



PREVENTION OF TORTURE IN THE CAUCASUS:

ROLE AND EXPERIENCE OF NATIONAL NGOs

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TORTURE IN THE
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**Follow-up to an APT regional
Seminar, Gudauri, Georgia
19-20 October 2001**

Geneva, June 2003

Foreword

On 18 June 2002, Armenia became the final country from the Caucasus region to deposit to the Council of Europe its ratification of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT). With this act, Armenia followed its neighbours Georgia and Azerbaijan, as well as 43 other European countries, in accepting a visiting mechanism, i.e. the Committee for the prevention of Torture (CPT), created by the ECPT. The three Caucasus countries have thus fulfilled one of the commitments undertaken at the time of their accession to the Council of Europe.

The Association for the Prevention of Torture (APT), an NGO based in Geneva, focusing on the prevention of torture, was behind the creation of the ECPT and the Committee of Experts (CPT) and therefore follows its work with interest. Since 1987, the CPT visited places of detention all over Europe with the goal to reduce possible risks of torture. The CPT visited Georgia in Mai 2001 and Armenia and Azerbaijan in 2002.

Visiting mechanisms to places of detention are key to the prevention of torture. National NGOs also play an important role. This is why the APT decided to organise a regional seminar in the Caucasus to discuss the possible role for national NGOs in the prevention of torture and what the interactions could be between the NGOs and visiting mechanisms, in particular the CPT. The seminar was held on 19-20 October 2001 at the Gudauri Hotel in the North of Georgia, in the midst of the beautiful mountains at the Russian border. With the participation of 30 NGOs from the three countries of the Caucasus region, with representatives of the authorities of Human Rights Commissions, as well the newly elected Georgian member of the CPT, the discussions were very rich and helpful. Experiences made in countries with different factual and legal situations were exchanged and plans grew for the creation of a regional network for national human rights NGOs working on human rights issues.

To enhance the discussions, it was decided that small groups in the seminar should take up the inputs given by the participating experts and apply them to their concrete situation. During the two days it became clear that NGOs would have to keep a permanent eye on places of detention and be monitoring the commitments entered into at the time of accession to the Council of Europe. They also concluded that they should seek a legal basis for national NGOs to have access to places of detention. Not only to control the respect of the rights of prisoners to prevent them being victims of torture and inhuman or degrading treatment or punishment, but also to monitor the respect of the recommendations made by the CPT after its visit. This would also enable them to submit important independent information to the CPT before its further visits. Other potentially useful mechanism was the use and enforcement of national monitoring structures such as an independent ombudsman.

Although the NGOs came from different backgrounds and communication wasn't always easy, since Russian as the common language during the Soviet period is being replaced by the national languages, the evaluation of the seminar by the participants was positive. As shown in the enclosed report by the Rapporteur Prof. Evans, interesting conclusions and commitments came out of the discussions. One

year later, it is interesting to see that several of these conclusions have been translated into practice and that several changes occurred in the countries. The prevention of torture has made some significant progress in the last twelve months since the seminar.

Both Armenia and Azerbaijan not only ratified the ECPT but also received their first periodic visit, of which we all hope to see the report published soon. Already published by the Council of Europe is the report on the first periodic visit in Georgia (see appendix). This constitutes a very important precedent, since the Georgian authorities did allow the publication with no delay and disseminated the report also in a Georgian version.

Georgian authorities made another important step earlier this year setting up, with a presidential decree, an Independent Council of Public Control of the Penitentiary System with the participation of national NGOs. Armenia has taken up the same important discussion on the role of civil society in monitoring places of detention and the establishment of a similar body seems now only a question of time. It is interesting to note that the recently adopted Optional Protocol to the UN Convention against Torture includes the obligation for State Parties to set up or designate one or several national visiting mechanisms. A clear tendency to a two-pillar monitoring system can be observed: an international mechanism interacting with a national system of monitoring places of detention. In this set-up the role of a national NGO could be twofold. First as an active member of the national monitoring board and secondly as an independent source of information for the international mechanism.

With the positive reception of the CPT report by Georgian authorities, the creation of a national network of NGOs in the field of Human Rights and torture in Azerbaijan, and furthermore fruitful discussions on civil society Monitoring Bodies in Armenia, everything points to the fact that progress is underway. But as we all know a lot remains to be done.

This publication is not a verbatim report of what has been discussed during the seminar but rather based on these discussions it offers future perspectives, promoting best practices in the field of the prevention of torture and showing the potential role of NGOs. It also suggests how national and international systems could interact. We have divided the publication into three different parts, considered as three themes of importance for NGOs:

- Monitoring places of detention
- Using international mechanisms
- Interaction of international mechanisms with national NGOs

These parts combine practical guidelines produced by the APT on alternative reporting or on setting up monitoring programmes of places of detention, that have been illustrated by concrete examples of activities carried out by national NGOs.

The first part on monitoring places of detention includes an abstract of a joint APT/ODHIR guide on “Monitoring places of detention: a practical Guide for NGOs”. It should give ideas for national NGOs on how to establish a monitoring programme.

Advice can be found on how to prepare a general plan of action or obtaining access to people deprived of their liberty. The first part is completed by a practical experience by an Azeri NGO, the Center "EL". In seven stages the Center "EL" describes the steps to take for their successful monitoring programme. Both the practical guide as well as the experience made by the Center "EL" are possible ways for other NGOs to establish similar programmes. This is very relevant as a very lively discussion has started in the region about the role of civil society in monitoring places of detention.

The second part starts with an abstract of the APT guidelines for parallel reports to the Committee against Torture (CAT). Again, this should provide ideas to national NGOs wanting to present an alternative report to an international mechanism. To a certain extent presenting an alternative report is a logic continuity of a monitoring programme. The information gathered nationally should also be used on a international level. We cannot stress enough the importance of alternative reports for the good functioning of international mechanisms, such as the CAT or the CPT. The second part also includes a case study by the Georgian Young Lawyers Association (GYLA) on the interaction with the CAT, completed by the alternative report presented by a group of Georgian NGOs to the CAT in 2001. The effective use of international mechanisms by national NGOs normally ought to lead to positive changes at a national level.

The third part gives another perspective on the interaction between international mechanisms with national NGOs. The seminar paper by Petya Nestorova, from the CPT Secretariat at the Council of Europe, describes in the first part the basic structure of the functioning of the CPT monitoring programme. It then enlightens the complementarity with national NGOs. The same idea of complementarity is followed by the text by Christine Mardirossian, Human Rights Officer, OSCE in Yerevan. To a certain extent, a well organized network of national NGOs can be both "the ear and the hand" of international mechanisms in their countries. The "ear" because they can gather first-hand information essential to enforce internationally defined human rights standards. The "hand" because they can monitor places of detention on a much more regular basis and thus protect and promote human rights standards.

Last but not least, a final word of thanks. This seminar could not have taken place without the support and coordination given to us by GYLA. A special thank to their former president Ms Tinatin Khidasheli. Not only did she and her team contribute with important advice and information but also dealt with most of the technical preparation of the Seminar. We would also like to thank the participating experts, namely Rod Morgan, Petya Nestorova, Malcolm Evans, Christine Mardirossian and Pascale Roussy, for their excellent and very important contributions. Likewise we would thank the Swiss Agency for Development and Cooperation as well as the Department of European Affairs of the Dutch Ministry of Foreign Affairs for their financial contribution, without which this seminar would not have been possible. A last big thanks goes to all the participants who made this an enriching experience. We hope that the ideas exchanged at 2200 meters of altitude in the breathtaking mountains of the Caucasus have fallen on some fertile ground. This publication is our contribution to help achieve the goals set by tenacious national NGOs of the Caucasus.

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Geneva, December 2002

List of abbreviations

APT	Association for the Prevention of Torture
CAT	UN Committee against Torture
CPT	European Committee for the Prevention of Torture and other Inhuman or Degrading Treatment or Punishment
ECPT	European Convention for the Prevention of Torture and other Inhuman or Degrading Treatment or Punishment
EU	European Union
GYLA	Georgian Young Lawyers Association
HRC	UN Human Rights Committee
NGO	Non governmental organisation
OMCT	Organisation Mondiale contre la Torture (World Organisation against Torture)
OSCE	Organisation for Security and Cooperation in Europe
UN	United Nations
UNDD	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

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Conclusions of the seminar: What Role for National NGOs of the Caucasus in the Prevention of Torture?

By Malcolm D. Evans Professor of International Law, University of Bristol

1. Introduction

The purpose of the APT seminar held in Georgia on 19-20 October 2001 was to consider the role that national NGOs can play in the prevention of torture and ill-treatment in the Caucasus region. These roles are bound to vary within the countries in question - Armenia, Azerbaijan and Georgia - not only because the factual and legal situations prevailing in each of these three countries is different, but because at the moment although all three are member states of the Council of Europe, only Georgia is currently party to the European Convention for the Prevention of Torture (ECPT)¹. However, this does not mean that the Council of Europe, or for that matter, the ECPT, does not have a relevance for Armenia and Azerbaijan. On the contrary, all this means is that the form that that relationship will take is likely to vary for the time being.

All three states have undertaken commitments at the time of accession to the Council of Europe and these are subject to scrutiny through the political organs of the Council, and in particular the Monitoring Committees established under the auspices of the Parliamentary Assembly. For those states, which appear to be slow to fulfil their political commitments to ratify human rights instruments, including the European Convention on Human Rights (ECHR) and the ECPT, this becomes an important point of pressure. NGOs should be aware of this and seek to use it as a means of ensuring that those commitments are adhered to. Once these commitments have been translated into legal obligations through participation in relevant treaties, this opens up a new line of engagement for the national NGOs but even once this has occurred the continuing relevance of the political bodies must not be forgotten: they retain their potency as a means of oversight. Indeed, the Georgian experience is salutary: once Georgia had been admitted into the Council it swiftly reversed many of the amendments to its legal system that had been introduced in order to comply with the admission criteria. In the light of such actions, the need for ongoing monitoring by the political organs is manifest, and the role of NGOs in highlighting such practices manifest.

2. The Common Problems

Although the political and legal situation varies between the three countries in question, they share many common problems, most of which are hardly unique to the region. As is so often the case, the evidence suggests that risks of ill-treatment are greatest during the first few hours of a suspect being taken into the control of the security forces, and that members of minorities or other marginalised groups are at greatest risk. The relevance and importance of the 'basic safeguards' called for by

¹ Armenia ratified on 18 June 2002; Azerbaijan ratified on 15 April 2002.

the ECPT- the right to have a third party notified of the fact of detention, the right of access to a lawyer and the right to an independent medical examination, and the allied right to be informed in an appropriate fashion of these rights - is generally recognized, but a comparison of the experience within the three countries suggests that they are neither fully reflected in domestic law nor, where they are found, enjoyed in practice. The result is that the position of those taken into detention is precarious.

Thus, for example, in Georgia, the Constitution enshrines the right for those 'detained' to have immediate access to a lawyer. However, the Code of Criminal Procedure refers to those 'suspected' of offences, and permits a person to be held for up to 12 hours before they beyond a 'suspect'. In consequence, there is no right of access during the first 12 hours of what amounts to 'detention', the constitutional provisions notwithstanding. Even where the law is, in principle, satisfactory, the reality of practice is very different. This is mirrored across the region, where there is no practice of using private doctors to conduct independent medical examinations and where information on rights is, if given at all, given in a haphazard and unsystematic fashion. In all three countries there are also common problems concerning the average length of pre-trial detention, which in Azerbaijan and Georgia averages out at 9 months, whilst in Armenia the average is more like 12 month. There are also grave problems concerning the physical conditions in which detainees are held, including problems of overcrowding.

3. The Response by NGOs

Such problems are - regrettably - commonplace. But one consequence of this is that the means, both substantively and procedurally, to address them, currently exist at the international level. It is clear that well developed sets of international standards, which bear upon these issues are already in existence but the problem is one of ensuring that those at risk of ill-treatment are able to have the benefit of them. This is a challenge that NGOs have to face.

It is apparent that NGOs in the three countries have responded to their common problems in different ways. Although this is something of a simplification, it can be said that whereas Georgian NGOs have tended to look to the international community for support, the NGOs in Armenia and Azerbaijan have hitherto tended to focus on domestic action. Thus Georgian NGOs have made good use of the facilities offered to them to produce 'shadow reports' to be submitted to UN human rights monitoring bodies, in particular the Committee Against Torture (CAT), and have used the reporting process as a means of raising awareness of their concerns and of having issues raised in Geneva. They have then attempted to follow this up by publicizing the CAT recommendations and monitoring the state's response. There are clearly experiences that can be shared with other NGOs in the region.

Another important first step is to ensure that Armenia and Azerbaijan join Georgia in being a party to the ECPT² and then to utilize the opportunities it presents to bring pressure to bear on the states, by informing the Committee for the Prevention of Torture (CPT) of the situation 'on the ground' and pressing for the

² See footnote 1.

publication and dissemination of CPT reports, once made³. Of course, it is not necessary to wait until such a time to press for change: the corpus of CPT standards is increasingly well known and it can be used as a template against which to measure and assess the practice of states whether or not a CPT is yet in the public domain. This is another area in which NGOs across the region should be able to assist each other.

Thus there is considerable scope for co-operative NGO activity as far as engagement with international bodies is concerned. This need not - and probably neither should not nor could not- take the form of joint action at the international level. Rather, it is the sharing of experience of the utility of engagement with international human rights bodies that is likely to be most beneficial: learning from each other as to how to get the most out of them - what works and what does not work, how states have responded to international pressure, and how to use that pressure within the domestic context as national NGOs who are working for change.

There may also be scope for considering whether there is scope for identifying particular regional concerns and co-ordinating the forms of response to be made at the national level on a regional basis. There is merit in seeking to address common problems in a common fashion and the example of practice in similarly situated states to similar issues can be used to good effect in domestic lobbying. Once again, however, it needs to be accepted that there is probably little realistic scope for joint action on a regional level.

4. Making Progress - Building Partnerships

All of the above is easier said than done. There are formidable practical and psychological barriers than need to be overcome before NGOs can effectively engage in any of the tasks outlined above. Some concern of self-education. NGOs must seek to refine their knowledge of

- International organizations
- International human rights standards
- International human rights mechanisms

Moving beyond the international level, they need to establish links with a wide variety of actors and develop constructive relationships with them. This will involve making and developing connections

- With other national, regional and international NGOs
- With national human rights mechanisms
- With the international organizations and mechanisms
- With law enforcement agencies
- With state officials with responsibility for policy formation and implementation in areas of criminal justice and human rights
- With the general populace

³ On 25 July 2002, Georgia published the report on the first visit which took place from 6-18 May 2001.

The relevance of the latter should not be underestimated. NGOs often conceive of themselves as mouth pieces for society, but it has to be accepted that they do not always - nor should they always - project the views of society on matters such as policing and punishment. If the demands of the NGO community are not going to be sidestepped by the organs of the state by appealing directly to the prevailing views of society at large, it is vital that NGOs concern themselves with building bridges with the populace at large and not only with the agencies whose work they hope to influence.

The establishing of a series of relationships of this nature helps to construct a network that can be used efficiently and effectively to maximize the impact of the work of all NGOs. Clearly, not all NGOs can be expected to operate in so many directions at the same time. However, the aim should be that NGOs work together constructively to achieve a series of interlocking and reinforcing relationships.

