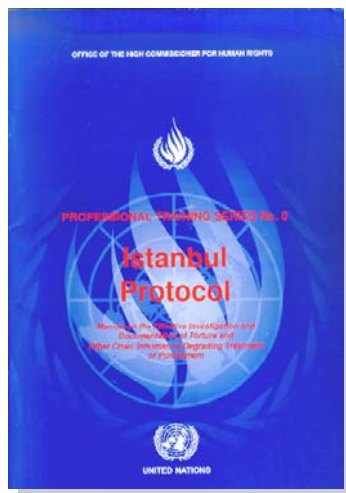


Reference Materials

The Istanbul Protocol: International Guidelines for the Investigation and Documentation of Torture

ACTION AGAINST TORTURE A PRACTICAL GUIDE TO THE ISTANBUL PROTOCOL FOR LAWYERS IN GEORGIA

2004



This guide has been written by the REDRESS TRUST as part of the Istanbul Protocol Implementation Project, an initiative of Physicians for Human Rights USA (PHR USA), the Human Rights Foundation of Turkey (HRFT), the World Medical Association (WMA), and the International Rehabilitation Council for Torture Victims (IRCT)

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ISBN 87-88882-96-9

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Investigation and Documentation of Torture

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A PRACTICAL GUIDE TO THE ISTANBUL PROTOCOL FOR LAWYERS IN GEORGIA

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ACTION AGAINST TORTURE: A PRACTICAL GUIDE TO THE ISTANBUL PROTOCOL FOR LAWYERS

ACKNOWLEDGMENTS

This report was written by Caroline Rowlands and Gabriela Echeverria on the basis of information provided by Keti Kamashidze and Vakhtang Vakhtandidze, Legal Consultants of the Istanbul Protocol Implementation Project, and edited by Carla Ferstman.

REDRESS is also grateful for the assistance provided by Hulya Ucpinar from the Human Rights Foundation of Turkey and Olga Shepeleva from the International Helsinki Federation for Human Rights.

REFERENCE MATERIALS REGARDING THE USE OF THE ISTANBUL PROTOCOL: INTERNATIONAL GUIDELINES FOR THE INVESTIGATION AND DOCUMENTATION OF TORTURE

The Istanbul Protocol is the first set of international guidelines for the investigation and documentation of torture. The Protocol provides comprehensive, practical guidelines for the assessment of persons who allege torture and ill treatment, for investigating cases of alleged torture, and for reporting the findings to the relevant authorities. Initiated and co-ordinated by Physicians for Human Rights USA (PHR USA), Action for Torture Survivors and the Human Rights Foundation of Turkey (HRFT), the Protocol was developed over three years with the involvement of more than 40 organisations, including the International Rehabilitation Council for Torture Victims (IRCT) and the World Medical Association (WMA).

With the generous support of the EU, the 'Istanbul Protocol Implementation Project' was carried out between March 2003 and March 2005 to increase awareness, national endorsement and tangible implementation of the Protocol in five target countries; Georgia, Mexico, Morocco, Sri Lanka and Uganda.

The resource materials presented here were developed as a source of practical reference for health and legal professionals during the trainings conducted as part of the project. The materials were widely disseminated to the 250 individual health professionals and 125 lawyers who participated in the trainings and were also distributed to relevant national institutions and government agencies in the five countries. It is hoped that these materials offer insights and create synergy between the two professions in the joint efforts to combat torture.

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Part 1: Overview of the Istanbul Protocol

A. Introduction

Recognising the prevalence of torture in the world and the need to take active steps to combat it, medical, legal and human rights experts from a range of countries drafted the “*Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol)*.” The Manual was finalised in August 1999 and has since been endorsed by the United Nations, regional organisations and other bodies.¹

The Istanbul Protocol is intended to serve as a set of international guidelines for the assessment of torture or cruel, inhuman or degrading treatment or punishment, for investigating such allegations, and reporting findings to the judiciary or other investigative bodies. The set of “*Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*” (*The Istanbul Principles*) annexed to the Istanbul Protocol was included in the Resolution on Torture unanimously adopted by the UN General Assembly in December 2000.² Subsequently, the United Nations Commission on Human Rights drew the attention of governments to these Principles and strongly encouraged them to reflect upon them as a useful tool in combating torture.³

Torture is defined in the Istanbul Protocol in the words of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

“Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”⁴

Accordingly, torture is the intentional infliction of severe pain or suffering, whether physical or mental, by or on behalf of a public official (such as the police or security forces) or with their consent. The calculated abuse of an individual’s physical and psychological integrity, in a way that is designed specifically to undermine their dignity, is horrible in any circumstance. But when this act is perpetrated by or on behalf of a public official (someone with the very responsibility to protect an individual’s rights) the crime becomes all the more reprehensible. Indeed torture is

¹ Available at <http://www.unhchr.ch/pdf/8istprot.pdf>.

² UNGA Resolution 55/89 Annex, 4 December 2000.

³ Commission on Human Rights Resolution 2003/33, 57th meeting, 23 April 2003 [E/CN.4/2003/L.11/Add.4].

⁴ Article 1, UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; UNGA resolution 39/46 of 10 December 1984, *entry into force* 26 June 1987.

typically perpetrated/condoned by the State officials who are responsible for upholding and enforcing the law.

Torture may cause physical injury such as broken bones and wounds that heal slowly, or can leave no physical scars. Often torture will lead to psychological scars such as an inability to trust, and a difficulty to relax in case the torture happens again, even in a safe environment. Torture survivors may experience difficulty in getting to sleep or may wake early, sometimes shouting or with nightmares. They may have difficulties with memory and concentration, experience irritability, persistent feelings of fear and anxiety, depression, and/or an inability to enjoy any aspect of life. Sometimes these symptoms meet the diagnostic criteria for post-traumatic stress disorder (PTSD) and/or major depression. Physical and psychological scars can last a lifetime. To someone who has no experience of torture, these symptoms might appear excessive or illogical, but they can be a normal response to trauma.

The word 'torture' will, to most people, invoke images of some of the most horrific forms of physical and psychological suffering - the pulling out of fingernails, electric shocks, mock executions, being forced to watch the torture of parents or children, rape. The variety and severity of the methods of torture and cruel, inhuman or degrading treatment or punishment may simply defy belief. But there is no exhaustive list of acts that constitute torture;⁵ torturers continue to invent new ways to brutalise individuals. And there is no limit on who can be victimised – survivors of torture come from all walks of life, and from most countries around the world. Even children may be victims.⁶ But most frequently, torture survivors are criminal suspects, or victims of discrimination on the grounds of race, ethnicity, religion, gender or sexual identity.⁷

As noted in the Istanbul Protocol, "torture is a profound concern for the world community. Its purpose is to deliberately destroy not only the physical and emotional well-being of individuals, but the dignity and will of entire communities. It concerns all members of the human family because it impugns the very meaning of our existence and our hopes for a brighter future."

In other words, torture is abhorrent not only for what it does to the tortured but for what it makes of the torturer and the system that condones it. The Istanbul Protocol explains: "Perpetrators often attempt to justify their acts of torture and ill-treatment by the need to gather information. Such conceptualizations obscure the purpose of torture and its intended consequences...By dehumanizing and breaking the will of their victims, torturers set horrific examples for those who later come in contact with the victim. In this way, torture can break or damage the will and coherence of entire communities...."

For this reason, torture is absolutely prohibited by every relevant human rights instrument since the Universal Declaration of Human Rights of 1948. The violation of this prohibition is considered so serious that no legal justification may ever be found, even in times of emergency or armed conflict.

⁵ In its General Comment on Article 7 of the International Covenant on Civil and Political Rights, the UN Human Rights Committee considered that it is not desirable to draw up a list of prohibited acts or a precise distinction between them. Furthermore, Sir Nigel Rodley, former UN Special Rapporteur on Torture, considered that it is extremely difficult and indeed dangerous to establish a threshold to distinguish acts of torture from cruel, inhuman or degrading treatment.

⁶ See *Hidden Scandal, Secret Shame* (AI Index ACT 40/38/00) for reports of torture perpetrated against children.

⁷ See *Crimes of Hate, Conspiracy of Silence* (AI Index ACT 40/016/2001) for reports of torture perpetrated against sexual minorities; *Broken Bodies, Shattered Minds* (AI Index: ACT 40/001/2001) for reports of the torture of women; *Racism and the Administration of Justice* (AI Index: ACT 40/020/2001) for reports of torture and racial discrimination.

Despite the absolute prohibition of torture under international law, a glance at any of the reports of the United Nations Special Rapporteur on Torture, or of recent reports of the International Committee of the Red Cross (ICRC), or indeed many newspapers, makes it quite clear that torture is still commonplace in many countries around the world. This imbalance between the absolute prohibition on the one hand and the frequent practice of torture underscores the need to improve domestic implementation of international standards against torture and to improve the effectiveness of domestic remedies for torture survivors.

The Istanbul Protocol is an important instrument in the fight against torture - the effective investigation and documentation of torture helps to expose the problem of torture and to bring those responsible to account. The Principles contained in the Protocol reflect important international standards on the rights of torture survivors and States obligations to refrain from and prevent torture.

International law requires States to investigate allegations of torture and to punish those responsible. It also requires that victims of acts of torture obtain reparation and have an enforceable remedy to fair and adequate compensation, restitution of their rights and as full rehabilitation as possible. The Istanbul Protocol is a manual on **how** to make investigations and documentations of torture **effective** in order to punish those responsible, to afford adequate reparation to the victims and more generally, to prevent future acts of torture.

This Guide is aimed at lawyers in Georgia working with torture survivors. For each key international standard contained in the Istanbul Protocol it outlines the relevant domestic laws and practices and highlights discrepancies between domestic laws and international standards and procedural violations of international standards in domestic practices. This Guide examines domestic law and practice in light of these international standards and suggests practical ways that lawyers might improve the recognition and implementation of these international standards.

Lawyers are key interlocutors for survivors of torture seeking justice and other forms of reparation. Equally, they may play a vital role in persuading governments to comply with their international obligations to refrain from acts of torture and to implement preventative measures. If lawyers are familiar with the applicable international standards, they may seek to interpret and apply domestic law in light of these standards, and may cite such standards in their legal argument, pleadings and complaints.

This Guide does not purport to be a comprehensive survey of domestic law and practice of torture in Georgia. It aims only to provide an outline of relevant legal provisions, case law and practice, in order to identify steps to ameliorate domestic implementation of applicable international standards.

Chapter I of the Istanbul Protocol outlines the ethical responsibilities of lawyers and medical professionals under international law, as well as relevant international human rights mechanisms. Chapter II outlines the relevant professional ethical codes for lawyers and doctors, as well as judges and prosecutors. Whilst Chapter III sets out international standards on the purposes and procedures of a legal investigation into torture, Chapters IV - VI cover how to obtain different sources of evidence in torture cases - physical and psychological medical evidence, as well as evidence from other sources, such as interviews.

B. The importance of medical professionals in the documentation of torture and the need for lawyers to understand the medical symptoms of torture

The Istanbul Protocol highlights the important role of medical professionals in the documentation of torture and sets out detailed guidelines on methodology for obtaining medical evidence, including the recommended content of medical reports.

It is important for lawyers working with torture survivors to know how torture can be medically documented and to understand the physical and psychological symptoms of torture. This will not only help them to better understand their clients and assist them but equally, such insight is extremely important when lawyers lodge complaints of torture or other forms of ill-treatment on the survivors' behalf. As recognised in the Istanbul Protocol lawyers and doctors need to work closely together to effectively investigate and document acts of torture. Medical evidence will help prove that torture has occurred. It will also assist lawyers to determine victims' claims for reparations (e.g., restitution, compensation and rehabilitation). Similarly, lawyers will need to assess whether the official investigation of the police or other competent body took into account proper medical evidence or whether they need to arrange for independent medical examinations to attest to the victim's version of the events.

The Istanbul Protocol states that lawyers have a duty, in carrying out their professional functions, to promote and protect human rights standards and to act diligently in accordance with law and recognised standards and ethics of the legal profession. Other human rights instruments, such as the "*UN Basic Principles on the Role of Lawyers*", set out the duty of lawyers to assist clients "in every appropriate way" and to take legal action to protect their interests. The Istanbul Protocol also states that there is a duty on medical professionals to always act in the best interests of the patient, regardless of other pressures or contractual obligations. Similarly, under the "*UN Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*" it is a "gross contravention of medical ethics" for doctors to engage in acts which constitute participation in, complicity in, incitement to, or attempts to commit torture.

C. Key international standards in the Istanbul Protocol

The Istanbul Protocol outlines international legal standards on protection against torture and sets out specific guidelines on how effective investigations into allegations of torture should be conducted. These guidelines (the Istanbul Principles) have been recognised by human rights bodies as a point of reference for measuring the effectiveness of investigations. The Istanbul Protocol identifies the following obligations on governments to ensure protection against torture:

1) To take effective legislative, administrative, judicial or other measures to prevent acts of torture, for example, by:

- Not expelling, returning or extraditing a person to a country when there are substantial grounds for believing that the person would be tortured (non-*refoulement*);
- Ensuring that any statement that is established to have been made as a result of torture is not invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made;
- Ensuring that the prohibition of torture is included in training of law enforcement and medical personnel, public and other relevant officials;

2) To ensure that general safeguards against torture exist in places of detentions such as:

- Granting detainees prompt and unrestricted access to a lawyer and a doctor of their choice;
- Granting detainees access to family members;
- Ceasing the use of incommunicado detention;

3) To effectively investigate allegations of torture, by:

- Ensuring that the relevant authorities undertake a prompt and impartial investigation whenever there are reasonable grounds to believe that torture has been committed;
- Guaranteeing that all allegations of torture are effectively investigated;

4) To ensure that alleged perpetrators are subject to criminal proceedings by:

- Criminalising acts of torture, including complicity and/or participation;
- Making torture an extraditable offence and providing assistance to other national governments seeking to investigate and/or prosecute persons accused of torture;
- Ensuring that the alleged perpetrators are subject to criminal proceedings if an investigation establishes that an act of torture appears to have been committed;

5) To ensure that victims of torture have the right to an effective remedy and adequate reparation by:

- Ensuring that victims of torture have effective procedural remedies to protect their right to be free from torture in law and practice;
- Guaranteeing that domestic law reflects the different forms of reparation recognised under international law and that the reparations afforded reflect the gravity of the violation(s).

Part 2: General legal framework and practice of torture in Georgia

This Part outlines the legal framework and the practice of torture in Georgia. It gives the context in which lawyers in Georgia work to assist torture survivors and to improve implementation of relevant international standards.

