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Georgia: Uncertain Torture Reform

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Introduction

Georgia has a long record of tolerating torture and ill-treatment by law enforcement agents. The new government that came to power after the November 2003 'Rose Revolution' has taken some steps to address such abusive practices, but these efforts have proven inadequate to stem them. Moreover, some of the government's new law enforcement policies appeared to trigger new allegations of due process violations, torture, and ill-treatment.

The new government, headed by President Mikheil Saakashvili, has been trying to fulfill its promises of radical reform and satisfy popular demands to end widespread unemployment, poverty, corruption, and criminality, which have plagued Georgia since its independence in 1991. The government sees at least part of the solution in closer ties with Europe and the United States. It wants to bring the country's legal, economic, and social standards in line with those of these countries.¹ Accordingly, the government began a program of wide ranging reforms in nearly all spheres, from education to the military.

Among the highest of the government's reform priorities was the eradication of corruption and rampant criminality. Saakashvili's strong platform in these areas led to a high-profile campaign of arrests of former government officials and suspected members of organized crime. After enduring twelve years of governance crippled by corruption, Georgians welcomed a government that was finally prepared to tackle these issues. The international community welcomed a partner government that held out the promise of bringing stability to the region.² However, the campaign was accompanied by persistent allegations of abuses by law enforcement officials, including torture and ill-treatment. In the government's first ten months in office, its policies seemed to fuel rather than reduce abuses. In line with the government's strong-arm approach, law enforcement officials appeared to feel emboldened to use illegal means to secure the arrests of all types of criminal suspects. Lawyers, nongovernmental organizations, journalists, and even government officials told Human Rights Watch about widespread police abuses,

¹ See, for example, "Saakashvili Addressed PACE," *Civil Georgia*, January 28, 2004, [online], <http://www.civil.ge/eng/> (retrieved on February 14, 2005) and Statement of H. E. Salome Zourabichvili, Foreign Minister of Georgia, Meeting of the Foreign Ministers, NATO Speeches, 8 December, 2004.

² See, for example, "Functioning of democratic institutions in Georgia," Document 10049, January 26, 2004, Parliamentary Assembly of the Council of Europe; "Powell Pledges U.S. Support to Georgia," *Civil Georgia*, January 26, 2004, [online], <http://www.civil.ge/eng/> (retrieved on February 14, 2005); and "President's Anti-Corruption Proposals," *Civil Georgia*, February 2, 2004, [online], <http://www.civil.ge/eng/> (retrieved on February 14, 2005).

including the failure to produce relevant warrants, planting weapons and drugs on detainees, using false witnesses, torture and ill-treatment.³

A component of the government's criminal justice reform program is a newly created plea bargaining system, which is unwittingly facilitating impunity by enabling law enforcement officers who have committed torture, or their colleagues, to negotiate away the right of criminal detainees to seek redress in exchange for promises of light penalties for these detainees. While the law instructs judges to ensure that plea bargain arrangements are not coerced, in practice judges have done little to ensure that law enforcement agents refrain from abusing the new system and have confirmed plea bargaining agreements that effectively eliminated the possibility of pursuing torture allegations. Given Georgia's long record of police abuse, one would have expected extra diligence to ensure that plea bargaining arrangements did not in practice undermine suspects' rights, but no extra efforts appear to have been made.

New abuses by law enforcement officers starkly contrasted with the government's promises of reform. By October 2004, the government appeared to realize this and took some steps to improve the situation, by proposing better training for police and implementing more oversight of detention facilities.

This briefing paper examines the issue of torture in Georgia since the Saakashvili-led government came to power. It outlines the historical context of torture in Georgia, describes the new government's policy priorities that compounded problems leading to torture, in particular the government's campaigns against corruption and organized crime, and details the measures the government has taken to combat torture. The paper raises several torture cases that highlight the problematic aspects of the newly established plea bargaining system and the ongoing problem of impunity. Finally, it lays out a series of recommendations to combat torture. It recommends that the Georgian government systematically and impartially investigate all complaints of ill-treatment and torture, make public the results of all investigations, and bring to justice those found responsible for abuses. As measures to improve accountability, it recommends that when a defendant agrees to a plea bargain, safeguards are implemented to protect a defendant's right to pursue accountability for torture or ill-treatment.

³ From December 13 – 23, Human Rights Watch carried out a research mission to Tbilisi and spoke with members of nongovernmental organizations, government officials, lawyers, experts, victims and their relatives, representatives of international organizations, diplomats, and journalists. This briefing paper is based on that trip and on past Human Rights Watch research.

Background

Torture

The long-standing and widespread problem of torture and ill-treatment in Georgia has been well documented since the 1990s.⁴ Although successive Georgian governments have stated a willingness to institute reforms aimed at reducing the prevalence of torture, allegations of torture committed by law enforcement officers continued. In 1997, the U.N. Special Rapporteur on Torture found that torture methods included:

[H]anging upside down; scalding with hot water; extraction of fingernails or toenails; application of electric shocks; systematic beating, sometimes resulting in fractured bones or broken teeth; and issuing of threats that members of the detainees family would be killed or tortured. Courts were said generally to refuse to exclude evidence, including "confessions," repudiated by defendants as having been obtained through torture, and to fail to investigate such claims of torture.⁵

Some reforms undertaken in the years prior to the 'Rose Revolution' had a positive, although limited, effect. Reforms included closer independent monitoring of places of detention and the transfer of the prison service from the jurisdiction of the Ministry of the Interior to the Ministry of Justice, as recommended by international bodies.⁶ Both local NGOs and international observers reported a reduction in the number of reports of suspicious deaths in custody apparently due to torture, torture cases that led to severe injuries, and torture allegations involving electrocution.⁷

However, many proposed anti-torture reforms were not realized. A new criminal procedure code adopted in May 1999 established some new rights for criminal detainees,

⁴ See, for example, Human Rights Watch/Helsinki, "Torture and Due Process Violations in Georgia: An Analysis of Criminal Case No. 7493810," *A Human Rights Watch Report*, vol. 6, no. 11(D), August 1, 1994. *Concluding observations of the Committee against Torture: Georgia*, November 21, 1996, A/52/44, paras. 111-121. Mr. Nigel S. Rodley, Report of the Special Rapporteur on Torture, December 24, 1997, Commission on Human Rights, fifty-fourth session, E/CN.4/1998/38. *Georgia: Continuing Allegations of Torture and Ill-Treatment*, Amnesty International, February 2000, EUR 56/01/00. Human Rights Watch, "Backtracking on Reform: Amendments Undermine Access to Justice," *A Human Rights Watch Report*, vol. 12, no. 11 (D), October 1, 2000.

⁵ Mr. Nigel S. Rodley, Report of the Special Rapporteur on Torture, December 24, 1997, Commission on Human Rights, fifty-fourth session, E/CN.4/1998/38, para 98. The current United Nations Special Rapporteur on Torture, Manfred Nowak, undertook a fact finding mission to Georgia from February 19 to 25, 2005.

⁶ See, for example, *Concluding observations of the Committee against Torture: Georgia*, November 21, 1996, A/52/44, paras. 111-121.

⁷ Human Rights Watch interviews with representatives of the diplomatic community, experts, and Georgian NGOs, Tbilisi, February 2004.

but amendments to the code adopted shortly thereafter eroded these newly established rights.⁸ In 2002, then-Minister of Interior Koba Narchemashvili attempted to further erode detainees' rights by proposing to parliament regressive criminal procedure amendments.⁹ The Soviet-era institution of the procuracy retained its conflicting duties of both prosecutor and the chief protector of detainees' rights, and the judiciary remained de facto dependent on the executive, making it unresponsive to torture allegations. As a result, law enforcement officers accused of torture and ill-treatment appeared confident that they would not be exposed or punished.