5. The Tasks

The goal for NGOs working in partnership is to move beyond informing each other of what each does, its mandate, etc. There is a need for the sharing of information, experience and expertise so that lessons learnt by one need not be re-learnt by another. The business of engaging with international organizations can be daunting but no less so than the problems of engaging with domestic state actors. It is here that many NGOs face their greatest problems - gaining access to places of detention, for example, and so there is an inevitable tendency to look upon the state as the 'target' of NGO activities. There is, however, an alternative way of looking at the situation. The goal in all instances is the betterment of the treatment of those in detention. Rather than see the 'state' as the 'target' of NGO activity, it can be more productive to see the state as another partner in the task of preventing ill-treatment. It may be that in the eyes of many this is utopian. But effective prevention requires commitment at all levels and trying to secure prevention solely by means of internal or international pressure is, ultimately, doomed to failure. It is, then, necessary to work towards the development of a culture within officialdom and within society at large, which understands and accepts the importance of eradicating ill-treatment. NGOs will have many partners in this work, and have the advantage of the entire corpus of international human rights law and its mechanisms to draw on. It is, however, a stage in the development of prevention, which is often either overlooked or set aside. But it is increasingly clear that it is when national NGOs work with, rather than against, the authorities in addressing ill-treatment that the greatest advances are made.

6. Conclusion - and a programme for action

It follows from this that NGOs can best contribute to the prevention of torture in the region by focussing on two areas of activity.

First, they must continue to be a source of pressure for change. This will involve them in monitoring, gathering, collating and analysing evidence, which can then be used to inform public opinion within the country and to make the case for change. It can also be passed on to international bodies who can then take it up within their own work and bring a new source of pressure to bear upon the state.

Engagement with international visiting mechanisms, such as the CPT, can be particularly valuable because of the manner in which they can collect their own material at first hand and where this corroborates the views that have been expressed by domestic groups, those domestic voices receive authoritative and powerful support. It then falls to the domestic NGOs to take up the points made and follow up the response of the state through careful monitoring at the national level, reporting back to the international bodies as appropriate. The role of international political bodies, such as the Monitoring Committee of the Council of Europe and the OSCE also has an important role to play here.

Secondly, NGOs must continue to be a source of education for change. This too will involve a variety of different tasks. It can include making the case for treating detainees with respect and humanity - often a very difficult argument to 'sell' to a sceptical audience in societies plagued by violence, corruption and crime. It will involve attempts to influence the domestic political agenda, by seeking to ensure that parliamentarians and members of governments 'own' human rights issues and are prepared to take them up. At another level, education for change will involve technical training of police, prison officers, etc, in legal and practical aspects of human rights approaches, demonstrating how conformity with such approaches can enhance their efficiency and effectiveness, rather than be an impediment to them.

There are, however, a number of less abstract conclusions that have emerged from the deliberations at this seminar and which offer a number of concrete goals that experience from across the region shows to be attainable and, if realized, will provide a platform from which these other more aspirational goals can be approached. These are as follows:

- Seek a legal basis for securing free access for NGOs and the media to visit places of detention.
- Seek to establish supervision councils for places of detention (and have NGOs be made a part of them).
- Seek to establish a network linking NGOs across the three republics, which will serve as a platform for information exchanges, co-ordination and mutual support.
- Seek to use structures already existing at the national and international level to their best advantage.
- Lobby for the early ratification of the ECPT by Armenia and Azerbaijan⁴
- Continue to use the Monitoring Committee of the Parliamentary Assembly of the Council of Europe as a means of ensuring continued fidelity to the commitments undertaken by all three states on their accession to the Council of Europe.
- Seek to develop and offer expertise in the form of technical assistance in matters that bear upon the prevention of ill-treatment
- Contemplate the organization of further seminars for NGOs, officials, politicians and the general public aimed at information sharing and awareness raising

⁴ See footnote 1 for the dates of ratification by Armenia and Azerbaijan.

This is itself an ambitious agenda, but it must be accepted that the goal of enhancing the protections against ill-treatment is itself an ambitious one and cannot be easily achieved. It is, however, the commitment of the NGO community that holds out the best hope for the realisation at the national level of the obligation so easily accepted by states at the international level, that no-one shall be subjected to torture, inhuman or degrading treatment or punishment.

Bristol, November 2001

PART I:

MONITORING PLACES OF DETENTION

Designing a programme for monitoring conditions of detention⁵

Introduction

It is increasingly recognised by international experts that monitoring places of detention through regular and unannounced visits constitutes one of the most effective way to prevent torture and ill-treatment of persons deprived of their liberty. Visits by international mechanisms should be complemented by visits at the national level. Among possible national visiting mechanisms, NGOs possess interesting advantages, the most important one being their independence from the authorities. NGOs monitoring places of detention can be both a civil society watchdog and contribute to the respect of human dignity of persons deprived of their liberty.

Through reference points and questions, the following abstracts from the joint APT/ODIHR guide on "Monitoring places of detention: a practical guide for NGOs" is aimed at helping NGOs to set up a monitoring programme of places of detention.

1. Preparing a general plan of action

1.1. Preliminary conditions for the NGO

Whether the NGO already has already activities in the field deprivation of liberty or whether it is not yet active at all, it should ask itself a number of questions before undertaking concrete steps to obtain access to people deprived of their liberty.

The list of questions below is not exhaustive; it is merely an aid for drawing up a plan of action.

⁵ Abstracts of the APT/ODIHR joint guide on "Monitoring places of detention: a practical guide for NGOs", Part II (pp. 31-47), Geneva, December 2002.

The profile of the NGO

In order to begin the process of persuading the authorities to grant the necessary authorisation for a monitoring programme, the NGO must first introduce itself: what it is, what it does, what it wants to do, for whom and how

Are the following points sufficiently developed and well-argued in the NGO's presentation?

- The mission that it has set itself, its goals and objectives;
- Its values;
- Its procedures and working methods;
- Its spheres of competence.

The NGO's resources

Monitoring of conditions of detention is a preventive mechanism which can help protect people only if it is repeated regularly. Such a programme therefore needs to have sufficient human and financial resources for the long-term.

Depending on the objectives that it has set itself, does the NGO have the necessary resources in terms of:

- number of staff: permanent members as well as extra, temporary staff to guarantee repetition of visits and ability to respond to emergencies
- professional skills: to deal with the legal, medical, social and material aspects of detention

Does the NGO have the financial means necessary to cover the running costs of a programme for a certain length of time?

Priorities for action of the NGO

Monitoring the conditions of detention of all persons deprived of their liberty nation-wide is an immense task, which requires, in addition to political will on the part of the authorities, considerable means which are not within the reach of all NGOs. The NGO should therefore define its priorities and limit its action according to the mission that it has assigned itself, the means it has available, and the attitude of the authorities towards the work of human rights NGOs and protection activities already carried out by other players.

Reason would dictate that those people deprived of their liberty who are most cut off from the outside world, and thus most at risk of suffering serious abuse, should be the priority target of a programme to monitor conditions of detention. In practice, however, these are often the very people who are the most difficult to visit.

To sum up, the **priorities** can be selected according to the following, non-exhaustive criteria:

Category of people deprived of their liberty

Age
Sex
Nationality or community of origin
Type of deprivation of liberty

Detaining authorities

Ministry of the Interior: police, security services, immigration services
Ministry of Justice: Criminal Investigation Department, prison authorities
Ministry of Defence

The work of other players

Who? who are the other players working in the field of people deprived of their liberty;

For whom? what categories of people deprived of their liberty are they interested in;

Why? what are their objectives;

How? what are their working methods;

How much? what is the scope of their activities;

Where? what is the geographic radius of their activities;

Are the objectives of the NGO's action plan complementary to other players', or do they duplicate them? Depending on the replies, should the NGO's objectives and initial programme be modified?

Socio-geographic criteria

Geographic regions with particular problems
The main cities and towns

1.2. Working in a network: a strategy for enhancing efficiency

The NGO can enhance the efficiency of its monitoring and protection programme for persons deprived of their liberty by including the concept of working in a network in its action strategy.

This working method consists of establishing working relations with other organs, institutions or non-governmental organisations involved directly or indirectly in the field of deprivation of liberty.

Potential partners

- National and international human rights NGOs;
- Charitable associations, religious or otherwise;
- Regional organisations:
 - Council of Europe (above all the CPT);
 - Organisation for Security and Cooperation in Europe (field offices);
- United Nations agencies:
 - UNDP, judicial reform programmes;
 - UNICEF, women and children in detention;

UNHCR, programmes for the protection of refugees.

<p>The working relations can entail different degrees of involvement by the NGO:</p>

- | |
|--|
| <ul style="list-style-type: none"> • The exchange of general information between players: getting to know and making oneself known; • Concertation on general or specific issues; • Complementarity of action: <ul style="list-style-type: none"> → by dividing up the areas of work → by seeking political or operational support from other organisations; • Coordination on general or specific issues: defining common positions or strategies; • Partnership by implementing joint programmes with other organisations. |
|--|

2. Obtaining access to people deprived of their freedom

2.1. Obtaining authorisation

In some countries, access by non-governmental organisations or by civil society as a whole is provided for in a law, decree, or regulation. This means that the NGO does not in principle have to obtain an authorisation to gain access to people deprived of their liberty. It must still, however, negotiate the concrete procedures for this access. The advantage of having a legal basis of this kind is the permanence of the authorisation, which does not depend on the good will of the authorities in place and is not subject to limitations in length. On the other hand, the legal basis may provide a narrower framework than could otherwise be negotiated directly with the authorities.

In some contexts, it may also be possible to gain access to certain categories of people deprived of their liberty simply with the agreement of the persons in charge of the place in question. An unofficial and limited authorisation can be beneficial to those deprived of their liberty and very useful in a crisis situation. Such an approach, however, cannot constitute a true monitoring mechanism, and thus will not be taken up here.

In most cases, the NGO must request authorisation from the authorities in charge to carry out regular visits to people deprived of their freedom. It is often easier to obtain this authorisation from the higher authorities, in general the Ministry responsible (see Table 1), than from those lower in the hierarchy.

Deciding on the best strategies to adopt depends on many factors related to the NGO itself, the context in which it is working, and the detaining authorities concerned. For this reason, we will limit ourselves here to mentioning some questions which can help new NGOs in particular to prepare for meetings with the authorities concerned, in order to obtain the necessary authorisation.

<p>Questions – reference points</p>
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Do the NGO's arguments clearly draw the authorities' attention to the fact that there are also advantages for them in letting NGOs monitor the conditions of detention of people deprived of their liberty:

- Assistance to State organs in fulfilling difficult and delicate tasks;
- An external eye on the functioning of these organs helps reduce public distrust and the ensuing negative rumours;
- Improvement of the State's image internally and externally through a concrete measure - authorisation of access - aimed at guaranteeing application of the law and respect for human rights.

Would the intervention of external experts back up the NGO's position?

Professionals active in a field or fields related to the deprivation of liberty;

- People who are socially or politically influential;

Can these people intercede with the authorities concerned on behalf of the NGO before the meeting (lobbying);

NGO back-up strategy:

If the authorities concerned refuse to grant access to the people targeted by the programme, what is the NGO's back-up strategy:

- More lobbying to make the authorities change their mind;
- Modifying one or more points of the action programme:
 - change the category of people deprived of their liberty, the detaining authorities or the type of place of detention targeted;
 - limit the breadth or implementation of the programme;
 - postpone the request for access to the categories of people which met with direct refusal by the authorities, and negotiate access to less sensitive categories so as to begin monitoring work, which can then be developed in the medium term depending on the possibilities;

2.2. Type of authorisation of access

Official authorisations of access to people deprived of their liberty can be either in written or oral form.

Even though there is a written authorisation, this does not automatically mean that there will not be difficulties of access on the spot, however it does have the advantage of being material evidence, which can be shown to recalcitrant officials in charge of places of detention. This is particularly useful, even indispensable, in places of detention under the responsibility of the police or security forces and in prisons.

To enable the visits to people deprived of their liberty to begin within a reasonable period, the authorities who granted the authorisation should officially notify those directly in charge of the places of detention.

In particular at the beginning, it can be useful to ask the authorities who granted the authorisation to identify a representative, if possible with certain decision-

making power, to serve as a contact for the NGO in case of difficulties of access on the spot.

2.3 Content of the authorisation

The content of the authorisation can either be general or detailed. The advantage of a detailed text is that it provides a better guarantee for the NGO regarding the conditions of access and work which are necessary for efficient monitoring. The time spent in obtaining a well-formulated authorisation is more than made up for by the time saved once the programme is under way.

In certain contexts, however, access may be granted to an NGO simply because the circumstances of the moment favour such a decision by the authorities. In this case, it may be neither possible nor wise to negotiate the content of the authorisation in detail. Any subsequent refusals or restrictions must then be dealt with in the field with the officials directly responsible for the places of detention.

Access concerns above all the people who are deprived of their liberty and not the places of detention themselves. Visiting empty places of detention has no value whatsoever.

The authorisation must guarantee:

- Access without restriction, within the place of detention, to all persons targeted by the NGO's programme;
- Access to all places used by and for the people deprived of their liberty (living quarters, kitchens, sanitary installations, etc.);
- Interviews in private - out of hearing and, if possible, out of sight of the surveillance personnel - with people deprived of their liberty who so wish and with those selected by the members of the visiting team. The authorities must also guarantee that the people with whom the visiting team has spoken are not subjected to pressure, threats or ill-treatment by the officials by way of reprisal.
- The possibility of repeating the visits at a frequency determined by the NGO according to its objectives.

It is also strongly recommended that the authorisation permit:

- Visits without prior notification of the detaining authorities. Failing this, and in all circumstances, access should be given as quickly as possible. Where the authorities require that the NGO inform them in advance of the dates of the visits, the notification period should not exceed several days;
- Access to all registers in the place of detention relating to the people held there and their living conditions.

3. Establishing a programme

3.1. Establishing a programme of visits

The visiting programme should contain following points:

- List of places holding the categories of people deprived of their liberty that the NGO is targeting and for whom it has obtained authorisation;
- The order in which the places will be visited;
- The intended length of each visit;
- The frequency with which they will be repeated.

Choosing the places

Criteria for choosing which place to visit

- Risk: the risks, whether potential or real, to which the people deprived of their liberty are exposed;
 - priority to places of detention where people are interrogated;
 - places of detention in high-risk regions, towns or districts;
- Number of detained persons;
- Sample: selection of places deemed the most representative of the situation in the country.

Length of the visits

The visits must be long enough to be able to talk with the people in charge of the place, their subordinates and a representative sample of the people held there, and to examine the facilities and living conditions.

The length of the visit should however also reflect the fact that visits can disrupt or inhibit the work of the staff in charge of the people deprived of liberty. It is thus important to strike a balance between the need for efficient monitoring and the constraints inherent in the way such places function.

The length of the visit can be estimated on the basis of the following factors:

- The size of the visiting team;
- The emotional stress caused by visits; it is thus not realistic to plan very long visiting days;
- The content of the visit agreement between the NGO and the authorities and any constraints contained in the agreement;
- How much is already known about the places to be visited:
 - has the NGO already visited the place?
 - has it received information from third parties which helps it to estimate the time needed for the visit?
- The size of the place of detention and the number of people held there;
- The type of place of detention;
 - what security regimes are applied (the higher the security, the longer it can take to move about within the detention facility);
 - are there different categories of people deprived of their liberty under different detention regimes held in the same place? This can mean that more time is needed to examine the different conditions of detention.