A. The practice of torture in Georgia

The Council of Europe recently recommended that the Georgian Government makes serious efforts to end the practice of torture and to raise the level of professional ethics within its law enforcement agencies.⁸ The types of abuse highlighted by individuals interviewed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) during its visit to Georgia in 2001 were mainly slaps, punches, kicks and blows struck with truncheons, gun butts and other hard objects. The most serious allegations concerned the infliction of electric shocks, asphyxiation by using a gas mask, blows struck on the soles of the feet and prolonged suspension of the body in an inverted position.⁹

In 2002, the UN Human Rights Committee expressed its concern at the widespread and continued subjection of detainees to torture by law enforcement officials.¹⁰ In July 2003, the UN Special Rapporteur on Torture intervened with the Government of Georgia in the case of three individuals who were allegedly tortured whilst being held in police custody.¹¹

International and local non-governmental organisations (NGOs) have also documented many instances of torture in Georgia, including police brutality as well as deaths in custody.¹² Security forces have been reported to subject detainees to torture in pre-trial detention facilities and to hold victims for lengthy periods in pre-trial detention to allow for physical injuries to heal. Reports include the use of electric shocks on detainees to extract money or confessions, although the vast majority of reported cases involve severe beatings by the police—including on the soles of the feet—and suffocation.¹³

⁸ See Council of Europe, Compliance with commitments and obligations: the situation in Georgia, February 2004 – June 2004 (available online at www.coe.int).

⁹ See the Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 18 May 2001, CPT/Inf (2002) 14, 25 July 2002.

¹⁰ See Concluding Observations of the UN Human Rights Committee on the second periodic report of Georgia, CCPR/CO/74/GEO, 19 April 2002.

¹¹ See Addendum, Report of the UN Special Rapporteur on Torture to the UN Commission on Human Rights, E/CN.4/2004/56/Add.1, 23 March 2004.

¹² See, for example, Amnesty International, Concerns In Europe and Central Asia: January - June 2004, AI Index: EUR 01/005/2004, September 2004; International Federation for Human Rights (FIDH) and Human Rights Information and Documentation Centre (HRIDC), Open letter to Javier Solana, Secretary-General of the Council of the EU and High Representative for the Common Foreign and Security Policy on the occasion of the EU/CFSP mission "State of law" in Georgia, 9 July 2004; Human Rights Watch, Agenda for Reform: Human Rights Priorities after the Georgian Revolution, Briefing Paper, 24 February 2004.

¹³ See US State Department, Report on human rights practices in Georgia 2003, United States Bureau of Democracy, Human Rights and Labor, 25 February 2004.

According to some reports on human rights practices in Georgia, law enforcement officials continue to torture detainees, usually to extract money or confessions.¹⁴ Reports by NGOs also indicate beatings sometimes accompanied by extortion, with relatives of detainee's facing financial or other demands in exchange for the detainee's release.¹⁵ Additionally, Georgian NGOs have reported that a frequently used method of psychological torture is by isolating detainees in a specific type of detention facility, known as temporary detention isolators.¹⁶

Allegations of torture have been reported in the conflict areas of South Ossetia and Abkhani regions.¹⁷ The United Nations Human Rights Office in Sukhumi, Abkhazia recently reported a number of cases of excessive violence by uniformed, Abkhaz officials.¹⁸ Additionally, a Tbilisi-based Georgian NGO (Article 42) coordinates an inter-agency working group on the issue of torture in the Abkhazia region.

B. Prohibition and definition of torture

The Constitution

Article 17(2) of the Georgian Constitution states that "[T]orture, inhuman, cruel treatment and punishment or treatment and punishment infringing upon honour and dignity shall be impermissible".¹⁹ Additionally, Article 18(4) states that "[P]hysical or mental coercion of an arrested or a person otherwise restricted in his/her liberty shall be impermissible".²⁰ Article 42(7) of the Constitution stipulates that evidence obtained through a breach of the law is inadmissible.

Criminal Law

Article 126(1) of the Criminal Code, under the subheading of "torture", criminalises the offence of "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."²¹ Under Article 126(1), this offence is punishable by

¹⁴ See US State Department, Report on human rights practices in Georgia 2003, United States Bureau of Democracy, Human Rights and Labor, 25 February 2004 (available online at www.state.gov/g/drl/hr/).

¹⁵ See Amnesty International, *Georgia: Continuing Allegations of Torture and Ill-treatment*, February 2000, EUR 56/01/00; Human Rights Watch, *Georgia: Backtracking on Reform: Amendments Undermine Access to Justice*, October 2000, Vol. 12, No.11(D).

¹⁶ See reports issued by Psycho-Rehabilitation Centre for Victims of Torture, Violence and Pronounced Stress Impact (EMPATHY), *Mental and Psychological Consequences of Torture Among Torture Survivors in Georgia*, 2004.

¹⁷ For more information on human rights violations in the region of the autonomous republic of Abkhazia, see, for example, Human Rights Watch, World Report 2001 (available online at www.hrw.org) and US State Department, Human Rights Practices 2003 (available online at www.state.gov/g/drl/hr/).

¹⁸ See Report of the Secretary-General on the situation in Abkhazia, Georgia, UN Doc S/2004/570, 14 July 2004.

¹⁹ The Constitution of Georgia currently in force was adopted on 24 August 1995 and subsequently amended by the Constitutional Law of Georgia, 30 March 2001 and further amended on 6 February 2004.

²⁰ Commentators have noted the confusion in interpretation of Article 46(1) of the Constitution, in light of Articles 17(2) and 18(4) of the Constitution, since Article 46(1) states that in the case of a state of emergency or martial law, the President of Georgia is permitted to restrict certain constitutional rights, including the rights protected by Article 18(4) of the Constitution. See Ioseb Baratashvili and Sandro Baramidze, *Prevention of Torture, Inhuman or Degrading Treatment or Punishment in Georgia and Compatibility of Georgian Law with International Human Rights Instruments*, Georgian Centre for Psychosocial and Medical Rehabilitation of Torture Victims (GCRT).

²¹ Articles 117 and 118 of the Criminal Code envisage criminal liability for intentional serious and less serious damage to an individual's health.

restriction of freedom not exceeding two years or by a prison sentence not in excess of three years. Subparagraph (h) of Article 126(1) provides that an aggravated form of this offence is where the act is committed by use of one's official position.

Article 333 of the Criminal Code provides for the offence of "abuse of power". Under Article 333(1), the minimum penalty for committing this offence is either a fine; jail time up to four months in length; imprisonment for up to three years; or deprivation of the right to hold a position or pursue professional activity for up to three years.²²

During consideration of its second periodic report before the UN Committee against Torture, the Georgian Government explained that an act is considered to constitute "aggravated torture" if the perpetrator was acting in an official capacity and if the motive was racial, religious, national or ethnic intolerance.²³ However, the Government agreed that the definition of torture in the Georgian Criminal Code is not in compliance with the definition contained in Article 1 of the UN Convention against Torture, as the Criminal Code includes no reference to intimidation, coercion or the use of force to obtain a confession.²⁴

The UN Human Rights Committee also recommended the Georgian Government to ensure that all forms of torture are punishable as serious crimes under Georgian legislation, in accordance with Article 7 of ICCPR.²⁵

On 6 June 2003, an amendment of the Criminal Code in Article 335 entered into force, which provides that where a public official coerces any person through intimidation, deception, blackmail or any other illegal act for the purposes of obtaining a statement or testimony, or a conclusion from an expert, this offence is punishable by two to five years imprisonment; or by deprivation of the right to pursue professional activity. Under Article 335(2), it is an aggravated form of this offence where this act is committed by resorting to violence, abuse or torture.

International treaties

Under Article 6 of the Constitution, international treaties and agreements, to which Georgia is party and that do not contradict the Constitution, take precedence over domestic law.²⁶ According to Article 7 of the Constitution, the state shall protect

²² Article 333(1) of the Criminal Code states: "Exceeding official powers by an officer or a person equal thereto that has inflicted a substantial damage to the right of a natural or legal person, legal public or state interest shall be punishable by fine or by jail time up to four months in length or by imprisonment for up to three years in length, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years; Article 333(2) states: "Exceeding official powers by a state-political official shall be punishable by fine or by imprisonment for up to five years in length, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years". Article 333(3) states that "The action preferred to in Paragraph 1 or 2 of this article, perpetrated (a) repeatedly, (b) under violence or by application of arms and (c) by insulting a dignity of a victim shall be punishable by prison sentences ranging from three to eight years in length, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years".

²³ See Summary Record of the 458th meeting of the UN Committee against Torture, Consideration of the second periodic report of Georgia, CAT/C/SR.458, paragraph 6, 14 February 2002.

²⁴ See Summary Record of the 458th meeting of the UN Committee against Torture, Consideration of the second periodic report of Georgia, CAT/C/SR.458, paragraph 10, 14 February 2002. For a discussion of the incompatibility of the definition of torture in Georgian legislation with Article 1 of the UN Convention against Torture, see Ioseb Baratashvili and Sandro Baramidze, *Prevention of Torture, Inhuman or Degrading Treatment or Punishment in Georgia and Compatibility of Georgian Law with International Human Rights Instruments*, Georgian Centre for Psychosocial and Medical Rehabilitation of Torture Victims (GCRT).

²⁵ See Concluding Observations of the UN Human Rights Committee on the second periodic report of Georgia, CCPR/CO/74/GEO, 19 April 2002.

²⁶ Article 6(2) of the Constitution provides that "[T]he legislation of Georgia shall correspond to universally recognized principles and rules of international law. An international treaty or agreement of Georgia unless it contradicts the Constitution of Georgia, the Constitutional Agreement, shall take precedence over domestic normative acts.

universally recognised human rights and when exercising authority, the state and its officials shall be bound by international law that may be applied directly in Georgia.

The representative of the Georgian Government stated before the UN Committee against Torture that international human rights treaties had been directly applied in five cases heard by the Supreme Court and in one case before the Constitutional Court.²⁷

Georgia has ratified the following treaties prohibiting torture:

- ❑ Geneva Conventions of 12 August 1949 [14 September 1993]
- ❑ UN International Covenant on Civil and Political Rights²⁸ [3 May 1994]
- ❑ First Optional Protocol to the International Covenant on Civil and Political Rights [3 May 1994]
- ❑ UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [26 October 1994]
- ❑ Second Optional Protocol to the International Covenant on Civil and Political Rights [22 March 1999]
- ❑ European Convention on Human Rights and Fundamental Freedoms [20 May 1999]
- ❑ European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [20 June 2000]
- ❑ Rome Statute of the International Criminal Court [5 September 2003].

C. Domestic remedial avenues/mechanisms available to torture survivors

Constitutional remedies

Article 39 of Georgia's Law on the Constitutional Court specifies that individuals may directly petition the Constitutional Court if they believe that their constitutional rights, as outlined in Chapter II of the Constitution, have been breached.²⁹ Additionally, the Constitutional Court is competent to arbitrate constitutional disputes between branches of government and review legislation for conformity with the Constitution.

Article 42(1) of the Constitution provides that an individual has the right to appeal to a court to protect his rights and freedoms and Article 42(9) states that any individual who suffers damage caused by illegal actions of the State, self-governing bodies, or their officials "shall be guaranteed to receive complete compensation from state funds through court proceedings".

Criminal procedures

Under the Criminal Procedure Code, torture victims directly or through their lawyer can submit a written complaint to the of the Prosecutor General's Office (hereinafter referred to as the *procuracy*).³⁰ Under this Code, the office of the procuracy with

²⁷ See second periodic report of Georgia to the UN Committee against Torture, CAT/C/48/Add.1, 2 June 2000.

²⁸ In 2002, in concluding its review of Georgia's second periodic report, the UN Human Rights Committee requested that the Georgian government reports on progress in addressing concerns within 12 months, rather than waiting until 2006 when Georgia's third periodic report is due.

²⁹ Chapter Two of the Constitution *Georgian Citizenship, Basic Rights and Freedoms of the Individual*, sets out the fundamental rights of individuals protected by the Constitution, such as citizenship, the right to life and the prohibition against torture.

³⁰ Since January 2004, the procuracy has been undergoing internal restructuring and it is envisaged that the adoption of a new Criminal Procedure Code will impact these reforms. See Footnote 8.

territorial jurisdiction is obliged either to investigate the allegations, or refer the complaint to the procuracy's "inquiry office", which is equally obliged to open an investigation within twenty days. If the procuracy refuses to initiate an investigation into torture allegations within the time limit provided by law, this refusal can be appealed at a higher level within the procuracy and at a regional court. If the regional court rejects such an appeal, such decision can be appealed before the Supreme Court of Georgia.

Chapter 28 of the Criminal Procedure Code contains provisions covering the rehabilitation and compensation for individuals subjected to unlawful acts committed by law enforcement officials.³¹ Under Article 30 of the Criminal Code of Procedure, a victim has the right to claim compensation for physical and moral damage caused by the unlawful action of any public official. Claims for compensation can be filed with the agency conducting the criminal investigation (e.g. the procuracy) or a district court, however only a district court can make a decision on the amount of the award. The order of a district court awarding compensation may be appealed at a regional court and, in turn, the decision of the regional court may be appealed at the Supreme Court.

Civil procedures

Compensation can be claimed as a civil action during criminal proceedings. There are no specific provisions on torture in the Civil Code, however under Article 1005, the State is liable to pay damages for harm inflicted by any public official. Additionally, Article 408 establishes the right of a victim that has suffered physical injury or damage to health to claim compensation to cover costs of treatment as well as monthly allowances. Article 413(2) of this Code provides that a victim may claim compensation for moral damages.

Public Defender (Ombudsman)

Under Article 43 of the Constitution "the protection of human rights and fundamental freedoms within the territory shall be supervised by the Public Defender of Georgia". The Public Defender has the authority to receive complaints from persons deprived of their liberty and visit persons in detention to request information relating to a specific complaint.

Under Article 21 of the Law of the Public Defender, the Public Defender is authorized, *inter alia*, to make proposals to the Georgian Parliament on enactment of human rights-related legislation; to make recommendations to the Georgian authorities to redress violations of individual's human rights where an action by that authority caused such a violation; to refer cases of human rights violations to a "special" state body and recommend criminal prosecution, where there are indications that a criminal offence has been committed, or disciplinary or administrative sanctions; to make recommendations to judges to review specific cases, once the court's ruling in the case in question has been delivered, if the Public Defender believes that a complaint lodged with the Public Defender might have materially affected the outcome of proceedings; and, in special circumstances, to

³¹ In June 2004, the Georgian Minister of Justice requested the assistance of the Council of Europe in drafting a new Criminal Procedure Code, to ensure compatibility with Council of Europe standards. It is envisaged that following adoption of a new Criminal Procedure Code, the draft Law on the Prosecutor General's Office and Law on the Police will be adopted. For more details on forthcoming reforms of the judicial system and law enforcement agencies in Georgia, see Footnote 8.

refer cases of human rights violations to the Georgian Parliament, requesting the establishment of an investigative committee to examine the facts. Article 18 of the Law on the Public Defender also gives the Public Defender the right to order that an expert examination (such as a medical examination) is carried out.

