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公民权利和政治权利，包括酷刑和拘留问题

酷刑和其他残忍、不人道或有辱人格的待遇或处罚问题  
特别报告员曼弗雷德·诺瓦克的报告

对格鲁吉亚的访问\*

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\* 本访问报告的内容提要以所有正式语文分发。报告本身载于内容提要的附件，  
仅以原文和俄文分发。附录仅以英文分发。

## 内 容 提 要

应格鲁吉亚政府邀请，酷刑问题特别报告员于 2005 年 2 月 19 日至 25 日在其任务规定范围内访问了格鲁吉亚。特别报告员感谢格鲁吉亚政府在他访问期间向他提供全力合作。本报告对格鲁吉亚的酷刑或虐待状况的法律和实际问题进行了研究。特别报告员认为，格鲁吉亚持续存在酷刑现象，而其持续的主要原因是存在一种有罪不罚的文化。特别报告员还访问了阿布哈兹和南奥塞梯地区，他在当地对现有的拘禁条件表示关切。尤其是在阿布哈兹，他对尽管目前暂停死刑、但仍可判处死刑这一情况表示关切，并对死囚犯的处境表示关切。因此，他建议当局采取一系列措施，防止和制止酷刑行为和其他形式的虐待。

特别报告员提到了格鲁吉亚政府采取的一些积极措施，如建立探访拘留场所的监测机制。他指出，政府向他作出明确承诺，并保证认真对待他的建议。特别报告员认为，这次访问是朝在格鲁吉亚铲除酷刑和虐待这一共同目标合作的富有成效的开端。

特别报告员欢迎自他访问以来的事态发展——其中有一些是他在初步访问说明(E/CN.4/2005/62/Add.3)中所建议的，如修正《刑法》，使酷刑罪的定义符合《禁止酷刑和其他残忍、不人道或有辱人格的待遇或处罚公约》，格鲁吉亚加入《公约附加议定书》，以及承认酷刑委员会有权审议个人申诉。这些事态发展表明，政府为此目的提供合作。

**Annex**

**REPORT OF THE SPECIAL RAPPORTEUR ON TORTURE AND  
OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT  
OR PUNISHMENT, MANFRED NOWAK ON HIS MISSION TO  
GEORGIA (19-25 FEBRUARY 2005)**

**CONTENTS**

	<i>Paragraphs</i>	<i>Page</i>
Introduction .....	1 - 9	4
I.    LEGAL FRAMEWORK .....	10 - 27	5
II.   THE SITUATION OF TORTURE AND ILL-TREATMENT .....	28 - 39	8
III.  CONDITIONS IN DETENTION .....	40 - 51	11
IV.   ABKHAZIA .....	52 - 54	13
V.    SOUTH OSSETIA .....	55 - 56	14
VI.   CONCLUSIONS AND RECOMMENDATIONS .....	57 - 62	15
Appendix - Individual cases .....		18

## Introduction

1. At the invitation of the Government - originally extended in February 2002 but not realized owing to circumstances beyond the control of the Government - the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, undertook a visit to Georgia from 19 to 25 February 2005. What follows is the report of his findings, conclusions and recommendations. The Special Rapporteur examined the legal framework and governmental activities relating to the prohibition of torture and other forms of ill-treatment. He also examined the response of the Government to allegations of violations, particularly in relation to inquiry, impunity and prevention. The Special Rapporteur has based his findings on the situation of torture and ill-treatment in Georgia on written information and interviews of a wide array of sources, including government officials, NGOs, lawyers and victims themselves, as well as from on-site inspections of detention facilities. He expresses his appreciation to the Government for providing the detailed information requested by him, as well as additional updated material, by letters dated 23 March, 9 July and 15 August 2005.
2. The visit to Georgia was his first mission since he was appointed Special Rapporteur on 1 December 2004. The one-week visit to Georgia also covered the territories of Abkhazia and South Ossetia, which are not under the Government's control. According to the Special Rapporteur, the main purposes of the visit were to assess the prevailing situation of torture and other cruel, inhuman or degrading treatment or punishment, to promote preventive mechanisms to eradicate torture and ill-treatment, and to begin a process of cooperation with the Government.
3. The Special Rapporteur noted the enormous and rapid change the country was experiencing following the "Rose Revolution" in late 2003, and credited those who assumed leadership on the platform of human rights and democratic principles. He noted the commitment and efforts the Government had undertaken to tackle corruption, uphold the rule of law, and reform the law enforcement and criminal justice system, among other things. He acknowledged the socio-economic challenges the country faced, as well as the ongoing conflicts on its territory. Nevertheless, the Special Rapporteur also noted that credible and reliable allegations of torture and ill-treatment continued to be received. Mindful of the scope and pace of these reforms, the Special Rapporteur highlighted that they should be carried out in full respect of international human rights law, in particular respect for the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment.
4. Over the course of his visit the Special Rapporteur met with President M. Saakashvili, Ms. S. Zurabishvili, Minister for Foreign Affairs, Ms. N. Burjanadze, Chairperson of Parliament, Ms. E. Tevdoradze, Chairperson of the Human Rights and Civil Integration Committee of Parliament, Mr. K. Gabashvili, Chairperson of the Foreign Relations Committee of Parliament, Ms. K. Makharashvili, a member of the Legal Committee of Parliament, Ms. E. Tkeshelashvili, Deputy Minister of Justice, Mr. B. Bregadze, Deputy Minister of Internal Affairs, Mr. K. Korkelia, Deputy Secretary of the National Security Council, Mr. Z. Adeishvili, the General Prosecutor, and Mr. S. Subari, the Public Defender, among other officials.
5. He also met with representatives of numerous non-governmental human rights organizations (NGOs), including the American Bar Association (Central European and Eurasian Law Initiative), Article 42 of the Constitution, Former Political Prisoners for Human Rights, the Georgian Centre for Psychosocial and Medical Rehabilitation of Torture Victims, the Georgian

Committee against Torture, the Georgian Medical Association, the Georgian Young Lawyer's Association, the Human Rights Information and Documentation Centre, the Liberty Institute, Open Society - Law Programme, Penal Reform International, the Rehabilitation Centre for Victims of Torture "Empathy", as well as lawyers and forensic experts.

6. The Special Rapporteur met with Mr. E. Svanidze, the Georgian member of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and representatives of international organizations present in Georgia, including the European Union, the International Committee of the Red Cross, the Organization for Security and Cooperation in Europe (OSCE) and the United Nations Country Team.

7. In Abkhazia, the Special Rapporteur met with the de facto Deputy Minister of Internal Affairs, Mr. G. Leonid, and the director and deputy director of the detention facility of the Ministry of Internal Affairs. He also met with representatives of the United Nations Observer Mission in Georgia (UNOMIG) Human Rights Office of Abkhazia, Georgia; representatives of NGOs, including the Foundation for Civil Society and Man of the Future, the Centre for Humanitarian Programmes and the Abkhaz Red Cross; as well as lawyers and the media.

8. In South Ossetia, the Special Rapporteur met with the de facto Minister for Foreign Affairs, Mr. M. Djioev, the Human Rights Plenipotentiary, Mr. D. Sanakoev, the de facto Minister of Justice, Mr. M. Chigoev, and the heads of the departments of the penitentiary and human rights compliance of the Ministry of Justice, as well as the Head of the Tskhinvali Field Office of OSCE, Mr. G. Gantchev. He also met with representatives of NGOs, including the Association of South Ossetian Women for Democracy and Human Rights, and Law Above Power.

9. The Special Rapporteur expressed his gratitude to the excellent cooperation of the Government in relation to his visit, including facilitation of meetings and full compliance with the terms of reference for the visit. He also expressed his appreciation for the assistance of the United Nations Resident Coordinator, Mr. L. Clark, and Ms. N. Cherkezishvili; the UNOMIG Human Rights Office of Abkhazia, Georgia, in particular Mr. V. Stefanov, Ms. A. Buehler and Ms. I. Nizhynska; OSCE, in particular Ambassador R. Reeve, Ms. I. Muth and Mr. J. Plantiveau; and the Office of the High Commissioner for Human Rights, in particular Mr. S. Syed, who accompanied the Special Rapporteur on the visit.

## **I. LEGAL FRAMEWORK**

### **A. International and regional levels**

10. Georgia is a party to the major United Nations human rights treaties prohibiting torture: the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child. Georgia has also ratified both Optional Protocols to ICCPR. It is also a party to the Geneva Conventions, of 12 August 1949, and the Rome Statute of the International Criminal Court.

11. At the regional level Georgia is a party to the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The European Committee for the Prevention of Torture (CPT) has visited Georgia in 2001, 2003 and 2004.<sup>1</sup>

## **B. National level**

### **1. Human rights**

12. The 1995 Constitution, as subsequently amended, provides, in article 6 (2), that Georgian legislation shall be consistent with the universally recognized principles and norms of international law. International treaties or agreements by Georgia that are not contrary to the Georgian Constitution prevail over internal normative acts. Article 7 of the Constitution states that Georgia “shall recognize and protect universally recognized human rights and freedoms as eternal and supreme human values. While exercising authority, the people and the State are bound by these rights and freedoms as directly [applicable] law”. The Constitution of 1995 contains a chapter on human rights, Chapter Two, articles 12-47.