- The work needed to compile the data, which must be done as quickly as possible at the end of the visit
- The travelling time between different places of detention, in the case of a continuous programme.

Frequency of the visits

The **frequency of the visits** can be determined according to:

- The type of place of detention;
- Pre-trial detention facilities such as police stations should generally be visited more frequently than penitentiary establishments, as interrogations are held here;
 - detainees' contacts with the outside world are limited
 - there is a rapid turnover of detainees
- The risks - known or presumed - to which people deprived of their liberty are exposed, or any protection-related problems noted.
- The balance to be struck, over time, between the needs of the NGO and the needs of the officials in charge in order to carry out their work. Frequently repeated routine visits can, in the long run, be counterproductive if they disrupt the work of the staff without valid reason.

The frequency of the visits also largely depends on the gravity of the protection problems encountered. In some cases, for instance, it can be a good idea to repeat a visit after a short period of time if the NGO fears, rightly or wrongly, that reprisals might be taken against the detainees who talked to the visiting team.

3.2. The visiting team

Composition

To monitor conditions of detention certain **skills** are needed, in particular in the fields of law and public health. The visiting team should thus comprise at least one person with a legal background and one with a medical background, preferably a doctor.

Should the NGO not have such skills available when forming its visiting team, it should at least make certain that those carrying out the visits have been given a general grounding in these subjects by professionals.

Other professional skills can also be very useful, for instance those linked to psycho-social, organisational and environmental engineering activities.

The NGO should, as far as possible, try to maintain stability in the composition of the visiting team for a certain length of time. If the members of the team change too often, it will be difficult to establish a constructive dialogue with the people deprived of their liberty and the authorities in charge of the places of detention..

Size

The **size of the visiting team** depends on a number of factors, for instance:

- The objectives of the visit;

- How much is already known about the places and their problems;
- The size of the establishment and the number of people held there;
- Any constraints laid down by the detaining authorities.

The ideal size for a visiting team can be estimated as being anywhere between 2 and 8 people.

Training

The people who are going to take part in a visit should have received basic **training** on:

- The issues and problems relating to the deprivation of liberty;
- The objectives of the visits;
- The necessary points of reference for monitoring conditions of detention, in particular the relevant laws and regulations;
- The behaviour to adopt with the authorities, the staff and the people detained.

Monitoring experience of an Azerbaijan NGO: Monitoring Prisoner's right to health by the Centre of Programmes for Development "EL"⁶

By Dr. Elmira Alakbarova of the Centre of Programmes for Development "EL"

1. Introduction

On 25th of January 2001, one year has passed since Azerbaijan has become an equal member of the Council of Europe. During that period Azerbaijan implemented a number of commitments set up by the parliamentary Assembly of the Council of Europe (PACE). Several commitments had been met previously - we may note the conducting reforms in penitentiary system, which has begun in 1998 according to Criminal Procedure and Execution of Punishments, which were ratified by Milli Mejis (Azerbaijan Parliament) and entered into force from 1st October 2001.

International cooperation in the field of criminal-legal policy and penitentiary problems has been developing successfully for a long time. In the framework of the Council of Europe Secretariat, the main bodies of the Committee of Ministers engaging in the above matters are the European Committee on Crime Problems (CDPC) and the Committee on cooperation in the field of penitentiary problems, which give their help with knowledge, experience and means.

The main formal and moral reference points for prison administrations are the European Prison Rules and the European Convention on Human Rights, which Azerbaijan ratified.

One of the main idea of rules - to underline that its execution is a obligation of penitentiary administrations (which is especially important in the field of health care, allowing to prisoners to protect and strengthen their health) and as well as to increase its influence and authority by means of inspections (monitoring) at both national and international levels and consultative mechanisms of the Council of Europe.

To point to the ongoing reforms, which are carrying out in structure, organization and regulation of health care bodies in penitentiary system and also in the frame of health policy, we consider that it is in the interest of physicians who are working in the penitentiary system, as well as other medical staff, prisoners and penitentiary administration, to define accurately the prisoners right for health care and as well the specific role of physicians and other medical staff.

In order to provide a wide-spread dissemination of principles and recommendations and the main aspects of right for health care in penitentiary system of Azerbaijan and as well to call the attention of society, governmental and international organizations to above mentioned problems of the penitentiary system

⁶ Abstracts from the Center "EL" report on "Healthcare in prisons of Azerbaijan", Baku 2002.

of Azerbaijan, in 2001 (March-June) we carried out the project “Monitoring of Prisoners Right for Health” with financial support of Charity know-how/ Azerbaijan.

2. The Preparation stages of monitoring

2.1. Why “Monitoring of prisoner’s right to health”?

Every punitive establishment of the penitentiary system has its peculiarities and relating to it, specific problems of prison medicine.

Prison medicine is a particular group with particular needs and restraints in a particular environment. The majority of prisoners are young, poorly educated socially deprived and emotionally traumatized. Taking into account the fact that all punitive establishments are secure controlling, there are many problems for health care service in prisons. We see our main aim in the disclosing of those problems. That’s why we decided to begin our activity from the basic human right to health, with no consideration of gender, age or religion. So:

- Firstly medicine in prison is not the primary service
- Secondly, medical care is dependent for delivery on the prison service
- and finally, prisoners are a low political priority for the majority of the authorities.

We consider that conducting the monitoring “Prisoner’s right to health” is a very important event, to show how important it is to create the conditions in order to provide the fundamental human right for life, and also to show the important and complicated role of physicians in punitive establishments as health and hygiene officers. That is especially important in imprisonment conditions, where human liberty is limited and custody conditions are not always adequate to conditions outside of imprisonment.

- In order to provide the prisoners health care service at required level is actually necessary. Compassion at all levels (of penitentiary and civil establishments staff) and common sense
- Cooperation and communication between all establishments (civil and penitentiary)

We chose monitoring as more accessible and demonstrative method to achieve our aim. Information, obtaining by means of questionnaires, oral and video interviews more reliable can demonstrate the situation in imprisonment places.

In our case, the object of our monitoring is :

- Observance of a concrete right: the prisoners right to health
- Observance of the right of particular groups in concrete establishment

Any actions for conducting of monitoring include two stages:

- Review of national legislation in the light of international requirements
- Comparison of real situation with legal conditions of prisoners

2.2. Stage 1: Selection of penitentiary establishments for the conducting of monitoring

Taking into account that it is the continuation of monitoring “Prisoners right for health”, which was conducted by NGO and based on prisoners health problems, we were carefully selecting the objects of monitoring. As a result we selected 5 punitive establishments based on following criterias:

- Every selected punitive establishment is a different type of penitentiary establishment - opened and closed: women, children, men; ordinary and special medical cases, so we can clearly see their specific peculiarities. Proceed from peculiarities of these establishments, we have not asked permission for conducting video-interviews in closed (Gobustan) and special medical (TB) establishments. But we visited them and had contacts with both prisoners and prison administration;
- Every selected punitive establishment is the only one of that type in Azerbaijan. So we have to examine at their example the level of prison medicine in Azerbaijan;
- Every selected punitive establishment may be pointed as particularly controlled by government and frequently visited by international humanitarian organizations and experts
- Every selected punitive establishment correspond to the definition “relatively good establishment” namely these establishments are not overcrowded, but there are many problems, relating to health;
- In the end as a result of the above-mentioned criteria’s, we were doing to get higher local standard or prison medicine. On this case, our conducted monitoring allows us to compare that standard with high international (EU) standards.

In order to make noticeable the positive changes of detention conditions as a result of conducted reforms we have used the comparison method of our monitoring results conducted in February-May 2002 with the monitoring, also conducted by our organization in March-June 2001 and as well as with the implementation of suggested recommendations. The result of the monitoring should allow the reader and the managers of penitentiary establishments to judge about the level of cooperation with state bodies of the Republic and the assistance to reforms in the penitentiary system.

Stage 2: Qualification of the organization and the monitoring group members

First and main term of monitoring imprisonment places for NGO is the professional preparation of its members for the implementations of such a particular task and confidentiality.

Qualification of organization:

Center “EL” is an initiative of the people of art and science. (total members – 30 persons including 4 - staff members, 5 experts, 3 consultants and volunteers) . Board members are 7 peoples:

- Alakbarova Elmira – chairperson of board, Doctor of physical and mathematical sciences;
- Akhundov Elchin – Artist, animator;
- Nazirova Sara – Writer, journalist;
- Mamedov Rauf – Physicist;
- Alekperov Adil – Film director;
- Sheyhzamanova Afag – Teacher;
- Agaev Aidyn – Teacher.

But our members also work in psychology, education and medicine. This spectrum of activity sets the main focus points for our organization as follows:

To design and launch pilot projects and programs focused on education, social and public development as well as human rights.

Center “EL” has long-term and co-operative contacts with lots of governmental, international and non-governmental organizations, dealing with social problems in Azerbaijan and worldwide.

Members and representatives of Center “EL” believe in international networking as an effective way of development. So they participate and perform their work in international seminars and conferences as much as possible. Our organization is an associative member of the human rights center of Azerbaijan which is an associative member of the International Helsinki Federation and SOS – Torture Network.

Center “EL” constantly seeks for professional growth and new fields of activity.

The special memorandum has been signed at the 9 September 2001 between the Ministry of Justice and three NGOs – Center “EL”, Human Rights Center and Amnesty International Initiative group. This memorandum enables the above NGOs to work in co-operation with the Ministry of Justice and the Council of Europe.

About the monitoring group:

For getting an effective result, the monitoring as a method requires the participation of professionally training groups.

For corresponding to international standards, monitoring group members are to have the following requirements:

- To have professional qualification, which allows the prison staff to demonstrate their competence by means of putting a question or bring forward requirements wanted the expert responds.
- To be absolutely impartial towards both to prisoners and prison staff so in such way they can keep authority in front of both cities.
- To be able to act in accordance with marked plans
- To be capable of listening others and to control his own emotions.

- To have sufficient courage to carry well without convoy and to talk to every prisoner without bias (prejudice).

Monitoring groups should include :

- Lawyer (specialist in criminology)
- Experienced physician with good knowledge of national medical legislation
- During visits to penitentiary establishments it is desirable to include in team sociologist psychologist or teacher.

The lawyer has to know the penitentiary law and also the regulations of international law. He is to have an extensive experience in order to understand and analyze the realities of prison life.

A good physician needs for working in penitentiary establishment the following features:

- Practical experience as a general physician
- High professional training
- To be independent and impartial and mainly respect the dignity of the individual

Taken into consideration the above-mentioned requirements the monitoring group of Center "EL" consists of:

- Project coordinator
- Advocate specialist on criminal law
- Physician – has a good practical experience, Surgeon – cancer specialist;
- Teacher of physical education (children- refugees, disabled , young offenders)
- Psychologist (volunteer)
- Producer – cameraman the representation of Center "EL", competent specialist, film director;
- Consultant – M. Humbatov colonel, chief staff of Head Office on Execution of Court Decisions. Lawyer in the field of penitentiary law.

We must note that monitoring group of 5 persons already have had experience of conducting the monitoring in 2001 and then was added a doctor and a psychologist (volunteer), who successfully supplemented the group.

Stage 3: The ways of conducting the monitoring

Monitoring can be conducted in the following forms:

- Visits to penitentiary establishments (a few establishments during one visit i.e 2-3 days)
- Urgent visits for talks with prisoners who asked for a meeting
- To get written complaints from prisoners
- Telephone contacts with the prison director and personal contacts with the officials of Head Prison Office and staff

The members of Center EI have specially prepared themselves for every visit. Preparation has included the collection of information about the establishment to be

visited. The information has been collected in advance by means of contacts with the Head Prison Office and also looking through published research papers on subjects concerned. We received the information about this or another prison from human rights organizations, advocates and relatives of prisoners. It should be specially noted that a good way to provide regular monitoring of situation in prisons is to obtain permanent pass, which gives a right without any difficulty to visit the prisoners. We have to note that only E. Alakbarova, the chairperson of board of the center EL and Agayev, the teacher of physical and cultural education have the permanent pass and have been working in Young Offenders and women prisons for a few years.

Another way to provide monitoring is an official permission signed by an officially authorized person. Center "EL" has such permission signed by A. Gasimov general-major, Deputy Minister of Justice of Azerbaijan chief of the head office on executive of court.

Stage 4: Working out of test questionnaires with consideration of specific features of every penitentiary establishment and also special questionnaires for these establishment's personnel.

The questions of interviews and questionnaires were the subject of serious attention and scientific approach. We have worked out 4 types of questionnaires altogether for prisoner's medical staff, doctors, educators, inspectors and prison officials. All questions were grouped and divided into following categories: physical, moral and physiological health; legal aspects; education level in the field of sanitary and hygiene.

We have also worked out questionnaires especially for Young Offenders Prison and then distributed them. We have received 59 responses to test-questionnaires on the subject:

"Sport and 9" (14 questions). Since 2001 in the Prison of Young Offenders, the members of Center "EL" have been carrying out a special sport program, on the base of which has been worked out the pilot project "Rehabilitation of young offenders through the systematic sport training" (working title).

The questionnaires were preliminarily distributed among prisoners but prison personnel filled in the questionnaires during the interview. It has been distributed altogether.

- 59 questionnaires (young offenders prison) + 10 (prison personnel)
- 69 questionnaires (prison for women) + 20 (prison personnel)
- 70 questionnaires (central prison hospital) + 20 (prison personnel)
- 50 (TB center N: 3) +10 (prison personnel)
- 50 (investigator isolator N:1) +12 (prison personnel)

In total 298 questionnaires received responses.

Stage 5: Video and audio interviews with prisoners and all-level representative of administration

Before every visit to prison the monitoring group has discussed the conducting scenario of monitoring, strategy and tactics of implementation. Besides that every prison director received the letter of request from Center "EL" about permission to visit the prison, mentioning time, date and names of the monitoring group members. It was also created the focus-groups (prison personnel, medical staff and prisoners.)

Interviews have been carried out with doctors and prisons' directors and some time with deputy directors of prisons. 15 interviews with prison personnel and 2 interviews with leading officials of central prison administration.

We expected that some of video interviews could remain anonymous. But actually all video interviews were shoot with active participation of prisoners, especially in young offenders' prison. (i.e. prisoners had their natural attitude). At the same time we consider our video materials as an illustration to the report, for example the premises of prisons and hospital. The interviews with prisoners are a more valuable evidence (testimony) of positive and negative examples of health cares situation in prisons. We hope that after the presentation of our video materials to the Central Prison Administration, these materials will be used as the video manuals for lectures in the Training Center of Central Administration. It would be better the interview to be made with sound recording.

Stage 6: Analyze and comparison of received information with official statistics

The result of this stage has to be a summarized report on the project. "Monitoring of prisoners' right for health" which was carried out in specially selected 5 prisons.

The final report will be submitted in a comparative table form, where in one column you can see, the results of monitoring "prisoners" right for health in prisons which was carried out by Center "EL" in 2001 and in the other column (next to first column for comparison) the results of monitoring of 5 prisons, which was carried out by Center "EL" in February-May 2002.

We suggested such scheme of monitoring in order to reveal clearly the changes that have been made in prisons since 2001. Besides that, such practice will allow the readers to judge about professional level of our NGO- Center of the Programs for Development "EL" which was the executor of the project.