Georgian NGOs have noted that the Public Defender has been the subject of complaints from victims of human rights violations who claim that the institution fails to invoke its powers sufficiently.³²

Inspector General of Ministry of Internal Affairs

There is an Inspector General in almost all of the ministries of the Government. The primary responsibility of the Inspector General in the Ministry of Internal Affairs (IGMIA) is to conduct internal inquiries into complaints concerning police misconduct, including torture allegations, and recommend sanctions that need to be approved by the Minister or Deputy Minister. Similar structures have been established at the regional level. According to the Georgian Government, eighty-one cases of police misconduct were referred by the IGMIA to the procuracy between January and March 2001. From these, fourteen cases end up with criminal charges against police officers.³³

Torture claims can be filed to the IGMIA. The Inspector General should subsequently refer the case to the relevant agency (the procuracy, for example). However, lawyers have reported that the IGMIA constantly fails to undertake investigations and that there is no accountability mechanism to compel this institution to initiate investigations.

D. International remedial avenues/mechanisms available to torture survivors

When domestic remedies fail to provide prompt and adequate redress, torture survivors and their families directly or through their lawyers can bring claims before international human rights bodies.

Since international law considers that States should have an opportunity to repair any human rights violation for which they are responsible before the international bodies intervene³⁴-- international procedures for individual complaints generally require domestic remedies to have been "exhausted" before accepting to examine the complaint. However, there is no need to exhaust domestic remedies when they are ineffective or cannot provide fair and adequate reparation. In such cases torture

³² These opinions were reported in Human Rights Watch, *Georgia: Backtracking on Reform: Amendments Undermine Access to Justice*, October 2000, Vol. 12, No.11(D).

³³ See Responses of the Georgian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf (2004) 1, 29 January 2004.

³⁴ This principle does not apply for systematic or gross violations of human rights. For more information see *Reparation - A Sourcebook For Victims Of Torture And Other Violations Of Human Rights And International Humanitarian Law*, REDRESS, March 2003, available at <http://www.redress.org/publications/SourceBook.pdf> (REDRESS' Sourcebook on Reparation). In a case pending before the European Court of Human Rights, *Shamayev and 12 Others v. Georgia and Russia*, [ECHR Application No. 36378/02] the Court ordered interim measures against the Georgian government. The Court indicated to the Georgian government that the extradition of Chechen nationals to Russia should be stayed pending more detailed information concerning the circumstances surrounding the extradition. The Court declared the case admissible after a hearing on 16 September 2003 and also decided, under Rule 42(2) of its Rules of Procedure, to organise fact-finding missions in Georgia and Russia with a view to taking evidence from the applicants and witnesses.

victims, their families or/and their lawyers can seek recourse through the most appropriate individual complaints procedure at the international level.³⁵

In Georgia, victims of torture can bring individual claims against the Georgian State for the failure to provide effective remedies and adequate reparation (*complaints procedures*) before the European Court of Human Rights and the UN Human Rights Committee.

It is also possible to send information on the general failure of the Georgian State to prevent and punish torture and to afford effective remedies and adequate reparation for victims (*reporting procedures*) to the European Committee for the Prevention of Torture (CPT), the UN Committee against Torture and the UN Special Rapporteur on Torture. The UN Special Rapporteur also admits information on individual cases but can only refer them to the government in question.

1. International Human Rights Complaints Procedures

European Court of Human Rights

The European Court of Human Rights was established pursuant to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Any individual claiming to be a victim of a violation of the Convention may lodge a claim alleging a breach of any of the Convention rights.

The European Court of Human Rights has interpreted the prohibition of torture in Article 3 of the European Convention on Human Rights together with the general duty to guarantee Convention rights under Article 1 as creating the obligation on States to investigate torture allegations. The Court has recognised implied procedural safeguards contained in Article 3 requiring an effective investigation of torture allegations, an effective protection of vulnerable persons and also in relation to the authorities attitude towards close relatives of “disappeared” persons.³⁶ The Court found in *Assenov et al v. Bulgaria* a violation of Article 3 and 13 (the right to effective remedies) for the failure to investigate effectively allegations of torture.

Under Rule 39 of the Rules of Court, at the request of a party, any other person concerned or on its own initiative, the Court can adopt interim measures.³⁷

A Georgian NGO (*Article 42*) has submitted a number of applications to the European Court of Human Rights on the grounds that the Georgian Government has

³⁵ *Idem*.

³⁶ See *Assenov et al v. Bulgaria* (1999) 28 EHRR 652; *Venzdedaroglu v. Turkey* (2001) 33 EHRR 1412; *Z. V. United Kingdom* (2002) 34 EHRR 3.

³⁷ In a case pending before the European Court of Human Rights, *Shamayev and 12 Others v. Georgia and Russia*, [ECHR Application No. 36378/02] the Court ordered interim measures against the Georgian government. The Court indicated to the Georgian government that the extradition of Chechen nationals to Russia should be stayed pending more detailed information concerning the circumstances surrounding the extradition. The Court declared the case admissible after a hearing on 16 September 2003 and also decided, under Rule 42(2) of its Rules of Procedure, to organise fact-finding missions in Georgia and Russia with a view to taking evidence from the applicants and witnesses. For more information on how to request interim measures from the European Court of Human Rights, see the Practice Direction issued by the President of the Court available online at www.echr.coe.int.

breached its obligations under Article 3 and Article 13 of the Convention.³⁸ At the time of writing, only one of the applications submitted by Article 42 had been formally registered by the European Court, namely *Mamasakhlisi v Georgia and the Russian Federation*. In this case, it is contended that the Georgian Government has breached its obligations under Article 3 and Article 13 of the Convention, by failing to effectively investigate allegations of torture.³⁹ Levan Mamasakhlisi was allegedly tortured whilst being detained in a prison in the Abkhazia region.

UN Human Rights Committee

The UN Human Rights Committee was established pursuant to Article 28 of the International Covenant on Civil and Political Rights (ICCPR) to monitor State Parties' implementation of the ICCPR.

Torture is prohibited under Article 7 of the ICCPR, and under Article 2, States are obliged to provide effective remedies for the rights protected by the ICCPR and if breached, to provide adequate reparations to the victims.

As Georgia has ratified the first Optional Protocol to the ICCPR, torture victims directly or through their lawyers can submit individual communications to the Committee complaining that their rights under the ICCPR have been violated (i.e. Articles 2, 7 and 10). If the petition is found admissible, the Committee issues a decision on the merits and, if appropriate, on the forms of reparation due to the petitioner(s). The Committee's views are not binding but are sent as recommendations to the State Party and are made public in its annual report.

Four defendants in a high profile criminal case in Georgia submitted communications to the UN Human Rights Committee, alleging violations of Articles 7, 9, 10, 12, 14, 15, 19, 21 and 25 of the ICCPR.⁴⁰ The UN Human Rights Committee found violations of Articles 7, 10 and 14 in respect of all four defendants and concluded that, under Article 2 of the ICCPR, the defendants were entitled to an effective remedy, including their release.⁴¹

2. International Human Rights Reporting Procedures

³⁸ A total of 29 applications submitted by the Georgian NGO, Article 42, are currently pending before the European Court of Human Rights. In *Shapatava v. Georgia*, Article 42 contends that the Georgian Government breached its obligations under Articles 3 and 13 of the Convention. Article 42 has also filed applications to the European Court of Human Rights submitting that the Georgian Government has breached its obligations under Article 3 of the Convention in a number of cases, including *Pandjikidze v Georgia* (where the applicant was allegedly subjected to physical and psychological torture during interrogation and *Alavidze v Georgia* (where the applicant was allegedly subjected to inhuman and degrading treatment).

³⁹ Article 42 has also filed an application to the European Court of Human Rights submitting that the Georgian Government has breached its obligations under Article 13 of the Convention in the case of *Inasaridze v Georgia*. This case concerns the death of the applicant whilst in detention. In response to Giorgi Inasaridze's death, the Ministry of the Interior dismissed law enforcement officials implicated in the incident but did not pursue criminal prosecutions.

⁴⁰ UN Human Rights Committee, Communications No. 623/1995, 624/1995, 626/1995 and 627/1995. The UN Human Rights Committee decided to join consideration of all these communications. See UN Human Rights Committee, CCPR/C/62/D/627/1995, 29 May 1998 for the Committee's conclusions on these communications.

⁴¹ The UN Human Rights Committee also found a violation of Article 9 of the ICCPR in respect of three of the defendants (Victor P. Domukovsky, Zaza Tsiklauri and Petre Gelbakhiani). For details on the release from detention of Petre Gelbakhiani and Irakli Dokvadze, see International Society for Human Rights, Press Release *Shevardnadze orders the release of two political prisoners*, 10 September 2002 (available online at www.ishr.org).

European Committee for the Prevention of Torture

The European Committee for the Prevention of Torture (CPT) visits places of detention in Member States of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (in cooperation with national authorities). It examines the treatment of persons deprived of their liberty with a view to strengthening the protection of detainees against torture. Interested individuals can submit information to CPT on situations of concern in Georgia.⁴²

The CPT visits places of detention to see how persons deprived of their liberty are treated and, if necessary, to recommend improvements to States. CPT delegations visit States periodically but may organise additional "ad hoc" visits if necessary. The CPT must notify the State concerned but need not specify the period between notification and the actual visit, which, in exceptional circumstances, may be carried out immediately after notification.

The CPT conducted its second periodic visit to Georgia in November 2003. Due to the political situation in Georgia at that time, the CPT was not in a position to complete its programme and returned again in May 2004. The main purpose of the CPT's May 2004 visit was to examine the treatment of persons detained and detention facilities in Ajara.⁴³

UN Committee against Torture

Under Article 20 of the UN Convention against Torture, if the Committee receives reliable information that appears to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee must invite that State party to cooperate in the examination of the information and submit observations with regard to the information concerned. In agreement with the State Party, the inquiry may include a visit to its territory. The Committee may, after consultation with the State party concerned, decide to include a summary account of the results of the inquiry in its annual report to the other States parties and to the UN General Assembly.

The Committee also has an individual complaints procedure in accordance with Article 22 of the UN Convention against Torture; however, Georgia has not yet accepted the Committee's jurisdiction.

UN Special Rapporteur on Torture

The Special Rapporteur's remit to provide the UN Commission on Human Rights with information on governments' legislative and administrative actions in relation to torture extends to all UN Member States. Torture victims, their families or lawyers may submit a communication to the Special Rapporteur, who may transmit an urgent appeal (to prevent possible incidents of torture) or raise the allegation in a standard

⁴² For more information and contact details for CPT, see Part 2B of REDRESS' *Action against Torture: A Practical Guide to the Istanbul Protocol for Lawyers*, IPIP, August 2004.

⁴³ A Constitutional Law on the Status of the Autonomous Republic was enacted in July 2004. In 2000, an amendment to the Georgian Constitution (Article 3.3) provided that "[T]he status of the Autonomous Republic of Ajara shall be determined by the Constitutional Law of Georgia". For detailed information on the constitutional status of Ajara, see International Crisis Group, *Saakashvili's Ajara Success: Repeatable Elsewhere in Georgia*, Briefing Paper, 18 August 2004 (available online at www.crisisweb.org).

communication with the Georgian government.⁴⁴ The Georgian Government has invited the Special Rapporteur to visit Georgia and this visit is currently pending on the Special Rapporteur's agenda.⁴⁵

⁴⁴Addendum, Report of the UN Special Rapporteur on Torture to the UN Commission on Human Rights, E/CN.4/2004/56/Add.1, 23 March 2004, paragraph 649.

Part 3: International Standards contained in the Istanbul Protocol

This Part describes Georgia's obligations in accordance with international legal standards reflected in the Istanbul Protocol. It examines how lawyers can advocate the implementation of these standards through general advocacy work or/and through invoking them in specific cases when representing torture victims. This Part will address the following international standards:

- A General preventative measures;
- B Specific safeguards in places of detention;
- C Investigating allegations of torture effectively;
- D Prosecution of alleged perpetrators and punishment of those responsible; and
- E Guaranteeing effective remedies and adequate forms of reparation for victims

A. General measures to prevent torture in Georgia

The Istanbul Protocol recognises the obligations on States to take measures to prevent torture, including legislative, administrative and judicial measures. Lawyers can advocate for the implementation of concrete measures to be applied by their Government through their general advocacy work and through specific litigation.

For example, in 2003, the Criminal Procedure Code was amended following an appeal to the Constitutional Court by the public defender and a Georgian NGO challenging the constitutionality of some of its provisions.⁴⁶ According to these provisions detainees had no right to contact a lawyer or relatives or to request medical care within the first 12 hours of detention; the contact of detainees with their lawyer was limited to one hour per day; the right of a detainee to apply for judicial review of a decision made by criminal investigators was limited; and the period of pre-trial detention could exceed nine months.

In January 2003, the Constitutional Court struck out the clauses restricting the contact of detainees with their lawyer and relatives; and prohibiting time limits on lawyer-client meetings. The Court also ruled that the length of pre-trial detention could not exceed nine months, including a preliminary court hearing.

Similarly, collaboration between lawyers and international organisations working in Georgia has had some positive results. Judicial reform programmes, supported by the World Bank and other donors, have resulted in improvement of judicial responses to challenges of procedural violations raised by defence counsel during trials. However, lawyers still complain about the lack of independence of the judiciary.⁴⁷

In consultation with the Organisation for Security and Cooperation in Europe (OSCE), lawyers in Georgia helped to formulate a Plan of Action Against Torture in Georgia (2003-2005). In September 2003, a presidential decree *On Approval of the Plan of Action Against Torture in Georgia (2003-2005)* outlined a comprehensive programme

⁴⁶ Lawyers from the Georgian NGO, Article 42 of the Constitution filed the first petition to the Constitutional Court to challenge the constitutionality of Article 72 and 73 of the Criminal Procedure Code (as existed) on the grounds that these articles contradicted Article 42 and Article 18 of the Constitution.

⁴⁷ See Human Rights Watch, *Georgia: Backtracking on Reform: Amendments Undermine Access to Justice*, October 2000, Vol. 12, No.11(D).

to combat torture.⁴⁸ This Plan of Action includes such measures as a legislative reform of the Criminal Code and Criminal Procedure Code, the establishment of oversight mechanisms for law enforcement agencies and the creation of "independent councils of public control" within the Ministry of Internal Affairs (see Annex 1 to this Guide). The Deputy Secretary of the National Security Council on Human Rights Issues is responsible for the overall implementation of this Plan and is obliged, on the basis of information received from relevant governmental bodies, to submit annual reports on implementation of the Plan.