### **2. Prohibition of torture and other cruel, inhuman or degrading treatment or punishment**

13. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is enshrined in the Constitution: article 17 (2) states: “Torture, [and] inhuman [or] cruel treatment and punishment or treatment and punishment infringing upon honour and dignity shall be impermissible.” Moreover, article 18 (4) states that “[p]hysical or mental coercion of an arrested [person] or a person otherwise restricted in his/her liberty shall be impermissible”.

14. In the 1999 Criminal Code (CC), as amended up to 31 January 2002, article 126 (1), defines the crime of torture as “systematic beating or other violence that has resulted in the physical and psychological suffering of the victim but has not produced the consequences set out in articles 117 or 118 [i.e. intentional damage and less serious damage to an individual’s health, respectively]”. Apart from this provision, only in article 335, concerning coercion in submitting evidence, is torture specifically mentioned.

15. Various other provisions of the Code criminalize acts which may fall within the scope of the Convention, such as: intentional light damage to health (art. 120); damage to health beyond the measure necessary for catching a criminal (art. 123); assault and battery (art. 125); rape (art. 137); sexual abuse under violence (art. 138); coercion (art. 150); threats (art. 151); and exceeding official powers (art. 333).

16. However, even according to the Government, the definition of torture in Georgian criminal law does not satisfy the requirements laid down in article 1 of the Convention.<sup>2</sup> In particular, the crime of torture seems to be restricted to physical violence, and it lacks the requirement of intentional infliction of severe pain or suffering for a specific purpose, such as obtaining a confession, intimidation, or punishment.<sup>3</sup>

### **3. Safeguards against torture and ill-treatment during arrest and detention**

17. The safeguards for persons during arrest and detention are provided in article 18 of the Constitution, and include: the impermissibility of detention without a court order; production of an arrested person before a court within 48 hours; a limitation of the period of arrest of 72 hours and a maximum limit of detention in remand of nine months;<sup>4</sup> the impermissibility of physical or mental coercion; and right to defence upon arrest. Article 42 reiterates the right to a defence, and provides for the inadmissibility of illegally obtained evidence.

18. The following articles of the 2004 Criminal Procedure Code (CPC) further elaborate on the rights of suspects and detainees as contained in the Constitution: 12 (protection of honour and dignity); 72 (suspected persons); 73 (rights of suspects); 136 (rights of detainees, particularly paragraphs 4 to 8 concerning humane treatment, conditions of detention, illegality of abusive treatment, meetings with lawyers); 138 (notification of arrest); 145 (procedure for arrest); 146 (registration and examination of arrest); 295 (place of interrogation); 302 (duration of interrogation); 304 (use of audio recording); 310 and 311 (interrogation of suspects and accused); 312 (record of interrogation); and 313 (written testimony). Article 19 of CPC provides that a confession without corroborating evidence is insufficient to convict a person, and article 119 provides that evidence obtained through bodily and mental coercion is inadmissible.

### **4. Investigation and punishment of acts of torture and other cruel, inhuman or degrading treatment or punishment**

#### **(a) Complaints**

19. The right to make a complaint is provided in article 73 (1) (j) of CPC.

#### **(b) Investigations**

20. Complaints of torture and ill-treatment by public officials may be submitted to the police, the Inspector General of the Ministry of Internal Affairs, the Ministry of Justice, the Procuracy, the judiciary and the Public Defender, and the Procuracy is charged with investigating them, according to articles 45, 62 and 263 of CPC. Even in the absence of a complaint the authorities are required to investigate a crime, according to articles 24, 261, 263 and 264 of CPC, e.g. in cases where they have been notified by non-governmental organizations or through the mass media.

21. Victims are guaranteed the rights to be informed of the investigations, to tender evidence, as well as to appeal against official acts or decisions during the investigations, according to articles 21, 69 and 234 of CPC.

22. Under the 1996 Law on the Public Defender, a complaint may also be submitted to the Public Defender. In carrying out an investigation, this institution is empowered under article 18 with, among other things, unimpeded access to any place of deprivation of liberty, including military units, police custody and pretrial facilities; access to documentation; and recourse to independent expert examinations. Following an investigation, the Public Defender may forward his findings to the competent authorities with a recommendation to institute criminal proceedings, according to article 21.

**(c) Penalties**

23. The crime of torture is punishable by up to three years' imprisonment. Article 126 (2) increases the penalty, providing for three to six years' imprisonment in relation to special circumstances, for example, where the perpetrator has used his official position.<sup>5</sup> Penalties for other relevant crimes include: intentional damage to health (art. 117), up to 12 years' imprisonment; less serious damage and intentional damage to health (art. 118), up to 5 years' imprisonment; intentional light damage to health (art. 120), up to 1 year's imprisonment; damage to health beyond the measure necessary for catching a criminal (art. 123), up to 1 year's imprisonment; assault and battery (art. 125), up to two months' imprisonment; rape (art. 137), up to 15 years' imprisonment; sexual abuse with violence (art. 138), up to 15 years' imprisonment; coercion (art. 150), up to 1 year's imprisonment; threats (art. 151), up to three months' imprisonment; exceeding official powers (art. 333), up to 5 years' imprisonment; and coercion in submitting evidence (art. 335), up to 8 years' imprisonment.

24. According to article 71 of CC, for those forms of ill-treatment referred to in paragraph 22 for which the maximum penalty does not exceed 2 years' imprisonment, the statute of limitations is 2 years from the perpetration of the crime; otherwise, the statute is 10 years from the date of the incident.

25. CPC provides for disciplinary sanctions for officials in article 202 (3).

**(d) Compensation**

26. Article 42 (9) of the Constitution guarantees the right to compensation for torture and ill-treatment.

27. A person may bring a civil claim for compensation arising from a criminal case, according to article 30 of CPC. Moreover, the right to claim for rehabilitation and compensation for damages resulting from the unlawful acts of criminal procedure bodies is guaranteed, according to articles 219 to 229 of CPC.

## **II. THE SITUATION OF TORTURE AND ILL-TREATMENT**

### **A. Practice of torture and ill-treatment**

28. Despite the legal provisions outlined above in relation to the prohibition of torture and ill-treatment, as the Government itself has acknowledged, the practice of torture and ill-treatment persists in the country.<sup>6</sup> Indeed, over the years the Special Rapporteur has received numerous allegations of torture and ill-treatment in Georgia.<sup>7</sup> A large number of recent allegations by individuals were also brought to the attention of the Special Rapporteur during the course of the mission, some of whom he interviewed.<sup>8</sup>

29. The vast majority of the allegations brought to the attention of the Special Rapporteur bore common characteristics. They were marked by reports of excessive use of force by law enforcement officials, and violations of safeguards of arrest and detention, including lack of access to a lawyer or satisfactory medical examination upon entry to the detention facility. Torture and ill-treatment were primarily perpetrated in the first 72 hours of police custody (i.e. police stations and temporary isolators under the jurisdiction of the Ministry of Internal



Affairs) to extract confessions for alleged offences. The methods of torture included beatings with fists, butts of guns and truncheons and the use of electric shocks, and cigarette burns; injuries sustained by the victims included, among other things, broken bones, cigarette burns, scars, as well as neuropsychological changes.

30. Based on his meetings with officials, defence lawyers and independent forensic medical experts, the substantiated information received from NGOs, his visits to places of detention and interviews with detainees, the Special Rapporteur concluded that torture and ill-treatment by law enforcement officials still exists in Georgia.

## **B. Impunity**

31. The Special Rapporteur notes that there is a significant disparity between the number of allegations of torture and ill-treatment and the number of investigations and successful prosecutions carried out. Although there is a crime of torture, albeit poorly defined (see paragraphs 13 and 15), there are no instances of convictions of any police official for this, and few convictions for other related crimes (e.g. those cited in paragraph 14). However, by letter dated 9 July 2005, the Government informed the Special Rapporteur that to date, in relation to four incidents, 10 police officers had been found guilty under article 333 (i.e. exceeding the limits of official authority, repeatedly and with violence, and degrading the dignity of the victim) and sentenced to terms of imprisonment ranging from three to seven years. On the other hand, there are several examples of police officers having benefited from the plea-bargaining system (i.e. where the defendant agrees with the prosecutor to some form of cooperation or payment of a mutually agreed amount of money without pleading guilty). Alternatively, if they have been dealt with by the procedures within the Ministry of Internal Affairs, then the perpetrators are subject to disciplinary sanctions, such as transfer, suspension, or dismissal.

32. He also notes statistics from the Ministry of Justice which indicate that in the period December 2003 to March 2005, 558 persons with physical injuries were placed in pretrial detention facilities in Georgia while, according to the NGO, Liberty Institute, during that same period 1,067 persons with physical injuries were placed in Prison No. 1 alone. Even if one were to rely on the more conservative figure, the number is high enough to raise concern that not all of the injuries could be explained as being self-inflicted or sustained from resisting arrest, as often explained by the procuracy.