Stage 7: Montage of video materials for presentations in a form of monitoring documentary illustrations

The video illustrations will be added to the final report. Later (if there will not be any objection) these video materials will have been re-done to documentary film, addressed to high officials of Ministry of Justice or for review. Corresponding commentaries and conclusions of the representatives of Ministry of Justice are very important for further cooperation and collaboration, which have been supported by Council of Europe and other International organizations and donors.

PART II:
MAKING USE OF INTERNATIONAL MECHANISMS

APT Guidelines for Parallel Reports to the Committee against Torture (abstracts)⁷

Introduction

Under the international Human Rights Treaties adopted by the United Nations, Committees of independent experts have been set up to examine States reports on the implementation of their obligations. For an effective functioning of these bodies, it is important for the Committees to receive alternative information provided by NGOs. Accordingly, the APT has produced reporting guidelines on main points to be observed in order to submit successfully an alternative report to the different treaty bodies. We reproduce below guidelines concerning specifically alternative reports presented to the Committee against torture (CAT). These guidelines are directed at national NGOs and are aimed at helping them presenting useful information that will be taken into account in the examination of the country report and in the recommendations.

1. Preparations

Read the provisions contained in UN Convention against Torture (UNCAT) imposing obligations on the State Party carefully and define the topic and area you intend to cover.

Go thoroughly through the general reporting guidelines issued by the Committee to see whether the State Party reflects the initial steps and issues in the report Submitted.

Analyse your legal system regarding the definition of crimes, criminal procedures and punishments relevant to the UNCAT and collect the statistics that you need in the course of the preparation of your report.

Observe both the theoretical and practical underpinnings of the criminal justice system, including the investigation procedures, arrest and detention. Examine the constitutional and legal safeguards of persons arrested, detained or imprisoned, and tried. Analyse the legal remedies available to victims of human rights violations. Examine and assess all domestic laws, rules and regulations, circulars, courts precedence and orders related to the relevant issues. It is also necessary to examine legal documents, which relate to the use of force by law enforcement officials. These examinations and assessments should lead you to outline the scope and areas of priority for the preparation of your report.

Examine the way in which national laws incorporate international obligations.

⁷ This is an abstract from the APT Guidelines for national NGOs on Alternative Reporting to the UN Committee against Torture, Geneva, revised 2002, 22 pp.

Examine more closely your government's acceptance of the legal obligations arising from the CAT. To this end it is first of all important to know when your country ratified or acceded the CAT and when it entered into force. Moreover, it is important to see whether any reservations have been made and whether your country has accepted the Committee's competence to consider individual complaints (UNCAT article 22) and to make independent enquiries (UNCAT articles 20 and 28 (1)).

List the key issues that you highlighted and develop a plan of action to review instruments, systematise information, and assess the report of your government.

2. Review of Instruments: Legal Instruments

Have a thorough look at the preamble of the CAT. The preambular part will explain the global objectives and the context of the convention.

Read thoroughly the substantive articles of the convention in its part I. This part clarifies definitions, and the roles and responsibilities of a State Party to ensure that torture and other ill treatment are prevented and prohibited. It is important to bear in mind the difference between State Parties' obligations with regard to torture (as defined in article 1) and other cruel, inhuman or degrading treatment or punishment as spelled out in article 16.

It is necessary to review other international and regional instruments to gain a better understanding. Consult the relevant instruments related to the administration of criminal justice. These instruments are available in the **"Compilation of International Instruments"** or on Internet.

Study your own national legal provisions of criminal law and procedures related to torture and cruel, inhuman or degrading treatment and punishment. Examine the laws and practices in depth and evaluate their compatibility with the provisions of the convention.

Examine national law, regulations and practice concerning the extradition, expulsion and return of persons and their compatibility with the related provisions in the convention (CAT article 3).

Evaluate the criminal and administrative measures taken by the government to hold the perpetrators accountable and to control the possible re-occurrences of torture. Evaluate also the legal remedies provided to victims and their families to lodge complaints against perpetrators and to demand redress. Examine critically the effectiveness of these remedies and the willingness of the victims to lodge such complaints.

3. Review of Instruments: Non - Legal Instruments

Now, turn to non-legal measures, projects, remedies (if provided) and services undertaken by the Government in the area of implementation of the convention. This may cover issues of education, training, review of investigation rules, reform of the penal system or offices of ombudsmen.

For a periodic report it is of crucial importance to examine and review the previous reports of the Government. Reviewing and analysing the conclusions and recommendations of the committee in connection with the examination of these reports are necessary steps. If the Committee requested additional information or clarification from the government, it is good to verify whether this information has been submitted, and if so, what its content is.

4. Systematisation of Information

The substantive part of the alternative report and of the executive summary is documented information that you present in a systematically recorded form. The Committee is very much in need of properly documented cases of torture and other ill treatment for the period under consideration. This information should be in full accordance with the general guidelines 13, 15, and 16 provided above. Keep the records of such cases categorically on the basis of their type and of their fact collection methods.

Manage separately the information that is collected and documented primarily by yourself and the information collected through fact finding missions or other means. This information can best be checked if you are in contact with the victims or the persons or institutions related to the cases.

In case of information documented with the help of secondary sources, verify their credibility.

It is very important to bear in mind the need to provide accurate information. The Committee can refuse to examine your report if it deems it as not being precise, concrete or in conformity with the philosophy of the Convention. Avoid all unnecessary allegations in order to ensure that the information is to the point. Be aware also that the Committee can ask for additional information or clarifications to your information after preliminary examination of your submission. Be aware that the committee can ask for additional information in prescribed form.

With respect to information on torture as described in this chapter, give full details of the victims with their real names and addresses as well as of perpetrators, but do not forget to inform the victims and to get their consent. You can avoid the naming of victims in your report but they have to be made accessible to the members of the Committee on a confidential basis. In that case, your information will remain confidential in the course of the examinations by the Committee.

Organise the recording of the documented information described in this chapter in an appropriate format and in chronological or systematic order to ensure that they are at your hand, if need be.

5. Assessment of Government Reports

The assessment of a report submitted by the government to the Committee in accordance with CAT article 19 is essential for a comprehensive alternative report. Try to receive a copy of the Government report as well as additional information (if) provided by the Government to the committee and examine it carefully. You may have only a very short time span for the assessment of the Government report because of the schedule established by the Committee. It therefore directly affects your planning.

One cannot stress enough the importance of the time management. At your convenience, it is advisable to read the reports of other countries considered in previous sessions in order to receive inputs regarding the outlines and issues addressed.

Examine your Government's report as well with regard to the compliance to the guidelines prescribed by the committee.

Point out the issues that are inaccurate or ambiguous in your government's report and set a strategy to address them in your report with justifiable counter arguments.

6. Prioritisation and Setting-up of Key Issues

Documented information on torture cases which occurred in the period of report under UNCAT article 19 is undoubtedly of major importance in your report. Priority may as well be given to your counterclaims as described above (para. 25).

While prioritising, do pay attention to the distinction of legal and non-legal issues with regard to possible incompatibilities of your national system with the provisions of CAT in particular and to other treaties in general, but as well to non-legal material, which carry a moral obligation for States.

Favour in your report those issues which could possibly be improved without huge costs, and which depend mainly upon the willingness of the Government to improve. This is advisable as the Committee also considers the factors impeding the implementation of the provisions of the convention.

The situation in terms of criminal justice and of torture differs from country to country. The guidelines intended to provide guidance on an international scale might not meet your specific requirements in the choice of your priorities. The priorities may differ in function of types and phases of reporting periods. Look at the guidelines therefore as a simple tool for your own reflection.

The final list of priorities should contain the key issues to be addressed in your report. The key issues differ also according to the type of report. Generally in initial reports, the key issues focus more on legislative and administrative phenomena whereas in periodic reports, the implementation of the measures, remedies and other aspects of prevention may be key issues.

Completing the set-up of key issues is the final phase of preparation of your alternative report. Therefore, it is advisable to review your previous presentation for your own accuracy and verification.

7. Finalisation of the Report

Bear in mind that it is usually unnecessary to illustrate, copy or duplicate texts of legal documents, be they national or international or texts of government reports. Explicating already existing frameworks is not the task of alternative reports. The suggestions made in these guidelines regarding the review, the examination or the monitoring of such documents are important in order to carry out the preparation of the alternative report. The members of the Committee know well about the materials being of relevance to their work. It is therefore sufficient to mention the sources without citing them.

If it still seems necessary to cite parts of legal documents or of government reports, provide only essential parts and give the accurate reference in a footnote. This is necessary in order to make your report precise and accurate at once. Use a straight language and provide sufficient justifications for your arguments. It is important to avoid judgements. It can be of decisive importance for the success of your report that you present it in a short and attractive way.

Appreciate and encourage the governments' positive efforts in the field of human rights protection. Point however as well at the weaknesses, reluctant behaviour and negative conducts of the government in plain, respectful and polite language rather than criticising it bluntly. Indicate alternatives if there are.

Present your own remarks on the overall situation regarding certain important issues in brief and separately. Do not mix them up with independent or factual information.

Prepare an **executive summary** of your report and a **table of contents**.

8. Sending the Report

Send your report to the secretariat of the Committee against Torture. It is important to bear in mind that the secretariat needs to receive the final version of the written submission with the request that it be distributed to the members six weeks before the session. You should provide at least twelve copies.

Try to receive confirmation from the secretariat that the report has arrived and that its distribution has been taken care off.

Provide copies of your report as well to the Association for the Prevention of Torture (APT), Amnesty International (AI), the International Federation of Human Rights Leagues (FIDH) and other international NGOs. There also exists the Coalition of International NGOs against Torture (CINAT) whose members would be interested in your report. They will need them for information and in order to put in place their strategy with regard to the Committee.

What national NGOs can expect from the UN treaty-monitoring machinery : Case study of the Georgian NGO

By Tinatin Khidasheli, President of the Georgian Young Lawyers Association (GYLA)

Introduction

Officially registered in 1994, the Georgian Young Lawyers Association (GYLA) is the first association of lawyers dedicated to protecting poor and vulnerable from governmental abuse, to establish high standards of ethics and education amongst the country's professional lawyers. The establishment of GYLA was an enormous step for a society, in which, for decades, had feared lawyers as instruments of injustice and cruelty. Rather than viewing lawyers as defenders of rights and freedoms, citizens saw them as pawns of the Soviet courts, where: "The winner is the one who has more money." In the early 1990s, after first overcoming their own personal fears of lack of experience and age, the young Georgian lawyers began to change that image by enhancing their profession's ability to take the lead in creating a just society.

Today, GYLA unifies more than 800 lawyers from all over the country, working throughout Georgia and providing quality legal services, offering well functioning and effective Human Rights protection system and legal education for

raising the qualification of lawyers and the awareness of the larger population.

For all these years Georgian Young Lawyers Association was trying to mobilize not only Georgian public and civil society, but also the international community and bring international shame towards the Human Rights blind policies of the Georgian government.

1. Working on Shadow reports

Already in 1999 GYLA had first attempts for challenging Georgian government at the broader international level, different from meetings and information dissemination among the organizations and embassies working inside the country. We have participated in a large coalition of Women Rights Protection NGOs for bringing shadow report to the state report before the Committee for the Elimination of Discrimination Against Women (CEDAW) in New York. GYLA was responsible for legal backgrounds and interpretations of the legal norms along to the practice of Georgian courts and various state agencies in charge of implementation. That was the first try and as experts evaluated later pretty successful. However, results were not impressive as there was little follow up to the process and we had no experience with lobbying strategies within the UN system itself.

GYLA's real strong appearance was the Committee Against Torture (CAT) in May 2001. As the situation with Human Rights protection was day by day deteriorating, (starting from fall 1999 police took over all the power lost during the years of so called raising democracy of 1997- 1998) as caseload of torture and ill-treatment significantly increased, we felt that it was of an utmost importance to bring the problem at the higher level and within the limits of the UN diplomacy draw attention to the urgent issues. At the end of 2000 there was formed a coalition of major Human Rights groups working on Civil and Political Rights and representing victims in torture cases, with the purpose of creating a strong and well-documented report for the CAT. Again due to the limited experience, support from relevant international non-governmental organizations (such as APT and OMCT) in this process was crucial and most important to guide us in the whole process and give a chance of communication with the members of the committee.

Although the creation of a report was the most challenging and important part, the major values to our work was the composition, experience and commitment of the members of the coalition. All of us had their part and job to complete in the whole process. GYLA took a leadership over description of the appropriate legislation and identification of norms and provisions basically creating torture free environment. Other NGO's were in charge of filing concrete cases and mass media digest on the issue. Report was pretty impressive and we have filed it to the CAT.

As a next step we were pretty successful getting funding for participation in CAT session itself and presenting our report to the interested committee members. Fundraising is one of the most crucial elements. If there is nobody to present a report and to lobby it at the session, chances for success are less.

2. NGO Briefing

It is always most helpful if there is somebody from the authors presenting the report and answering questions of the members of the committee, as long as there are too many papers usually presented to the committee by various sources and some of those might never get reviewed. So, it is always better to have an eye contact with the main participants of the process. Your presence at the committee hearings works with the government as well, because government is more considerate to all they speak and present.

It is very useful to have a meeting with the members of the committee, or most importantly those who are in charge of your particular country after the session as well, because there might be quite substantial issues to be discussed and answered after government responded to the questions. It is important also for lobbying your arguments and statement for inclusion into the final document to be produced by the committee.

3. Follow-up

GYLA and the coalition of NGO's was pretty successful due to the fact that Human Rights Committee (HRC) was next in considering the Georgian Report and that there was less than a year between two. So, we knew, and so did the government, that there was a real possibility for a strong follow up to the recommendations and to the whole process that has developed as a result of CAT hearings of Georgia.

What makes your arguments, report and activities stronger is the support, or at least an attention from the media. We were pretty strong with that. Fortunately, our voices are listened and heard through Georgian independent media and it did not take lots of efforts to have a strong campaign and publicity to the report and CAT recommendations. There were several publications, several TV shows devoted to the issue, again mentioning that there was a HRC ahead and Georgian government should have been more considerate to the documents issued by the UN treaty-monitoring bodies.

It is true that UN does not have a real capacity to punish governments for every Human Rights violation, but it does have a force to produce documents that might be used later by the national NGO's as a tool of communication with their respective governments. Exactly that was our purpose. We were trying to achieve such a language in the concluding observations and recommendations that was least diplomatic and closest to the identification of problems and fears of the democracy in Georgia.

I believe that that purpose was achieved. We managed to keep an issue alive for a long time and we have used the text in lots of actions carried out by the NGOs in the course of 2001 for the protection of Human Rights in Georgia. CAT recommendations were incorporated in the annual report of "Public Defender of Georgia" for the year 2001 and were part of all Human Rights activities of most NGOs. CAT recommendations were part of our addresses to the police and

prosecutors' office, it was heard in the address of the president to the law – enforcement officials and he has even issued a special decree basically recognizing all the problems.

I believe there is much more to be worked and real, tangible changes to the achieved however, the mere fact that first time for the part ten years people heard of UN committee recommendations, people heard that somebody in Geneva cares about their lives and dignity and state is concerned for that is quite an achievement we need to build on.