Additionally, in February 2003, the Human Rights Department of the procuracy was established. The broad objectives of this department include to review the lawfulness of detention of criminal suspects held in detention facilities; prevent and expose incidents of torture; tackle human rights issues like trafficking and ethnic-based discrimination; and improve accountability of human rights offenders. The Human Rights Department collaborates with the Human Rights parliamentary committee, the National Security Council, the Public Defender and international organisations. In principle, the creation of the Human Rights Department is welcomed by NGOs in Georgia, however, practically, the level of collaboration with NGOs has so far been limited to written correspondence (e.g. where an NGO submits a question in writing, the Human Rights Department will respond).

Although some of the measures described above constitute positive developments, many problems still remain. For example, newspapers recently reported prominent public officials who were publicly praising criminal investigations in relation to which serious allegations of torture and procedural violations were raised.⁴⁹

Advocacy on policy initiatives

In the course of their work, lawyers may gain the opportunity to influence future policy initiatives, such as the following:

- ◆ The ratification of the Optional Protocol to the UN Convention against Torture and the recognition of the jurisdiction of the Committee to receive individual complaints under Article 22 of the UN Convention against Torture;
- ◆ Amendment of the Criminal Code to define torture as a specific criminal offence in accordance with recommendations of the UN Committee against Torture;⁵⁰
- ◆ Systematise of the registration and transfer of documentation between the procuracy, the Ministry of Internal Affairs and the Ministry of Justice to ensure thorough investigations into torture allegations;⁵¹

⁴⁸ Presidential Decree No. 468 *On Approval of the Plan of Action Against Torture in Georgia* (2003-2005), 27 September 2003.

⁴⁹ Such opinions were given, for example, by the Tbilisi procurator, Valery Grigalashvili, in *Fighting Fire with Fire, Aggressive tactics alarm legal observers*, *The Messenger*, English Language Daily, February 5, 2004. This reference was cited in Human Rights Watch, *Agenda for Reform: Human Rights Priorities after the Georgian Revolution* Briefing Paper, 24 February, 2004.

⁵⁰ This recommendation is one of the recommendations contained in the *Plan of Action Against Torture in Georgia* (2003-2005). Currently under Article 126 of the Georgian Criminal Code, torture is defined as an ordinary crime. Under international standards, torture should be classified as a specific criminal offence with penalties reflecting the seriousness of the crime.

⁵¹ This recommendation is one of the recommendations in the *Plan of Action Against Torture in Georgia* (2003-2005).

- ◆ Establishment of regulations for prison authorities to ensure that detainees are medically examined on entry and release from detention facilities and that such reports are promptly distributed to detainees;
- ◆ Supplement the provisions of the Criminal Procedure Code with a code of conduct for police interviews and interrogations and make the rules relating to interrogation public;
- ◆ Inclusion of the prohibition of torture under international law in training curricula for the police, procuracy, prison authorities, military and all law enforcement officials;
- ◆ Improvement of the dissemination of information to the general public on the system for the protection of human rights in Georgia, including the different remedies available to torture survivors;
- ◆ Allocation of funding towards legal assistance schemes and amendment of existing regulations on fees payable to public defence lawyers assigned to detainees to improve the quality of state-appointed legal representation;
- ◆ Drafting and submitting alternative or "shadow" reports to the UN Human Rights Committee and the UN Committee against Torture when Georgia is submitting its report as part of the its reporting obligations;
- ◆ Support calls for increasing the independence of the forensic medical profession.

B. Specific safeguards in places of detention and rights of persons deprived of their liberty

In light of the obligation on States to take measures to prevent torture, international human rights law has developed standards to minimise the risk of torture, including the implementation of specific "custodial safeguards" in places of detention.⁵²

This section highlights some of the key safeguards to protect detainees from the risk of torture. (For a full description of these safeguards see Section B, *Action Against Torture: A Practical Guide to the Istanbul Protocol for Lawyers*):

- National preventative mechanisms: independent bodies, consisting of legal and medical professionals, making periodic visits to any place of detention and with access to all detainees.
- Right to communicate with and notify a third person of detention: this includes granting detainees the possibility to immediately notify relatives or a third person of their detention.
- Right to access a doctor: this includes a prompt and independent medical examination upon a person's admission to a place of detention, health of detainees should be ensured during the whole period of detention and

⁵² International standards containing detailed safeguards for detainees include the UN Code of Conduct for Law Enforcement Officials, the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

detainees should have the right to an independent medical examination of a doctor of their own choice.

- Right to access a lawyer of their own choice: granting detainees prompt access to a lawyer of their own choice.
- Right to challenge the lawfulness of detention: a person who has been detained is entitled to have the lawfulness of their detention subject to prompt review by a judicial authority.

Legal framework and practice in Georgia

□ **National preventative mechanisms**

Under Article 93 of the Enforcement of Sentences Act, a commission composed amongst others of local government representatives, public figures and religious organisations, supervises the prison system in Georgia. The Human Rights Department of the procuracy also has an obligation to visit all police detention facilities on a regular basis. During such visits, prosecutors are required to verify the legality of the detention of persons in custody and consider complaints lodged by detainees. The Public Defender and the Human Rights Parliamentary Committee also undertake inspections of police detention facilities.

In 2004, a new council to monitor places of detention was created by presidential decree (the Council). NGO representatives are included in the members of the Council, which is accountable to the Minister of Justice. At the time of writing, the Council has yet to establish its terms of reference and rules of procedure.

What legal and practical steps can lawyers take?

- ◆ Clarify the mandate and procedures of the Council to monitor places of detention recently established by presidential decree and ensure the inclusion of independent qualified lawyers and medical professionals in its membership;
- ◆ Consider methods to adapt the procedures of the Council to bring them into compliance with requirements stipulated in the Optional Protocol to the UN Convention against Torture and other international standards; highlighting the importance of mandate issues, such as the national preventative mechanism having unhindered access to detention facilities, without prior notification to the authorities;
- ◆ Lawyers, including those who are members of the Council, can consider strategic litigation and other interventions in cases identified by this body during visits to detention facilities (e.g. challenging infringements of detainees' rights, such as denial of the right to medical assistance);
- ◆ Systematically record and collate information from individuals acting in the interests of torture victims (doctors, judges, NGOs, etc) and submit information to the national preventative mechanism and the CPT on situations of concern in detention facilities and of detainees at risk of torture. Request the CPT to raise situations of concern during its dialogue with the Georgian government.

□ **Right to communicate with and notify a third person of detention**

Under Article 73 of Criminal Procedure Code, detainees have the right to inform relatives or friends of their place of detention or their whereabouts within 5 hours of their detention. But there are general restrictions on the rights of detainees to communicate with the outside world that are prescribed in the Law on Imprisonment- for example, telephone calls and correspondence require prior permission of an investigator, the procuracy or a judge.⁵³

During its visit to Georgia in 2001, the CPT interviewed detainees who stated that the police had denied them the possibility to inform a relative of their detention by the police.⁵⁴ Accordingly, the CPT recommended that any delay to the exercise of this right should be circumscribed in law and subject to procedural scrutiny, such as recording the reason for the delay in writing and requiring the approval of a senior police officer.

What legal and practical steps can lawyers take?

- ◆ When lawyers are aware that law enforcement officials denied a detainee(s) the right to notify a third person of their place detention within 5 hours of their arrest/detention, submit petitions to the national preventative mechanism, the Human Rights Department in the Procuracy, the Human Rights Parliamentary Committee and/or the Public Defender. Raise the breach of both, domestic and international law, and seek sanctions of the individuals involved referring to international standards on the responsibilities of law enforcement officials, such as the UN Code of Conduct for Law enforcement officials. Take statements from any individuals present when a detainee is denied the right to communicate with a third person, to use as evidence where and when needed;
- ◆ In litigation before domestic courts and the European Court of Human Rights, challenge administrative restrictions on the right of detainees to notify a third person and communicate with the outside world as a breach of domestic and international law. Cite the findings and recommendations of the CPT;
- ◆ Consider legislative advocacy measures to bring about further amendments to the Criminal Procedure Code, the Law on Imprisonment and other relevant legislations that are not in compliance with international standards on detainees' rights to communicate with and notify a third person of their detention and whereabouts.

□ **Right to access a doctor**

Under Article 73 of the Criminal Procedure Code, a detainee has the right to request a medical examination after their first interrogation and to receive a written report on the examination. Article 146(6) stipulates that, upon their request, a detainee should receive a medical examination and that the examining doctor should issue a report.

⁵³ These restrictions are imposed on persons deprived of their liberty under the Georgian Law on Imprisonment.

⁵⁴ See the Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 18 May 2001, CPT/Inf (2002) 14, 25 July 2002.

The Georgian government stated before the UN Committee against Torture that: "it would be desirable for Parliament to consider adopting a law that would entitle [detainees] to an examination as soon as the detention commenced".⁵⁵ However, it is state-appointed doctors that carry out these examinations. Although the Georgian government considers that there is a professional duty on forensic doctors in Georgia to report any instances of torture,⁵⁶ the UN Committee against Torture has established that detainees "should be able to request that a medical certificate be prepared by a doctor of their own choice in any circumstances and it should be possible for that certificate to be produced as evidence before the courts".⁵⁷

The Georgian Government has stated that under Article 359 of the Criminal Code, an independent forensic doctor can examine detainees in order to determine whether they have been subjected to torture. And where a detainee's request to undergo a medical examination is denied, the decision can be appealed against at the regional court and a judge should hear the complaint within 24 hours of the appeal being filed. However, the Government has admitted that in practice, law enforcement officials sometimes obstruct this access and delays in the course of medical examinations have made it difficult to ascertain the nature and cause of detainees' injuries.⁵⁸

Additionally, under the Law on Imprisonment and Ministry of Health regulations, the permission of the investigator conducting the criminal investigation into the case of a detainee must be secured before a state-appointed medical professional can visit a detainee in a detention facility.⁵⁹

In practice, lawyers have reported that state-appointed doctors often lack impartiality and the head of Ministry of Health Judicial Medical Expert Centre reported that bribery and pressure of medical experts in the Centre was a serious problem. Medical examinations are mostly conducted in the forensic medicine institution and although law enforcement officials have no right to attend examinations, in practice they do attend.⁶⁰ Additionally, detainees do not obtain a medical examination by a state doctor until after an interrogation; therefore, there is a probability that physical indications of the detainee's injuries will have disappeared by the time of the medical examination.

Lawyers have reported impediments for detainees to obtain medical examinations because a criminal investigator refuses to authorise a forensic medical examination and procurators refuse to overturn such decisions.⁶¹ Lawyers have also reported that a major reason why detainees do not try and exercise their right to an independent

⁵⁵ See second periodic report of Georgia to the UN Committee against Torture, CAT/C/48/Add.1, 2 June 2000.

⁵⁶ See Summary Record of the 461st meeting of the UN Committee against Torture, Consideration of the second period report of Georgia, CAT/C/SR.461, 2 May 2001. Once the draft Law on Forensic Medicine in Georgia enters into force, it will regulate the forensic medical profession.

⁵⁷ See Report of the UN Committee against Torture on Turkey under Article 20 of the UN Convention against Torture, A/48/44/Add.1.

⁵⁸ See Summary Record of the 461st meeting of the UN Committee against Torture, Consideration of the second periodic report of Georgia, CAT/C/SR.461, 2 May 2001.

⁵⁹ Article 3 of the Ministry of Health Rules on Forensic Medical Examination on the Degree of Bodily Injury, states, "Forensic medical examination to establish a degree of bodily injury is conducted only by resolution of the inquest investigator, investigator, procurator or court's decision. Forensic medical examination can be carried out by the written request of the procuracy, Ministry of Internal Affairs, Committee of State Security, and judges".

⁶⁰ See Human Rights Watch, *Georgia: Backtracking on Reform: Amendments Undermine Access to Justice*, October 2000, Vol. 12, No.11(D).

⁶¹ *Ibid.*

medical examination is the fear that they will be subjected to retaliation by authorities if they request an examination that may substantiate allegations of torture. According to one Georgian NGO, even where the detainee does undergo a medical examination, and medical evidence of torture is identified, law enforcement officials document that injuries were sustained when the detainee resisted arrest, or by falling down.⁶²

What legal and practical steps can lawyers take?

- Review and suggest amendments to the draft Law on Forensic Medicine, including the degree of independence afforded to the organisation of the forensic medical profession, oversight mechanisms to ensure accountability of medical professionals and sanctions for medical professionals who breach the law;
- ◆ Highlight the importance of independent forensic medical professionals to make perpetrators of torture criminally accountable (through securing physical and psychological medical evidence) in the context of the OSCE Plan of Action against Torture in Georgia;
- ◆ Following the recent Constitutional Court ruling on the unconstitutionality of provisions in the Criminal Procedure Code, consider the feasibility of further challenges on the unconstitutionality of the Code, the Law on Imprisonment, and other relevant legislation which prescribes restrictions on detainees' rights such as the fact that detainees are only permitted access to a state-doctor after interrogation; the investigator's authorisation required before conducting medical examinations; and the delays in conducting the examinations;⁶³
- ◆ Where an investigator refuses permission for a detainee to undergo a medical examination, submit a petition to a district court requesting judicial review of this decision and an order to the investigative authority to permit an immediate medical examination. Cite international standards and jurisprudence of international human rights bodies on detainees' right to access a doctor of their own choice from the outset of detention;
- ◆ As a non-litigation measure, support initiatives to implement systemised registers of (state/independent) forensic doctors in detention facilities as one way to reduce practical reasons for delays in detainees' medical examinations;
- ◆ Lawyers should demand to be present at the medical examination of detainees to ensure that medical examinations are conducted out of sight and hearing of authorities. Report any breach to this international standard and keep record of the facts to allege, when necessary, the impartiality of the medical examination (for details on these procedural safeguards, see Istanbul Protocol, Chapter IV, Section B, *Procedural safeguards with respect to detainees*, page 24);
- ◆ Request the Human Rights Department within the procuracy to draft guidelines for medical professionals (state-employed and independent doctors) on how to identify physical and psychological indicia of torture and how to accurately record it in medical certificates issued to detainees.

⁶² See Former Political Prisoners for Human Rights, *The State of Protection of Civil and Political Human Rights in Georgia 1999-2000* (available online at www.steele.com/fpphr/2000/law.html).

⁶³ There are currently several cases before the Constitutional Court, such as *Piruz Beriashvili v. Parliament of Georgia* and *Revaz Jimsherishvili v. Parliament of Georgia* challenging the constitutionality of provisions of the Criminal Procedure Code on the grounds that these provisions limit the right to defence counsel. For more details, see the list of pending cases on the website of the Georgian NGO, Article 42 of the Constitution, www.article42.ge.

