was described as arbitrary and inadequate, with medication mostly unavailable unless supplied by relatives.²⁴

The Georgian authorities have characterized conditions in penal institutions as degrading,²⁵ defining as a common problem of the penitentiary system an almost complete absence of elementary living

²¹ Article 43 of the Constitution.

²² These comprise investigation-isolation prisons (known as SIZOs from their initials in Russian) where prisoners are held in pre-trial detention and on death row; corrective labour colonies where most prisoners serve their sentences; and maximum-security prisons for convicted inmates.

²³ Article 16 of the Convention against Torture prohibits cruel, inhuman and degrading treatment or punishment, and makes it clear that the obligations under Articles 10, 11, 12 and 13 also apply to such treatment or punishment.

²⁴ See AI Index: EUR 56/04/96.

²⁵ Georgia's Initial report to the Committee against Torture, UN ref: CAT/C/28/Add.1, para. 143, 17 June 1996.

conditions and unsatisfactory sanitary provisions, compounded by an extremely inadequate level of medical services. Among the factors leading to such a situation they point to the economic state of the country, which has meant insufficient funds to build new institutions or repair those already existing, and a lack of resources to ensure adequate medical provisions and other basic amenities.

Lack of training in, and knowledge of, international standards prohibiting torture

In addition to the inadequate implementation of standards and legislation against torture, the situation is aggravated by the fact that personnel of the penitentiary system are in practice not acquainted with international standards such as the United Nations Standard Minimum rules on the Treatment of Prisoners, while other documents such as the Convention against Torture have not been translated into Georgian. The failure to make information regarding the prohibition of torture available in a language which officials understand violates Article 10 of the Convention against Torture.²⁶

There is also no specific government program of education and training in place regarding the prohibition against torture for all law enforcement officials or others involved in the penitentiary system, as required by Article 10. Limited first steps have been taken, however, under the auspices of the Organization for Security and Co-operation in Europe (OSCE),²⁷ which has begun an initial training program for law enforcement officials. The second phase of a four-part training course for Georgian prison officers concluded on 26 April this year, with the return from Poland of a delegation, led by the General Director of the Georgian Prison Service. There, the delegates had worked alongside their counterparts in four Polish prisons, with the aim of exposing Georgian officials to realistic and attainable prison reform goals and illustrating that improvements in prison services can be made without new facilities or special funding. The third phase of the program will involve follow-up visits to Georgian penal institutions and a locally-developed training initiative.²⁸

Redress and compensation

Under Article 14 of the Convention against Torture all States-Parties are required to ensure in their legal systems that a victim of torture is able to obtain redress and that he or she has an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible. The Georgian Constitution incorporates only some aspects of this obligation. It provides for full compensation for

²⁶ Article 10 provides: "Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment."

²⁷ The OSCE has a long-term mission based in Georgia, charged among other things with "assisting the development of legal and democratic institutions and processes in Georgia".

²⁸ OSCE ODIHR Bulletin Vol. 4, No. 3.

damage inflicted by the state²⁹, but there is no specific mention of torture as a form of damage inflicted, nor a requirement of rehabilitation. Furthermore, to Amnesty International's knowledge there is not yet in place any enabling legislation to regulate such compensation or a mechanism to effect it. In spite of repeated requests the authorities have failed to provide Amnesty International with information on redress and compensation awarded to torture victims.

The death penalty

Amnesty International regards the death penalty as the ultimate cruel, inhuman and degrading punishment. Like torture, an execution constitutes an extreme physical and mental assault on a person already rendered helpless by government authorities.

The new Georgian Constitution retains the death penalty.³⁰ At least 19 people have been judicially executed since Georgia lifted a two-year moratorium on executions in 1994,³¹ and around 40 men are believed to be awaiting execution at the time of writing.³² Among those on death row are at least three men whose cases were mentioned above - Irakli Dokvadze, Petre Gelbakhiani and Badri Zarandia - who have alleged that confessions used at their trials were extracted by the use of torture or other ill-treatment and whose complaints, it appears, have never been properly investigated. In their cases, and possibly others, the death sentences have been passed by the Supreme Court of Georgia acting as a court of first instance, with the official verdict said to record that the sentence is final and not subject to appeal. The court's verdict in the case of Badri Zarandia, for example, is said to state that the verdict is final and not subject to an appeal by cassation (which can be lodged by the defendant against sentence or conviction) or by a judicial protest (which can be lodged by competent legal bodies against the decision of a court).³³ Amnesty International understands that in such cases the sentence can be reviewed by a body within the Supreme Court, although it is not clear to what extent this is automatic or what opportunities the convicted person has, if any, to present his or her case during such a review. It is also

²⁹ Article 49 (9) of the Constitution states: "Full compensation of damage unlawfully inflicted by state agencies, agencies of self-government, as well as their employees, at the expense of the state and determined through court proceedings, is guaranteed to all."