Corruption and Organized Crime

By 2003, corruption had reached endemic proportions. It was practiced broadly throughout the public and private sectors and often appeared to be protected by interested state bodies. It had severely disabled an economy already weakened by armed conflict and instability and was frustrating government efforts at poverty reduction. It was also frustrating efforts at building a state based on rule of law, undermining the legitimacy of the judiciary, and trust in law enforcement agencies.¹⁰

Similarly, violent organized crime had become a real danger in the country. Many major routes through the country could not be used by ordinary citizens for fear of kidnapping or robbery. Lawlessness was particularly prevalent in and around the breakaway republics of Abkhazia and South Ossetia, as well as the Pankisi Valley, and there were persistent reports of police involvement in kidnappings and other forms of organized crime.¹¹

⁸ For example, the amendments eroded the newly established rights of those under investigation to submit a complaint to the courts during criminal investigations. See Human Rights Watch, *Backtracking on Reform: Amendments Undermine Access to Justice*.

⁹ "Pro-Torture" Legislation Looms in Georgia," Human Rights Watch press release, November 26, 2002.

¹⁰ See for example, United Nations Development Programme, *National Human Development Report Georgia 2000*. This report found that the large informal economy in Georgia was supported by groups that included law enforcement and other officials. These groups had no incentive to encourage or contribute towards an effective judicial or law enforcement system, which could constitute a serious threat to their income. Transparency International rated Georgia between 2002 and 2004 as being perceived to have rampant corruption, *Transparency International Corruption Index 2004*.

¹¹ See, for example, Alexandre Kukhianidze, Transnational Crime and Corruption Center, "Criminalization and Cross-Border Issues: the Case of Georgia," March 2003, and Human Rights Watch, *Human Rights Watch World Report 2003*, (New York: Human Rights Watch, 2003).

Since the 'Rose Revolution'

Local NGOs, international observers, and even Georgian government officials agree that for most of 2004 the new government's record on torture was poor.¹² NGOs raised several cases of suspicious deaths in custody for the first time in approximately two years and reported on allegations of torture and ill-treatment.¹³ Although government officials were well aware of the problem of torture in Georgia, they were slow to react to these new developments, and at times appeared unconcerned by them. Statements made by the president and other high-level officials even appeared to encourage abuses by law enforcement personnel and diverged from the stated aim of developing European standards.¹⁴ Victims of abuse were induced not to pursue complaints of torture and ill-treatment through plea bargains, and impunity for abusers remained the norm.¹⁵

On a Path to Reform?

Throughout 2004, local NGOs and others raised the issue of ongoing police abuse and torture with little response from the government. However, by October, after a concerted effort by NGOs to place the issue of torture on the government agenda, the government appeared to listen. In an October meeting with local NGOs, Saakashvili and other high-level officials discussed a new plan for independent monitoring of police stations and places of temporary detention as a measure to prevent torture.¹⁶ Government officials acknowledged that the campaigns against organized crime and corruption had played a role in promoting police abuses and that more attention needed to be paid to eradicating human rights violations by the law enforcement agencies. Zurab Adeishvili, the procurator general, stated publicly that the government would continue

¹² For example, Human Rights Watch interview with Levan Ramishvili, Liberty Institute, Tbilisi, December 19, 2004; with Ucha Nanuashvili, Human Rights Information and Documentation Center, Tbilisi, December 15, 2004; and with Zurab Adeishvili, procurator general, Tbilisi, December 21, 2004.

¹³ See, for example, Human Rights Information and Documentation Center *One Step Forward, Two Steps Back*, Tbilisi, 2004, found at <http://www.humanrights.ge/eng/reports.shtml> and Former Political Prisoners for Human Rights, *Torture, Inhuman, Humiliating Treatment in Georgia: Theory and Practice*, Tbilisi, 2004.

¹⁴ See, Human Rights Watch, "Agenda for Reform: Human Rights Priorities After the Georgian Revolution," *A Human Rights Watch Briefing Paper*, February 24, 2004.

¹⁵ Many of those interviewed by Human Rights Watch asserted generally that judges continued to follow procurator's demands and did not safeguard the rights of the accused; police and procurators did not give detainees timely access to lawyers, or grant the defense full access to case materials. Other police abuses included failure to produce arrest warrants and planting evidence such as guns and drugs on the detainees. Human Rights Watch interviews with lawyers, experts, and representatives of NGOs, Tbilisi, December 13 to 23, 2004.

¹⁶ The government may also have been aware that its honeymoon period was coming to an end, almost a year since the Rose Revolution, and that unless it began to tackle this issue, international criticism would build and could effect the level of international support enjoyed by the government. Also present at the meeting were Irakli Okruashvili, the interior minister, and Zurab Adeishvili, the procurator general. "Interior Minister Offers New Scheme Against Torture in Detention," *Georgian Press Digest*, *Caucasus Press*, October 12, 2004.

its struggle against organized crime and corruption, but that human rights would be observed.¹⁷ When talking about the issue of torture, he told Human Rights Watch “[w]e made big mistakes after the revolution. We focused on corruption cases and we had other problems, such as Ajara and very painful reforms in the police.”¹⁸

Since October, the government has proposed to tackle torture in a number of ways. One of its primary initiatives was the creation, upon the initiative of the Ministry of Interior, of a monitoring council to visit police stations and places of temporary detention under that ministry’s jurisdiction.¹⁹ The council’s members are volunteers from NGOs that work on torture, who are chosen by the Public Defender’s Office. That office also provides some funding for some of the council’s operating costs.²⁰

Other steps taken have included the automatic investigation of reports of injuries of a prisoner when transferred from the custody of the Ministry of Interior to the Ministry of Justice and the strengthening of internal monitoring within the Office of the Procurator General.²¹

These initiatives build on the government’s renewed emphasis, beginning in May-June 2004, on the need for police professionalism, particularly in the collection of evidence. The procurator general told Human Rights Watch that this emphasis was related to the eradication of torture, arguing that police officers would not believe torture to be necessary if they could collect forensic and other evidence in order to solve a crime and prove a perpetrator’s guilt.²² With the help of international donors, the authorities planned to increase police training on evidence collection and set up a number of

¹⁷ “General Procurator’s Office—Human Rights General Procurator’s Office Promises to Guarantee Observance of Human Rights During Arrests and in Preliminary Custody,” *Caucasus Press*, October 18, 2004.

¹⁸ Human Rights Watch interview with the Procurator General Zurab Adeishvili, Tbilisi, December 21, 2004. Ajara is an autonomous region within Georgia. During 2004, the central government and Ajaran government had a conflict which almost escalated into war, until the Ajaran government capitulated and its leader went into exile in Russia.

¹⁹ This initiative was jointly decided by the government, the Public Defender’s Office and NGOs. The Public Defender’s Office is an independent national ombuds institution, set up under the 1996 Law on the Public Defender. It is also known as the Ombudsman’s office.

²⁰ The monitors were to receive financial support for petrol for necessary travel and mobile telephone cards to pay for necessary telephone communications. Human Rights Watch interview with Sozar Subari, public defender of Georgia, Tbilisi, December 22, 2004. In December 2004, when the program was launched, certain issues relating to the powers of the monitors, and the provision of training for them remained undecided.

²¹ The procurator general told Human Rights Watch that previously reports of injuries on prisoners transferred from the custody of the Ministry of Interior to the Ministry of Justice were not in fact investigated. Human Rights Watch interview with Zurab Adeishvili, procurator general, Tbilisi, December 21, 2004, and with Iris Muth, human rights officer, OSCE Mission to Georgia, Tbilisi, December 20, 2004.

²² Human Rights Watch interview with Zurab Adeishvili, procurator general, Tbilisi, December 21, 2004.

forensic laboratories staffed with forensic experts.²³ As of this writing, arrangements for the construction of the laboratories were being worked out, and forensic experts were receiving training; police training is still envisaged but it is not clear when it will begin. The Georgian authorities have resumed a joint project with the Organization for Security and Cooperation in Europe (OSCE) to establish and implement a national action plan against torture.