□ **Right to access a lawyer of their own choice**

Under Article 73 of the Criminal Procedure Code, detainees have the right to access a lawyer of their choice from the outset of their detention. And under Article 80, if a detainee cannot afford to pay for the services of a lawyer, the investigator or procuracy conducting the criminal investigation is obliged to appoint a public defence lawyer. The appointment of a public defence lawyer is contingent on a request being made by a detainee and a detainee producing written documentation that they do not have the financial means to retain a private lawyer. Where the detainee cannot provide such documentation, the authority conducting the criminal investigation has the discretion to decide whether to assign a lawyer to the detainee.⁶⁴

Article 83(7) of the Criminal Procedure Code prohibits a detainee from replacing their defence counsel during a criminal investigation if it is determined that the replacement is "aimed at the delay or hampering of proceedings". Under Article 107 of the Criminal Procedure Code, a detainee may refuse a state-appointed lawyer assigned to them in specific circumstances stipulated under the Code.

Only the defence counsel representing a detainee can visit detainees held in detention facilities. Before visiting a detainee, their defence counsel must obtain a permit that can be issued by the Collegium of Advocates, criminal investigation departments within some ministries (such as the Ministry of Internal Affairs), as well as by private law firms and some NGOs.⁶⁵

In Georgia, there is no code of ethics applicable to the legal profession. According to the Law on Advocates,⁶⁶ the responsibility for disciplining legal professionals is vested in the national bar association, which has yet to be established. Once established, this association will be responsible for drafting a code of ethics for lawyers. Currently, there are some informal associations of lawyers, such as the Collegium of Advocates, the Georgian Young Lawyers' Association and Article 42 of the Constitution.

As noted in Part 2D above, four defendants in a high profile criminal case in Georgia submitted communications to the UN Human Rights Committee, alleging violations of Articles 7, 9, 10, 12, 14, 15, 19, 21 and 25 of the ICCPR.⁶⁷ The author of one of the communications alleged that the failure of the Georgian authorities to give him unhindered access to defence counsel violated Article 14, paragraph 3(d) of the

⁶⁴ Public defence lawyers in Georgia are remunerated, approximately, at the equivalent rate of \$US 1 per case.

⁶⁵ Article 42 of the Constitution established, within its own organization, the Centre for Fundamental Human Rights of Criminal Defence. This Centre has the authority to issue the permits required by lawyers to enter any detention facility in Georgia.

⁶⁶ The Law on Advocates, adopted by the Parliament of Georgia in June 2001, Article 1 defines an advocate as "a person of independent profession, which obeys only the laws and norms of professional ethics [and] is registered in the General List of Georgian Advocates.

⁶⁷ UN Human Rights Committee, Communications No. 623/1995, 624/1995, 626/1995 and 627/1995. The UN Human Rights Committee decided to join consideration of all these communications. See UN Human Rights Committee, CCPR/C/62/D/627/1995, 29 May 1998 for the Committee's conclusions on these communications.

ICCPR and after its consideration of the facts, the UN Human Rights Committee found a violation of this provision.⁶⁸

In practice, lawyers and relatives of detainees have reported difficulties in meeting with detainees as investigators impede lawyers' access.⁶⁹ As detainees are most at risk of torture during the first few hours of their detention, when the police are seeking to obtain a confession from detainees, lawyers have reported that police officers try and persuade detainees from meeting with their lawyer. Lawyers have also reported that the procuracy sometimes prevents detainees from being represented by the lawyer of their choice and coerces detainees to accept state-appointed lawyers.⁷⁰ The CPT has recommended that detention facilities keep pre-established lists of lawyers in order to prevent such coercion and remove delays in accessing a lawyer.⁷¹

The UN Human Rights Committee has also expressed concern at the difficulties that detainees have to gain access to lawyers, particularly court-appointed lawyers, due to the lack of an effective legal aid system. The Committee recommended that immediately, from the outset of detention and throughout the period of detention, detainees should have free access to a lawyer. Additionally, the Committee recommended that the Georgian government should ensure budgetary provisions for an effective legal aid scheme.⁷²

What legal and practical steps can lawyers take?

- ◆ Request the national preventative mechanism to review procedures in detention facilities concerning detainees' request for legal representation and conditions under which lawyers can meet their clients;
- ◆ Collate and document cases where lawyers are denied access to detainees aiming to expose systematic patterns of violations at specific detention facilities for submission to the CPT;
- ◆ In pleadings before domestic courts, highlight restrictions on the access of lawyers working for NGOs and acting on behalf of torture victims to gain access to detention facilities;
- ◆ Propose administrative regulations on the prohibition of torture and the rights of detainees to prison administrations, the Ministry of Justice and the Ministry of the Interior. These regulations should be circulated to all law enforcement officials and include provisions on detainees' right to retain a lawyer of their choice as well as specific sanctions against law enforcement officials who violate detainees' rights (for example, by coercing detainees to waive their right to a lawyer of their own choice);

⁶⁸ The author of the communication alleged that he had to apply to the judge presiding in the trial for permission to see his lawyer and that the judge prevented him from meeting his legal representatives on several occasions. UN Human Rights Committee Communication No. 623/1995.

⁶⁹ See Amnesty International, *Georgia: continuing Allegations of Torture and Ill-treatment*, February 2000, EUR 56/01/00.

⁷⁰ See Human Rights Watch, *Georgia: Backtracking on Reform: Amendments Undermine Access to Justice*, October 2000, Vol. 12, No.11(D). Article 83(6) of the Criminal Procedure Code stipulates that the body in charge of a criminal investigation does not have the right to recommend a particular lawyer to a detainee or their relatives.

⁷¹ See CPT/Inf (99) 7, 15 April 1999, Report to the Government of the Czech Republic on the visit to the Czech Republic by CPT, 26 February 1997.

⁷² See Concluding Observations of the UN Human Rights Committee on the second periodic report of Georgia, CCPR/CO/74/GEO, 19 April 2002.

□ Challenging the lawfulness of detention

A detainee can challenge the lawfulness of his/her detention before the regional courts under Article 140 of the Criminal Procedure Code. However, whereas Article 140 states that the participation of the police investigator or procurator is obligatory at such hearings, the court hearing "may be attended" by the detainee and their defence counsel. In other words, if detainees 'waive' their right to attend the hearing, the hearing can be held without their presence in court. Furthermore, there is no requirement under Georgian law that a detainee, their lawyer, relatives, or any other interested party must be notified that a hearing under Article 140 has been scheduled. Lawyers have reported that investigators in criminal cases have failed to bring the detainee to court even when detainees have specifically requested to attend, or have pressurised the detainee not to attend the hearing.⁷³

Article 140(10) states that where the detainee and/or their defence counsel attend the court hearing, they shall be given an opportunity to be heard and present their case. However, in practice, a detainee's ability to petition the judge concerning allegations of torture during these hearings is restricted. Judges have constantly refused to consider evidence of torture since, under Article 140, the hearing is to challenge the lawfulness of the detention. Consequently, defence counsels have sought to use the hearings to raise allegations of torture by demonstrating the link between the allegation of torture and the appropriateness of the "restraining measure" sought by the procuracy. For example, lawyers have submitted that the detainee's coerced confession constituted the evidence upon which the procuracy requested to extend the period of pre-trial detention, therefore, making such detention unlawful.⁷⁴ However, due to the difficulties, lawyers have sought to lodge complaints of torture with the procuracy, at a higher level of responsibility, rather than to petition the judge during such hearings.⁷⁵

The UN Human Rights Committee has recommended that detainees in Georgia should be given the opportunity to make a complaint before a judge regarding torture during the investigation phase as required by Articles 7 and 14 of the ICCPR.⁷⁶

What legal and practical steps can lawyers take?

- ◆ Petition the Ministry of Justice, the Ministry of Interior and the Human Rights Department of the procuracy to include in administrative regulations issued to law enforcement officials that detainees should always be notified of the time, date and location of scheduled court hearings under Article 140 of the Criminal Procedure Code;
- ◆ As a legislative advocacy measure, seek amendments to the Criminal Procedure Code to make participation of detainees and their defence counsel obligatory at the court hearings to challenge the lawfulness of his/her detention. Also seek

⁷³ See Human Rights Watch, *Georgia: Backtracking on Reform: Amendments Undermine Access to Justice*, October 2000, Vol. 12, No.11(D).

⁷⁴ Under Article 7(6) of the Criminal Procedure Code, any evidence obtained by unlawful means has no legal force.

⁷⁵ See interview with Eka Beselia, a Georgian defence counsel, reported in Human Rights Watch, *Georgia: Backtracking on Reform: Amendments Undermine Access to Justice*, October 2000, Vol. 12, No.11(D).

⁷⁶ See Concluding Observations of the UN Human Rights Committee on the second periodic report of Georgia, CCPR/CO/74/GEO, 19 April 2002.

amendments to strengthen the right of detainees to challenge evidence presented by the prosecution requesting the continuation of detention and strengthen the right of the detainee to present evidence, such as witnesses statements, expert reports, etc;

- ◆ Support calls for the Supreme Court to issue guidelines to the lower courts on the principles ruling court hearings on the lawfulness of detentions; including among others, the inadmissibility of evidence obtained through the use of torture (like confessions);
- ◆ Document the authorities' failure to comply with domestic and international standards, such as to notify the detainee of their rights or to permit a detainee to undergo a medical examination, and present such evidence to the judge during hearings under Article 140 of the Criminal Procedure Code to prove the unlawfulness of the detention;
- ◆ Challenge the lawfulness of an individual's detention (i.e. where a detainee is held in a temporary detention isolator) with the Georgian authorities on the grounds of a denial of their right to communicate with a third person and their right to have access to a doctor and a lawyer. All of these are rights recognised by international law and breaching them amounts to *incommunicado detention*, which, as has been noted by international human rights bodies, increases the likelihood that the detainee will be subjected to torture.

C. Obligation to effectively investigate torture allegations

The obligation on governments to carry out effective investigations is firmly established in international law. Whenever there are indications that torture might have been committed, governments are obliged to undertake an effective investigation, even without a formal complaint triggering it. Accordingly, the Istanbul Protocol provides that, "even in the absence of an express complaint, an investigation should be undertaken if there are other indications that torture or ill-treatment might have occurred". For an investigation to be "effective" under international human rights law, it must be:

- ◆ **Prompt:** investigations should be commenced and conducted expeditiously;
- ◆ **Impartial:** investigations should be free from undue bias and the investigation should be in the hands of an authority without links to the alleged perpetrators;
- ◆ **Thorough:** the nature and scope of the investigation must ensure that all relevant facts and the identity of the perpetrators is ascertained.

The Istanbul Protocol highlights as key principles for investigations to be effective the following:

- ◆ Investigators must be competent, impartial and independent of suspected perpetrators and the national authority for which the investigators work;
- ◆ Methods used to carry out investigations should meet the highest professional standards and findings shall be made *public*;
- ◆ Investigators should be obliged to obtain all information necessary to the inquiry and should effectively question witnesses;

- ◆ Torture victims, their lawyer and other interested parties should have access to hearings and any information relevant to the investigation and must be entitled to present evidence and allowed to submit written questions;
- ◆ Detainees should have the right to obtain an alternate medical evaluation by a qualified health professional and this alternate evaluation should be accepted as admissible evidence by national courts.

Legal framework and practice in Georgia

Where a public official is implicated in serious crimes, such as torture, murder, rape and bribery under Article 62 of the Criminal Procedure Code (the Code), the procuracy has jurisdiction to investigate. The competent investigative authority is obliged to ascertain the relevant facts and initiate criminal proceedings. If allegations of torture are against a police investigator, the investigation would be conducted by the procuracy. Where the complaint relates to irregularities committed by a procurator, the complaint should be referred to a supervisory procurator (Article 235 of the Code).

All investigative bodies, such as the Inspector General of the Ministry of Internal Affairs, officials of the Ministry of State Security and the procuracy, are legally obliged to observe the provisions of the Code regulating the conditions under which an investigation should be opened, the nature of the investigation that should be conducted and the procedures to be followed when conducting an investigation (Articles 270 to 285). Under Article 234 of the Code, all parties to criminal proceedings, other individuals and legal persons, such as NGOs or the media, can challenge a procedural irregularity or decision taken by an investigative body by lodging a written or oral complaint. Lawyers challenging procedural irregularities in investigations, such as a procurator's refusal to allow a detainee to obtain a forensic medical examination, must initially submit their complaint to the procurator conducting the investigation. Article 279 of the Code establishes the right for torture victims to appeal, directly or through their lawyers, to the head of an investigating authority against actions and decisions taken by an official conducting the investigation. Actions or decisions taken by a procurator can be appealed through a complaint lodged with the senior procurator.

Under Article 238 of the Code, the public official with jurisdiction to review the complaint should immediately take measures for "restoration of the violated rights and legal interests of the parties to criminal proceedings" and other interested parties.⁷⁷ A procurator is obliged to review a complaint and notify the complainant of the outcome of this review within three days of the receipt of the complaint, or in "exceptional cases" within seven days.⁷⁸ If the complaint is rejected, the complainant must be informed of the grounds for rejecting the complaint and of the possibility to appeal such decision.

Under Article 129 of the Code, a defence counsel has the right to collect any evidence, including independent expert opinions. Additionally, the defence counsel can request the investigating authority to undertake certain steps during the investigation and the competent authority are required to fulfil any reasonable request.⁷⁹

⁷⁷ See second periodic report of Georgia to the UN Committee against Torture, CAT/C/48/Add.1, paragraph 103, 2 June 2000.

⁷⁸ See *ibid*, paragraph 104.

⁷⁹ See Ioseb Baratashvili and Sandro Baramidze, *Prevention of Torture, Inhuman or Degrading Treatment or Punishment in Georgia and Compatibility of Georgian Law with International Human Rights Instruments*.

Torture survivors have the right to appeal to court if their complaint was rejected by the procuracy or if the time limits for the procuracy to review the complaint have expired. A pending appeal at court against a decision issued by the procuracy does not suspend execution of that decision if a procurator "does not consider it necessary".⁸⁰ An appeal to a court must be tabled within two months after a complainant is notified of the decision or within two months of the act or omission by the investigative body in question.

In practice, according to the Georgian government, any investigation requiring the restriction of constitutional rights is subject to judicial and administrative oversight.⁸¹ The Government stated that "a complaint [against a procedural violation or decision of an investigative body] cannot be dealt with by a body or official whose activity is the subject of the complaint".⁸² It also stated that a body or official reviewing such a complaint is not restricted to the specific allegations contained in the complaint and has the right to check the legality and grounds of the appealed decision and, if necessary, to undertake a review of the entirety of the case.⁸³

The Georgian government further asserted to the UN Committee against Torture that in Georgia, under Article 73 of the Code, investigations into violations of the rights of detainees were subject to judicial review; that detainees can lodge a complaint at any stage in the investigation with the procuracy or a judge; and that if the complaint is rejected by the procurator, under Article 89 of the Criminal Procedure Code, an appeal can be made to the supervising procurator.⁸⁴ A Government representative also stated that, as a rule, torture cases become the matter of internal investigations.⁸⁵

However, lawyers have reported cases where torture victims have withdrawn their complaint when they had to identify the perpetrators.⁸⁶ Furthermore, lawyers have noted, that the judicial review of the procuracy's decision not to bring criminal charges against an alleged perpetrator of torture, does not constitute an effective remedy since the procuracy has discretion to drop the charges afterwards. For example, in cases where lawyers have appealed a decision by the procuracy to drop criminal charges and where the court has ordered the procuracy to re-open the case, the procuracy has, after re-opening the case, reached the same decision to stay the prosecution.⁸⁷

□ Investigating torture allegations "promptly"

⁸⁰ See *ibid*, paragraph 105.