33. According to the Special Rapporteur, impunity is the principal cause of the perpetuation of torture and ill-treatment. The inability to tackle it effectively will continue to encourage impunity in Georgia. In his assessment of the response of the authorities to allegations of torture, he identified a number of key shortcomings.

34. Often because of fear of reprisals against them or their families, as well as exhaustion and shock, victims at the centre of torture allegations may not readily reveal their injuries, request medical treatment or examinations, or complain or identify the perpetrators, even before a judge. And despite the obligation of judges or the procuracy to make inquiries or investigate allegations ex officio, absent a complaint, no further action is taken, including ordering a forensic medical examination. Similarly, where the victim is unwilling to identify the perpetrators, no further action is taken. Moreover, there is no adequate or effective mechanism to protect these victims or witnesses, such as transferring them to another detention facility or improving their security.

35. The onset of an investigation into allegations of torture is often subject to delays, especially with respect to medical examinations. And there is no equality of arms in torture investigations between forensic experts of the State-run Centre for Forensic Expertise and independent forensic medical experts.

36. In initiating an investigation into torture by the police, the procuracy, as an arm of the executive, is faced with an inherent conflict of interest in that it must also work with the police in combating crime. Indeed, a number of allegations have implicated investigators of the procuracy in participating in torture in the course of a criminal investigation. In addition, a number of allegations were received of victims being encouraged by the prosecution to agree to a plea-bargain agreement without an acknowledgement of any ill-treatment by the police. These agreements, which are rarely adequately scrutinized by the courts, are entered into by victims in exchange for escaping time in pretrial detention and further prosecution for their alleged crimes. The role of the Public Defender in relation to complaints of torture (see paragraph 21) is relegated merely to transmitting to the procuracy recommendations to institute criminal proceedings.

37. The Special Rapporteur observes that there is little evidence of restitution, compensation, or rehabilitation provided to victims of torture and ill-treatment by the Government. In light of this, he acknowledges the excellent work that a number of NGOs are undertaking in the field of rehabilitation and counselling support for victims of torture.

### **C. Prevention**

38. The Special Rapporteur notes that in the drive to root out corruption and restore the confidence of the public in law enforcement, the Government had dismissed en masse approximately 16,000 policemen by July 2004. In August 2004, they were replaced by a fresh cadre of policemen, or "Patrol Police", who have been rapidly recruited from among university graduates and provided with additional resources, including new equipment and vehicles and improved salaries. Generally, the public has warmly welcomed this initiative. However, there are concerns that the new recruits do not receive adequate training. In particular, the concerns relate to the potential, over time, for a return to corruption and abuse by the police given the fact that in their two-week training programme the recruits are not provided with adequate training and guidelines on, among other things, human rights safeguards, arrest and use of police equipment, effective interrogation techniques, and firearms training.

39. The Special Rapporteur further notes that several mechanisms for visiting places of detention have been established in Georgia. Article 18 of the 1996 Law on the Public Defender of Georgia provides unimpeded access by the Public Defender to all places of detention. Recently, a memorandum of understanding between the Public Defender and the Ministry of Internal Affairs has sought to strengthen this system of monitoring, including by the establishment of regionally based monitors, often composed of NGOs, under the coordination of the Public Defender, to carry out visits. A 21-member public monitoring council appointed by the President and composed of representatives of civil society was established by decree in August 2004, pursuant to article 52 of the 1999 Law on Imprisonment. The provision provides, among other things, that persons authorized by the President are entitled to enter penitentiary

institutions without prior permission. In addition, the Chairperson of the Human Rights and Civil Integration Committee of Parliament has informed the Special Rapporteur that she undertakes regular visits to places of detention. The Special Rapporteur also notes information that joint visits by the National Security Council, the Ministry of Internal Affairs, the General Procurator's Office and the Public Defender are envisaged. While these mechanisms may contribute to a degree of prevention of torture and ill-treatment, as they currently function they demonstrate a number of shortcomings, primarily widely differing mandates; lack of overall coordination among them; lack of a regular and systematic programme of visits, including regular follow-up; lack of investigatory powers; lack of adequate resources; and lack of independence, particularly in the case of the council appointed by the President.

### **III. CONDITIONS IN DETENTION**

40. The Special Rapporteur isolated the practice of torture and ill-treatment in Georgia from the generally deplorable conditions of detention he found.

#### **A. Facilities of the Ministry of Internal Affairs**

41. Following arrest suspects in police stations are then transferred to temporary isolators for a period of up to 72 hours.

42. On 22 February 2005, he visited the Vake-Saburtalo District Police Station, Arakisvili Street, Tbilisi, and the Vake-Saburtalo Police Station No. 2, Vaza Pshvala Street. At the District Police Station, the Special Rapporteur met with the duty officer, Mr. G. Rogava. He noted that the register of detainees was well kept, and that while there was a central register of cases for the district, there was no similar register of arrests. There were two empty cells, of approximately 1.5 x 2 m, each with a wooden bench, but without lighting or toilet facilities. According to the registers most persons were detained for two to three hours prior to transfer to the temporary isolator of the Tbilisi Head Department of Internal Affairs. At Vake-Saburtalo Police Station No. 2, the Special Rapporteur met with the station chief, Mr. A. Eloshvili. The facility was undergoing renovation at the time. One of the detainees interviewed said that he was well treated, informed of his right to a lawyer, was able to inform his family and, despite the renovations, was in relative comfort.

43. On 24 February 2005, the Special Rapporteur visited the temporary isolator of the Tbilisi Head Department of Internal Affairs, where he met with the duty officer, Mr. K. Khakhishvili, and the deputy chief of the isolator, Mr. F. Chankvetadze. Although many of the allegations of ill-treatment received by the Special Rapporteur specified that it took place in cells in the upper floors of the building, the staff indicated that there were no such cells, only offices. Eight interrogation and 14 detention cells were examined. The cells were very cold, damp, dark and filthy. Only four of the detention cells had beds, whereas the others had only raised wood-panelled floors for detainees to sleep on. Blankets were the only bedding provided. Each cell had a latrine separated by a waist-high partition. No toilet paper or washing facilities were available in the cells. There were no allegations of ill-treatment by the detainees interviewed. However, the conditions of detention were very poor.

### **B. Temporary isolator of the Ministry of State Security**

44. The temporary isolator of the Ministry of State Security primarily holds persons suspected of illegally crossing the border, visa/passport violations, terrorism, and drug trafficking. In 2004, the Ministry of State Security was merged with the Ministry of Internal Affairs.

45. On 22 February 2005, the Special Rapporteur was able to examine the isolator after a delay of almost 30 minutes while guards insisted that they were unable to locate the chief of the isolator, Mr. V. Imedashvili. An examination of the medical records and registry revealed that they were poorly kept, including missing entries. There was a shared shower and toilet facility which was clean and well maintained. The seven detention cells were located in a separate wing, each comprising two bunk beds, two chairs, a chess board and a water jug. All were clean, empty, and had sufficient lighting, fresh bedding and linen. Despite the cold, the windows of two cells were open, and the Special Rapporteur had the strong suspicion that a prisoner had recently moved out from one of these cells.

### **C. Facilities of the Ministry of Justice**

46. The facilities under the jurisdiction of the Ministry of Justice hold pretrial prisoners and convicted prisoners according to a general, or strict regime.

47. On 22 February 2005, the Special Rapporteur visited Prison No. 1, the product of an administrative merger of the former Prison No. 5 and Prison No. 1, and the Prison Hospital, which is located adjacent to the detention blocks. According to the director of Prison No. 1, Mr. M. Sinaunridze, on the day of the visit Prison No. 1 had 2,613 detainees, 100 of whom had been convicted; the vast majority were in pretrial detention. Despite the merger, the two prisons effectively exist and function as they did before. In the former Prison No. 5, the cells were overcrowded and exceeded official capacity (in one cell the Special Rapporteur noted that there were 41 prisoners in a cell with only 16 beds); poorly lit, heated and ventilated; damp; filthy, especially the toilet-cum-shower facility; and had inadequate bedding; the premises were decaying, and many window-openings had steel sheets welded to the outside bars, which restricted light but would also restrict ventilation in warmer months. The conditions were much the same in the main block of the former Prison No. 1, as well as for the 10 prisoners in the 14 basement cells, which held, among others, prisoners in solitary confinement, or prisoners who the prison administration felt needed to be separated from the rest of the prison population for their own protection.

48. The Special Rapporteur was informed by the director of the Prison Hospital, Mr. E. Zambakhidze, that 261 prisoners, both pretrial detainees and convicts, were receiving treatment. He explained that although the hospital could provide a wide variety of treatments, serious cases were moved to civilian hospitals.

49. On 23 February, the Special Rapporteur visited Prison No. 5 (the women's pretrial facility and prison colony). The pretrial section held 108 prisoners, who were kept in cells for four to six persons and equipped with a toilet. The section had a meeting room with a toilet, a bench to lie down on, an aquarium and a small collection of books. Seventy convicted prisoners

were held in a separate, open-dormitory-type section. In the medical wing of this section there was a room reserved for crafts and activities, which was also used by NGOs to provide counselling. Prison No. 5 was relatively modern and clean and the conditions were good. No allegations of ill-treatment were made.