Alternative report of the group of Georgian NGOs to the UN Committee Against Torture

Prepared by the Georgian Young Lawyers' Association, Liberty Institute, Former Political Prisoners For Human Rights - Tbilissi, April 2001

1. Subjects of Concern of the Group of Human Rights NGOs of Georgia

The Georgian Human Rights organizations reaffirm our appreciation to the government of Georgia for ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without reservations;

The current report represents an alternative to the state second periodic report to the Committee Against Torture and aims at following up on the measures and actions taken by the government of Georgia regarding the proper implementation of the **“Concluding observations of the Committee against Torture: Georgia. 21/11/96. A/52/44, paras.111-121”**. Accordingly, the present report covers the period between the adoption of those concluding observations / comments and February 2001. The Human Rights Non Governmental Organizations of Georgia are deeply concerned because the Subjects of Concern expressed by the in the CAT in 1996 in its concluding observations Continue to be applicable to Georgia now, 5 years later;

Unfortunately, the government of Georgia failed to bring the reform to the conclusion. Judicial reform was not accompanied by similar, radical changes within the prosecutor's office and the police. The establishment of an independent and qualified legal profession, continues to exist as a single progressive action within a highly corrupt and incompetent justice system;

Unfortunately, the newly appointed ombudsperson of Georgia prioritized social, economic and cultural rights over the civil and political rights. She has only announced a commitment to fighting violations in the fields of social, economic and cultural rights;

We are concerned that, in spite of the recommendations made by the CAT in 1997, Georgia has failed to identify and criminalize the use of torture by state officials in obtaining confessions from detainees and prisoners;

We express our concern, that the right to access lawyers, doctors and medical experts has diminished over the last couple of years and that Georgia has failed to adopt to adopt a law on Attorneys;

We regret that the government has failed to make clear the definition of “detention” and the status of “detained” persons;

We regret that under Georgian law recognition of a person as a “suspect” is made by the police or other investigative body **within 12 hours. Only a suspect is**

to be informed about his/her right to access lawyer, his/her right to remain silent, and other standard rights, usually activated during detention/arrest. A “suspect” is to be interviewed within 24 hours of his arrival at the place of final detention / arrest; and that, only after his first interview does the suspect have the right to request a free medical examination;

We regret that witnesses do not have the right to a lawyer;

We regret that diminishing defense rights and non-recognition of the rights of detained persons, can lead to many opportunities to detain people without registration, and without allowing them access to a lawyer and a medical examination for a substantial period of time. It can also lead to the increased opportunities to extract confessions from detained persons;

We regret that the 1999 presidential decree has essentially abolished the possibility of making independent, impartial and professional forensic medical expertise available to detained and arrested persons;

We regret, that due to the budgetary crisis, the government was unable to create a system of free legal aid and that it has prohibited the rendering of free legal services by NGOs and Human Rights Groups;

We regret that all these legislative gaps and obstacles encourage torture and ill-treatment of prisoners, and increase the atmosphere of impunity among law enforcement officials;

We regret that the use of non-custodial measures is uncommon among the Georgian judiciary and that the use of such measures is not encouraged either;

We regret that there are no courses or Ministry of Education approved materials for teaching about Human Rights instruments or raising law enforcement officials’ awareness of the mechanisms for combating torture;

Finally, we sincerely regret that the government of Georgia has failed to address the real life problems and issues of torture and ill treatment that are so wide spread at the detention facilities. There has been no attempt to challenge these practices or to introduce mechanisms that actively combat torture and other cruel, inhuman or degrading treatment or punishment.

2. Introduction

Georgian Human Rights organizations reaffirm our appreciation to the government of Georgia for ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without reservations. In addition, we express our deep satisfaction over ratification of the European Convention for the Prevention of Torture and Degrading Treatment or Punishment and its protocols, as well as of European Convention for Human Rights and

Fundamental Freedoms, and continue being confident, that parliament of Georgia will shortly ratify remaining Protocol one of the ECHR as well.

The current report represents an alternative to the state second periodic report to the Committee Against Torture and aims at following up on the measures and actions taken by the government of Georgia regarding the proper implementation of the **“Concluding observations of the Committee against Torture: Georgia. 21/11/96. A/52/44, paras.111-121”**. Accordingly, the present report covers the period between the adoption of those concluding observations / comments and February 2001. The Human Rights Non Governmental Organizations of Georgia are deeply concerned because the Subjects of Concern expressed by the in the CAT in 1996 in its concluding observations Continue to be applicable to Georgia now, 5 years later.

The report was prepared by a group of Georgian non-governmental Human Rights organizations in consultation with representatives of international Human Rights organizations represented in the country, private law firms, individual attorneys, media, various governmental institutions, academic institutions and public figures working and researching in the field of Human Rights. We also incorporated a thorough analysis of various Georgia – country reports published during the last two years. The three core organizations in charge of the project are Georgian Young Lawyers’ Association, Liberty Institute and Former Political Prisoners for Human Rights. Mission statements and short bios of these organizations are attached.

In preparing this report we are relying on the requirements of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the practice of alternative reporting. We attempt to report not only on the legislative environment of Georgia, which does not give the full picture, but also on the facts and developments in the practices and behaviors of various governmental institutions responsible for the issues covered under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The state of Georgia deserves due credit for the adoption of a democratic constitution and for enacting certain positive innovations in its core legislation regarding Human Rights protection. However, most of those developments are one-sided and are limited in that, they do not upset the base of corruption and brutality. When the government drafts concrete normative acts, it still does not regard human beings as creatures of great value.

Unfortunately, the interests of government institutions matter more than those of individuals. One of the greatest problems is incompatibility of much Georgian legislation with various international instruments the country has ratified. Lack of compliance of Georgian normative acts is also evident with regard to the Constitution of Georgia.

3. Concerns of the Georgian human rights groups

Unfortunately, faith in development and the building of a democratic state based on Rule of Law and respect for human rights is weakening among most representatives of Georgian civil society. The average Georgian cannot agree with

paragraph 4 of the government state report, which states that Georgia has carried forward important steps in building a democratic statehood, or with the statement that most Georgian legislation has been brought into conformity with Georgia's international obligations and basic HR documents.

Paragraphs 7 and 61 of the state report refer to judicial reform as the driving force behind all democratic developments. Though we value on-going reform and highly support its progress and proper implementation, in our judgement the Georgian government has failed to bring the reform to its conclusion. Judicial reform was not accompanied by similar, radical changes within the prosecutor's office and the police. The establishment of an independent and qualified legal profession continues to exist as a single progressive action within a highly corrupt and incompetent justice system. Neither the US State Department 1999 and 2000 country report released by the Bureau of Democracy, Human Rights, and Labor,⁸ nor the Human Rights Watch report gave a positive evaluation to the to the results of the judicial reform.

In spite of radical changes within the Judiciary, it is about the rule of law and obedience to the requirements of law. Without progressive legislation protecting individual Human Rights, even the most honest and professional judges cannot make a difference. In contradiction to the Georgian state report asserts in Paragraph 8, the provisions of the Criminal Procedural Code have had an extremely negative impact on Human Rights situation in the country. The criminal procedural Code passed due to the requirements of the Constitution of Georgia. It was a rather democratic act compatible with the progressive nature of the Constitution itself and the Conditions of the Council of Europe. However, after law enforcement agencies expressed concerns that the safeguards contained in the new Criminal Procedure Code would make it difficult for them to "combat crime", amendments to the Code in May and June 1999 reinstated many of their "soviet" powers.⁹

⁸ "However, there were some improvements in the judiciary during the year. As a result of the Law on Common Courts, many corrupt and incompetent judges were removed from the bench and replaced by judges who passed a qualifying exam and vetting process. The judiciary {in Georgia} is subject to pressure and corruption and does not always ensure due process. There were lengthy delays in trials." Further, in the report: "Judges generally are reluctant to exclude evidence obtained illegally over the objection of the Procuracy. Local human rights observers also report widespread judicial incompetence and corruption, including the payment of bribes to investigators, prosecutors, and judges, which also leads to denial of justice. Caseloads increased and judges' salaries, despite a pay raise, remained inadequate. Pressure from extensive family and clan networks was extensive"; 1999, US State Department Country report on Human Rights practices. The same statement was made in the 2000report

⁹ "When Georgia adopted a new criminal procedure Code in 1998, there was great hope that this would signal increased protection for the rights of those involved in criminal investigations and would be the first step toward ending the abuses inherent in the Soviet-era code. But shortly after the new Code went into effect on May 15, 1999, the parliament of Georgia adopted a series of extensive amendments in May and July 1999, marking a notable regression in efforts to bring Georgia's criminal procedure into line with international human rights standards. The new Code (hereinafter referred to as the 1998 code) would have provided criminal suspects, defendants, and witnesses, among others, with the right to seek judicial review of complaints of abuse or other violations by the procuracy, police, or other law enforcement or security agencies during the pre-trial period. Yet amendments in May and July to complaints procedures in the Code severely restricted individuals' access to the courts prior to trial. The parliament's repeal of these reform measures, which had been intended to protect those under criminal investigation, is especially alarming given persistent reports of widespread torture and other ill-treatment of detainees to secure confessions, and other blatant procedural irregularities,

Paragraph 18 of the state report and paragraph 116 of the CAT recommendations and comments from 21/11/96 are express great enthusiasm over the creation of the office of Public Defender / Ombudsman of Georgia. Unfortunately, the Georgian Human Rights organizations cannot be that enthusiast about this development. The first ombudsman was a former policeman - General, who took office in November 1997, but resigned in August 1999 to run for Parliament. During his tenure, the ombudsman focused his attention on social and economic rights and was not active in defending individuals from abuse by law enforcement agencies. As of February 2000, no replacement had been named, which speaks for itself regarding the "serious commitment" of the government of Georgia to Human Rights protection issues. Another proof of lack of commitment to Human Rights issues is the state budget. The office of the Ombudsman gets less financing than public organization "Writers Union" and its newspaper. The second Ombudsman appointed in February 2000 also stated that she would prioritize social and economic rights in her work.

Paragraph 19 of the state report outlines the role-played by non-governmental organizations and mass media in discussing facts of torture and ill treatment. However, to our great disappointment the authors of the report neither consulted with those civil society payers while creating the report, nor listed them in paragraph 3 as a source of information upon which the state report relies.

Almost each sentence of paragraph 21 of the state report deserves careful review (see paragraphs 12 – 13 of this report). When the authors of the report state that it is difficult to implement proper monitoring and to prove facts of torture, they are simply ignoring possibilities created by the Georgian laws. Namely, articles 18 and 19 of the Law on Ombudsman, which authorizes her/him to "examine the conditions of human rights protection in places of detention, pre-trial detention and other places of confinement. He/she personally meets and talks with the detained, convicted and persons who are under pre-trial detention; checks the documentation, concerning legality of their stay in the aforementioned facilities."¹⁰ Proper use of this right allows ample opportunity for monitoring and protection. Moreover, the same law on Ombudsmen in Article 27 says "the deputy of public defender and the staff members of the office carry out the authorities provided in the articles 18, 19 or part of them by the specially authorized persons of the Public Defender." We regret that the

during criminal investigations in Georgia". Human Rights Watch report, "Georgia: Backtracking on reform: Amendments undermine access to Justice", October 2000, Vol 12, No: 11 (D)

¹⁰ Under Article 18 of the law on Public Defender:

While conducting the inspection, the Public Defender of Georgia is authorized:

- a) to enter any state agency or the body of local self-government, enterprise, organization and institution, as well as military units and place of detention and pre-trial detention and other places of confinement without any hindrance;
- b) to require and receive from governmental and local self-governmental bodies, from the state and private enterprises, organizations and institutions, as well as from officials and legal entities any reference, document and other materials, that are necessary for the inspection;
- c) to receive explanations on issues that should be investigated, from any official;
- d) to conduct expert examination, prepare conclusions through the state and private institutions; to invite specialists in order to conduct expert examinations and consultative work.
- e) get acquainted with the criminal, civil and administrative cases, decisions on which have entered into legal force.

government cannot state a single case in which they appointed trustees and made use of this substantial power of the ombudsman.

In addition, we cannot agree with the state report that people are hesitant to report incidents of torture and ill treatment. Perhaps they are reluctant to report to the office of Human Rights of the National Security Council or to the Ombudsman, but they are not reluctant to report to the Parliamentary Committee for Human Rights and to Human Rights NGOs. Maybe they rarely approach state institutions because of the mistrust and shattered hopes they have due to the previous applications. The factual material attached to this report (collected by NGOs) and the compilation of news clips represent only a small portion of the applications and appeals we receive constantly from the people.

The 1996 Concluding observations of CAT identified the definition of “Torture” as one of the problems of the Georgian Criminal Code. The Criminal Code adopted in July 1999 separates provisions of Article 1 of the Convention into two separate articles. Unfortunately, Article 126 of the Criminal Code entitled “Torture” deals with completely different circumstances than those of the Convention. It says that torture is “systematic beating or other type of violence, which resulted in physical or mental suffering.” The problem with this Article is clear. It does not include language on torture for the purposes specified in the Convention; it does not give grounds for discrimination and so on.

The Georgian Criminal Code contains another Article 335 entitled “Obtaining of Information or confession by force.” This Article is more related to the purposes of Article 1 of the Convention though its language is still rather mild. It speaks about taking confessions or statements by prosecutors, investigators or inquirers with the use of force or by other illegal means.

The main problem with the Georgian Criminal Code is its insufficient definition of “torture” and the fact that it splits the principles and main provisions of Article 1 of the Convention into two distinct articles. Yet, even these two articles do not sufficiently express all the requirements of Article 1. Due to those complications, you will rarely find a person convicted for the use of torture or other degrading treatment¹¹ while acting in his official capacity. According to the 1999 US State Department Report “no policemen were arrested or disciplined for physical abuse during the year.”

The reason for most of the violence and misuse of power by law enforcement officials is not only poor legislation. It is mainly due to negative practices and the absence of well-defined frame agenda for fighting torture.

As regards citation, over non-acceptance of illegally obtained evidences, from Article 7 in the Criminal Procedure Code (state report paragraphs 27, 119 and 120) we recall that the US state department country report stated “judges generally are reluctant to exclude evidence obtained illegally over the objection of the Procuracy.” This is a situation we have encountered when reading and researching volumes and volumes of cases. The state report paragraph 29 does not deny either this situation.

¹¹ or, for obtaining forced confessions.

The 1998 and 2000 reports of the public defender of Georgia outline the similar problems as well.

An example of this problem is the case of Revaz Bukhnikashvili. He was detained on September 26, 1999. The police officers from the Ministry of Internal Affairs put drugs in his pocket. The protocol was drawn up later, a search was never conducted, and all the procedural norms were violated. After the expiration of the 72-hour term of pre-trial detention, the judge S.Chkheidze issued an order of arrest against him, never challenging the validity of his detention and never asking for details and verification of the collected evidences. 1999 Amnesty International and Human Rights Watch reports have cited this case. The attorney of Mr.Bukhnikashvili, Mrs. Eka Beselia, referred case to NGOs.

Before addressing substantial issues, we will refer to the technical problems in paragraphs 28, 48 – 54, and 83-84 of the state report. We group them together because they refer to similar issues. Article 78 mentioned in the report does not have a paragraph 8 at all. Article 80 does not deal with the obligation of appointing a lawyer before pressing charges. It simply speaks of appointing a lawyer to the poor. We will come back to the problems of this Article in Paragraph 18 of the present report. Again, paragraph 5 of Article 84 speaks about the absence of a lawyer while conduct of investigative actions, and does not deal with the possibility of unlimited visits by lawyer as mentioned in the state report. However, this problem is addressed by the Code and Article 73.1d limits those meetings to “not more than one hour per day.” The same applies to the convicted (Article 76.2). Again, Article 84 and the possibility of challenging decisions and actions of the investigative officials will be dealt in paragraph 19 of the present report, as an example of a breach of rights.