These government initiatives were a positive development for torture prevention. By December, when Human Rights Watch carried out its research in Georgia, it remained too early to judge the efficacy of the measures, and their success remains uncertain. This highlights the need for ongoing monitoring and assessment by the Georgian government, NGOs, and the international community. Since these government anti-torture measures were taken, there have also been some worrying signs. By January, the newly created torture prevention monitoring council appeared to be working effectively, but their monitoring efforts had yet to reduce reports of abuse. The council reported uncovering fifteen cases of physical abuse by police against detainees in facilities that they visited over a ten-day period in January 2005, demonstrating that police violence against detainees has continued at high levels.²⁴

In at least one case, the government attempted to restrict public debate about police involvement in torture. Since February 2004, community announcements against the use of torture, sponsored by the European Commission and the Georgian NGO, Former Political Prisoners for Human Rights, had been shown on several private television stations. The announcements included images of police in uniforms mistreating detainees and of electric shock equipment. The announcer's voice stated that it is a crime for police to beat people and that this is punishable under Georgian law; the announcement also provided a telephone hotline number.²⁵

On December 13 and 14 respectively, the television stations Imedi and Kavkasia received letters from the State Anti Monopoly Service of Georgia, asking them to

²³ Ibid and Human Rights Watch interview with Anthony Baird, U.S. Embassy political officer, December 17, 2004. During 2004, the government carried out reforms in the police force, halving the number of officers from 30,000 to 15,000 and increasing their wages from approximately U.S.\$40 to \$200 per month. Adeishvili told Human Rights Watch that these reforms help to improve professionalism within the police force, and thereby help to reduce police abuses.

²⁴ "NGO-Police-Bearing NGOs Affirm that Citizens are Beaten in Police," *Caucasus Press*, January 21, 2005; "Police Under 24-hour Monitoring," *Caucasus Press*, January 21, 2004; "Ombudsman Presents Prisons Monitoring Results," statement by the Liberty Institute, a prominent Georgian human rights NGO, January 20, 2005.

²⁵ The telephone number was of the NGO, Former Political Prisoners for Human Rights.

suspend their broadcasts of the community announcements.²⁶ They enclosed a letter from the Ministry of Interior, which stated that the community announcements “discredit the profession of the police and interfere with reforms of the system, which are attempting to establish justice and order in the country.” It also stated that the announcements did not comply with the law on advertisements.²⁷ The letter went on to request that the community announcements be taken off the air. Both channels suspended the broadcast of the community announcements. The next week representatives of the State Anti Monopoly Service and the Ministry of Interior held meetings with representatives of the European Commission and Former Political Prisoners for Human Rights. In the meeting with the latter, the authorities requested that the advertisements be changed so that images of police uniforms, the Ministry of Interior building, and electric shock equipment be deleted from the announcement.²⁸

After repeatedly requesting written confirmation of the ban on the advertisements from the State Anti Monopoly Service, Former Political Prisoners for Human Rights received a letter from the agency in late January 2005, stating that it was not banning the advertisements, but just recommending to the channels not to show them. After the NGO showed this letter to the television stations in early February, they began to show the unchanged anti-torture community announcement again.²⁹

Accountability and Impunity since the 'Rose Revolution'

Perhaps the biggest disappointment in torture reform since the 'Rose Revolution' has been the government's weak fulfillment of its promises to punish those responsible for torture. The Procurator General's Office deserves credit for beginning to prosecute some abusive police officers, but its response to hundreds of allegations of torture and ill-treatment has not yet reached an adequate level to effectively combat the long standing environment of impunity for abusive law enforcement officers.³⁰ As outlined

²⁶ Human Rights Watch interview with Nana Kakabadze, Former Political Prisoners for Human Rights, Tbilisi, December 18, 2004. Copy of letters on file at Human Rights Watch, unofficial Human Rights Watch translation. The State Monopoly Service, among other things, oversees advertising for television broadcasts in Georgia.

²⁷ The letter stated that there is a penalty for showing advertisements that are not ethical, which includes advertisements that are insulting on the basis of race, ethnicity, profession, social level, age, gender, religion, and other categories, under articles 3 and 4 (8) of the law on advertisements. Copy of letter dated November 29, 2004, on file at Human Rights Watch, unofficial Human Rights Watch translation.

²⁸ Human Rights Watch interview with Nana Kakabadze, head of Former Political Prisoners for Human Rights, Tbilisi, December 22, 2004.

²⁹ Human Rights Watch e-mail communication with Nana Kakabadze, Former Political Prisoners for Human Rights, received February 9, 2005.

³⁰ NGOs documented from between 200 and 1000 allegations of torture during 2004. Human Rights Watch interview with Levan Ramishvili, Liberty Institute, Tbilisi, December 19, 2004; with Ucha Nanuashvili, Human

below, impediments to accountability appeared to remain institutionalized, with law enforcement bodies systematically finding ways to avoid having to take criminal responsibility for acts of torture and ill-treatment.

The procurator general has publicly stated the need to bring to justice abusive police officers and told Human Rights Watch that his office had recently started to prosecute them.³¹ Of a total of 228 investigations into police misconduct in 2004, thirty-three, according to the procuracy, involved "elements of inhuman and degrading treatment."³² Of these thirty-three, only one has resulted in a police officer serving a prison sentence, a surprisingly low figure given the acknowledged widespread nature of torture and ill-treatment.³³

Out of the thirty-three cases noted above, twenty were terminated or suspended without criminal charges being pursued.³⁴ One case was still being investigated, and in the remaining twelve cases criminal charges were laid, and the cases were sent to court.³⁵ As of this writing, the courts had not yet ruled on seven of those cases.³⁶

Regarding the remaining five of those twelve, in one case a court imposed a fine and in three cases the defendants were convicted but immediately paroled (resulting in no time served in prison); in three of these four cases the underlying incidents appeared to involve police brutality but not torture. In the one case that did seem to fit the definition of torture, the victim died less than an hour after he was released from custody. In the fifth case, the only one to have resulted in a prison sentence (of one and a half years), the

Rights and Documentation Center, Tbilisi, December 15, 2004; and with Mariam Jishkariani, Empathy, December 15, 2004.

³¹ Human Rights Watch interview with Zurab Adeishvili, procurator general, Tbilisi, December 21, 2004.

"Alarming Statistics Makes Law enforcers Focus on Human Rights," *Civil Georgia*, October 20, 2004, [online], <http://www.civil.ge/eng/> (retrieved on February 14, 2005) "NGO-Police-Bearing NGOs Affirm that Citizens are Beaten in Police," *Caucasus Press*, January 21, 2004.

³² Ibid

³³ Statistics and information from the Procurator General's Office, provided to Human Rights Watch through e-mail communication, received on March 22, 2005.

³⁴ Human Rights Watch does not have information about the reasons for terminating or suspending the investigations.

³⁵ The overwhelming majority of these cases involve allegations of police violence that occurred after the Rose Revolution.

³⁶ These included the 1996 beating and use of electric shock against two murder suspects; the August 2003 "forcible obtaining [of] evidence" from a suspect at the Khobi District Police Department and at the Samegrelo-Zemo Svaneti Regional Police department; and the January 2004 "resort to coercion dangerous to the life and health" of a man in order to coerce him to confess to being an accessory to the murder of a well-known Georgian film director. Procuracy statistics received March 22, 2005.

defendant was convicted for beating another police officer under unclear circumstances.³⁷

Intimidation, persuasion, and blocking the justice process all played a role in perpetuating impunity for law enforcement officers who committed crimes of torture. According to NGOs we interviewed, in many cases, the victims of torture or their relatives chose not to pursue complaints of torture, either believing that there was no point or fearing retribution.³⁸ In two cases of suspicious deaths in custody, the victims' relatives said that they feared pursuing complaints, apparently because of threats made against them.³⁹ In other abuse cases, the authorities persuaded the victims not to proceed with cases through promises of lighter sentences, agreed through the new plea bargaining system, or simply failed to fully investigate and prosecute cases when complaints were made.