50. On 24 February, the Special Rapporteur visited Prison No. 7, located in the vicinity of the Ministry of Internal Affairs. Fifty-four prisoners, both convicts and pretrial detainees, were held on two floors, with eight cells downstairs and seven above. There were also three interrogation rooms in the prison. The conditions in Prison No. 7 were relatively better than in Prison No. 1; however, there was also a problem of serious overcrowding.

51. The Special Rapporteur did not receive any allegations of ill-treatment of prisoners by prison staff, and in many cases the prisoners expressed appreciation for the treatment from the guards despite the conditions of the facilities. Notwithstanding constraints on resource allocation, the Special Rapporteur is of the view that the conditions in the facilities are exacerbated by structural problems in the criminal justice system. In particular, despite provisions for alternative measures (e.g. articles 151-154 of CPC) the judiciary, severely overloaded with cases as a result of judicial reforms and large-scale dismissals of judges, and widely perceived to be acquiescent to procurators' requests, resort almost exclusively to pretrial detention of accused persons, irrespective of the gravity of the alleged offence.<sup>9</sup> This contributes to severe problems of overcrowding and strain on the already deteriorating infrastructure. Even the language used (i.e. people are "sentenced to pretrial detention in prisons") indicates that there is no clear distinction between pretrial detention and imprisonment following conviction. The Special Rapporteur considers that this extensive recourse to pretrial detention is contrary to the principle of the presumption of innocence - provided in article 40 of the Constitution and article 10 of CPC - and to the exceptional rule of deprivation of liberty laid down by international law (article 9, paragraph 3, of the International Covenant on Civil and Political Rights).

#### **IV. ABKHAZIA**

52. On 20 February 2005, the Special Rapporteur visited the detention facility of the de facto Ministry of Internal Affairs, where he met with the de facto Deputy Minister of Internal Affairs, Mr. G. Leonid, the Sukhumi City Investigator, Mr. Glazinova, the director of the detention facility, Mr. Vadim, as well as the deputy director. One cell contained pretrial and convicted adult female prisoners who had been detained for between 1 month and 10 years, as well as one prisoner who was sentenced to death. This cell was dark, dank, and poorly lit and ventilated. A red-hot, exposed wire fixed to a concrete brick provided a source of heat. On the day of the visit the cell was at its 12-person capacity; however, according to the detainees it was not uncommon for 16-20 prisoners to be held there. There was adequate bedding and facilities for personal hygiene. The detainees had no access to a radio or telephone, no possibility of sending or receiving letters and, save for five minutes of exercise per day on the roof, they did not have any other "leisure" activities. There were only male guards at the facility. A female nurse was on call, and although a doctor visited regularly, he prescribed only pain-relievers. The detainees complained that they did not have access to specialists, such as a gynaecologist. While there were no serious allegations of ill-treatment, the situation of one female detainee was particularly disturbing. This 50-year-old prisoner had been detained since 1994, sentenced to death in 1996,

and was subject to the current moratorium on the death penalty. She had been immobile owing to illness for the last three years and received no medical treatment; she was assisted on a day-to-day basis by one of the other inmates. Despite appeals to the authorities for her release on humanitarian grounds, including by the prison authorities themselves, no response had been received.

53. The Special Rapporteur also visited a male prisoner on death row. Once the guard unlocked the padlock to the heavy black steel door, he did not know how to open it. It finally took at least three guards approximately five minutes to slide the security bolt across and pry the door open. The prisoner was alone in a dimly lit, poorly ventilated and dank 3 x 4 m cell with a latrine and two bunk beds. He did not make any allegations of ill-treatment. Although the Deputy Minister indicated that the prisoner could leave to take physical exercise every day except Sunday and could have regular family visits, it was clear that the cell had not been opened for a very long time.

54. The Special Rapporteur noted that there were no serious allegations of ill-treatment made by the detainees, but expressed concern that the conditions of detention fell far below international standards. He noted with concern that despite the de facto moratorium on capital punishment, it was still applicable in Abkhazia, in clear violation of relevant Council of Europe standards that were applicable in Georgia.

## **VI. SOUTH OSSETIA**

55. On 25 February 2005, the Special Rapporteur visited two facilities in South Ossetia. At Tskhinvali Prison, where both pretrial detainees and convicted prisoners were held in separate wings, he noted that in general, there were no serious issues relating to the conditions of detention. The cells for both convicted and pretrial prisoners were not overcrowded, and there was sufficient bedding, lighting, heating and washing facilities. The detainees were allowed outside their cells four hours per day, although with no possibilities for educational, vocational or leisure activities, and were permitted family visits, but access to the prison was difficult. The prisoners had no access to a telephone; indeed, the prison staff alleged that they would be reprimanded for allowing prisoners to use the telephone. There were no allegations of ill-treatment by the prison staff, even of Georgian prisoners.

56. At the pretrial detention centre of the Ministry of Internal Affairs, the Special Rapporteur met with the chief of the facility, Mr. J. Akhmuraz. The facility had seven underground cells, which held 23 detainees on that particular day. On average there were three detainees per cell; however, one held five individuals and was overcrowded. There was no heating in the cells, nor washing facilities or toilets. Although pretrial prisoners were to be held for only up to three months, this period was often exceeded. Some cells were equipped with televisions, and the detainees reported that they had access to reading materials, telephone calls and visits twice a month. The prisoners were allowed out for four hours per day in a 4 x 5 m outdoor cage. Although there were no allegations of ill-treatment, the Special Rapporteur noted that the conditions fell far below international standards.

## V. CONCLUSIONS AND RECOMMENDATIONS

57. The Special Rapporteur stresses that the authorities at all levels recognized the problems outlined in this report. He points to positive examples of measures taken by the Government, including: the establishment of monitoring mechanisms to visit places of detention, which included members of civil society; the programme of construction of modern detention facilities to replace existing ones, such as in Rustavi and Kutaisi; and the Government's willingness to cooperate with international organizations to implement the 2003-2005 Plan of Action against Torture.

58. The Special Rapporteur welcomes developments that have taken place since the conclusion of his visit - some of which were recommended in his preliminary note (E/CN.4/2005/62/Add.3) - including: an amendment to article 144 of the Criminal Code of 23 June 2005 to bring the definition of the crime of torture into line with the Convention, and to be punishable by 7-15 years' imprisonment; the accession to the Optional Protocol on 9 August 2005; and the recognition of the competence of the Committee against Torture to consider individual complaints as of 30 June 2005. He further welcomes recent amendments to CPC, such as provisions ensuring that in-court testimony prevails over testimony obtained through the course of an investigation; fraud, restriction of rights of the defence, coercion and intimidation are grounds of appeal against a court decision rendered as a result of a plea-bargain agreement; the period of pretrial detention is reduced; and that preference is to be given to measures of restraint of persons facing trial other than detention.

59. During his visit the Special Rapporteur received clear commitments from the Government of Georgia, and was assured that his recommendations would be considered seriously. He sees the visit as the fruitful beginning of a process of cooperation towards the common aim of eradicating torture and ill-treatment in the country. The recent developments highlighted above are evidence of the Government's cooperation to this end.

60. The Special Rapporteur recommends to the Government of Georgia that:

### **Impunity**

(a) The highest authorities, particularly those responsible for law enforcement activities, declare unambiguously that the culture of impunity must end and that torture and ill-treatment by public officials will not be tolerated and will be subject to prosecution;

(b) Judges and prosecutors routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination;

(c) All allegations of torture and ill-treatment be promptly and thoroughly investigated by an independent authority with no connection to that investigating or prosecuting the case against the alleged victim;

**(d) Plea-bargain agreements made by accused persons be without prejudice to criminal proceedings that may be instituted for allegations of torture and other ill-treatment;**

**(e) Forensic medical services be placed under judicial or another independent authority, not under the same governmental authority as the police and the penitentiary system. Public forensic medical services should not have a monopoly on expert forensic evidence for judicial purposes;**

**(f) Any public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, be immediately suspended from duty pending trial, and prosecuted;**

**(g) Victims receive substantial compensation and adequate medical treatment and rehabilitation;**

**(h) Necessary measures be taken to establish and ensure the independence of the judiciary in the performance of their duties in conformity with international standards (e.g. the Basic Principles on the Independence of the Judiciary). Measures should also be taken to ensure respect for the principle of the equality of arms between the prosecution and the defence in criminal proceedings;**

#### **Conditions of detention**

**(i) Non-violent offenders be removed from confinement in pretrial detention facilities, subject to non-custodial measures (i.e. guarantees to appear for trial, at any other stage of the judicial proceeding and, should occasion arise, for execution of the judgement);**

**(j) Recourse to pretrial detention be restricted in the Criminal Procedure Code, particularly for non-violent, minor or less serious offences, and the use of non-custodial measures such as bail and recognizance be increased;**

**(k) Pretrial and convicted prisoners be strictly separated;**

**(l) The number of persons confined in detention not exceed the official capacity of the respective facility;**

**(m) Existing institutions be refurbished to meet basic minimum standards;**

**(n) To the extent that the use of non-custodial measures will not eliminate the overcrowding problem, new remand centres be built with sufficient accommodation for the anticipated population;**

#### **Prevention**

**(o) In accordance with the Optional Protocol to the Convention against Torture, a truly independent monitoring mechanism be established, whose members would be appointed for a fixed period and not subject to dismissal, to visit all places where persons**



are deprived of their liberty throughout the country. In the view of the Special Rapporteur, such a mechanism could be situated in an independent national human rights institution established in accordance with the Paris Principles, the basis of which might be the Public Defender's Office. This national institution should also be vested with investigatory powers in relation to allegations of torture and ill-treatment, and provided with the necessary financial and human resources, and appropriate capacity-building, to carry out its functions effectively;

(p) All investigative law enforcement bodies establish effective procedures for internal monitoring and disciplining of the behaviour of their agents, with a view to eliminating practices of torture and ill-treatment; and

(q) Law enforcement recruits undergo an extensive and thorough training curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of police equipment, and that existing officers receive continuing education.