⁸¹ See Summary Record of the 458th meeting of the UN Committee against Torture, Consideration of the second periodic report of Georgia, CAT/C/SR.458, paragraph 8, 14 February 2002.

⁸² See second periodic report of Georgia to the UN Committee against Torture, CAT/C/48/Add.1, paragraph 103, 2 June 2000.

⁸³ See, *ibid*.

⁸⁴ See Summary Record of the 461st meeting of the UN Committee against Torture, Consideration of the second periodic report of Georgia, CAT/C/SR.461, 2 May 2001.

⁸⁵ See second periodic report of Georgia to the UN Committee against Torture, CAT/C/48/Add.1, paragraph 29, 2 June 2000.

⁸⁶ For example, in the *Bitsadze* case, in which the torture victim received legal assistance from lawyers at the Georgian NGO, Article 42 of the Constitution, the victim withdrew their complaint alleging torture.

⁸⁷ See Human Rights Watch, *Georgia: Backtracking on Reform: Amendments Undermine Access to Justice*, October 2000, Vol. 12, No.11(D).

Under Georgian law, there are no provisions explicitly obliging the procuracy or other competent investigative bodies to promptly open an investigation into torture allegations. On this point, the UN Committee against Torture has recommended that State Parties should reform their criminal justice system to remove all doubt regarding the obligation of the competent authorities to institute impartial inquiries systematically and on their own initiative.⁸⁸ Moreover, the Committee has stated that the individual's right to an investigation should not be dependent on the discretion of State authorities.⁸⁹

As mentioned above, under Article 140 of the Code, it is not obligatory for the Georgian authorities to bring a detainee to the hearing where his/her detention is being challenged. Therefore, in practice, detainees can easily be denied the opportunity to bring allegations of torture to the attention of a judicial authority independent from the detaining authorities.

Additionally, as already described, lawyers have reported that even where a detainee does appear at an Article 140 hearing, the presiding judge tends to restrict its judgment to the issue of the reasonableness of the type of "restraining measure" requested by the procuracy. However, under international standards, if judges become aware that a person might have been subjected to torture, they should act accordingly, even if they have not received a formal petition.

□ **Investigating torture allegations "impartially" and the independence of investigating bodies**

The European Court of Human Rights has held that a procuracy, with powers similar to those of the Georgian procuracy, cannot provide the guarantees of impartiality or independence required by international standards. The Court reached its decision on the grounds that the powers of the procuracy in question (the Bulgarian procuracy) were executive rather than judicial in nature. In the case of *Assenov and Others v. Bulgaria*, the Court found that officials of the Bulgarian procuracy which plays both, an investigative and prosecutorial role, could not be considered a judicial authority empowered to review the lawfulness of a detention.⁹⁰

Notwithstanding the fact that the Georgian procuracy is deemed a judicial authority under Article 91 of the Constitution, according to the jurisprudence of the European Court of Human Rights it cannot be deemed sufficiently impartial.

□ **Investigating torture allegations "thoroughly"**

Under Georgian law, a detainee or their lawyer cannot access documentation relating to the investigation until it has officially concluded. However, under international standards, a "thorough" investigation capable of leading to the identification and punishment of those responsible should, as described in the Istanbul Protocol, allow torture victims, their lawyers and other interested parties to have access to hearings and to any information relevant to the investigation. The Protocol also states that they must be entitled to present evidence and to submit written questions.

⁸⁸ See Concluding Observations by the UN Committee against Torture on France, UN Doc A/53/44.

⁸⁹ See Summary Record of the UN Committee against Torture, Consideration of the second periodic report of Egypt, CAT/C/SR.168.

⁹⁰ European Court of Human Rights (90/1997/874/1086), 26 October 1998.

What legal and practical steps can lawyers take?

- ◆ To petition the procuracy to disclose all documentation relating to the investigation on the grounds that torture victims have the right to be a party to investigation proceedings and access all related evidence and reports as soon as they are disclosed during the course of the investigation, not at its conclusion;
- ◆ Where torture survivors cannot afford to pay for an independent medical examination, lawyers should try to obtain any type of evidence of the injuries sustained, such as prison medical records, photographs, testimonies of witnesses, including relatives that visited the detainee, to prove that the detainee was in good health before entering the detention facility in contrast to their physical and psychological condition while in detention or after their release (for more detailed guidelines, see Istanbul Protocol, Chapter III, Section C Points 3-5, pages 20-21);
- ◆ Ensure that there is sufficient evidence to substantiate all the facts, for example, if it is not possible to identify the alleged perpetrator, lawyers should record any names/nicknames that the detainee might have heard during the torture, or the description of persons that detainee saw or of the facility where he/she was held, the approximate time, etc. Lawyers should also seek links to prove the objective of subjecting the detainee to torture (such as eliciting a confession);
- ◆ When interviewing torture victims, lawyers should follow the guidelines for interviewing alleged torture victims provided in the Istanbul Protocol (see Chapter III, Section C, Point 2(f), page 18) and use the anatomical drawings contained in Annex III of the Istanbul Protocol to ensure accurate reporting on any indications of physical injuries sustained by the victims;
- ◆ To petition the procuracy to make the findings of their investigation public;
- ◆ Lawyers should also be encouraged to send submissions seeking recourse against the Georgian authorities for procedural, as well as substantive violations of individuals' rights, such as the denial of an individual's right to an effective remedy, where there has been no effective investigation into torture allegations.
- ◆ In addition to challenging the grounds for closure of an investigation before the courts and at a higher level within the procuracy/Ministry of Internal Affairs, lawyers should challenge cases where the procuracy is reluctant to open or conduct an investigation in accordance with the law. It is also important to comprehensively record outcomes of these interventions in order to expose the extent of the Government's failure/compliance with international standards before international mechanisms.

D. Prosecution of alleged perpetrators of torture and punishment of those responsible

International law clearly establishes the obligation on governments to prosecute, where sufficient evidence exists, those accused of torture. This duty exists regardless of where the torture was committed and of the nationality of the victim or the alleged perpetrator. As established in the Istanbul Protocol, "States are required under international law to investigate reported incidents of torture promptly and impartially. Where evidence warrants it, a State in whose territory a person alleged to have committed or participated in torture is present, must either extradite the alleged perpetrator to another State that has competent jurisdiction or submit the case to its own competent authorities for the purpose of prosecution under national or local criminal laws."

Article 7(2) of the UN Convention against Torture determines that a prosecuting authority must take a decision to prosecute an offence of torture in the same way as any other crime of a serious nature.

Legal framework and practice in Georgia

□ Prosecutions

Under Article 24 of the Criminal Procedure Code, after a preliminary investigation, the investigating authority submits an indictment to the procuracy for confirmation. Article 28 of the Criminal Procedure Code provides grounds on which the procuracy may halt a criminal prosecution.⁹¹

A Georgian Government representative informed the UN Committee against Torture that alleged perpetrators of torture referred to in previous annual reports of the Public Defender had been investigated and the perpetrators charged with "abuse of power", under Article 333 of the Criminal Code: "partly because the wording of that article did not allow them to be charged with torture".⁹² With the recent amendments to the Criminal Code, torture victims directly or through their lawyers, could pursue prosecution of law enforcement officials for committing acts of torture on the basis of Article 126 and Article 335. However, in practice, lawyers in Georgia have not tried yet to secure a criminal prosecution of an alleged perpetrator of torture using these legislative provisions.⁹³

Articles 96 and 359 of the Criminal Code provide that medical experts employed by a state institution, such as the Ministry of Health, can present an expert opinion in criminal proceedings. The Code also provides that in specific cases, medical professionals who are licensed, but not employed by a state institution, can present evidence in criminal proceedings. However, a presidential decree regulating the issue of licensing stipulates that a forensic doctor must be an employee of a state institution in order to hold a licence.⁹⁴

Under Ministry of Health regulations, the authority of state-employed doctors to offer their expert medical opinion is restricted: "a forensic medical expert does not qualify injuries as abuse or torture; a decision on this issue is within the competence of an inquest investigation, preliminary investigation and courts. Forensic medical examiners should only determine: (1) the fact of the injuries existence and their character (2) the age of the injuries and (3) the device with which the injuries were made and the manner in which they were made".⁹⁵

The Ministry of Defence, the procuracy and Tbilisi State University Department of Forensic Medical Science are authorised to present medical opinions, however this has reportedly occurred in very few cases due to a lack of resources.⁹⁶

⁹¹ Second periodic report of Georgia to the UN Committee against Torture, CAT/C/48/Add.1, 2 June 2000.

⁹² See Summary Record of the 458th meeting of the UN Committee against Torture, Consideration of the second periodic report of Georgia, CAT/C/SR.458, paragraph 9, 14 February 2002.

⁹³ It should be noted here that Article 335 of the Georgian Criminal Code only entered into force on 6 June 2003.

⁹⁴ Presidential Decree No.4, dated 4 January 1997 states that in order to be licensed as a forensic medical examiner, a doctor must be an employee of a state forensic medical facility.

⁹⁵ Article 24 of the USSR Ministry of Health Decree No. 1208, 11 December 1978.

⁹⁶ See Human Rights Watch, *Georgia: Backtracking on Reform: Amendments Undermine Access to Justice*, October 2000, Vol. 12, No.11(D).

In the few cases where defence counsel has successfully petitioned the judge to obtain an independent medical opinion, on the basis of Articles 96 and 359 of the Criminal Code, such opinions have been challenged by the Ministry of Health, the procuracy, or one of the parties to the proceedings, on the basis that the medical professional presenting the opinion does not hold a license required under the presidential decree.⁹⁷ The UN Committee against Torture has held that when a torture survivor requested the judge to allow submission of evidence additional to the opinion of the state-employed doctor, there was no justification for the judge to refuse to allow other evidence.⁹⁸

In the government report submitted to the Committee against Torture in 2000, the Government alleged that under Georgian law, when courts consider allegations of torture made by defendants during criminal trials to be well-founded, the courts will order the procuracy to re-examine the case. To illustrate, the Government referred to a case from 1997, where the Supreme Court decided that the conclusions of a forensic doctor, a medical certificate and a complaint by the defendant constituted grounds to order the procuracy to re-examine the facts. However, the second investigation by the procuracy failed to "prove the validity of the complaint of the defendant".⁹⁹

□ **Punishment/Penalties**

Although torture is a punishable offence in Georgia under Article 126 of the Criminal Procedure Code, it is not characterised as a serious crime. Moreover, to date, no public official has been criminally prosecuted for torture under Article 126 or Article 335 of the Criminal Code. Instead, the perpetrators have been charged under Article 333 of the Criminal Code with the offence of "abuse of power". Under Article 333(1), the minimum penalty for committing this offence is either a fine; jail time up to four months in length; imprisonment for up to three years; or deprivation of the right to occupy a position or pursue a particular activity for up to three years.¹⁰⁰

The UN Human Rights Committee has recommended that the Georgian Government ensure that all forms of torture are punishable as serious crimes under Georgian legislation, in accordance with Article 7 of ICCPR.¹⁰¹

What legal and practical measures can lawyers take?

- ◆ In submissions before the courts, in particular, the Constitutional Court, highlight the discrepancy between the definition of torture in Georgian law and those international human rights treaties binding on Georgia;
- ◆ Challenge decisions charging alleged perpetrators of torture with "abuse of power" under Article 333 of the Criminal Code instead of with "torture" under Article 126 and Article 335;

⁹⁷ See Human Rights Watch, *Georgia: Backtracking on Reform: Amendments Undermine Access to Justice*, October 2000, Vol. 12, No.11(D).

⁹⁸ UN Committee against Torture Communication No. 59/1996, *Encarnacion Blanco Abad v. Spain*.

⁹⁹ See second periodic report of Georgia to the UN Committee against Torture, CAT/C/48/Add.1, paragraph 45, 2 June 2000.

¹⁰⁰ See *ibid*, Footnote 22.

¹⁰¹ See Concluding Observations of the UN Human Rights Committee on the second periodic report of Georgia, CCPR/CO/74/GEO, 19 April 2002.

- ◆ In pleadings before the regional and Supreme Courts, refer to the definition of torture in international human rights instruments and all relevant international standards;
- ◆ Institute criminal proceedings against forensic doctors issuing reports falsifying the physical or psychological condition of a torture survivor under Article 355 of the Criminal Procedure Code and on the basis that involvement in torture by doctors may constitute complicity in torture;¹⁰²
- ◆ Consider strategic litigation in the higher courts to secure a precedent-setting prosecution and conviction of a public official against whom there strong evidence of torture allegations. Lawyers should also consider those cases more likely to succeed in a case before the European Court of Human Rights.

E. Right to an effective remedy and reparations

The right to an effective (procedural) remedy to guarantee the substantive right to adequate reparations for torture survivors is clearly established under international law (see Section E, *Action Against Torture: A Practical Guide to the Istanbul Protocol for Lawyers*). According to the UN Draft Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law,¹⁰³ the forms that reparation may take include: restitution, compensation, rehabilitation and satisfaction and guarantees of non-repetition.

Legal framework and domestic practices in Georgia

□ Effectiveness of remedies

Some of the procedural remedies available to torture survivors and their lawyers are listed in Part 1 of this Guide and discussed in relevant sections above.

Concerning the effectiveness of constitutional remedies, in practice, the enforcement of Constitutional Court decisions has been problematic as both the executive and legislative bodies have on occasion ignored judicial decisions.¹⁰⁴ The new nine-member Court has returned relatively few judgments since it began to hear cases in September 1996. Substantial delays of six or seven months between the time a petition is filed and a preliminary hearing before the Court have been reported.¹⁰⁵ The UN Human Rights Committee recommended that the Georgian Government reform procedures for accessing the Constitutional Court.¹⁰⁶

Regarding the effectiveness of other remedies, in *Assanidze v. Georgia*,¹⁰⁷ lawyers from Article 42 of the Constitution, and the Union of Independent Lawyers of Georgia,

¹⁰² See Summary Record of the 77th meeting of the UN Committee against Torture, Consideration of the additional report of Chile, CAT/C/SR.77, 24 April 1991.

¹⁰³ Annex, E/CN.4/2000/62. The revised version of 15 August 2003 can be found at <http://www.unhcr.ch/html/menu2/revisedrestitution.doc>.

¹⁰⁴ See American Bar Association/Central European and Eurasian Law Initiative, *Overview of the Legal System: Georgia*, February 2003 [available online at www.abaceeli.org].