Plea Bargaining

Amendments to Georgia's criminal procedure code introduced plea bargaining in February 2004, and further amendments adopted four months later expanded plea bargaining to include cases in which the defendant does not admit her or his guilt.⁴⁰

³⁷ It is questionable whether this case involved assault and battery or torture as defined under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Statistics and information from the Procurator General's Office, provided to Human Rights Watch through e-mail communication, received on March 22, 2005. The four cases that did not result in custodial sentences were as follows:

- 1) Two police officers had a quarrel with a man at the train station and beat him. After a plea bargain agreement, the court ordered that the two police officers pay a 2500 lari (approximately U.S. \$1,400) fine.
- 2) A police officer beat and shot a man in a restaurant, causing severe bodily injuries. The court released him with a three-year probation period. Prosecutors appealed, but the appeal court left the decision intact.
- 3) A police officer had an argument in the street with a man and beat him. The court released him on a three year probation period.
- 4) A police officer arrested Khvicha Kvirikashvili on suspicion of a crime and then beat him in the police station, causing minor bodily injuries. Then the police officer released him and falsified documents, including a forged signature of Kvirikashvili, in order to conceal the abuse carried out by the police officer against the suspect. Kvirikashvili died at home twenty to thirty minutes after police released him. The police officer was found guilty of charges relating to falsification of evidence, but not guilty of the charge of abuse of power by the use of violence. The court released him on one year of probation. The prosecutor appealed the decision and the appeal had not yet been heard.

³⁸ Human Rights Watch interview with Nana Kakabadze, Former Political Prisoners for Human Rights, Tbilisi, December 18, 2004.

³⁹ Ibid and Human Rights Watch interview with Eka Beselia, a lawyer who takes on human rights cases, including those involving torture and ill-treatment, Tbilisi, December 16, 2004.

⁴⁰ For example, a man who does not admit his guilt can still agree with the procurator to pay a sum of money to the state in return for his freedom and have this agreement confirmed by a judge with no determination being made as to his guilt. Human Rights Watch interview with Jason Reichelt and Erekle Glurjidze, American Bar Association, Tbilisi, December 17, 2004. The plea bargaining provisions are contained in articles 37(1) and 679 of the Criminal Procedure Code of Georgia. In January 2005, the Georgian government began to draft

Under the current arrangements, the procurator may negotiate a deal with the defendant in which the defendant provides some sort of cooperation, including a monetary payment to the authorities, in exchange for a lighter sentence, or for dropping the charges altogether.⁴¹ By law the payment does not appear to be calculated as a fine for any underlying offense, according to a schedule of fines in the criminal code, or in cases of corruption or embezzlement, as restitution for specific amounts swindled from the state. A judge confirms the deal before it goes into force and should ensure that there is a *prima facie* case against the defendant and that the defendant was not coerced into the agreement.

Many high-profile cases of former government officials and businessmen charged with offenses related to corruption have been resolved through the defendant's payment of large sums of money to the state in exchange for the dropping of charges.⁴² In other more common criminal cases, such as theft or hooliganism, law enforcement authorities have been using the plea bargaining system extensively.⁴³

Members of the diplomatic community, Georgian lawyers, and NGOs have all criticized the plea bargaining system as a particularly perverse response to corruption. A report for the Council of Europe encapsulated these concerns, stating:

The system may not only create an impression that big thieves are allowed to buy an immunity from justice, but is also worrisome because the lack of legal and administrative checks and balances in the Georgian police, prosecutor services and courts create a risk for abuse.⁴⁴

Human Rights Watch does not object to the general concept of plea bargaining *per se*, so long as due process rights set out in law are observed in practice. But in Georgia,

amendments to these articles, to allow plea bargaining only in cases where the defendant admits her or his guilt to the crime. Human Rights Watch telephone interview with Anna Dolidze, Georgian Young Lawyers Association, February 11, 2005.

⁴¹ Article 679 of the Criminal Procedure Code does not explicitly state that defendants can pay money to the state as a result of a plea bargain. However, it states that a defendant can agree with the prosecutor on a measure of punishment. In making such an agreement, the prosecutor should take into account "the gravity of a penalty envisaged for the crime committed and the degree of the action's wrongfulness and fault and the public interest towards the maximum utilization of state resources."

⁴² Many of these cases were never brought before a judge for confirmation, and it remains unclear what legal standards governed them. Government officials, however, stated that these were cases of plea bargaining. Human Rights Watch interview with a member of the diplomatic community, Tbilisi, December 2004.

⁴³ Human Rights Watch interviews with eight lawyers, Tbilisi, December 13 to 23, 2004.

⁴⁴ Council of Europe, *Honouring of obligations and commitments by Georgia*, Report, Document 10383, December 21, 2004, Parliamentary Assembly of the Council of Europe.

Human Rights Watch has documented cases in which law enforcement authorities used their powers to use plea bargaining as a means to stop a full investigation into allegations of torture. Given the widespread nature of torture, judges should be making a concerted effort to ensure that there is no coercion in plea bargaining, but in cases we have examined this does not appear to be happening.

A criminal defense lawyer, Tamara Japaridze, told Human Rights Watch that her client alleged that police beat him after an argument developed following a minor car accident in September 2004.⁴⁵ According to the lawyer, "DG" alleged that police handcuffed him and beat him throughout a period of several hours late at night at the Vake-Saburtalo district police station in Tbilisi.⁴⁶ During the beating, DG's parents came to the police station. They told Japaridze that they waited in the corridor and heard the sounds of their son being beaten. They said that the police were also rough with them, hitting DG's father in the face, and manhandling his mother.⁴⁷ In the morning DG's parents called Japaridze and asked her to go to the police station, which she did. When she met with DG, she saw bruises on his arms, legs, back, and neck, and cuts and scrapes on his nose and forehead.⁴⁸ She lodged a complaint with the Public Defender's Office and the Procurator General's Office, and requested an immediate medical examination. After approximately two days, a state medical expert examined DG.⁴⁹ However, the authorities did not allow her access to the medical report. DG was charged with hooliganism and was then released on bail.⁵⁰

Japaridze, with her client's consent, was keen to pursue the torture complaint. However, some weeks later, DG contacted her and told her not to go ahead with the complaint. He told her that the procurator in the case had proposed a plea bargain agreement on the basis that DG plead guilty and agree to the police version of events that did not include any of the torture allegations. Thus, the agreement compelled him to either face prosecution and be tried by a court that has the reputation of following the will of the procurator, or forfeit the real possibility of pursuing the torture complaint, since the

⁴⁵ Human Rights Watch interview with Tamara Japaridze, lawyer, Tbilisi, December 17, 2004.

⁴⁶ DG are not his real initials. At the lawyer's request, we changed the initials to protect the client's safety.

⁴⁷ Tamara Japaridze observed blood on DG's father's face when she arrived at the police station in the morning.

⁴⁸ Human Rights Watch has photographs on file of bruises to DG's arms and neck and a cut above the eye, supplied by the Human Rights Information and Documentation Center, Tbilisi.

⁴⁹ In the past, state medical examiners, usually from the Department of Health, lacked impartiality and lawyers and their clients frequently complained about the medical examiners' bias and lack of objectivity. An independent forensic expert told Human Rights Watch that now the quality of reports by state medical examiners varies and that some of them are objective, while others lack impartiality. Human Rights Watch interview with Maia Nikoleishvili, independent forensic expert, Tbilisi, December 15, 2005.