#### **Territories of Abkhazia and South Ossetia**

61. Many of the above recommendations apply, *mutatis mutandis*, to the de facto authorities in the territories of Abkhazia and South Ossetia, especially those in relation to conditions of detention. With particular reference to Abkhazia, the Special Rapporteur recommends that the death penalty be abolished.

#### **International cooperation**

62. The Special Rapporteur recommends that relevant international organizations be requested to provide, in a coordinated manner, assistance in the follow-up to the above recommendations, including considering incorporating the recommendations in a future plan of action against torture in Georgia. To this end, the Office of the United Nations High Commissioner for Human Rights should continue its efforts to establish a permanent human rights presence within the United Nations Country Team in Georgia, and it should ensure that adequate attention is paid to South Ossetia.

## Appendix

### Individual cases

By letter dated 9 March 2005, the Special Rapporteur notified the Government of allegations by the following persons, whom he interviewed during the mission. While the Special Rapporteur does not draw any conclusions as to the facts as they were provided to him, he concluded from the interviews that these persons were tortured to extract confessions. Moreover, their injuries were still visible at the time of the meetings, and had been well documented by independent forensic experts. As was evident to the Special Rapporteur from the meetings, these persons continued to suffer from the effects of torture and were in need of appropriate medical treatment and rehabilitation, which they were not receiving. This is compounded by their already lengthy pretrial detention and the poor conditions in which they were detained, particularly in relation to Nodar Dudaev and David Mindadze. In this regard, and as an indication of mutual cooperation, the Special Rapporteur appealed to the Government to release the persons mentioned below from custody. The Government responded by letters dated 23 March and 9 July 2005.

1. **Giorgi Vashakidze**, a former Deputy Defence Minister, and **Eldar Gogberashvili**, both former members of the paramilitary organization Mhedrioni, and **Beniamin Saneblidze**, their driver. On 9 January 2004, they were arrested and taken to Saburtalo cemetery. For five hours, Eldar Gogberashvili and Beniamin Saneblidze were beaten in front of Giorgi Vashakidze with stones and handguns and subjected to simulated executions, in which the former Ministers of Security and Internal Affairs participated. Eldar Gogberashvili was dragged to a car, where his head was forced between the two front seats and he was choked. The two other men were put in the trunk. They were driven to the Tbilisi Head Department of Internal Affairs, where Eldar Gogberashvili and Beniamin Saneblidze continued to be beaten. Eldar Gogberashvili was trussed up to an overhead heating pipe with car seatbelts and forced to put on a gas mask with the air valve periodically closed. He was subjected to electric shocks on his fingers and ears. Beniamin Saneblidze was reportedly given electric shocks to his head and hands. They were tortured to extract confessions of involvement in an attempted coup but later in the alleged kidnapping of an executive of the United Bank of Georgia in December 2003, allegations which they denied. On 12 January, they were taken to the Vake-Saburtalo district court, where the judge ignored the allegations of torture, and they were remanded in pretrial detention for three months. But rather than being taken to Prison No. 1, they were returned to the police station where they were held for an additional 18 hours. Eldar Gogberashvili continued to be tortured and eventually signed a confession to the kidnapping charge. They were not brought to Prison No. 1 until 13 January, where only cursory medical examinations were made. As a result of the torture, Beniamin Saneblidze was unable to sit up and had difficulties breathing. Medical examinations were reportedly conducted at the request of the Public Defender's Office in April 2004. Eldar Gogberashvili had cigarette burns on his legs and scars consistent with the application of electric shock, which were still visible at the time of the Special Rapporteur's meeting with him at Prison No. 1 on 22 February 2005. He still experienced pain in his kidney region and burning sensations in his eyes. Until just prior to the Special Rapporteur's visit, he had been held in solitary confinement for most of his detention in Prisons No. 1 and No. 7 (where he was held from March to May 2004).

2. The Government reported that on 10 January 2004, the three men were arrested and the release of the kidnapped executive was secured. On 11 January, the three were charged with a number of offences under the Criminal Code in relation to the kidnapping. On 12 January, Eldar Gogberashvili, in the presence of his lawyer, pleaded guilty to the crime. After that, in the course of the preliminary investigation, he claimed several times that he was subjected to physical influence exerted by police officers and that his confession had been the result of beatings and inhumane and degrading treatment. He complained that high officials of the Tbilisi City Administration and Central Administration of the Ministry of Internal Affairs had threatened to shoot him and attempted to compel him to plead guilty at the time of his arrest on 10 January. He was also subjected to physical abuse in the Temporary Arrest Isolator of the Ministry of Internal Affairs. All the policemen involved in the arrest testified that once they had identified the alleged criminals driving the car, they tried to halt it. The suspects did not comply, but were eventually stopped. Although the police presented their identification to the three men, they violently resisted. Only by the use of legally permitted coercive measures were the police able to arrest them. According to the police officers, their use of special fighting methods, resorted to as urgent measures prompted by Eldar Gogberashvili's resistance, might have caused his alleged injuries. Forensic medical examinations proved that he had suffered minor injuries without any long-term adverse effects to his health. No traces of cigarette or electrical burns could be identified. An independent forensic examination report refers to the existence of traces of burns that could have been made by a lit cigarette but fails to determine the severity of the alleged injuries and is vague as to their date. The expert expressed the view that it was possible for the injuries to have been inflicted in the period of time claimed by Eldar Gogberashvili. Further, the report is silent on the existence of electrical burns. The preliminary investigation concluded that the findings of the independent expert were unfounded and did not accept them. In view of the foregoing, the request to initiate a criminal case into the cause of his injuries was rejected by a decree of 30 June 2004. Concerning medical treatment, it is established that Eldar Gogberashvili arrived in Prison No. 1 on 12 January 2004. Having undergone a medical examination on 21 January 2004, which found his health status to be normal, there was no need for further treatment. He was later moved to Prison No. 7 and was held there from 9 March 2004 to 13 May 2004. Examined on arrival at Prison No. 7, his body was not marked with any kind of injuries. He was periodically provided medical aid and medicines, such as for heart disease and high blood pressure, and was placed under the close supervision of the doctor. The care was considered to be effective. During his stay, his health status was not assessed to be serious. His isolation was for security reasons: he was marked for assassination by other inmates, who accused him of murdering a criminal. Solitary confinement proved to be the only way to ensure his safety. Special measures were applied in conducting his interrogation in full isolation from others. Today he shares a cell with Giorgi Vashakidze.

3. **Nodar Dudaev**, a 30-year-old cattle farmer from Artsevi village, South Ossetia. On 16 March 2004 at around 9 a.m., as he was approaching the gate to his farm, he was fired upon without warning by masked men, allegedly members of a special unit of the Georgian Ministry of State Security. He was struck several times in the chest and left shoulder, and then hit in the face with the butt of a rifle. He was thrown into the trunk of the attackers' car. His companion was thrown on top of him. Both men were driven to Gori, where Nodar Dudaev's companion was taken to a police lock-up, then to Prison No. 1 and released one month later. Nodar Dudaev was taken to Gori Hospital, and underwent emergency surgery for his gunshot

wounds. One lung was removed and a bullet still remains lodged close to his heart. He is almost blind in his right eye as a result of the facial injuries sustained. He was transferred to Prison No. 1 and then to the Prison Hospital. He was later transferred to Prison No. 7, where he is currently being held. The authorities allege that he was shot while resisting arrest, and he has been charged under article 19 of the Criminal Code. He has been detained now for almost one year, and the investigation has been closed for almost eight months. The case has reportedly been transferred to the Supreme Court. Following the meeting of the Special Rapporteur with Nodar Dudaev at Prison No. 7 on 25 February 2005, it was clear that he is not well informed about his legal situation, including what the charges are against him, nor the outcome of the investigations carried out. It was clear that his serious health condition, exacerbated by cirrhosis of the liver, warrants immediate provision of appropriate medical treatment and supervision. Moreover, the fact that he is detained in a cell with seven other prisoners in cramped conditions is completely inappropriate given the state of his health. The Special Rapporteur appeals on humanitarian grounds that Nodar Dudaev be transferred to the jurisdiction of South Ossetia, where he may receive the appropriate medical treatment and supervision.