¹⁰⁵ See Human Rights Watch, *Georgia: Backtracking on Reform: Amendments Undermine Access to Justice*, October 2000, Vol. 12, No.11(D).

¹⁰⁶ See Concluding Observations of the UN Human Rights Committee on the second periodic report of Georgia, CCPR/CO/74/GEO, 19 April 2002.

¹⁰⁷ *Assanidze v. Georgia*, ECHR, Application no. 71503/01, 8 April 2004.

represented an applicant before the European Court of Human Rights. The applicant alleged, in particular, a violation of his right to liberty and security, arguing that the fact that he had remained in custody despite having received a presidential pardon in 1999 for a first offence and been acquitted of a second by the Supreme Court of Georgia in 2001, constituted a violation of his rights under the Convention. The Court held that applicant was being detained arbitrarily, found breaches of Articles 5 and 6 of the Convention and ordered the State to secure the applicant's release at the earliest possible date. The judges stated that "the fact that for a period of over three years the authorities have consistently refused to respect or give effect to the order of the Supreme Court of Georgia is the clearest evidence of the ineffectiveness of the remedy in the case of the present applicant".

□ Adequate reparations

The right of torture victims to reparations is not explicitly recognised under Georgian law. Article 42(9) of the Constitution covers compensation for illegal damage caused by the State, governmental bodies or public officials: "Everyone having sustained illegally damage by the State....shall be guaranteed to receive complete compensation from state funds through court proceedings". Chapter 28 of the Criminal Procedure Code deals with rehabilitation and compensation for unlawful acts committed by law enforcement officials. An individual who, as a result of a crime, suffered physical, financial or moral damage has the right to request compensation and to initiate a civil action during criminal proceedings.¹⁰⁸ Because civil remedies for torture are dependent on the outcome of criminal proceedings, where the offence of torture is not recognised in criminal proceedings, the victim cannot demand any reparation through a separate civil action. However, if the offence of torture is recognised as having been committed in criminal proceedings but the public official that committed the torture cannot be identified, the victim has a right to be awarded reparations on the basis of State liability.¹⁰⁹

Claims for reparation can be lodged with the investigative authority or a district court but only a district court can award compensation. A decision by the district court can be appealed to the regional court and, in turn, this decision can be appealed to the Supreme Court.

Successfully claiming reparations for torture in civil proceedings is dependent on torture survivors meeting the burden of proof that their injuries were sustained as a result of torture. In view of the restrictions, in law and practice in Georgia, on the right of detainees to obtain a medical examination, it is unlikely that torture victims can fulfil this onerous burden of proof. The UN Committee against Torture has considered a matter of concern that a perpetrator of torture is only ordered to compensate the torture victim after criminal liability has been established. The Committee has stated that a civil procedure should be available, regardless of the outcome of any criminal procedure.¹¹⁰

What legal and practical steps can lawyers take?

¹⁰⁸ See second periodic report of Georgia to the UN Committee against Torture, CAT/C/48/Add.1, paragraph 111, 2 June 2000.

¹⁰⁹ See Article 30 and Article 33 of the Criminal Procedure Code.

¹¹⁰ See, for example, Summary Record of the 10th meeting of the UN Committee against Torture, Consideration of the initial periodic report of Sweden, CAT/C/SR.10, 18 April 1989.

- ◆ As a legislative advocacy measure, support calls for amendments of relevant legislative provisions and procedures to improve access to justice for torture survivors and to allow them to obtain reparations through civil procedures in accordance with international standards;
- ◆ Through non-litigious measures, such as press conferences and parliamentary petitions, highlight the problem of judicial enforcement of awards for torture survivors and torture cases where the Georgian government has failed to respect court rulings;
- ◆ In pleadings in criminal proceedings, cite jurisprudence from international human rights mechanisms recommending reform of criminal justice systems where the burden of proof falls on the torture survivor to prove that physical injuries were sustained through torture; present documentation showing obstructions faced by the torture survivor in meeting this burden of proof and challenge evidence presented by the police or procuracy indicating that injuries were caused otherwise.
- ◆ Consider possible claims before the European Court of Human Rights specifically on the failure to afford effective penal and civil remedies to torture victims and in providing victims adequate reparations

Annex 1

DECREE Of the President of Georgia

No 468

27 September 2003

On Approval of the Plan of Action against Torture in Georgia (2003-2005)

Georgia joined UN Convention against Torture, Other Cruel, Inhuman and Degrading Treatment and Punishment in 1994 and assumed concrete responsibilities to execute the requirements of the document. The President of Georgia declared Georgia “an area free of torture” and issued respective legal acts to put this initiative in practice. Nevertheless, more systemic and comprehensive approaches are needed in order that any individual be fully protected against all forms of torture or other forms of ill/treatment. Thus:

1. Approve the Plan of Action against Torture in Georgia (2003-2005).
2. Deputy Secretary of National Security Council on Human Rights Issues Ms. R. Beridze shall take control over the implementation of this Plan.
3. Deputy Secretary of National Security Council on Human Rights Issues, on the basis of information received from the respective executive bodies, shall annually submit reports on the implementation of the above Plan of Action.

Eduard Shevardnadze

Approved by

**President of Georgia,
27 September, 2003
Decree No 468**

**Plan of Action against Torture in Georgia
(2003-2005)**

Objectives	Purpose	Types of Activity	Responsibility	Date
1	2	3	4	5
<p>1. Adoption of amendments to the existing legislation and elaboration of new legal acts</p>	<p>1. To enforce the implementation of international obligations assumed by Georgia and recommendations of the respective UN treaty bodies in the field of human rights</p>	<ol style="list-style-type: none"> 1. Elaboration of a draft law on amendments to article 46, paragraph 6 of the Criminal Code, in order to provide for compulsory medical examination of a detained suspect within the first 24 hours of detention 2. Elaboration of proposals on amendments to the Criminal Procedure Code, according to which at any stage of investigation an accused person shall have the right to directly complain to a judge concerning the matters of ill-treatment 3. Elaboration of proposals on the ratification of Protocol to the UN Convention against Torture, Other Cruel, Inhuman and Degrading Treatment or Punishment 	<p>Interim Interdepartmental Commission on the Elaboration of Institutional Reforms in the Security and Law Enforcement Bodies attached to the National Security Council of Georgia</p> <p>Interim Interdepartmental Commission on the Elaboration of Institutional Reforms in the Security and Law Enforcement Bodies attached to the National Security Council of Georgia</p> <p>Ministry of Foreign Affairs of Georgia, Ministry of Justice of Georgia</p>	<p align="center">2003 December</p> <p align="center">2003 December</p> <p align="center">2003 December</p>
<p>2. Prevention and punishment of torture, other cruel, inhuman and degrading treatment and punishment</p>	<p>2. To minimize the possibility of applying torture, other cruel, inhuman and degrading treatment and</p>	<ol style="list-style-type: none"> 1. Organization of regular control over the activities of law enforcement bodies, in order to prevent and reveal facts of torture, other cruel, inhuman and 	<p>Prosecutor-General's Office of Georgia</p>	<p align="center">2003-2005</p>

Objectives	Purpose	Types of Activity	Responsibility	Date
	<p>punishment, to combat impunity, and institute criminal or administrative proceedings to punish those to blame</p>	<p>degrading treatment and punishment and, if necessary, to prosecute and punish perpetrators</p> <p>2. Verification and, if necessary, investigation of any complaint lodged by a citizen or his lawyer, or information published in the media means regarding alleged torture/ill-treatment</p> <p>3. Permanent control on the part of the respective prosecutors over the process of verification/investigation of alleged ill-treatment applied to detained and arrested persons</p> <p>4. Activation of a special “hotline” at the central and local bodies of the Prosecutor-General’s Office and the Ministry of Internal Affairs of Georgia, in order to enable a person to immediately inform these agencies regarding alleged torture/ill-treatment</p> <p>5. Establishment and activation of a system on coordinated activities between the Prosecutor-General’s Office of Georgia, the Ministry of Internal Affairs of Georgia, and the Ministry of Justice of Georgia, in order to ensure undertaking steps aimed at revelation of facts</p>	<p>Prosecutor-General’s Office of Georgia</p> <p>Prosecutor-General’s Office of Georgia</p> <p>Prosecutor-General’s Office of Georgia, Ministry of Internal Affairs of Georgia</p> <p>Prosecutor-General’s Office of Georgia, Ministry of Internal Affairs of Georgia, Ministry of Justice of Georgia</p> <p>Prosecutor-General’s Office of Georgia, Ministry of Internal Affairs of Georgia, NGOs</p>	<p>2003-2005</p> <p>2003-2005</p> <p>2003-2005</p> <p>2003 December</p>

Objectives	Purpose	Types of Activity	Responsibility	Date
		<p>concerning alleged torture/ill-treatment, as prescribed by law</p> <p>6. Elaboration and introduction of a system for accurate registration of facts related to torture/ill-treatment (including data concerning the measures implemented)</p> <p>7. Implementation, on a regular basis, of operational-preventive activities to reveal facts when detainees are placed to isolators of pretrial detention with the infringement of procedural terms, or in the case of having bodily injuries, undertake necessary measures in this respect</p> <p>8. Periodic implementation of unexpected departmental inspections of places of detention, in order to reveal facts of torture/ill-treatment</p> <p>9. Implementation, on a regular basis, trainings of the respective personnel aimed at making each official realize that any form of torture/ill-treatment is absolutely prohibited and constitutes a punishable crime under the law</p> <p>10. Consideration, on a regular basis, of reports of top officials of the law</p>	<p>Ministry of Internal Affairs of Georgia, Prosecutor-General's Office of Georgia</p> <p>Ministry of Internal Affairs of Georgia, Ministry of Justice of Georgia</p> <p>Prosecutor-General's Office of Georgia, Ministry of Internal Affairs of Georgia, Ministry of Justice of Georgia, NGOs</p> <p>Ministry of Internal Affairs</p> <p>Ministry of Internal Affairs of Georgia, NGOs</p>	<p>2003 December</p> <p>2003-2005 (every three months)</p> <p>2003-2005 (monthly)</p> <p>2003-2005</p> <p>2003-2005</p>

Objectives	Purpose	Types of Activity	Responsibility	Date
		<p>enforcement units and General Inspection of the Ministry of Internal Affairs at the sittings of Collegium of the Ministry, on revealing the facts of torture and measures taken</p> <p>11. Creation of independent councils of public control in the Tbilisi Main Department of Internal Affairs and regional main departments of internal affairs of Georgia</p> <p>12. Regular contacts and cooperation with the Public Defender (Ombudsperson) of Georgia and NGOs dealing with torture-related issues</p>	<p>Prosecutor-General's Office of Georgia, Ministry of Internal Affairs of Georgia, Ministry of Justice of Georgia, Office of the Public Defender of Georgia, NGOs</p>	<p>2004 February</p> <p>2003-2005</p>
<p>3. Prevention and unacceptability of torture, other cruel, inhuman and degrading treatment and punishment in the penitentiary</p>	<p>3. Reformation of Georgian penitentiary, improvement of living conditions, food and medical treatment for convicts</p>	<p>1. Finalization of the concept for the reformation of penitentiary aimed at humanization of treatment to persons deprived of their liberty, in compliance with existing international standards</p> <p>2. Promotion and facilitation of unhindered work for Independent Council of Public Control in the Ministry of Justice of Georgia</p> <p>3. Promotion of activities of</p>	<p>Ministry of Justice of Georgia</p> <p>Ministry of Justice of Georgia, NGOs</p> <p>Ministry of Justice of Georgia</p>	<p>2004 June</p> <p>2003-2005</p> <p>2003-2005</p>

Objectives	Purpose	Types of Activity	Responsibility	Date
		<p>permanent public commissions established in penitentiary facilities</p>	<p>Ministry of Justice of Georgia, Prosecutor-General's Office of Georgia</p>	<p>2003-2005</p>
		<p>4. Establishment of a strict control over physical conditions of detainees, in order to find persons who had bodily injuries when entering to or staying at the penitentiary facility. If such injuries exist, immediate submission of the respective papers to the Prosecutor-General's Office</p>	<p>Ministry of Justice of Georgia</p>	<p>2003</p>
		<p>5. Creation of a system for the training of the penitentiary staff within the Ministry of Justice, focusing on the rules of treatment with respect to persons deprived of liberty, in compliance with existing international standards</p>	<p>Ministry of Justice of Georgia, Ministry of Labour, Health and Social Affairs of Georgia</p>	<p>2003-2005</p>
		<p>6. Implementation of healthcare programmes for persons deprived of liberty, ensuring their regular medical examination, consultations and further treatment. Reduction of death rate, in particular, by preventing murders and suicides</p>	<p>Ministry of Justice of Georgia, Ministry of Labour, Health and Social Affairs of Georgia, NGOs working in the field of healthcare</p>	<p>2003-2005</p>
		<p>7. Periodical inspections and</p>		

Objectives	Purpose	Types of Activity	Responsibility	Date
		<p>evaluation of living conditions, care, food and medical treatment for patients at the "Strict Control Republic Psychiatric Hospital Ltd." with the view of elaboration and implementation of practical steps to improve existing state of affairs</p> <p>8. Periodical inspections at the penitentiary facilities to examine the state of sanitation and hygiene with the view of elaboration and implementation of practical steps for its improvement</p> <p>9. Improvement of food supplies to persons deprived of liberty, with due regard to calorie rate prescribed by law</p>	<p>Ministry of Justice of Georgia, Independent Council of Public Control, permanent public commissions</p> <p>Ministry of Justice of Georgia</p>	<p>2003-2005 (monthly)</p> <p>2004</p>

Objectives	Purpose	Types of Activity	Responsibility	Date
4. Special measures to fully protect women and minors from torture, other cruel, inhuman and degrading treatment	4. Prevention of torture, other cruel, inhuman and degrading treatment against minors, improvement of living conditions, food and medical treatment for women and minor convicts	<ol style="list-style-type: none"> 1. Elaboration of a draft amendment to the Criminal Code of Georgia, pursuant to which torture of a woman shall be regarded as an classifying circumstance to this crime 2. Provision of full investigation of each fact of torture/ill-treatment against minors, to find and punish perpetrators, in conformity with the law 3. Elaboration of proposals aimed at creating system of protection for minor victims of torture during inquiry, preliminary investigation, court trial, and the post-trial period 4. Improvement of living conditions, food, education opportunities and medical treatment for women and minor convicts, to bring them in line with the respective international standards 	<p>Ministry of Justice of Georgia</p> <p>Prosecutor-General's Office</p> <p>Prosecutor-General's Office, Ministry of Internal Affairs of Georgia, Ministry of Justice of Georgia, Ministry of Education of Georgia</p> <p>Ministry of Justice of Georgia</p>	<p>2004 January</p> <p>2003-2005</p> <p>2003-2005</p> <p>2003-2004</p>
5. Monitoring in the field of combating torture, other cruel, inhuman and degrading treatment and punishment	5. Control over the implementation of the Plan, identification and analysis of existing problems, elaboration of	<ol style="list-style-type: none"> 1. Submission of data concerning activities carried out during the year under review, based on which a report for the President of Georgia shall be prepared containing, inter 	<p>Prosecutor-General's Office, Ministry of Internal Affairs of Georgia, Ministry of Justice of Georgia, Department for Human Rights, Humanitarian and Intellectual Security Issues of the Office</p>	<p>2003-2005 (In December of the respective</p>