⁵⁰ The bail condition was that he report to the police station twice a week. Human Rights Watch interview with Tamara Japaridze, lawyer, Tbilisi, December 17, 2004.

state's version of the facts he agreed to were not consistent with his torture allegations. Japaridze told Human Rights Watch:

In the end they agreed that he [DG] should pay 3,000 lari [approximately U.S. \$1,700] and agreed that he was guilty. They needed this agreement to include his guilt so they could save the police who beat him. The procurator forced him to agree to this... Procurators deal with cases this way very often now. I get lots of cases with [police] beatings. All the torture cases end like that and no one is ever punished.⁵¹

In December, a Vake-Saburtalo District Court judge confirmed the agreement in a short procedural hearing. According to Japaridze, the judge reviewed the case in approximately fifteen minutes, asking DG if he admitted his guilt and then confirming the agreement with only a cursory examination of the circumstances surrounding the case.⁵²

DG was reluctant to meet with Human Rights Watch. Japaridze explained that prior to making the plea agreement, he and his family had wanted to raise the allegations of torture publicly. However, after making the agreement, they were reluctant to pursue the complaint in any way.

In another case, on August 24 police detained Rustam Anzorov, a refugee from Chechnya.⁵³ According to Anzorov's lawyer, police claimed that Anzorov had an illegal weapon, but when they found nothing on him, they charged him with hooliganism and not complying with a lawful order, alleging that he swore at police. Anzorov told his lawyer that the police were very rough with him, twisted his arms, and took him to the Vake-Saburtalo district police station in Tbilisi, where they proceeded to kick and hit him with their fists and gun butts. The next day, he was taken to the State Security Ministry detention center where he was not beaten.⁵⁴ Anzorov's lawyer told Human Rights Watch:

⁵¹ Ibid.

⁵² Human Rights Watch telephone interview with Tamara Japaridze, lawyer, February 9, 2005. Under the law the judge has a duty to check both whether there is a prima facie case against the defendant and that the defendant has not been coerced into making the agreement. In practice, however, judges routinely confirm agreements in short procedural hearings without giving time to examine these issues or other circumstances surrounding the case. Human Rights Watch telephone interview with Anna Dolidze, Georgian Young Lawyers Association, February 11, 2005.

⁵³ He was granted refugee status in Georgia. He was arrested with two other Chechen refugees who were also mistreated by the police. Human Rights Watch interview with Dato Chochishvili, Anzorov's lawyer, Tbilisi, December 16, 2004 and telephone interview with Dato Chochishvili, February 10, 2005.

⁵⁴ Ibid.

I saw him at the state security detention center. He told me about the beating. His eye was bruised and bloody. His head and shoulders were covered in bruises. I made a statement to the Ministry of Interior [which is responsible for the police] about the beating, but they didn't react.⁵⁵

An independent forensic examination carried out on August 30 confirmed the injuries on Anzorov's body, finding that he had bruising to both his eyes, neck, and left shoulder. A report by the doctor who examined him when he was later transferred to Prison No.1 for pre-trial detention also confirmed injuries to both eyes and his back.⁵⁶

The Ministry of Interior later replied to the lawyer's complaint, stating that the targets of the complaint were not under its authority and that the Ministry of Interior had forwarded the complaint to the State Security Ministry. The State Security Ministry never replied.⁵⁷

The Vake-Saburtalo District Court remanded Anzorov to custody for three months. In September, the procurator offered to free Anzorov in exchange for a guilty plea and a sum of money paid to the state. Anzorov's lawyer told Human Rights Watch:

At first, they asked for \$50,000. It was like bargaining. But because this case was in the newspaper, that he [Anzorov] was beaten and arrested for nothing, they let him go for five thousand lari [approximately U.S. \$2,800].⁵⁸

Although, according to his lawyer, Anzorov continued to believe that he was not guilty of the charges, the prospect of a possible nine months in pre-trial detention, followed by an uncertain outcome in a trial presided over by a judge who would most likely favor the procurator, led him to accept the procurator's offer. As in the case involving DG, Anzorov had to forfeit any possibility of pursuing the abuse complaint or face prosecution on charges of hooliganism and not complying with a lawful order.

⁵⁵ Human Rights Watch interview with Dato Chochishvili, lawyer, Tbilisi, December 16, 2004.

⁵⁶ E-mail correspondence from Maia Nikoleishvili, independent forensic expert, received by Human Rights Watch February 25, 2005, and information from the General Procurator's Office, provided to Human Rights Watch through e-mail communication, received on March 22, 2005.

⁵⁷ Ibid and telephone interview with Dato Chochishvili, February 10, 2005.

⁵⁸ Ibid.

Shortly after the plea bargain was agreed to, a Vake-Saburtalo District Court judge confirmed the legality of the agreement in a procedural hearing that took approximately five minutes, and Anzorov was then released.⁵⁹

According to the Office of the Procurator General, a preliminary enquiry into the case found that the injuries to Anzorov were caused during the arrest as a result of his resistance, and that Anzorov "stated that he had no objections against the employees neither of the Patrolling Police nor Tbilisi Vake-Saburtalo District Police. Nor claims he to have been injured by them."⁶⁰ The procuracy therefore decided not to proceed with a full investigation of the case.⁶¹

Impediments to Investigation and Prosecution

The case of Nikoloz Okruashvili illustrates how law enforcement authorities remain reluctant to investigate and prosecute police officers for torture. It also highlights the inherent problem of the procuracy taking on conflicting oversight and investigative tasks, resulting in inadequate protections for those with complaints against the police and procuracy.⁶² In this case the allegations of torture were made before the current government came to power. However, the victim and his lawyer had no more success in prosecuting the case after the change in government than before.

Police arrested Nikoloz Okruashvili on April 22, 2003, on suspicion of having been involved in a break-in three days earlier. Okruashvili told his lawyer that police tortured him on the sixth floor of the headquarters of the Ministry of Interior. His lawyer told Human Rights Watch:

When Okruashvili said that he hadn't participated [in the crime], police beat him. They beat him and then put a black hat on his head and then a gas mask and didn't allow him to breathe. They electrocuted him, put wires on his ears, fingers, and spine all at once. They beat him with a baton on his legs. This went on for four or five hours. He lost consciousness.⁶³

⁵⁹ Ibid.

⁶⁰ Information from the Procurator General's Office, provided to Human Rights Watch by e-mail communication, received March 22, 2005.

⁶¹ Ibid.

⁶² For a discussion of the problems of the procuracy taking on a judicial role in receiving and deciding on complaints, see Human Rights Watch, "Backtracking on Reform: Amendments Undermine Access to Justice."

⁶³ Human Rights Watch interview with Zurab Jorjashvili, lawyer, Tbilisi, December 16, 2004.

Okruashvili ultimately signed a confession.

At his first appearance in court, three days after his arrest and after he signed the confession, Okruashvili told the Mtatsiminda-Krtsanisi District Court that police had beaten him. The presiding judge ordered the procurator to investigate the allegations. After the court hearing, when Okruashvili was transferred to the pre-trial detention center the Ministry of Justice doctor who examines incoming detainees wrote a report detailing Okruashvili's injuries, including bruising around the left eye, the back of the head, and lower part of his legs.⁶⁴

On June 26, 2003, the procurator's preliminary investigation found that Okruashvili must have caused the injuries to himself in order to lighten his sentence.⁶⁵

After Okruashvili's appealed this decision, on June 16, 2004, the Mtatsiminda-Krtsanisi District Court ordered the procurator's office to investigate. On August 10, 2004, the Mtatsiminda-Krtsanisi procurator's office opened an investigation under article 333 of the criminal code, exceeding authority, but no charges were laid, even though Okruashvili had identified four of the six people who beat him.⁶⁶ On November 10, the investigation was suspended. The Procurator General's Office stated that the "conducted investigation failed to collect sufficient amount of reliable evidences in order to bring charge and the latter served the basis for suspending the proceedings for the case in question."⁶⁷ The procurator's office also refused to allow Okruashvili or his lawyer to view the materials from the investigation, stating that he was a witness in the case and not a victim, since the charge related to exceeding authority and not torture. Only the victim and defendant in a case have the right to view prosecution materials.⁶⁸

⁶⁴ Human Rights Watch telephone interview with Zurab Jorjashvili, lawyer, Tbilisi, February 24, 2005.