4. The Government reported that on 16 March 2004, Nodar Dudaev was arrested by officers of the Ministry of State Security, following an armed stand-off. The officers resorted to the legally permitted means to overcome the armed resistance, which consequently caused him severe injuries. Nodar Dudaev was immediately taken to Gori District Hospital, where he survived as a result of the timely medical treatment. Considering that the lives of the officers were endangered by his acts, it was established that they were acting in circumstances of compelling necessity and did not exceed legal limits. Therefore, there is no ground for the initiation of a criminal case in this regard, and a decree of 1 September was issued to this effect. Regarding the medical treatment provided to Nodar Dudaev, on 19 October, he was taken to Prison No. 7 from the Prison Hospital. A medical examination there found evidence of gunshot wounds, and a forensic examination found the same. During his detention in Prison No. 7, he sought and received medical attention several times, including treatment by a cardiologist. He remains under the supervision of a doctor. Trial proceedings against Nodar Dudaev are under way. The Government submits that he was ensured all procedural guarantees granted under the Code of Criminal Procedure and international legal standards. Among other things, he was informed of the charge against him and was given adequate facilities for the preparation of his defence, in accordance with article 14 (3) of the International Covenant on Civil and Political Rights. The Government of Georgia would never have expected to hear an appeal by a United Nations representative such as the one sent by the Special Rapporteur to transfer him to the so-called jurisdiction of South Ossetia. Nodar Dudaev was a national of Georgia and suspected of crimes against Georgian nationals in the territory of Georgia. It is beyond doubt that the criminal acts which he is alleged to have committed come within the exclusive jurisdiction of Georgia. South Ossetia forms an integral part of the territory of Georgia and statements about any kind of jurisdiction of South Ossetia demonstrates disregard for the territorial integrity of Georgia and seriously undermines the supremacy of the Georgian Government within the national territory. Exercise of criminal jurisdiction over a territory and the population living there is one of the principle corollaries of the sovereignty and equality of States; a principle unanimously recognized by the international community of States, and owes its origin to the Charter of the United Nations. Respect for the territorial integrity of States and inviolability of frontiers are principles enshrined in a number of General Assembly resolutions

and further developed within the framework of the United Nations. It is unacceptable for a representative of the United Nations to make an appeal manifestly counter to these principles and calling into question the sovereignty of Georgia as an independent State.

5. **Gia Lobzhanidze** and **Valeri Kurtanidze**, who were the subject of an urgent appeal dated 9 June 2004 sent by the Special Rapporteur and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, for which no response has been received (E/CN.4/2005/62/Add.1, para. 683). According to the information received, on 22 April 2004, the two men were attacked by five or six armed men in Tbilisi at the entrance of the 5th block of Digomi District, and taken to the police department of the Didube-Chugureti region. The police kicked and beat them with the butts of their handguns in order to make them confess to robbing a flat. When they refused, Gia Lobzhanidze and Valeri Kurtanidze were taken to the Tbilisi Head Department of Internal Affairs, where they were subjected to further torture. It is alleged that live wires were applied simultaneously to Gia Lobzhanidze's toes while his feet were drenched with water, as well as to his ears. He bit through his tongue and could not move it, speak properly or eat for several days. After he lost consciousness he was reportedly revived by the policemen with spirits. Following this, Gia Lobzhanidze, who is left-handed, was forced to write a confession with his right hand. No medical care was provided. The court-appointed medical expert who examined Gia Lobzhanidze on 27 April 2004 concluded that the injuries he sustained were consistent with his account. The report further indicated that the men had been injured by a solid blunt object. Traces of an electric wire was also detected near Valeri Kurtanidze's ear. At present Gia Lobzhanidze and Valeri Kurtanidze are detained in Prison No. 1. When the Special Rapporteur visited Mr. Lobzhanidze in his crowded pretrial cell at Prison No. 1 on 22 February 2005, he refused to speak with the Special Rapporteur, even in private, and it was apparent that he was still afraid to speak of his experience.

6. The Government reported that on 1 May 2004, the director of Prison No. 1 notified the Didube-Chugureti District Investigative Unit of the Ministry of Internal Affairs that Gia Lobzhanidze had been brought to the prison with injuries. The director cited a prison medical report which indicated that there were injuries on both edges of his tongue and on his right foot. It was not deemed necessary to provide medical treatment. The report also indicated that several small bruises were visible on Valeri Kurtanidze. Upon receipt of this notification an investigation was begun, in the course of which Gia Lobzhanidze and Valeri Kurtanidze stated that their injuries had been sustained before their arrest, that they had no complaints against the police and that they had never been subjected to ill-treatment while in the isolator. Since the beginning of the investigation in May 2004, they exercised their right to remain silent and refused to provide any explanations regarding their injuries. Only on 7 and 8 July, when they were interrogated in relation to charges against them, did they claim that they had been subjected to physical pressure at the Isolator of Temporary Arrest of the Ministry of Internal Affairs and in the prison, and were able to identify the perpetrators. They had an opportunity to raise the question of torture at their initial court hearing on 24 April 2004, and the court would have given due regard to their health status had they done so. Concerning the allegation that Gia Lobzhanidze was forced to write his confession with his right hand although he was left-handed, since there is no legal requirement to write a confession by hand, compelling a detainee to do so would not have been necessary. Concerning the allegations that the policemen sought to forcibly obtain confessions, no such confessions appear in their case files. As there were three defendants involved in the suspected offences, it begs the question why only two of

them were allegedly tortured by the police to obtain confessions. If it were true, as he claimed, that the third individual was compelled to confess by being forced to watch the torture of Gia Lobzhanidze and Valeri Kurtanidze, it would not have been necessary for him to enter a plea to the charges against him, which he in fact did (i.e. he pleaded guilty to weapons offences but not burglary). During joint examinations of the defendants, the testimony of Gia Lobzhanidze and Valeri Kurtanidze was tentative. Except for one policeman, they hesitated to directly implicate the policemen seated before them. The policemen denied the allegations. The employees of the isolator who were on duty during the period 22-24 April 2004 were questioned and also denied the allegations. The allegations of ill-treatment in the prison were not supported by the prison's director and doctor. On 27 July 2004, forensic examinations were conducted and the report concluded that the bruises on the tongue of Gia Lobzhanidze were not such to seriously affect his health, and that there were no visible bruises on Valeri Kurtanidze. Similarly, the report of the defendants' forensic expert concludes that the injuries of the two men were minor and not so serious as to affect their health. According to the expert: the bruises on the hand of Valeri Kurtanidze seemed to have been caused by a solid blunt object; the injury in the area of his ear might have been caused by electricity; and no trace of electric shock was found on the body of Gia Lobzhanidze. Given that the examinations by the defendants' expert began five days after their arrest, had the allegations been fact, the cause and time of any injuries should have been easy to identify. In view of the foregoing, the investigation established that the necessary elements to initiate criminal action into the alleged ill-treatment were absent, and a decree was issued to that effect on 8 August 2004. It was not appealed by Gia Lobzhanidze or Valeri Kurtanidze but the Investigative Division of the Procuracy reversed the decree and initiated an investigation on 31 May 2005. On 10 June, charges under articles 333 (3) (b) and 335 (2) (a) and (b) were brought against the Head of the Criminal Investigative Subdivision of the Tbilisi Didube-Chughureti Unit of the Ministry of Internal Affairs and five other policemen of the Subdivision. The Tbilisi City Court was requested to suspend them from duty and to impose a written undertaking from them not to leave the area while the proceedings were pending.

7. **Sulkhan Molashvili**, aged 35, former Chairman of the Chamber of Control. On 22 April 2004, he was summoned to the Tbilisi Office of the Public Prosecutor, where he was confronted with charges relating to corruption by an investigator of the Public Prosecutor's Office. On 23 April, on the order of the Vake-Saburtalo District Court, Sulkhan Molashvili was detained for a period of three months' pretrial detention at the Tbilisi Head Department of Internal Affairs. Approximately 30 minutes after he was first brought to the basement cell of the station, he was blindfolded and taken by three or four uniformed men to a sixth floor office. He was seated on a chair with his hands handcuffed behind his back. The interrogators insisted that he confess to the charges. According to his medical history, he suffers from ischaemic heart disease, stenocardia, arterial hypertension, calculous cholecystitis and varicose veins. When he refused to confess, electric shocks were applied to his wrists and ankles, and his legs were beaten. His sweater was pulled up over his head and he was repeatedly burned with cigarettes. He was warned that if he revealed that he had been tortured his wife and children would be harmed. The same day he was moved to Prison No. 1 and then to the Prison Hospital. On 4 June, he was moved back to Prison No. 1, despite a deterioration of his health, including chest pains, a gall bladder attack and a diagnosis of depression. He reportedly did not reveal that

he had been tortured, out of fear, until July 2004. On 2 July, he was moved to a solitary cell in the basement of Prison No. 7. The cell was approximately 4 m<sup>2</sup> and had no lighting or adequate ventilation. On 5 July, the Tbilisi Office of the Public Prosecutor opened a criminal case in relation to the torture of Sulkhan Molashvili. Forensic examinations conducted by the State and by an independent expert on 6 and 9 July, respectively, indicated lesions and scars consistent with the account of the treatment he described. On 16 July, Sulkhan Molashvili suffered a heart attack and was moved to the Prison Hospital. He has lost 25 kg since 4 June. On 22 July, the judge of the Investigative Panel of the Tbilisi District Court approved the prosecution's request for an extension of his detention for another three months, to 23 October. The Special Rapporteur met Sulkhan Molashvili at the Prison Hospital on 22 February 2005, where he remains in pretrial detention. He stated that since 12 December 2003, he has been continuously harassed because of his allegations of governmental corruption.