Article 18 of the Constitution of Georgia, as it is cited in a paragraph 83 of the state report, is strict enough stating that every detained/arrested person has the immediate right to access a lawyer of his/her own choice. According to the Constitution, a detainee is presumed innocent and has the right to a public hearing. A detainee has the right to demand immediate access to a lawyer and to refuse to make a statement in the absence of counsel. The detaining officer must inform the detainee of his rights and must notify the detainee's family of his location as soon as possible. However, we do not agree with the introductory statement of paragraph 84 of the state report, which states that the Criminal Procedure Code is in full conformity with the Constitution of Georgia on this issue. The aforementioned rights mark a significant departure from the Code and legal practice. The Criminal Procedure Code offers its own interpretations on these fundamental rights contained in the constitution and of most of the Human Rights treaties to which Georgia is party.

The term detained / arrested has been “slightly” changed in the Criminal Procedure Code of Georgia to the term “suspect.” This is a fundamental and crucial change, and we will explain the problem in depth. Honorable committee members can even read it in paragraph 78 of the state report. However, the government fails to explain the difference between “suspect” and “detained” in the Georgian Criminal procedure code.

The Code never speaks of the rights of detained/arrested persons. When speaking of rights and obligations, it uses the language of “suspect” and “accused.”

Under the Article 72.3 recognition of a person as a “suspect” is made by the police or other investigative body **within 12 hours**; that **only a suspect is to be informed about his/her right to access lawyer, his/her right to remain silent**, and other standard rights, usually activated during detention/arrest. Paragraph 4 of the same Article states that a “suspect” is to be interviewed not later than within 24 hours of his arrival at the place of final detention/arrest. Why is this important? Because later Article 73.1.f states that, only after the first interview does the suspect have the right to request a free medical examination. In a similar spirit, Article 84.3.j gives a lawyer the right to access his/her own client only during or after the first interview by the police or other investigative bodies.

All these articles are addressed in paragraph 49 of the state report. However, probably due to the fact that mainly non-lawyers have prepared the report, it fails to link the different articles to one another and to identify the real problems any person in Georgia might experience if confronted by the police and other investigative bodies.

In colloquial language, this means that at least within the first 36 hours the police has the right to deny the defendant a lawyer, doctor and expert access. The police actively used this opportunity in 1999 while NGO run pre-trial detention-monitoring the project.

An example of denial of access to a lawyer is the case of Dato Natelashvili cited by Amnesty International, Human Rights Watch and most of the national Human Rights groups. The case is also illustrative of this everyday, routine work of our police. The case goes as follows:

In a written complaint to the Tbilisi procurator and the General Procurator, Dato Natelashvili stated that he was beaten at the temporary detention facility of Tbilisi Main City Police Department over a period of two days after being transferred there from the Interior Ministry's investigation-isolation prison No 1. (Ortachala prison) on 19 November. He also alleged that he had been subjected to electric shock treatment in order to force him to confess to a murder.

Dato Natelashvili was detained on 26 June 1999, charged with theft and transferred from preliminary detention to Ortachala prison. On 19 November, however, he was transferred back to the temporary detention facility. His family was reportedly not informed of the transfer at the time, and only discovered the move when Natelashvili's brother attempted to deliver a food parcel to him at Ortachala prison on 21 November. The next day Natelashvili's brother and his two lawyers tried to visit him at the Tbilisi Main City Police Department, but were denied access. The lawyers reported that procuracy officials told them they were no longer able to represent their client as they had been designated as witnesses in the case. Dato Natelashvili's written complaint (dated 30 November) reportedly stated that on the day of his transfer, 19 November, four law enforcement officials who had accompanied him from Ortachala to the Tbilisi Main City Police Department beat him. They beat him the next day also, and used electric shock treatment to try to force him to confess to the murder of a man named Sheikhadinov. At the time of writing his complaint, Natelashvili said that he still suffered from pain in the right hand side of his body, and he requested a forensic medical examination. A third lawyer, allowed

access to him only on 25 November, reported that her client, who described to her how he was severely beaten, was unable to sit upright without severe pain.

We return to the issue of the Public defender and her responsibility to actively protect Human Rights in the country. Many Human Rights groups have been requested that she challenge her challenging the constitutionality of many articles of the Criminal procedure code. Although there is no formal privilege given by law to the ombudsman, giving her hearings priority at the Constitutional Court it is not forbidden either. The list of cases brought to the Constitutional Court is so long that lawyers raising issues must wait a couple of years to receive a hearing. Meanwhile, because the Constitutional Court considers ombudsman's submissions on a priority basis, a real possibility exists to have cases considered more quickly. Unfortunately, we have never succeeded in convincing the Public Defender of Georgia to bring cases that challenge the constitutionality of parts of the code.

Paragraph 28 of the state report speaks about the increased powers of lawyers. If one reads the Criminal Procedural Code, one sees that in fact lawyers are not powerful at all. Unfortunately, these articles comprise only a partial list of problems. In considering the rights of lawyers, one needs to address once again the fact that suspects have the right to meet their lawyers for only one hour daily.

Investigative offices have the right to change a lawyer if he/she fails to attend any of the investigative actions, regardless of reasons. According to Article 83.5 prosecutors have the right to appoint temporary defenders for that single purpose, and the prosecutors include their signatures as a justification of the legality of action.

In cases where defendants were unable to afford legal counsel, the Office of Legal Assistance, a part of the state-controlled Bar Association, assigned attorneys to a case upon the recommendation of the Procurator's Office. In certain cases, defendants were pressured to accept a state-appointed attorney. The Procuracy not only had control over state-appointed lawyers. It also determined whether a defendant's request to change lawyers was granted. These problems will once again be described in depth in the following paragraphs.

According to Article 84.3.m, lawyers have the right to get familiar with the materials of an investigation only after the completion of the investigation. This means that defense lawyer has no right to read the materials and facts of the case during the investigation, while the prosecutor obviously has access to all materials. It creates a situation of inequality of arms. Thus, the state's statement of paragraph 121 about equality of parties is not a reality.

Another obstacle Lawyers face when attempting to fully implement their defense is to get permission from investigator to conduct basic procedural actions. The lawyer, having no access to the investigation materials, has to beg for permission to contact experts, get doctors to the defendants, etc. Defense lawyers even need permission to visit defendants and often have difficulty obtaining permission from the investigators (usually difficulties are due to the absence of an investigator from his primary place of work, etc.).

The Criminal Procedure Code goes even further. Article 80 speaks of cases and possibility of appointing a lawyer for the poor. The Article is extremely cynical. Combined analysis of Article 73.1.c and Article 80.1 and 2 make the following conclusion. Article 73.1.c. says that every suspect has the right “to use services of a lawyer (not more than three) with his agreement, for charge or free of charge only in cases prescribed under Article 80.” Article 80.1 clearly says, “lawyers free of charge are appointed with the decision of investigative body“ and 80.2 says that “appointed lawyer is to be reimbursed from the state budget”. Again, this means that the poor are left without any defense. Nowadays the state is unable to provide for the legal costs of the poor [it is not included in the law on the state budget] and the law does not allow NGOs and Human Rights groups to provide the poor with free legal services. Later in paragraph 27, we will provide the example of concrete case, in which the state prohibited the Georgian Young Lawyers’ Association from providing lawyers to detained persons.

Before the amendments of May / June 1999 were enacted, a defendant or his/her representative / lawyer could complain directly to the court prior to a trial involving abusive actions committed by the police or the Procuracy during a criminal investigation and could request a forensic medical examination. Paragraphs 28 and 82 of the state report deal with this right. The authors of the report cite Article 234 to show that everyone has the right to challenge decisions in court under the rules and procedures set by the Criminal procedure code; however, they never mention what those rules and sets of regulations are. Now, under Article 242 a defendant can only file a complaint of abusive investigation with the Procuracy, and they do not have the right to challenge the decisions before courts. Accountability tends to exist only in extreme cases, such as those involving death. This means that the problems raised in the last sentence of paragraph 18 are that much more dramatic. Because any simple request from a lawyer, declined by the investigator stays without any challenge. As mentioned, it is possible to approach the superior prosecutor. In the best case scenario the prosecutor, within the terms established by law, will give the lawyer permission to set up forensic medical examination for her/his client. The legally defined term is one month. After a month, it is possible that a doctor can visit a beaten client. Alternatively, as is commonly the case, the superior prosecutor simply supports the decision made by his own inferior.

The major problem is that subsequent to the above-mentioned amendments to the Criminal Procedure Code the right of a witness to a lawyer was abolished. If in the above stated articles and provisions we have been arguing that the rights of lawyers, have diminished in the case of witnesses they simply do not have a right to lawyer.

Paragraph 30 of the state report outlines innovations in the Criminal Procedural Code regarding alternative methods of imprisonment during pre-trial investigations. We fully agree with the evaluation of the situation by the authors of the state report. To how that this situation is even worse we cite the report of the Chairman of the Supreme Court to the President of Georgia on the use of non-custodial methods where he negatively evaluated even those few examples of the use of non-custodial measures. The report is available in the GYLA library and anyone who is interested can access it. The report concludes with following official statistical data gathered by the Supreme Court overran 8-month period in 2000.

Paragraph 21 of the state report states that NGOs' access to places of detention and arrest has increased over the last two years. This is simply not the case. It was just the opposite in 1999 and 2000. The state of Georgia ignored its constitutional and international Human Rights obligations and did not allow Human Rights groups to access places of detention at the police stations.

The project was terminated a year and a half ago. We never received support from the public defender / ombudsman to continue the project. The police have continued to deny access to detention places on the basis of the above-mentioned provisions and articles.

Paragraph 40 of the state report recognizes the problem with the definitions of torture and ill treatment. The report promises that after the Criminal Code enter into force, the state will make changes to the definition of "torture." The Code has been in effect for approximately two years now and there have been no changes made to the article.

The problem with paragraph 40 of the state report is not only its false promise. Here, in explaining the reasons for inaccurate legal definitions and later in paragraph 44, the government of Georgia states that: "It is explained by the fact that for the reporting period there were no cases of torture identified in their pure nature (if they have ever occurred)." The government is much too defensive. Later in paragraph 41, the government recognizes the existence of cases against policemen for beating and the use of physical force against prisoners. However, its conclusion is that none of those acts have been committed with the aim of forcefully obtaining confessions. The question arises than of why a policeman would beat a detainee in a cell, unless a policeman is insane or needs to extract a confession from the detainee in order to justify his arrest?

The US state department clearly states in its country report for Georgia that "Police and security forces continued to torture, beat, and otherwise abuse prisoners and detainees, force confessions, and fabricate or plant evidence. Several deaths in custody were blamed on security force abuse or prison conditions." Year after year, Amnesty International reports, "Allegations of torture and ill-treatment by law enforcement officials continued,"⁶ citing numerous instances. Mr. Alvaro Gil-Robles⁷, reports "many police officers carry out arbitrary searches, extort money and commit acts of brutality and, particularly after arrest, acts of torture - last year nine deaths of persons who had just been arrested were recorded, especially in Isolator 5 in Tbilisi, but also in Kutaisi."⁸ Human Rights Watch continues to express its concerns "Georgia has an abysmal record of torture and other ill-treatment in pre-trial detention and of unfair trials. Over the past several years, Georgian nongovernmental organizations, Amnesty International, Human Rights Watch, and other organizations have documented numerous instances of police brutality, torture, and deaths in custody in Georgia. These reports include instances in which the government's political opponents have been subject to torture and

⁶ Amnesty International, Concerns in Europe, July – December 2000 / Georgia

⁷ Mr. Alvaro Gil-Robles is a Commissioner for Human Rights to the Committee of Ministers and the parliamentary Assembly of the Council of Europe

⁸ Report of Mr. Alvaro Gil-Robles, Commissioner for Human Rights to the Committee of Ministers and Parliamentary Assembly of the Council of Europe, The Visit to Georgia, July 13, 2000

deprived of fair trials.”⁹ Numerous hearings have been conducted by the parliamentary committee for Human Rights challenging these acts of torture and killings at the detention places. Finally, all the Human Rights groups in Georgia have expressed and continue to express their concerns about the increase in brutality and torture cases. In the light of all the above, the government’s denial sounds like a great big lie, designed to support law enforcement officials in their actions. Factual material and news clips on the brutality and torture are attached to the report.

Here we will bring to light a few examples of how our police deal with the victims of torture and why the government states that there are no cases of torture reported. It is a general rule that deaths do not talk and report.

In 1999, unofficial sources contested the cause of death of two men reported by the police to have committed suicide in custody. On 4 December, police reported that a young man named Zaza Tsotsolashvili fell to his death after throwing himself from the sixth floor window of the Ministry of Internal Affairs building in Tbilisi. His two brothers named as Aleksandr and Kakha Tsotsolashvili were being questioned in the next room. Zaza Tsotsolashvili was taken to hospital, but died shortly afterwards the same day. Amnesty International understands that the Ministry of Internal Affairs has initiated an investigation, and that Criminal Procedure has also been instituted by the Krtsanisi District Procurator's Office in Tbilisi. Four officials from the Organized Crime Department, said to have accompanied Zaza Tsotsolashvili to the investigator's office for questioning, have been suspended pending the investigation.

Elene Tevdoradze, Chairperson of the parliamentary Human Rights Committee who visited the room from which Zaza Tsotsolashvili fell, is quoted on 14 December (by the Black Sea Press) as saying that she doubted that he threw himself from the window. She said to have based these remarks on her observations that the window was relatively high in the room and closed for the winter. In Addition, Zaza Tsotsolashvili was not alone in the room at the time but accompanied by four police officers that would have been expected to prevent his efforts to climb up onto the high, large and open the window.

Concerns were expressed by Amnesty International and Human Rights Watch about allegations that one of Zaza Tsotsolashvili's brothers was pressured by the police into refusing an independent forensic medical examination of the body. (The brother is said to have visited the police and been held by them until 3am the following morning until he agreed not to seek such an examination.)

In a similar case earlier in 1999, a 32-year-old man from Lanchkhuti named Ivane Kolbaya fell to his death on 22 March from the fifth floor window of the Tbilisi Central Police Department while being questioned by police officers about alleged thefts. His death was said to have been regarded officially by police as suicide, although the head of the Georgian forensic medical center, speaking four days after the events to the non-governmental organizations, reportedly said that forensic medical examiners did not have the capacity to determine conclusively whether the trauma marks they found on Ivane Kolbaya's body were the result of the fall or were

⁹ Human Rights Watch report, “Georgia: Backtracking on reform: Amendments undermine access to Justice”, October 2000, Vol. 12, No: 11 (D)

sustained prior to his death. In an open letter to President Eduard Shevardnadze the following month, Human Rights Watch reported the cases of four other people (including two women) said to have died in a similar manner since 1995.

The four other cases mentioned, all residents of Tbilisi, were Gulchora Dursunova, said to have fallen to her death from the eighth floor window of the Ministry of Internal Affairs headquarters on 23 June 1998; Eka Tavartkiladze, who fell to her death from the sixth floor apartment window of a police officer on August 15, 1997 while being questioned about theft of an officer's property (the forensic medical examiners report, dated December 3, 1997, included pages of detailed description of the injuries she sustained, and stated that it was unlikely that she sustained all these injuries as a result of the fall, but added that it was not possible to determine with complete certainty if she sustained them before her death. The judge cited this report in his decision to acquit three police officers brought to trial in connection with the case); Akaki Iobashvili, who was said by police to have jumped to his death from the sixth floor of the Tbilisi Central Police Department in the early hours of 1 August 1997; and Zaal Ramishvili, who police claim jumped to his death from the sixth floor of the Ministry of Internal Affairs headquarters on 19 July 1995 (his father who visited him several days before his death reported that his son had been so badly beaten that he was unable to walk).