⁶⁵ Ibid.

⁶⁶ When investigating a case of torture, the procuracy invariably uses article 333 of the criminal code, exceeding authority, rather than article 335 of the code, torture. Human Rights Watch interview with Ana Dolidze, Georgian Young Lawyers Association, Tbilisi, December 15, 2004. This is also reflected in the statistics supplied to Human Rights Watch by the Procurator General's office. All twenty-one cases with allegations of inhumane and degrading treatment investigated by the procuracy were opened on the bases of article 333, exceeding authority. Statistics from the Procurator General's Office, provided to Human Rights Watch through e-mail communication, received on January 1, 2005.

⁶⁷ Statistics and information from the Procurator General's Office, provided to Human Rights Watch through e-mail communication, received March 22, 2005.

⁶⁸ Criminal Procedure Code, article 405. Human Rights Watch interview with Zurab Jorjashvili, lawyer, Tbilisi, December 16, 2004 and telephone interview with Zurab Jorjashvili, February 16, 2005.

Okruashvili's lawyer appealed the decision to suspend the investigation to the Tbilisi City Procurator's Office. That office sent the appeal back to the Mtatsiminda-Krtsanisi District Procurator's Office, which made a decision on January 16, 2005, to deny the appeal. At the time of writing Okruashvili's lawyer was appealing the decision to the Office of the Procurator General.⁶⁹

In the following case, the authorities used the inability of a torture victim to identify his torturers to impede an investigation, even though it is the authorities' duty to keep records of which law enforcement officers are with a detainee at any given time.⁷⁰ On April 22, 2004, police arrested Gia Lobzhanidze and Valeri Kurtanidze on suspicion of breaking into a flat. They took them to the Didube-Chugureti district police station in Tbilisi where they reportedly kicked and beat them with the butts of their handguns. When they refused to confess to the break-in, police took the two men to the Tbilisi city police station.⁷¹

The next day Lobzhanidze's lawyer saw his client, who told him that police had beaten and electrocuted him. The lawyer told Human Rights Watch:

They used a twelve volt telephone. They turned the handle and electrocuted him. He bit a piece out of his tongue. It was all bloody and swollen. He couldn't speak [to me] and just used his hands and gestures [to communicate with me]... They put wires on the fingers of both hands and put paper around his fingers to stop any marks being left.⁷²

An independent forensic examination confirmed injuries on Lobzhanidze's neck, arms, fingers, legs, back, and tongue, and concluded that these injuries were consistent with serious physical abuse allegations.⁷³

⁶⁹ Ibid and telephone interview with Zurab Jorjiashvili, February 16, 2005.

⁷⁰ See, for example, Principles 12 and 23 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Adopted by General Assembly resolution 43/173 of December 9, 1988. Principle 23 (1) states: "The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law."

⁷¹ *One Step Forward, Two Steps Back*, Human Rights Information and Documentation Center, Tbilisi, Georgia, 2004, p. 12.

⁷² Human Rights Watch interview with Zurab Rostia, Lobzhanidze's lawyer, Tbilisi, December 19, 2004.

⁷³ E-mail correspondence with Maia Nikoleishvili, independent forensic expert, received by Human Rights Watch February 25, 2005. Alternative Medical Examiner's Report from examination in pre-trial detention center no.5 on April 27, 2004, written by Maia Nikoleishvili unofficial translation provided by Zurab Rostia, Lobzhanidze's lawyer.

Lobzhanidze's lawyer wrote a complaint to the Didube-Chugureti procurator's office, and the authorities opened a criminal investigation into the matter. He then received a letter, dated August 3, 2004, stating that the investigation had been closed because the authorities could not establish the identity of the perpetrators.⁷⁴

Lobzhanidze was not able to identify the police officers who beat him.⁷⁵ However, law enforcement authorities should have consulted their own records to determine who was responsible for the interrogation and who had access to him while he was in their custody.

The Procurator General's Office provided information to Human Rights Watch confirming injuries on Lobzhanidze and Kurtanidze, but stated that the injuries occurred prior to their arrest. The statement from the Procurator General's Office further states that there "also exists a separate document whereby it is *directly certified by the detainees* that they have never been subject to ill-treatment during their presence in the Isolator [detention cell]."⁷⁶ In view of inadequate credible evidence and police officers denial of involvement in torture, the authorities decided not to initiate a criminal case.

In some cases, the threats by law enforcement officials to detainees hamper the investigation of torture allegations. This was the case in one of the most highly publicized and controversial anti-corruption cases, involving the arrest and subsequent treatment of Sulkhan Molashvili, the former president of the Auditing Chamber of Georgia.⁷⁷

⁷⁴ Human Rights Watch interview with Zurab Rostia, lawyer, Tbilisi, December 19, 2004 and telephone interview with Zurab Rostia, February 9, 2005.

⁷⁵ Zurab Rostia, Lobzhanidze's lawyer, told Human Rights Watch that the police officers did not identify themselves to Lobzhanidze and that he was beaten to the point of unconsciousness and so was not in a fit state to recall clearly the identity of his perpetrators. Human Rights Watch telephone interview with Zurab Rostia, lawyer, February 24, 2005.

⁷⁶ Information from the Procurator General's Office, provided to Human Rights Watch by e-mail communication, received on March 22, 2005. Human Rights Watch did not interview Kurtanidze's lawyer and has no information about any abuse he endured.

⁷⁷ Another case of torture of detainees, Gia Vashakidze, a former deputy defense minister, and two of his associates, Eldar Gogberashvili, and Benjamin Saveblidze, arrested as a part of the campaign against corruption is outlined in Human Rights Watch, "Agenda for Reform: Human Rights Priorities After the Georgian Revolution." In the campaigns against corruption and organized crime, the authorities have used not only torture but also ill-treatment as a form of pressure on detainees. Human Rights Watch has received information detailing a variety of forms of ill-treatment, inflicted on detainees who refuse to confess to a crime, including placement in cells with poor conditions such as no lighting, lack of fresh air, inadequate toilet facilities, and overcrowding, refusal to give medication and appropriate medical treatment, not supplying food and drinking water, limiting exercise, and restricting visits from family members. For example, Human Rights Watch received information in relation to ill-treatment of Tamaz Galuashvili, Davit Mirtshkhulava, and Sulkhan Molashvili.

On April 22, 2004, Molashvili went to the office of the Tbilisi City Procurator in response to a summons. There the authorities detained him and charged him with offenses of corruption, allegedly committed while he was the president of the Auditing Chamber.⁷⁸ Molashvili was transferred to the headquarters of the Ministry of Interior, where, according to testimony he gave to his lawyers and others, he was tortured. At about 2:00 or 3:00 a.m., several men came to his cell, blindfolded him with a piece of cloth and took him to a higher floor in the building. They put him in a room. He heard the door opening and closing and understood that people were coming and going. Then several people spoke to him, demanding that he admit his guilt, pay money as they instructed, and admit that he had been fulfilling the political orders of former President Eduard Shevardnadze. When he refused to comply, they handcuffed his hands behind his back, put something like paper around his wrists, and pulled his socks down. Then he felt an electric current pass through his body.⁷⁹ Molashvili told an independent forensic expert:

At that moment he felt... ache in bones, buzzing in the ears, and all these then [sic] wavelike came up to the face; he felt burning pain in the face, eyes became heavy and bulging... He thought as though blood was flowing out of the ears, he had such a feeling. Even now he hear echo in his left ear and the ear grows numb.⁸⁰

According to the forensic expert, the men asked Molashvili to write a confession and when he refused, they pulled the body of his sweater over his blindfolded head and he felt a burning pain on his back. He understood that they were burning him with cigarettes. They repeated this several times, as they demanded that he write a confession and threatened him with further torture. Then they repeated the electrocution. When they finished, they warned him not to talk to anyone about what happened, otherwise "he would see what happened to his family members and his children, and then blame

Human Rights Watch interview with Manana Kobakhidze, lawyer, Tbilisi, December 16, 2004; with Eka Beselia, lawyer, Tbilisi, December 16, 2004; and with Ioseb Baratashvili, lawyer, Tbilisi, December 14, 2004.