Objectives	Purpose	Types of Activity	Responsibility	Date
	<p>recommendations for solving them</p>	<p><u>alia</u>, recommendations on how to address problems identified</p> <p>2. Cooperation with NGOs dealing with the torture-related issues to involve them into the monitoring process, with the view of obtaining more comprehensive information, and to determine jointly the ways to address existing problems</p> <p>3. Involvement of the Rapid Reaction Group (Office of Public Defender of Georgia), mobile group of the Human Rights Unit of the Prosecutor-General's Office, seeking of international assistance (OSCE), in terms of conducting permanent monitoring in various regions of Georgia and taking practical steps to deal with the specific violations revealed</p> <p>Promotion of transparency, accessibility of the process and results of the monitoring by making them public through the Web site of the National Security Council's Department for Human Rights, Humanitarian and Intellectual Security Issues, the media means and NGOs' network</p>	<p>of National Security Council of Georgia</p> <p>Department for Human Rights, Humanitarian and Intellectual Security Issues of the Office of the National Security Council of Georgia, NGOs, Office of the Public Defender of Georgia</p> <p>Office of the Public Defender of Georgia, Prosecutor-General's Office, Department for Human Rights, Humanitarian and Intellectual Security Issues of the Office of the National Security Council of Georgia</p> <p>Department for Human Rights, Humanitarian and Intellectual Security Issues of the Office of the National Security Council of Georgia</p>	<p>year)</p> <p>2003-2005</p> <p>2003-2005</p> <p>2003-2005</p>

Annex 2¹¹¹

To: Telavi Regional Court
Representatives of the victim V.
Bagashvili, L.Chincharauli and Sevdia
Ugrekhelelidze

COMPLAINT

On quashing the ruling delivered on 19 April 2003 by the District Court of Khakheti region regarding the termination of the criminal case.

Criminal case is brought against the victim. He is charged with the crime envisaged by the third paragraph of Article 100 of Georgian Criminal Procedure Code, together with the second and the third paragraphs of Article 187 and Article 105 (old version).

On 15 May 2002 the judgement on returning the aforementioned criminal case for additional investigation and on leaving the means of restraint unchanged was delivered by the District Court.

On 7 September 2002 on the ground of aforementioned judgement the case was sent to Khakheti Regional Prosecutors' Office for additional investigation. On 2 November 2002 the investigator from Khakheti Regional Prosecutors' Office, V. Phanozishvili, delivered the ruling on termination of the criminal case. The aforementioned ruling was appealed by us and according to the judgment of the Supreme Court delivered on 28 January 2003 the case once again was returned for additional investigation.

On 19 April 2003, the investigator of Telavi Regional Prosecutors' Office, G. Bachiaashvili, once again delivered the ruling on termination of N. Abulashvili's criminal case. The aforementioned ruling is not well reasoned and has to be repealed for the following reasons:

Pursuant to the judgment of the Supreme Court delivered on 28 January 2003, the aforementioned criminal case was returned for additional investigation personally to the General Prosecutor's Office of Georgia, which has violated the aforementioned judgment of the Supreme Court and returned the case for re-investigation again to the Khakheti Regional Prosecutor's Office. The fact is obviously unlawful and represents the violation of the Constitution on the following grounds:

In the judgment of the Supreme Court delivered on January 28 it is indicated that pursuant to the second paragraph of Article 426 of the Criminal Procedure Code, the court is authorized to decide to assign the case for additional investigation to another investigator. The chamber defines that the court enjoys such authorization not only in relation to a specific investigator but also to a specific Prosecutor's Office as well." After that in the conclusive part of the same judgement, the chamber held that "the case should be returned to the General Prosecutor's Office of Georgia for re-opening of the investigation and conducting an additional investigation. Notwithstanding the aforementioned, the General Prosecutor's Office of Georgia returned the case for the additional investigation again to the Khakheti Regional Prosecutor's Office".

¹¹¹ Translation of Annexes 2, 3, 4, 5 and 6 was from Georgian to English, as arranged by Article 42, in its capacity as IPIP Consultants. The original text of these documents, supplied by Article 42, is in Georgian.

Pursuant to the second union of Article 82 of the Constitution “Acts of court are binding on the whole territory of the State for all state bodies and citizens”. Pursuant to the fifth union of Article 84 of the Constitution “[T]he repeal, change to or halting of a court decision is possible only by a court by the procedure in accordance to rules determined by law.” Thus the General Prosecutor's Office of Georgia did not observe the judgment of the Supreme Court delivered on 28 January 2003 and assigned the case for the investigation to the same Prosecutor's Office which has been rejected by the Supreme Court.

The attorneys of the victim permanently indicated on the tendentiousness of both Signagi and Kakheti District Prosecutors' Office investigative bodies. The reason was the fact that the defendant, N. Abulashvili, was the police officer and the case was directed in his favour. The aforementioned can be proven by the fact that, during the period of preliminary investigation, the testimonies were changed according to N. Abulashvil's indications and in favour of him. At first the defendant was giving the evidence, after which appropriate testimonies were given by witnesses. If the investigation was gaining any new evidence, the defendant was immediately changing his testimonies, after which the evidence of aforementioned witnesses was changed as well.

The chief investigator of Kakheti Regional Prosecutor's Office, instead of taking all measures for finding the culprit, started to defend the interests of the defendant. To be exact, the investigator gives the interpretation of expert conclusions in favour of the defendant, while he does not evaluate the conclusion of the ballistic expert on 3 February 2000 at all, in which it was clearly said that the bullet taken from Z. Bagashvili's dead body is shot from the same type of pistol which is owned by N. Abulashvili. Not analysing the aforementioned conclusion in his ruling of 19 April 2003, the investigator declares that in the concrete situation the shooting from Abulashvili's pistol was not up to him and happened unintentionally. Thus he cannot be responsible for the result.”

In his ruling, the investigator declares that by using the gun Abulashvili did not violate the Law on Police (Point 9 of Article 13) and that his action was lawful, because the action of the driver (Bagashvili) was creating the danger for him as well as for other persons lives and health. The aforementioned statement cannot be taken into account, because during the process of prior investigation we petitioned several times before the court to requalify Abulashvili's action under Article 104 of Criminal Procedure Code (old version), because by using a gun Abulashvili posed the threat for other persons' life and health. In spite of our argumentation, none of our petitions has been upheld by the investigation on the ground of the statement, that when Abulashvili was using a gun there was nobody around. Consequently no harm or danger could be posed to others lives or health. The logical question can be raised, how could Bagashvili's action pose the threat for others lives or health if there was nobody around? So there is no doubt that the investigator gave the interpretation of the evidence existing in investigation in favor of N. Abulashvili and defended his interests.

When the criminal case was returned for additional investigation by the judgment of 15 May 2002 delivered by the District Court, the following questions should have been decided: was the car of dead person Z. Bagashvili moving from the spot until its full stop with a missing wheel. The issue is essential for the case, because the aforementioned fact is not mentioned in the records from viewing the scene. For deciding the issue it was necessary to conduct the appropriate investigation of the wheel, which was not done in additional investigation, by which it violated the indication of the court.

In addition to the aforementioned violations there were also inconsistencies in the testimonies given by witnesses during the prior investigation. No confrontations were conducted to address these discrepancies. Witness Z. Darchiashvili mentioned during his last interrogation that the reason for inconsistencies existing in the testimonies given by him was that once when he was interrogated by the investigator G. Janiashvili he was drunk and

in other cases his testimonies were not correctly written down. On the basis of the aforementioned facts, we petitioned to interrogate investigator G Janiashvili and to confront him with D. Naskidashvili. On the grounds of the motion, investigator G. Bachiashvili only conducted the interrogation of G. Janiashvili, who rejected everything and declared that he interrogated Z. Darchiashvili in a sobriety condition and no incorrect fixing of the testimonies took place. Moreover, he declared that Z. Darchiashvili after each interrogation was reading the transcript of the interrogation and was signing it.

As it is clear that there are obvious discrepancies between the testimonies of Z. Darchiashvili and G. Janiashvili, it is necessary to confront them .

Drawing on the aforementioned facts and pursuant to Article 399 of the Criminal Procedure Code we petition the court to:

1. Accept and deliberate over the complaint.
2. Repeal the ruling on termination of the criminal case delivered by the investigator of Kakheti Regional Prosecutor's Office, G. Bachiashvili, issued on 19 April 2003.
3. Return the case for additional investigation to the General Prosecutors' Office of Georgia.

Representatives of the victim:

S. Ugrekhelidze
Signature

L. Chincharauli
Signature

16.05.2003

Annex 3

To: Judge of Didube-Chugureti Regional Court,
Mr. R Asakashvili
Advocate of the defendant, Dimitri Khachidze

PETITION

The case of the defendant is pending before your court. He is charged with the crime envisaged by the first and the second paragraphs of the Georgian Criminal Code. At this moment, he is in the prison hospital.

According to the reference issued on 16 August 2004 by the medical department of the Ministry of Justice, there is great deal of bruises and cigarette burning found on his body, which needs a time-independent treatment.

Drawing on the aforementioned facts, I petition the court to appoint a medical expertise to decide the following questions:

How is the health condition of defendant Vakhtang Vakhtangidze?
Does he need any kind of treatment?

Dimitri Khachidze
Signature

Annex 4

To: Investigator, Didube-Chugureti Regional
Prosecutor's Office, Mr. R Asakashvili

Advocate of defendant Dimitri
Khachidze

PETITION

On 16 August 2004 the defendant was detained by you. He is charged with the crime envisaged by paragraph 2 of Article 262 of the Georgian Criminal Code.

Pursuant to Article 73 of Georgian Criminal Code (paragraph 73(v)) after finding a person a criminal suspect, he has the right to demand a free medical examination with appropriate reporting, as well as the right to demand the appointment of an expert for a health assessment.

Drawing on the aforementioned facts, I petition the court to appoint a medical expertise to decide the following questions:

How is the health condition of the defendant nowadays?
Does he need any kind of treatment?

Dimitri Khachidze
Signature

Annex 5

To: Investigative Collegium of Tbilisi
District Court

From: Lawyer Khakhaber Khakhaberi, 25,
Kostava Street, III floor, Tbilisi, Georgia,
Tel: 998856

C O M P L A I N T

On quashing the decision of Mtatsminda-Krtsanisi Regional Court issued 16 May 2003.

On 24 March 2003 the General Prosecutor's Office of Georgia initiated a criminal case against the members of "Union of Veteran Soldiers" and others, who were detained on the same day as the criminal suspects. They were accused according to paragraph A, Section 2, Article 222 and paragraph A, Section 3 and paragraph B, Section 4, Article 237 of the Georgian Criminal Code.

On 26 March 2003 arrest as a measure of restraint was ordered to my defendant and others. Tbilisi District Court did not change this decision.

On 9 June 2003, on the basis of paragraph G, Section 1, Article 28 of Georgian Procedure Criminal Code, the criminal case against my defendant was terminated in the part of committing the crime, which was envisaged by paragraph A, Section 3 and paragraph B, Section IV, Article 237 of the Georgian Criminal Code. On the same day, a criminal action was brought against my defendant for the crime envisaged by I and II Sections, Article 236 of the Georgian Criminal Code.

On 9 June 2003 by the ruling of Mr. Shashiasvili, senior investigator of the investigative department of the General Prosecutor's Office of Georgia, my defendant was accused in the criminal answerability by paragraph A, Section 2, Article 222 and Section I-II, Article 236 of the Georgian Criminal Code. Actions determined by these articles belong to the category of less serious crimes, as opposed to III-IV Sections, Article 237 of the Georgian Criminal Code, which stipulates the categories of serious and extremely serious crimes.

Taking into consideration the aforementioned changes, as well as our petition, reasonable sentencing as a measure of restraint was discussed on 13 July in the Khrtsanisi-Mtatsminda Regional Court. On 16 June, Judge Mamuka Songulashvili had not changed the order of arrest on the grounds that there was a reasonable suspicion that the indicted would hide from the investigation, make pressure on witnesses and impede finding the culprit. Another

motivation was that the indictee was accused in committing the crime, for which the determined arresting more than two years. This decision of the Judge is unlawful and must be repealed for following reasons:

Testimonies given through the investigation only prove the factual circumstances and not the personal connection between the indictee and these facts. The judge's concern that Tengiz Rostomiani will make pressure on witnesses to avoid responsibility is groundless.

According to Section 1, Article 151 of the Georgian Criminal Procedure Code, the restraining measure is used not with the aim that the indictee avoids pre-trial investigation and litigation but to restrain his future criminal action, to impede to find certainty in the case and to secure enforcement of the judgment. In this criminal case there is no evidence which would give us the grounds for suspicion that arresting the indictee is necessary to secure the above-mentioned aim. Accordingly the argument of Judge Mamuka Songulashvili, that Tengiz Rostomiani impedes the process of investigation, is groundless. Furthermore, mitigation of the accusation reduces the dangers of hiding.

In the situation of the indictee, hiding is excluded because of his family situation - he is married, has children and a permanent residence. Article 153 of the Criminal Code of Georgia considers the family situation as well as the gravity of the accusation as circumstances to take into consideration.

From all the above-mentioned facts and pursuant to Article 243 of the Criminal Procedure Code of Georgia we request:

1. To deliberate over the complaint.
2. To repeal the ruling delivered by Mtatsminda-Krtsanisi Regional Court on 16 June 2003
3. To repeal arrest as the measure of restraint on T. Rostomiani.

Lawyer

Khakhaber Khakhaberi
Signature

17.06.2003

Annex 6

To: Medical Department of the Ministry of Justice

Our organization is working on the criminal case of the defendant registered in Prison No.5.

According to the report issued by you on 1 July 1995, Tengiz Rostomiani was diagnosed with tuberculosis of the right lung in the phase of infiltration, which was subject to intensive tuberculous treatment (See Appendix 1).

Currently the defendant, Tengiz Rostomiani, complains that he has pains in the area of his lungs, due to which he was moved to the hospital of Prison No.5.

Pursuant to the law currently in force we ask you to examine the health condition of the defendant, Tengiz Rostomiani, and notify us in writing regarding the following questions:

1. Current health condition of defendant Tengiz Rostomiani (diagnosis)
2. What kind of treatment does Tengiz Rostomiani need?

Following document is attached:

Reference issued on 4 April 2003 by the Ministry of Justice of Georgia.

With respect,

Kakhaber Kakhaberi
Member of the Board.

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