Paragraphs 44 and 45 of the state report emphasize the use of allegations of torture by suspects as a means for prolonging trials or escaping punishment. The government also states that the medical forensic experts appointed by the courts have proved none of the torture allegations.

Again, the appointment of experts by the courts is symptomatic of serious problems in the Georgian legislation. We agree with the government of Georgia that in most of the cases it is difficult to prove the facts of torture and ill treatment. The question is: How can you prove something that has not been seen by anybody and has not been examined by an independent medical expert? No one can. Paragraph 69 of the state report scenically states that the Criminal Procedure Code expanded upon the rights of experts. In reality, the Criminal Procedure Code of Georgia (articles 356 and 367) explicitly says that only investigative officials have the right to appoint expertise. Our opponents might refer to Article 96 of the Code that defines the status of Experts and says, "Investigative officials and a court have the right to appoint an expert." However, later in the same article, the Code cites Article 356 and 367 as compulsory rules regulating the appointment of expertise. Here the Code contradicts to itself, but law enforcement officials are able to use it for their own purposes. As reported by Amnesty international "Officials obstruct access to an independent forensic medical experts seeking to examine prisoners who had made allegations of torture."¹⁰

In spite of all above-mentioned problems with the forensic expertise, the Criminal Procedural Code still allows for the possibility of Alternative expertise at the initiative and expense of the parties. However, the Code defines expert as one who either working at the Expertise Bureau or is specially licensed (Article 96.2). The rules for licensing and establishing the Bureaus have been prescribed by Decree of the President of Georgia # 564 of October 1, 1999. The decree explicitly states that only

¹⁰ Amnesty International, Concerns in Europe, July – December 2000 / Georgia

those having a 100 per cent state share have the right to apply for a license. This means that the vision of establishing an independent alternative group of experts has faded once again.

Paragraphs 72-74 of the state report speak about the supervisory power of the Procuracy of Georgia over the misconduct of law enforcement officials and over the Human Rights protection standard in the country. Surprisingly enough the General Prosecutor of Georgia (he resigned recently) denied the “allegation that arbitrary conduct, corruption and inertia on the part of the prosecuting authorities led to impunity for state officials who misused their authority.” He has made it clear to Mr. Alvaro Gil-Robles “at the outset that there were other authorities in charge of investigations and prosecutions which were outside his control, namely those of the Ministry of the Interior and the Ministry of State Security.”¹¹

When considering Convention Article 11 and depicting the Procuracy as a “watchdog” over misconduct, abuse of power, etc, the authors of the state report neglected to report on the extensive rights that prosecutors have in this country. We disagree completely with the optimistic believe expressed by the government of Georgia in Paragraphs 43, 58 and 95 of the state report where in they claim that prosecutors are requested by law to investigate all cases brought before the Prosecutor General’s office by individuals, NGOs, media and so on. Unfortunately, we do not have the statistics on the number of cases brought before the prosecutor generals’ office that do not receive any consideration, because the Prosecutor General’s office has failed to provide us with such. However, careful review of the Criminal Procedure Code is sufficient to give a clear picture of the situation.

Under various provisions of the Criminal procedure code, as well as under the provisions of the Law on Procuracy everybody has the right to apply to the Prosecutor’s office and initiate an investigation. Moreover prosecutors have the duty to open a case without any formal submission if, for some reason (newspaper articles, TV broadcast, information from NGOs), they have learned of grave violations of Human Rights, namely of Torture. This is all true. However, what does the Code say about opening or not opening a case? If sufficient evidence has not been obtained, prosecutors obviously have the right to close the case as stated in a paragraph 98 of the state report. If the prosecutor does not react, does not respond to your submission, what rights do you have? Do you have a right to challenge the decision in court? Answer is NO. Article 242.3 speaks of the term during which you have the right to go to court and it refers to Article 239. Article 239 following the famous May 1999 changes, says “the terms for consideration of complaints are to be defined by this code”. No other Article deals with this issue. This means that you have a right to challenge a court decision but the Code never says when this right goes into effect.

The Criminal Procedural Code raises serious problems in light of Articles 12 and 14 of the Convention . If someone is acquitted by the court and claims moral and material compensation of the damage caused by torture, degrading treatment, length of illegal pre-trial detention and so on, he has the right to go to court and to claim full

¹¹ Report of Mr. Alvaro Gil-Robles, Commissioner for Human Rights to the Committee of Ministers and Parliamentary Assembly of the Council of Europe, The Visit to Georgia, July 13, 2000

rehabilitation and compensation. Here the authors of the state report are absolutely correct. However, they forgot to include the substantial exceptions to that right. Under Article 596, the prosecutor has the right to re-open a case on the basis of newly – found evidence and newly discovered circumstances. The person cannot be detained as a suspect on the same charges of which the court has already acquitted him, but he can continue to be called for interviews as a witness to the case. In addition, here numbers of legislative gaps created especially for the law enforcement officials come to effect.

First of all, according to the above cited May 1999 amendments witnesses are denied the right to a lawyer. This is a vicious violation of the major constitutional guarantee, that ensures everyone immediate access to a lawyer of his choice. In opposition to the spirit of Article 13 which requests that extra measures be taken by the government to protect witnesses.

Secondly, witnesses are bound by the Criminal Code to give testimony on all the facts of which they are aware. The provision of “not making incriminating statements against oneself” does not apply in this case. If witnesses cancel facts or lie they will be prosecuted later on the basis of Article 370 of the Criminal Code of Georgia.

Thirdly, the Code does not prescribe a term limit to the prosecutor’s investigation of the newly found evidences and circumstances or to the time in which he can file charges against the defendant. For example, Mr. Shapatava was imprisoned illegally for 11 months. In August 1999, the court acquitted him fully. The decision stated clearly that the investigation had used all possible means to hide only evidence or testimony that would have proven his innocence. The acquitted former defendant brought a civil suit for rehabilitation and moral compensation against the prosecution. Immediately prosecutors re-opened the case on the basis of newly formed evidences, which automatically aborted the civil case. It has been a year and half since the prosecutors kept silent about the investigation and since the court consequently denies Mr. Shapatava hearings on civil case. This case very well known among Georgians examples misuse of power by the prosecutor’s office.

We have substantial reservations with regard to the state report paragraphs 110 – 118, which address compliance with the provisions of Convention, Article 14. Criminal Procedural Code raises serious problems concerning the provisions of Convention, Article 14. First of all, it needs to be emphasized that there is no specific article-granting victims of torture the right to compensation. The law has various rules and regulations set up dealing with compensation and rehabilitation, but they are of general applicability. When in paragraph 117 the government states that rehabilitation claims can be brought to court even before the end of investigation and during pre-trial detention, they fail to report the law in its entirety. Article 219 of the Criminal Procedure Code, establishing rules regulating rehabilitation claims, clearly prescribes: “The basis for rehabilitation is a decision of acquittal” (Article 219.2). Once again, two articles of the Code contradict one another. That is one can open the case during the investigation and pre-trial detention, but the decision will be only rendered upon conclusion of the case, and in case of an acquittal.

Another problem with the rehabilitation and compensation decisions is the lack of terms governing the execution date of the courts decisions. This is much bigger and more general problem of the Georgian legal system and one of the main impediments in a way of the proper administration of justice.

One of the concerns of the Georgian NGOs is Georgia's non-compliance with the requirements of Article 11 of the Convention specifically with regard to the "systematic review {of the} arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture".

All visitors to Georgian prisons have expressed their deepest concerns about the conditions in which prisoners are kept there. Probably, one of most illustrative is the report from Mr. Alvaro Gil-Robles from July 13, 2000. He states: "after visiting Prison Hospital No.5 in Tbilisi, I made unannounced visits to two prisons (for remand prisoners - 1,748 people, in Tbilisi, and prisoners serving long sentences - 624 people in Ortachala Prison "Colony"), and in practice, without wishing to list them all, I saw situations and heard complaints which are manifestly incompatible with the Georgian authorities' obligation to respect prisoners' basic rights: many remand prisoners held for several months had never seen "their" lawyer; many remand prisoners had been in detention for more than nine months because their cases had been postponed by the courts on the grounds that they had failed to appear at the hearing (lack of transport from the prison to the courthouse); dilapidated buildings and cells had not been refurbished for more than 60 years, had no electricity or running water, but were invariably overcrowded - there was one cell of barely 70 m² for 46 prisoners serving long sentences in the "colony", and another measuring about 18 m² for 11 minors on remand who were compelled to sleep two by two in five bunks 70 or 80 centimeters wide (the Deputy Minister undertook to remedy this); yet just near it, in the same wing for minors on remand, a perfectly adequate cell was occupied by four adult remand prisoners from the police force, and there was even a large cell for two adults on remand for financial crimes, who were well fed by their families and cheerfully expecting to be acquitted shortly; the food was apparently appalling, so that prisoners depended for survival on support from their families and friends (though even at a time of economic recession, the Prison Administration is still allocated one if not two Lari per day for each prisoner!); there was no medical assistance or free medication and basic sanitary conditions were lacking; and there was no opportunity for vocational training, particularly in the form of workshops for some kind of manual work or job."

There is almost no difference in this negative evaluation of prison conditions from those reported in Human Rights Watch, Amnesty International and US State Department reports.

The measures for human rights protection are very poor in the penitentiary system. The living conditions in the penitentiary are unbearable. Everything is a problem for the convicted, whether it is a lack of electricity (in some facilities, even lack of water) or the poor hygiene and sanitary conditions. The existing situation is aggravated by systematic and widespread corruption. The administrators of the penitentiaries find various ways to make money at the expense of the convicted persons: for giving the convicted an appointment, the duration of which exceeds the

limits that is envisaged by law; for early conditional discharge; for receiving a positive reference; for moving the convicted into the penitentiary hospital, where the conditions are much better than they are in penitentiaries.

We encounter specific problems in pre-trial detention facilities (police stations), where the non-transparency of the system creates favorable conditions for torturing detainees in order to extract a confession. Violations of detainees' rights are common everyday. As a result, in the best-case scenario we have unfair investigations and verdicts, and in the worst - dead or disabled detainees.

We give due credit to the government of Georgia because we cannot deny that positive changes have been made in the prison administration. After transferring the penitentiary from the Ministry of Internal Affairs to the Ministry of Justice, government set up an NGO monitoring group to monitor prison conditions and prisoners' rights. The group is not required to give preliminary notification or get permission from the prisons administration. In addition, appointment of a prominent Human Rights defender as deputy head of the penitentiary is seen as a progressive step forward. However, the country is far from meeting international standards and provisions of Article 136 of the Criminal Procedure Code cited by the government in paragraphs 123 and 124 of the state report.

Paragraphs 70 – 71 deal with the implementation of Article 10 of the Convention. Paragraph 70 states that international Conventions and Human Rights treaties are required texts for study at the Police and Security Academies of Georgia, by the decree of the president. The question is what language are these treaties introduced for study? When and by whom are they taught? We were trying to locate the relevant subjects in the curricula of those academic institutions but were unable to. We can claim for sure, that Human Rights law is not taught at the law department of the State University to ordinary law students. One of the arguments of the department is non-existence of textbooks, reading materials and qualified law professors. Does it not sound strange that the government claims it teaches Human Rights in a police academy? Unfortunately, we must state that the government's assertion is not true. Human Rights are not a part of the curricula at any of these institutions.

After transferring penitentiaries over to the Ministry of Justice, there have been some attempts to make the system transparent for society and NGOs. The same cannot be said about the pre-trial detention facilities. Such an attempt was not successful in the police stations (city lawyer). The non-governmental organization "Former Political Prisoners for Human Rights" had a the project, which envisaged conducting seminars for the police station staff, on the problematic issues of human rights protection. After conducting the first seminar, the project faced serious obstacles from the Minister of Internal Affairs. He was opposed to the project, as during the seminar the policemen were told, if they receive orders from their superiors that were illegal, they were released from their responsibility to fulfill them. When the Minister learned the above-mentioned, the project was closed down for several months. We give credit to Mrs. Rusudan Beridze for her successful efforts at making the project continue. Only after Mrs. Beridze's serious involvement, was it possible to receive the Minister's consent, and only on the condition, that Rusudan Beridze would attend all the seminars (She promised to the minister, that the seminar would not rouse "anti-state ideas").

PART III:

**INTERACTION OF INTERNATIONAL MECHANISMS WITH
NATIONAL NGOs**

The Work of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and its Complementarity with National NGOs

By Petya Nestorova, Administrator Secretariat of the CPT Council of Europe, Strasbourg

1. Main characteristics of the monitoring system set up by the ECPT

The prohibition of torture and inhuman or degrading treatment or punishment is an international standard found both in national law and in a number of global and regional instruments set up since the Second World War. Nevertheless, the continuous need for more effective measures to strengthen the protection of persons deprived of their liberty has become apparent over time. The 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the Convention") was elaborated with the express intention of complementing existing human rights mechanisms within the Council of Europe. In particular, it supplements the system of judicial protection against ill-treatment afforded by article 3 of the European Convention on Human Rights:

"... this system, which is based on complaints from individuals or from States claiming that human rights violations have taken place, could usefully be supplemented by non-judicial machinery of a preventive character, whose task would be to examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.

For these reasons the present Convention establishes a Committee which may visit any place within the jurisdiction of the Parties where persons are deprived of their liberty by a public authority."¹²

The Convention setting up the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") is said to represent a "major innovation" in the area of peacetime human rights protection, a "unique" international human rights instrument. What constitutes its originality?

First, the system set up by the Convention is essentially **preventive**: it looks to the future. On the basis of information collected during visits, recommendations designed to improve the protection of persons deprived of their liberty are addressed to the State concerned. The CPT is thus first and foremost a mechanism designed to prevent ill-treatment from occurring. Nevertheless, in special cases, the Committee may

¹² Explanatory Report to the Convention, paragraphs 13 and 14.

intervene after the event: for example, in order to request information or explanations as regards a case concerning which it has received reports.¹³

Second, the CPT undertakes **verification at first hand**: the information on the basis of which its recommendations are made is collected through visits (often unexpected) to places where persons are deprived of their liberty. In this respect, the mechanism of the CPT is different from that of the UN Committee against Torture (CAT), which considers reports periodically submitted by States and makes general comments on them, and may only in exceptional cases carry out a visit to the territory of a State.

Third, the Convention creates a completely **new obligation** on the part of States, which become Parties to it: the authorisation for an international body of experts to visit unconditionally any place where a person may be deprived of his/her liberty by a public authority. The only exception to the obligation to permit visits by the CPT is contained in Article 9 of the Convention.³ In case of representations being made against a visit, the Committee and the State concerned are expected to enter into consultations and seek agreement on ways in which the CPT will be able to perform its functions speedily and effectively. It should be noted that such representations have been extremely rare and have not hampered significantly the CPT's work.

Fourth, when carrying out visits, the CPT enjoys **extensive powers** under the Convention: access to the territory of the State concerned and the right to travel without restriction; unlimited access to any place where people are deprived of their liberty, including the right to move inside such places without restriction; access to full information on places where people deprived of their liberty are being held, as well as to other information available to the State which is necessary for the Committee to carry out its task. The Committee is also entitled to interview in private persons deprived of their liberty and to communicate freely with anyone whom it believes can supply relevant information.