⁷⁸ The charges included abuse of authority in order to obtain an advantage or benefit, articles 332(1) and 332(3) (a) of the Criminal Procedure Code.

⁷⁹ Human Rights Watch interview with Ioseb Baratashvili, lawyer for Sulkhan Molashvili, Tbilisi, December 14, 2004, and certified translation of the Alternative Medical Examiner's Opinion No. 20/2004, written by Maia Nikoleishvili, July 9, 2004.

⁸⁰ Certified translation of the Alternative Medical Examiner's Opinion No. 20/2004, written by Maia Nikoleishvili, July 9, 2004.

himself.”⁸¹ According to his lawyers and others he spoke to, he did not tell anyone about his torture until July 2 because of the threats against his family.⁸²

On April 23, a judge from the Vake-Saburtalo District Court in Tbilisi refused to grant bail and remanded Molashvili in custody for a period of three months.⁸³ According to his lawyer, Molashvili did not attend the court hearing due to his poor state of health following his torture.⁸⁴ He was then transferred to Prison No.1, a pretrial detention center in Tbilisi, which is under the authority of the Ministry of Justice. Later that day, he was moved to the prison hospital after complaining of a dull pain in his chest and swollen arms and legs.⁸⁵

Several appeals to higher courts against the continued detention of Molashvili were unsuccessful.⁸⁶

On July 2, Nana Kakabadze, the head of Former Political Prisoners for Human Rights, saw Molashvili in the prison hospital. She said that at first he did not want to talk about what had happened to him. He told her that he was fearful for his own safety and the safety of his family. But then he told her that he had been electrocuted and burnt with cigarettes. Kakabadze photographed the small circular injuries on his back.⁸⁷

The same day, Kakabadze gave a press conference and made public the torture allegations. That night, apparently in response to the press conference, the authorities moved Molashvili to prison No.7, a pretrial detention center with a reputation for having

⁸¹ Ibid.

⁸² Human Rights Watch interview with Ioseb Baratashvili, Tbilisi, December 14, 2004.

⁸³ The grounds for the decision were that the charges fell within the category of serious offenses and therefore the accused, if released, could interfere with the investigation or could flee. Molashvili's lawyers argued that the gravity of the charges themselves did not provide sufficient reason to justify Molashvili's continued custody, and that the judge must look at all the facts in this particular case, in accordance with standards set by the European Court of Human Rights. Human Rights Watch interview with Ioseb Baratashvili, lawyer, December 14, 2004, and e-mail correspondence with Ioseb Baratashvili, received on February 10, 2005.

⁸⁴ Human Rights Watch telephone interview with Ioseb Baratashvili, February 10, 2005.

⁸⁵ E-mail correspondence with Ioseb Baratashvili, received on February 10, 2005.

⁸⁶ On July 2, after 231 prominent figures wrote an open letter to President Mikheil Saakashvili requesting the release of Sulikhan Molashvili (see, "Saakashvili Refuses to Help Corrupt Officials," *Interfax*, June 11, 2004), Saakashvili responded in an interview to Imedi TV, stating that the government would not release Molashvili until he paid back all the money he had allegedly stolen. Human Rights Watch interview with Ioseb Baratashvili, lawyer, Tbilisi, December 14, 2004.

⁸⁷ Human Rights Watch interview with Nana Kakabadze, Former Political Prisoners for Human Rights, Tbilisi, December 13, 2004. Copies of the photographs on file in Human Rights Watch.

particularly poor conditions.⁸⁸ He was placed in a basement cell that lacked fresh air, had no artificial light or electricity, no chair, and no clock, and a tap that could not be turned off and made a constant noise of running water.⁸⁹ On July 7, Matyas Eorsi, the co-rapporteur on Georgia for the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, along with two Georgian human rights defenders, visited Molashvili in his cell.⁹⁰

After the visit, Eorsi stated publicly:

I'm shocked by the conditions in which the detainee has been kept. This is a serious violation of human rights. I met the Justice Ministry people and told them that I was shocked. No human being, however serious charges against him might be, may be kept in such conditions... Fight against corruption might be very important for the government, but I would like to emphasize that everything should be done within the limits of law. Unlawful acts are unacceptable, especially if those acts amount to torture.⁹¹

On July 5 and 6, the Forensic Examination Center of the Ministry of Health carried out a forensic examination of Molashvili. The report on the examination concluded that Molashvili had small circular scars on his back that had been caused by hot objects within the last six months.⁹²

On July 9, Maia Nikoleishvili, an independent forensic expert, carried out an examination of Molashvili, at the request of Molashvili's lawyer. The examiner's report

⁸⁸ "Detained Former Georgian Official Subjected to Torture," *Trans Caucasus and Central Asia Newslane*, Volume 8 Number 126, Radio Free Europe Radio Liberty, July 7, 2004, and Human Rights Watch interview with Nana Kakabadze, Former Political Prisoners for Human Rights, Tbilisi, December 13, 2004.

⁸⁹ Human Rights Watch interview with Elene Tevdoradze, chairwoman of the Human Rights and Civil Integration Committee of the Parliament of Georgia, Tbilisi, December 22, 2004, and with Ioseb Baratashvili, lawyer, Tbilisi, December 14, 2004.

⁹⁰ The two Georgian human rights defenders were the Chairwoman of the Human Rights and Civil Integration Committee of the Parliament of Georgia, Elene Tevdoradze, and Director of the Georgian Young Lawyers Association, Tinatin Kidasheli. "PACE- Molashvili-Torture Matyas Eorsi Made Sure of Molashvili Being Tortured", *Caucasus Press*, July 7, 2004.

⁹¹ Material provided to Human Rights Watch by Ioseb Baratashvili, lawyer, December 14, 2004. Also, see *Honouring of Obligations and Commitments by Georgia*, Document 10383, Parliamentary Assembly of the Council of Europe, December 21, 2004.

⁹² Translation of medical report of P. Jibladze, medical examiner, July 5, 2004. Translation supplied to Human Rights Watch by Ioseb Baratashvili, lawyer for Sulkhan Molashvili.

concluded that the injuries on Molashvili's body were consistent with his account of torture.⁹³

On July 5, the Tbilisi City Procurator's Office opened a criminal case in relation to the torture allegations. However, on July 13, Valery Grigalashvili, the chief procurator of the Tbilisi City Procurator's Office stated publicly that Molashvili's injuries were either self-inflicted or the result of violence by fellow detainees. "I know for sure that Mr. Molashvili lied when he said that he had been tortured in the detention center of the Tbilisi Chief Police Department."⁹⁴

In response to this, Molashvili's lawyers made a successful application to have the investigation transferred to the Procurator General's Office. The procurator general told Human Rights Watch that Molashvili was not cooperating with the investigation and so he feared that it would not be successful.⁹⁵ At the time of writing, Molashvili remained in custody awaiting trial.

During 2004, the government also targeted for arrest those it believed were involved in organized or gang crime. In one such case, on September 1, 2004, about thirty police and security officials broke into the house of Geno Kulava and detained him. On the same day they detained three other men, all of whom were former members of a partisan group, previously involved in fighting in Abkhazia. Instead of taking Kulava to the police station in Zugdidi, the closest police station, they took him to the police station in Khobi, a small town approximately forty kilometers south of Zugdidi. His lawyer, Tandila Dzologua, told Human Rights Watch that he saw Kulava approximately seven or eight hours after his detention, and he appeared in ordinary health. However, when he saw him approximately two days later, prior to the first court hearing in Zugdidi, Dzologua saw that his client had a black eye and was limping. He told his lawyer that police had beaten him. According to Dzologua, they had handcuffed Kulava's hands

⁹³ Certified translation of the Alternative Medical Examiner's Opinion No. 20/2004, written by Maia Nikoleishvili, July 9, 2004.