8. The Government reported that Sulkhan Molashvili was arrested on 23 April 2004, at 2.50 a.m. The Tbilisi City Prosecutor's Office was dealing with the investigation. He was subsequently placed in Prison No. 7 of the Isolator of Temporary Arrest of the Ministry of Internal Affairs. In response to information published in the press, on 4 July, the Tbilisi City Prosecutor visited Sulkhan Molashvili in Prison No. 7, during which he claimed that on the night of 23 April he was taken from the isolator to one of the rooms on the upper floors of the building by unknown persons. There they tortured him with hot objects and an electrical device in order to obtain a confession. He further claimed that the perpetrators threatened that his family would be harmed if he disclosed the torture. On 5 July, a criminal case into the allegations of abuse of power by forcible means (article 332 of the Criminal Code) was opened. In the course of the investigation employees of the isolator, Prison Nos. 1 and 7, and the Prison Hospital, as well as a number of witnesses, were interviewed. A judicial decree has been obtained to access the medical records and other relevant documentation relating to Sulkhan Molashvili maintained by the Prison Hospital. On 5 July, a forensic examination was conducted and the findings included five oval scars on the left and right sides of his torso. They appeared to have been made with a hot object and were of slight severity. Although the exact date of the injuries could not be determined, they could not have been inflicted earlier than six months previously. On 3 August, at the request of the defence counsel, an independent forensic expert conducted an examination. Similar conclusions concerning the scars and their origins were drawn, and the same conclusions were arrived at by a joint commission of forensic experts on 14 August. Consequently, on 27 October, a criminal case was opened against the doctor of Prison No. 7 for failure of a State official to perform his duties (article 342 of the Criminal Code), particularly his failure to carry out an adequate examination of Sulkhan Molashvili. Similar charges were brought against the medical staff of Prison No. 1 and the Prison Hospital. Proceedings have been under way since 16 February 2005. It was their failure to examine the health of Sulkhan Molashvili that has prevented the investigations into the allegations to be conducted effectively. Concerning his medical treatment during his detention in Prison No. 7 from 2 to 16 July, he was provided treatment in accordance with particular symptoms. According to the prison registry, on 5, 15 and 16 July, he was treated by a doctor. On 16 July he was taken to the Prison Hospital. The Government has a special interest in ensuring that the investigation is conducted in compliance with international and national norms. As an indication of the Government's interest, a number of international organizations have been requested to render assistance, namely in the area of

medical expertise; however no responses have been received yet. Moreover, a number of key factors hinder the progress in the investigations. The information regarding his injuries was reported long after he was arrested (i.e. he was arrested on 23 April and his injuries were reported on 4 July). This has complicated the determination of the origin and condition of his injuries. Most crucial to the investigation is the precise determination of the date of the injuries, but this remains impossible. After the case was opened, Sulkhan Molashvili refused to cooperate with the investigating authorities. On 6 July he exercised his right to remain silent; on 7 July he gave his first statement; and only on 20 September did he confirm his previous testimony. On each occasion he did not provide any useful information for the investigation, but rather promised to provide additional information if he considered it appropriate. His testimonies were vague and inconsistent, and he continues to refuse to identify the perpetrators without specifying any reasons. While it is claimed that the injuries on his feet were caused by electric shock, it is common knowledge that he suffers from varicose veins, for which he was receiving medical treatment, which he himself confirms. In conclusion, due regard should be given to the fact that beatings and torture are usually resorted to as a means of forcibly obtaining confessions from accused persons. There existed enough evidence to prove the guilt of Sulkhan Molashvili for his suspected crimes, and there was no need for his confession. Therefore, there was no motive on the part of the law enforcement authorities to have perpetrated the alleged ill-treatment.

9. **David Mindadze**, aged 27. On 13 May 2004, at around 10 a.m., near the Varketili Metro Station, Mr. Mindadze was arrested on suspicion of attempted murder. He was brought to the Tbilisi Head Department of Internal Affairs and taken to an office on the twelfth floor. He was seated on a chair with his hands handcuffed behind his back. He refused to confess, and the policemen began to beat him with truncheons, hit him with an iron lock in the face, and applied electric shocks to his legs and feet. He was beaten with a plastic beverage bottle filled with water. The Deputy Minister of Internal Affairs, an investigator of the Public Prosecutor's Office and a lawyer also participated in the beatings. His wife and infant daughter were threatened. The treatment lasted until around 3 p.m., after which he was taken down to the basement cell. His family was not informed of his whereabouts for three days. Among his injuries were a fractured temporal bone and upper jaw. He subsequently developed epilepsy, and he suffers from disturbed sleep, flashbacks, blackouts, loss of vision, memory difficulties, headaches and tremors. On 16 May 2004, he was remanded in pretrial detention and transferred to Prison No. 7. Upon his transfer, he did not indicate to the doctor at the prison the nature of his injuries because he was afraid and exhausted. At the request of his lawyer, a criminal case into the torture claim was initiated by the Public Prosecutor's Office and in November 2004, the Office reported that there was no evidence of torture. On appeal, the Tbilisi District Court upheld the appeal, which was confirmed by the Supreme Court in February 2005, and the case was returned to the Public Prosecutor to reinvestigate the torture claim. At the time of the Special Rapporteur's visit with David Mindadze at Prison No. 7 on 24 February 2005, he had been in detention for almost 10 months and, despite his poor health, has remained in pretrial detention in Prison No. 7 for much of this time.

10. The Government reported that on 13 May 2004, David Mindadze was arrested by members of the Search Unit of the Tbilisi City Police on suspicion of attempted murder. On 8 October 2004, the Procuracy received a complaint from the wife of David Mindadze that an investigator of the Tbilisi City Prosecutor's Office and officers of the Central Office of the Ministry of Internal Affairs had beaten and tortured her husband to obtain a confession.



Annexed to the complaint was a report from a torture victims' rehabilitation and treatment centre supporting the findings of ill-treatment. Based upon the complaint the Procuracy commenced an investigation. All persons having any connection with the circumstances described in the complaint were questioned and necessary information obtained by different agencies. There were inconsistencies in the statements given by David Mindadze, who later denied the involvement of persons whom he earlier alleged had taken part in the beatings. Reports of the treatment centre, David Mindadze's wife and an NGO were biased and based primarily on his assertions. For example, the centre's report states, "the current physical and psychological status of the patient does not exclude the possibility that he had been subjected to physical and psychological influence and torture that might have resulted in this kind of deterioration of his psychological condition". The report speaks about David Mindadze's alleged ill-treatment in terms of "possibilities" and likelihood and fails to reliably set out any definite conclusions. Moreover, the report of the centre indicates the existence of a skull fracture as evidenced by computer tomography, which contrast with the findings of the examination conducted on 18 October 2004 by the Forensic Medical Expertise Centre and the Diagnostics Institute of Radiology. As there appeared to exist substantial inconsistencies between the two sets of reports, additional experts were consulted. On 12 November 2004, a multi-institutional team of experts, which included the author of the original tomography report, carried out an examination, and found that there were no injuries to the skull of David Mindadze. According to the following persons, the allegations of David Mindadze are unsupported: the alleged perpetrators; the medical personnel and the director of Prison No. 7; witnesses; the Chairman of the Vake-Saburtalo District Court and the secretary of the court session; a video operator; his relatives; and a neighbour. One psychologist explained that the mental condition of David Mindadze is typical for those suffering from phobic neurosis, which is caused by fears developed as a result of stress. Being detained and charged, according to the expert, is sufficient to drive an individual to phobic neurosis. Further, beatings and torture can by no means be considered the only grounds giving rise to this pathology. A doctor who examined David Mindadze on 13 May 2004 stated that he told the doctor nothing about ill-treatment; a visual examination found no marks of physical violence and that his mental state was a result of his alarm at being arrested, given that he was wanted by the authorities. While David Mindadze claimed he was beaten by police officers on 13 May, a videotape of him being brought back to the crime scene on the same day clearly shows no visible injuries and that he could move without difficulties. It is likely that the injuries he complains of were inflicted by inmates in the prison. The nature of the circumstances within the prison makes it difficult to recreate the events there. Based on all of the foregoing, the Procuracy decided not to open a criminal case into the allegations, and a decree was issued to that effect on 17 November. On 6 December, the decision was appealed to the Tbilisi Krisanisi-Mtatsminda District Court. On 23 December, it reversed the decree and recommended that the Procuracy examine particular factual circumstances before considering whether to bring a criminal case. This decision was appealed by the Procuracy to the Cassation Chamber of the Supreme Court. On 8 February 2005, the Court upheld the District Court's decision, and on 24 February a criminal case was opened on the crime of torture (article 126 of the Criminal Code). Presently, new investigations are under way into the allegations, including, among other things, further analysis of the above-mentioned videotape. On 19 February, David Mindadze was moved from the Prison Hospital to Prison No. 7. Upon his arrival, no injuries were visible on his body. He is receiving care and is under close observation by the prison doctor.