³⁰ Article 15 (2) of the Constitution states: "The death penalty, as an exceptional measure of punishment, and until its complete abolition, may be provided by law for the commission of especially serious crimes against life."

³¹ See for example *Georgia: A summary of Amnesty International's concerns*, AI Index: EUR 56/04/96.

³² Comments by George Kobakhidze, deputy chairman of parliament, reported in *Akhali Taoba* No. 129 of 2 September 1996.

³³ Human Rights Information Bulletin No. 9, 8 July 1996, produced by the Moscow-based organization "Anti-Fascist Youth Action". They have also alleged that Badri Zarandia had not, as of July, been given a copy of the verdict in his case (under Georgian law this records not only whether a defendant was guilty or not, but also provides the court's detailed reasoning for arriving at the verdict).

believed that all death sentences are reviewed by the Presidential Clemency Commission, which looks at possible mitigating factors but has no power to review the actual conduct of the case.

Under internationally agreed human rights standards³⁴ all prisoners sentenced to death have the right to appeal to a court of higher jurisdiction. Amnesty International is concerned that any violation of this right - of special importance in cases where a defendant's life is at stake - also removes the possibility to challenge the court's dismissal of fair trial concerns, including allegations that testimony extracted under duress was not excluded.

Recommendations

Torture and ill-treatment of people under any circumstances are expressly prohibited both under international agreements to which Georgia is party, such as the Convention against Torture, and by the Georgian Constitution and Criminal Code. Amnesty International recognises the problems that may exist within the prison system, for example such as those caused by lack of funding for professional staff, training and infrastructure, but these problems can never be used as an excuse for torture and deliberate ill-treatment. Amnesty International believes that it is clearly within the power of the Georgian authorities to take immediate measures to eliminate these illegal practices within its prison system.

Amnesty International welcomes the recent statements by officials admitting the seriousness of the problem in Georgia regarding torture and ill-treatment. Amnesty International sincerely hopes that these statements, and the recent prosecutions of police officers accused of torturing detainees, will be the beginning of rapid and concrete measures to end the illegal treatment of people in detention. Amnesty International recommends that the authorities as a matter of priority:

- C inform all detainees of their rights, including the right to complain to the authorities against ill-treatment;
- C ensure that detainees under interrogation are informed promptly of the charge or charges against them, and that they are allowed prompt and regular access to a lawyer of their own choice, as well as to relatives and a medical practitioner;
- C implement prompt and impartial investigations of all complaints of torture or ill-treatment of detainees, as well as when there are reasonable grounds to believe that torture or ill-treatment has occurred even if no complaint has been made;
- C as part of such investigations, ensure prompt, impartial and professional medical examinations of persons alleging torture or who may have been tortured;
- C bring those responsible for torture or ill-treatment of detainees to justice in the courts;
- C ensure that every victim of torture has access to the means of obtaining redress and an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible;
- C ensure that information regarding the absolute prohibition against the use of torture and ill-treatment is fully included in the training of law enforcement personnel and other persons who may be involved in the custody, interrogation and treatment of any individual subjected to any form of arrest, detention or imprisonment;

³⁴ Article 14 (5) of the International Covenant on Civil and Political Rights, to which Georgia is a party.

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- C establish an effective system of independent inspection of all place of detention;
 - C amend Article 46 of the Constitution without delay to ensure that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
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With regard to the death penalty, Amnesty International is urging the authorities to:

- C commute all pending death sentences;
- C declare an immediate moratorium on further death sentences and executions pending a comprehensive review of the death penalty in Georgia;
- C if not yet ready to do the above, at least ensure that all legal proceedings in which a death penalty could be imposed conform to international minimum standards, including ensuring as a priority the right to appeal to a court of higher jurisdiction;³⁵
- C publish timely, accurate and comprehensive statistics on the application of the death penalty, in accordance with Georgia's commitments as a member of the OSCE and other international recommendations.³⁶

³⁵ See, for example, those standards set forth in the International Covenant on Civil and Political Rights, the UN Economic and Social Council (ECOSOC) Safeguards guaranteeing protection of the rights of those facing the death penalty, annexed to Resolution 1984/50 of 25 May 1984, and ECOSOC Resolution 1989/64 of 24 May implementing those Safeguards, as well as ECOSOC Resolution 1996/15 adopted on 23 July 1996 without a vote.

³⁶ See for example ECOSOC Resolution 1989/64, the requirements of the five-yearly studies on the use of the death penalty by the ECOSOC Commission on Crime Prevention and Criminal Justice and the 1994 Budapest Review Conference Concluding Document, Decision on the Human Dimension, Section VIII, para. 19.