⁹⁴ *Georgian Prosecutor's Office Rejects Torture Accusations*, Excerpt from report by Georgian Imedi TV on July 12, BBC Monitoring, July 12, 2004. He stated that Molashvili had been accompanied by others after his arrest and so there was no time period in which the torture could have occurred. Some days later, Valery Grigalashvili stated that the procuracy would support an application to release Molashvili prior to trial if he paid the state three million lari [approximately U.S. \$1.7 million], an amount equivalent to that allegedly embezzled from the state budget by Molashvili.

⁹⁵ Human Rights Watch interview with Procurator General Zurab Adeishvili, Tbilisi, December 21, 2004. The authorities opened an investigation for negligence of the prison doctors who examined Molashvili in custody for failing to detect injuries on him. Human Rights Watch interview with Ana Dolidze, Georgian Young Lawyers Association, Tbilisi, December 15, 2004, and *The Old System Turned Everyone into a Criminal*, Spiegel Online, English Site, November 26, 2004.

behind his legs and then thread a metal bar through his arms and legs and hung him upside down, resting the ends of the metal bar on two tables. As he was hanging upside down, they beat him with rubber batons on the legs and burnt his arms and back with candles. As they tortured him, they questioned him about a kidnapping case and demanded that he admit participation in it.⁹⁶

The authorities charged Kulava with illegal possession of weapons and drugs. He disputed the charges, claiming that police planted the weapons and drugs on him. Dzologua showed Kulava's injuries to a judge of the Gali-Gulirpshi District Court and asked for a medical examination to be performed. The procurator agreed to order an examination.⁹⁷

The defense also organized an independent forensic examination which confirmed that Kulava had injuries consistent with his allegations of torture.⁹⁸

Members of the Zugdidi branch of the Public Defenders Office visited Kulava and the other detainees arrested at the same time as Kulava and reportedly expressed their intention to bring the case to the attention of the Procuracy General and other authorities to request that a criminal investigation be opened to inquire into the torture allegations. They confirmed injuries on the detainees.⁹⁹

The office of the Poti Regional Procurator opened a criminal case in relation to the allegations of torture but did not charge any police officers for the offenses. The investigation was suspended on the grounds that the perpetrators' identity could not be established, since Kulava could not identify those who tortured him, and the police from the Khobi and Zugdidi district police stations and the Samegrelo-Zemo Svaneti regional police station denied injuring Kulava.¹⁰⁰ As in Lobzhanidze's case, it seems that the duty of the law enforcement authorities to keep an accurate record of who carried out the interrogation and who had access to him while he was in their custody was not adequately fulfilled.

⁹⁶ Human Rights Watch interview with Tandila Dzologua, lawyer, Tbilisi, December 19, 2004.

⁹⁷ Human Rights Watch is not aware of the conclusions of the state medical examiner in this case.

⁹⁸ Human Rights Watch interview with Maia Nikoleishvili, forensic expert, Tbilisi, December 15, 2004.

⁹⁹ "Prisoners Have Turned Out to Have Bodily Injuries," *HumanRights.ge*, September 7, 2004.

¹⁰⁰ Statistics and information from the Procuracy General's Office, provided to Human Rights Watch through e-mail correspondence, received on March 22, 2005, and Human Rights Watch interview with Tandila Dzologua, lawyer, Tbilisi, December 19, 2004.

Dzologua appealed Kulava's continued detention to the Sukhumi Court in Tbilisi, and on November 14, the court ordered his release from custody prior to trial. On November 15, the detention center released him. However, security officers immediately rearrested him on suspicion of involvement in the kidnapping that they had questioned him about when he was arrested previously.¹⁰¹

Recommendations

To the government of Georgia:

Implement immediate reforms to discourage the abuse of persons in custody, including the following:

- Require that correct and complete records be kept that specify every person present during any given interrogation of a detainee and every person who had access to the detainee at any time.
- Require that all interrogators, as well as medical and other staff coming into contact with detainees, wear badges that identify them by name and position.
- Ensure that all medical personnel in detention facilities are attentive to detainee injuries and other possible signs of mistreatment. All injuries or indications of mistreatment should be documented in the greatest possible detail and promptly reported to the proper authorities. The state must ensure that there are enough properly trained medical staff and resources to do this.
- Notify family members immediately of an individual's detention, and allow immediate access to detainees by close family members and legal representatives.
- Fully investigate any and all allegations of abuse in a systematic and impartial manner, and make the results of such investigations public.
- Suspend any officials from active duty where they are being investigated for having committed, ordered, sanctioned or tolerated torture or mistreatment, and where credible evidence of such offenses exist, refer the case for public prosecution.

Undertake legal reforms, including:

- Guarantee the right of immediate access to a lawyer of choice for anyone who is detained or held for questioning by a law enforcement officer in relation to a criminal investigation, whether or not they are charged or suspected of a crime.

¹⁰¹ Ibid and interview with Maia Nikoleishvili, independent forensic expert, Tbilisi, December 15, 2004. "Released Prisoners Taken Back to Prison," *HumanRights.ge*, November 15, 2004.

- Allow defendants or their lawyers to call a doctor or any other witness to testify at any stage of criminal proceedings, including hearings on the lawfulness of detention, as to torture or abuse of the defendant.
- Ensure free legal counsel is available to any detainee who cannot afford a lawyer, and that such lawyers are also free from government influence.

Begin immediately much-needed systemic reforms, including:

- Ensure that persons who make plea bargains in Georgia do not thereby compromise their ability to bring claims of torture and other mistreatment and pursue redress.
- Reform the procuracy to ensure that policing and judicial tasks are performed by separate bodies that are fully independent of each other.
- Strengthen the independence of the judiciary and ensure that judges respond appropriately to torture allegations by ordering investigations, taking protective measures, and disallowing evidence procured by torture or mistreatment.
- Ensure that judges release defendants from custody subject to guarantees to appear for trial in accordance with the laws of Georgia and international standards; this is particularly necessary in order to ensure that defendants do not enter into plea bargains because of prolonged pre-trial detention absent legitimate security concerns.
- Authorize an independent government body, adequately funded through the state budget, to review the work of judges as it relates to torture and impose appropriate sanctions where judges fail to order investigations, take protective measures or disallow evidence obtained through torture or other abuse.
- Request publication of the report on the visit to Georgia in 2003 and 2004 by the European Committee for the Prevention of Torture and implement its recommendations.
- Create independent body to receive and investigate allegations of torture and ill-treatment.

To the European Union:

- Incorporate, as a priority, concrete benchmarks for the prevention of torture into the European Neighbourhood Policy Action Plan that is to be jointly agreed with Georgia. The benchmarks should include that the legislature reform the procuracy to ensure that policing and judicial tasks are performed by separate bodies that are fully independent of each other.

To the Council of Europe:

- Encourage the government of Georgia to publish the report on the latest visit to Georgia by the European Committee for the Prevention of Torture and to implement its recommendations.

To the Organization for Security and Cooperation in Europe:

- Increase monitoring of human rights cases, in particular those involving torture and criminal procedure abuses, and regularly make public and raise with the government the results of the monitoring;
- Consider setting up a trial monitoring program that will result in a report with recommendations on strengthening the independence of the judiciary.

To the United States and other Countries Engaged in Bilateral Security Cooperation:

- Make any further security assistance conditional on the Georgian government's reform of the procuracy and implementation of other concrete steps to prevent torture, including the recommendations in this briefing paper;
- Ensure that any further assistance to Georgian law enforcement agencies to build capacity to collect and analyze forensic evidence is specifically conditioned on the Georgian government's provision of unimpeded access to prompt and impartial forensic medical examinations for all detainees from the moment they are in custody, and for all other individuals, whether in detention or not, who wish to substantiate a report of abuse by a law enforcement or other official.