13. **Ms. Ketevan Lotishvili**, aged 41. On 29 May 2004, at around 4 p.m., Ms. Lotishvili was arrested at her house in Tbilisi in connection with a theft of a television set from a neighbouring house. She was taken to the Isani-Samgori District Police Station. At around 3 a.m. she was taken into the office of a male investigator, who opened a box containing a collapsible truncheon and struck her on the head and neck with it. He interrogated her about other thefts in the area. Despite the attempts of another investigator to intervene, he continued to hit her, striking her in the kidney area and probing the truncheon on various parts of her body. She was later brought back to her cell. About one hour later, the male investigator returned, using abusive language and continued to question her, indicating that he would let her go if she confessed. On 1 June, she was brought to the women's colony, Prison No. 5. Upon arrival, out of fear, she did not indicate her injuries during the medical examination. However, two days later, she developed a severe headache, and revealed her treatment to the neuropathologist, who examined her. Although she receives medication, she still experiences pain in her kidneys. At the time of the Special Rapporteur's visit with Ms. Lotishvili at Prison No. 5 on 23 February 2005, she had been in pretrial detention for a burglary charge for over eight months, a clear example of how easily the courts resort to pretrial detention, especially in circumstances which do not give rise to a risk of absconding or tampering with evidence.

14. The Government reported that Ms. Lotishvili was arrested on 29 May 2004. When she was first put in Prison No. 1, on 1 June, an examination revealed a minor abrasion on her right upper eyelid for which no medical treatment was necessary. On 16 June, the Head of the Penitentiary Department of the Ministry of Justice was notified by the prison administration of the injury. At the initiative of the prison director, a forensic examination was conducted and concluded that the injury had been caused by a solid blunt object, and its gravity was not such as to impair her health. Ketevan Lotishvili stated that the injuries were sustained before her arrest at home, and she does not make any claims against the officers of the Ministry of Internal Affairs. The investigation revealed that she was a chronic alcoholic who was frequently involved in domestic disputes with her husband. Indeed, on 27 May, two days before her arrest, she was involved with a dispute with her husband. Concerning the allegations of ill-treatment by the police officers, the issue of the initiation of action against them was not even considered, as the likelihood that they had caused the alleged injuries was very marginal. For this reason, on 1 July 2004, a decree was issued declining to initiate a criminal case against the police officer. On 13 February 2005, she was moved to Prison No. 5 (Women), where she was medically examined upon arrival and no injuries were detected. According to the prison doctor, Ketevan Lotishvili suffers from headaches and bouts of dizziness, likely as a result of earlier concussions. She is being provided with adequate treatment. Her detention pending trial was required by the interests of justice.

15. **George Migriauli**, aged 28. On 9 October 2004, at 2 a.m., unknown persons in masks entered his house, assaulted him and his family, and took him away to the office of Archil Babajanashvili, the Gori District Prosecutor. He was beaten by the prosecutor and his deputies in order to make him confess to bribing officials. George Migriauli was forced to sit with his back against a wall and was beaten on the head and body. A wet rag was wrapped around his head and he was struck with an instrument. After he lost consciousness, he was revived with cold water. He was burned with cigarettes on his abdomen and struck with open palms simultaneously on his ears. When he asked for a lawyer, the prosecutor put the muzzle of a gun in his mouth and pretended to fire it. He repeated this act numerous times. Mr. Migriauli

sustained bruises, scarring and a concussion. He was warned not to reveal that he had been beaten. David Tsituri, the Shida Kartli Regional Prosecutor, approached George Migriauli's family and demanded a GEL 10,000 plea-bargain settlement to secure his release. Despite the payment having been made, George Migriauli was not released and he eventually signed a confession. He was transported at 6 a.m. the next day to the police lock-up, where he was held for about three days. At the initial court hearing, the judge remanded him to three months' pretrial detention. When he arrived at the facility at 3 p.m., the staff informed the Gori Branch of the Public Defender's Office, which facilitated medical treatment for him. Despite the doctor's recommendation that he be transferred to a hospital, the prosecutor's office did not issue the order for the transfer. Upon the intervention of the Public Defender's Office, the General Prosecutor's Office announced that a criminal case concerning torture had been opened. George Migriauli was later transferred to the Prison Hospital, and is presently free on his own recognizance. The district and regional prosecutors have since resigned from their posts. The Special Rapporteur met with George Migriauli at UN House, Tbilisi, on 24 February 2005.

16. The Government reported that on 11 October 2004, officers of the Inspection General questioned Giorgi Migriauli in the Gori Isolator of Temporary Arrest of the Ministry of Internal Affairs. He denied any ill-treatment and explained that his injuries were the result of a struggle with unknown persons in the Kaspı District prior to his arrest. His brother and cousin confirmed this account. At his first appearance before the court, Giorgi Migriauli denied that he had been assaulted physically or verbally during arrest and investigation. On 13 October, after being put in the hospital, he changed his statement and alleged that unlawful acts had been committed by the Gori District Prosecutor. On 15 October, the Office of the Prosecutor General opened a criminal case into the crime of compulsion to provide evidence committed in aggravated circumstances (article 335 (2) of the Criminal Code), and directed the Office of the Inspector General of the Procuracy to conduct an investigation. A number of witnesses have been questioned, and forensic and other examinations have been carried out. There are some other inquiries still pending. Giorgi Migriauli is currently receiving medical care from a torture victim treatment and rehabilitation centre. The forensic examinations are expected to be finalized when his treatment is completed. On 15 January 2005, the Prosecutor General extended the three-month period of investigation to 15 March, and again to 15 May. After the case on compulsion was initiated, Giorgi Migriauli was released on bail. Shortly thereafter, he filed a statement with the Prosecutor General partially denying that the procuracy officers had ill-treated him. On 21 March 2005, he appeared before the investigators and testified about inhumane treatment by the former Gori District Prosecutor, who has been charged under articles 118, 147 and 335 (2) of the Criminal Code. Although Giorgi Migriauli denied that the former Deputy Gori District Prosecutor was involved, he was also charged in relation to the crime. On 27 April 2005, the Mtatsminda-Krtsanisi District Court ordered the former Gori District Prosecutor to provide a written undertaking that he would not leave the area pending the proceedings. From 17 May 2005 to 3 June, complex forensic examinations were conducted with respect to the injuries sustained by Giorgi Migriauli.

17. Concerning the issue of compensation to victims and their families, the Government reported that where cases are still under investigation, it is not possible to decide on compensation. When a decree is issued dismissing a case of alleged ill-treatment, it follows that requests for compensation are also dismissed.

### Notes

<sup>1</sup> See the reports of the Committee's visit of 6 to 18 May 2001 (CPT/Inf (2002) 14 and CPT/Inf (2004) 1), and of 18 to 28 November 2003 and 7 to 14 May 2004 (CPT/Inf (2005) 12).

<sup>2</sup> Second periodic report of Georgia to the Human Rights Committee (CCPR/C/GEO/2000/2), para. 113. See also the concluding observations of the Committee against Torture (A/56/44, para. 82 (a)), and the concluding observations of the Human Rights Committee (CCPR/CO/74/GEO), para. 8.

<sup>3</sup> Article 144 of the Criminal Code was amended on 23 June 2005 to bring the definition of torture into line with the Convention, and provides for penalties of 7-15 years' imprisonment.

<sup>4</sup> In accordance with amendments of the Criminal Procedure Code of 25 March 2005, effective 1 January 2006, the maximum period of pretrial detention will be reduced to four months.

<sup>5</sup> See note 3.

<sup>6</sup> See State party reports to CAT (CAT/C/48/Add.1), para. 21, and to the Human Rights Committee (CCPR/C/GEO/2000/2), para. 140.

<sup>7</sup> During the mission previous communications for which no replies had been received were retransmitted to the Government, and it responded to most of them by letter dated 22 March 2005 (see the country entry in the addendum on communications, document E/CN.4/2006/Add.1).

<sup>8</sup> See the appendix on individual cases.

<sup>9</sup> See note 4. Moreover, effective 1 January 2006, the current maximum period of detention of 32 months during trial proceedings, including the court of first instance, the court of appeal and the court of cassation, will be reduced to 12 months. The Government reported that the amendments to CPC on 25 March 2005 ensure that preference shall always be given to measures of constraint not related to the deprivation of liberty.

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