Fifth, the CPT is also unique in the sense that in the Convention establishing it, there are **no substantive provisions** to guide it when examining the treatment of persons deprived of their liberty. The Convention does not even contain a definition of "torture", unlike the UN Convention against Torture (UNCAT). In carrying out its

¹³ See Rule 30 of the CPT's Rules of Procedure.

³ Article 9 provides that "in exceptional circumstance, the competent authorities of the Party concerned may make representations to the CPT against a visit at the time or to the particular place proposed by the Committee. Such representations may be made only on the grounds of national defence, public safety, serious disorder in places where persons are deprived of their liberty, the medical condition of a person or that an urgent interrogation relating to a serious crime is in progress".

functions, the CPT has the right to avail itself of legal standards contained in various relevant human rights instruments. At the same time, it is not bound by the case law of judicial or quasi-judicial bodies acting in the same field, although it may use that as a point of departure or reference when assessing the treatment of persons deprived of their liberty in individual countries. Over the years, the CPT has developed a corpus of standards – promulgated in both its visit reports and annual general reports – for the treatment of persons deprived of their liberty, which offer national authorities general guidelines.

The CPT deals with what remains a sensitive and protected area of the functioning of a State; understandably, it could be envisaged that certain obstructions might be put in its way. In order for the Committee to be able to fulfil its task, two inter-related principles were incorporated in the Convention: **co-operation** and **confidentiality**.

When ratifying the Convention, States agree to the general duty to co-operate with the CPT in its work. It is this notion of co-operation which lies at the heart of any success that the Committee can expect to achieve. The CPT has given a broad interpretation to the concept of co-operation, and works on the basis that it will be available at a variety of times and at a variety of levels.

The corollary of co-operation is confidentiality. Visits and subsequent reports to States are confidential, as is any information obtained during visits, discussions during meetings, and recommendations made. The CPT strictly respects the confidentiality principle, expecting States to strive to implement its recommendations without it needing to pressurise them through public condemnation. However, the Convention provides a possibility for States to request publication of the CPT's report and their own responses; indeed, the majority of the reports drawn up by the Committee after visits have already been made public (89 public reports by September 2002).

2. The CPT at work

The CPT has been active for over 12 years. During that time, it has carried out over 140 visits to the 44 States currently bound by the Convention.

The Convention provides for two types of visits: periodic and "required in the circumstances" (ad hoc). Periodic visits ensure that different States are visited, as far

as possible, on an equitable basis. The traditional programme of periodic visits is increasingly being counterbalanced by targeted ad hoc visits addressing particularly sensitive issues. The CPT is following closely any situations of tension in the States Parties to the Convention, in order to ascertain whether issues falling under its mandate are involved. For example, in the last two years, a number of ad hoc visits have been carried out to the North Caucasian region of the Russian Federation, "the former Yugoslav Republic of Macedonia" and Turkey.

According to the Convention, visits may be carried out to "any place where persons are deprived of their liberty by a public authority". Consequently, the CPT's mandate extends beyond prisons and police stations and encompasses psychiatric institutions, detention areas at military barracks, holding centres for asylum seekers or other categories of foreigners, places in which juveniles are deprived of their liberty by judicial or administrative order, etc.

In fulfilling its task, the CPT is guided by three principles:

- That the prohibition of ill-treatment of persons deprived of their liberty is absolute,
- That ill-treatment is repugnant to the principles of civilised conduct, even if used in milder forms, and
- That ill-treatment is not only harmful to the victim but also degrading for the official who inflicts or authorises it and ultimately prejudicial to the national authorities in general.

The CPT first of all explores the prevailing factual situation in the countries it visits. In particular, it examines the material conditions and regime in the establishments visited, interviews persons deprived of their liberty and observes the attitude of staff towards them. An important part of the work during visits is the study of documentation (registers, legal and medical records and files, etc.). The Committee also reviews the legal and administrative framework on which the deprivation of liberty is based.

After each visit, the CPT sends a report to the State concerned, giving its assessment of all the information gathered and providing observations and detailed recommendations designed to improve the protection of all categories of persons deprived of their liberty. The national authorities are subsequently requested to

provide responses concerning the action taken by them to implement the Committee's recommendations.

In order that its preventive mandate be fulfilled, the CPT is interested in having a constructive on-going dialogue with governments. This dialogue is based on a cycle of visits, each of which is followed by a visit report, government responses to that report, the Committee's comments on these responses, as well as, if necessary, the holding of talks between the Committee and the national authorities.

In the majority of cases, member States react seriously to CPT recommendations, and engage in a dialogue with the Committee about the manner in which they may best be implemented. However, the Convention provides no formal means to ensure that the CPT's recommendations are implemented. If a State fails to co-operate or refuses to improve a situation in the light of the Committee's recommendations, the only "sanction" which is available to the CPT is to make a public statement on the matter.⁴

3. Complementarity between the work of the CPT and national non governmental organisations monitoring places of detention

Prevention requires the efforts of many actors. Making places of deprivation of liberty subject to inspections or scrutiny by external organisations is a way of establishing a sense of constant supervision. In many Council of Europe countries, the involvement of national NGOs in monitoring places of detention plays an important role in the protection and promotion of human rights. National NGOs also provide intergovernmental organisations with the information essential to enforce internationally defined human rights standards.

National non-governmental monitoring mechanisms are more developed in some countries than in others. Where such mechanisms exist, they have the advantages of:

- Being better aware of and more sensitive to the specific social, cultural and political conditions in their own country;
- Being continuously present on the ground, and therefore in a position to follow closely developments in their country. National NGOs can therefore be better informed of the trends in penal reform, changes in the criminal justice system, etc., and are in a position to react more quickly to such changes. In some countries, national NGOs are engaged in drafting legislative proposals and giving opinion on pending legislation;
- Being in direct contact with the public and the mass media, and hence in a position to regularly inform them of their observations, increase public awareness of the issues and influence public opinion. Once such information is made public, the authorities are compelled to act;
- Having the flexibility to lobby the national authorities and to expeditiously disseminate information to the relevant policy makers. National NGOs can testify before parliamentary and government committees, provoke policy initiatives and put sustained pressure in order to keep the issue on the political agenda;
- getting directly involved, on a practical level, in improving the protection of persons deprived of their liberty (through the provision of legal aid and

⁴ See Article 10, paragraph 2, of the Convention.

humanitarian assistance, help for the resettlement of ex-prisoners, staff training programmes, etc.).

However, in many countries, there are obstacles in the way of national NGOs actively and effectively monitoring places of deprivation of liberty. Access to police detention facilities can be particularly difficult to negotiate. Similarly, psychiatric institutions and military detention facilities often remain “no go” areas.

On the other hand, the CPT, as an international monitoring mechanism functioning within the framework of an intergovernmental organisation, has certain advantages of its own:

- Due to its extensive powers described earlier, the CPT has the unparalleled right to visit places of detention as and when it pleases, to speak in private with persons deprived of their liberty, and to have access to wide-ranging sources of information;
- Because of its multidisciplinary and multinational composition - the CPT brings together members and experts from a variety of national and professional experiences - and thanks to its independent and balanced approach, the Committee can provide a professional and impartial international voice;
- Due to the comprehensive standards developed by the CPT over time on the basis of its experience in many countries and in the light of modern conceptual developments in the area of human rights protection, the Committee’s recommendations can play an important part in conceiving measures at national level to investigate and prevent ill-treatment;
- The CPT can be the source of external pressure for reforms which are long due; it can offer international support for the changes on which the national authorities have already embarked, and lend legitimacy to the direction of national policy.

However, the CPT risks being insufficiently informed of all aspects of the situation in a given country and thus more “detached from reality” than national NGOs. Moreover, there are certain drawbacks associated with the rule of confidentiality: while observance of this rule facilitates the holding of very frank discussions between the CPT and State authorities and is necessary for effective co-operation with States, it is an obstacle to publicity about the CPT’s work and may hinder co-operation with NGOs. Further, as already indicated, the CPT has limited possibilities for ensuring that its recommendations are implemented.

It is clear that the work of international monitoring bodies like the CPT could be complemented and made more effective through co-operation with national non-governmental monitoring mechanisms. Over time, the CPT has built contacts with a network of national NGOs. The Committee considers communications sent by them when selecting the establishments to be visited and deciding whether to carry out ad hoc visits, and has a practice of meeting NGO representatives at the outset of each periodic visit.

There is also a need for governments to give explicit recognition to the importance of NGOs in monitoring places of deprivation of liberty and protection of the rights of detained persons. Instead of being seen as unwelcome visitors to

detention facilities, national NGOs should be recognised as assisting governments to move towards the international standards to which they have committed themselves.

4. Concluding remarks

The Parliamentary Assembly of the Council of Europe has recently adopted certain texts concerning the CPT. In its Recommendation 1517 (2001) on the CPT's working methods, the Assembly recommends that the Committee of Ministers invite the States Parties to the Convention to allow the CPT **more openness** and **less strict confidentiality** in relation to its work. This could help to raise public awareness about the Committee's activities and increase their impact.

Further, the Assembly "strongly urges the CPT to **increase its co-operation with NGOs** known for their activity in combating torture and inhuman or degrading treatment or punishment". It is thus recognised that there is a scope for enhanced complementarity between the monitoring mechanism of the CPT and non-governmental mechanisms at the national level.

Finally, it is clear that the prevailing economic circumstances in certain States visited by the CPT render it difficult for them to implement all of the Committee's recommendations, notwithstanding the goodwill of the authorities concerned.. The CPT is therefore seeking to develop means through which the question of the implementation of its recommendations might be resolved, for example by providing financial assistance to States in appropriate cases. In this context, national NGOs can play an important part in identifying priority areas and participating in the realization of projects.

Aspects of Penitentiary Reform in Armenia in the Framework of the Cooperation with OSCE

By Christine Mardirossian, Human Rights Officer, OSCE Office Yerevan

Since 1996 the Armenian authorities are working on the reform of the penitentiary system, notably in the perspective of the country's accession to the Council of Europe, which was effective on 25 January 2001. The penitentiary system was officially transferred from the Ministry of Interior to the Ministry of Justice in the beginning of October 2001¹. The concrete transformation process of the penitentiary induced by this transfer will however take several years. The Department for Structural Reforms within the Ministry of Justice is responsible for planning and implementing the reform process, which notably aims at demilitarizing, humanizing and opening the Armenian penitentiary.

The reorganization of the Ministry of Interior system for execution of criminal sentences into a penitentiary system under the Ministry of Justice includes the improvement of conditions for holding arrestees, detainees and convicted as well as protection of their rights, humanization of detention conditions and implementation of sentences by improving medical/social/psychological rehabilitation services, creation of favorable conditions for employment of detainees and increasing contacts between penitentiary world and society.

Following decisions of the President and Prime Minister on drafting and implementation of legal and penitentiary reforms, work on the legal framework resulted in the drafting and adoption of important pieces of legislation, i.e. law on the treatment of arrestees and detainees (adopted) and related regulatory acts (draft), criminal code (draft), criminal executive code (draft), law on criminal executive service (draft), manual on healthcare delivery to detainees and prisoners in corrective institutions and pre trial detention facilities under the Ministry of Justice (draft), etc.

The OSCE Office in Yerevan has been officially established in February 2000 in order to assist Armenia in implementing OSCE standards and commitments through realization of concrete activities, notably in the human dimension field, which encompasses strengthening of democracy, rule of law and human rights protection. OSCE support to the penitentiary reform in Armenia enters in this framework and focuses on four main directions: introduction of social-psychological rehabilitation services in pre trial and post trial detention places under the Ministry of Justice, establishment of a civil society monitoring group, training of prison personnel on new penitentiary regulations and international/European human rights standards and practices as well as review of draft legislation. In the framework of these activities, the OSCE enjoys good cooperation with the Ministry of Justice Department for Structural Reforms and Criminal-Executive Department, main human rights protection NGOs and international agencies active in that sphere (Council of Europe, Open Society Institute/SOROS, British Embassy).

¹ The pre trial detention center under the Ministry of National Security was not transferred to the Ministry of Justice.

1. Encourage civil scrutiny over detention places as an element of prevention of torture and ill treatment

Torture and ill treatment in police stations, penitentiary institutions (especially at the pre trial stage) and armed forces remain a serious human rights concern in Armenia according to domestic and international human rights reports as well as individual complaints received at the OSCE Office. Although Armenia ratified major international/European instruments on prevention and prohibition of torture, inhuman and degrading treatment or punishment and that its domestic legislation includes provisions punishing such practices (articles 19 and 42 of the Constitution; articles 20 and 193 of the Criminal Code; articles 9, 11 and 105 of the Criminal Procedure Code and article 5 of the Law on Police, etc.), allegations still subsist in practice.

The OSCE and the Armenian Ministry of Foreign Affairs jointly organized a roundtable on the prevention and prohibition of torture, inhuman and degrading treatment in Armenia: current situation and future perspectives on 13 and 14 July 2001 in Yerevan. The roundtable resulted in a final report containing recommendations for further action prepared by the two working groups formed during the event².

It was notably recommended to accelerate the course of legal reforms (adoption of major pieces of legislation such as criminal and criminal executive codes as well as laws on ombudsman, alternative service, etc.) and to make a declaration under article 22 of the UN Convention against torture, degrading and inhuman treatment enabling the submission of individual complaints from Armenia to the UN Committee against Torture.

In the field of structural reforms, the creation of a civil society monitoring group of places of detention, introduction of social, psychological and medical rehabilitation services in penitentiary institutions, specification of the status of the military police, improvement of the complaint mechanisms and gathering of data on torture and ill treatment cases were highlighted.

The final report also underlined the importance of raising public awareness on torture and ill treatment cases as well as training specific groups (law enforcement agencies, judiciary, lawyers, forensic experts, etc.). The report mentioned the fact that preparation of the next periodic report under the UN Convention against Torture should be produced with contribution of all interested and competent parties, i.e. including civil society actors and independent experts.

A major point discussed during the event and mentioned in the final report was the need of increasing transparency of detention places by securing more systematic access to professionals (lawyers, doctors, social workers, psychologists and media) and non governmental structures active in the field of protection of detainees' and prisoners' rights.

² Final report on the roundtable, web site of the OSCE Yerevan Office

2. Increasing Capacity for Monitoring

The OSCE concentrated its efforts in two main directions to serve this goal: train professional monitors among NGO members and cooperate with the authorities and civil society to establish a national monitoring mechanism over places of detention.

Since 2001 the OSCE and the Polish Helsinki Foundation for Human Rights jointly implement a project on human rights monitoring and reporting training for Armenian NGOs. More than 20 NGO members along with a few representatives of state bodies (Ministry of Foreign Affairs, Ministry of Interior and Human Rights Commission to the President) participated to the training sessions. The latter, conducted by experts of the Polish Helsinki Foundation for Human Rights, aimed at giving concrete and in-depth knowledge about international/European human rights philosophy, standards and protection mechanisms, monitoring aims/conception/methodology/instruments, report writing and lobbying.

As a result of the 2001 training, participants implemented four monitoring projects (all of them are posted on the OSCE Yerevan Office web site in English, Russian and Armenian languages). One of them was dedicated to the right to communicate with the outside world in pre trial isolators in Armenia (notification of relatives and friends on detention, visits, correspondence and parcels) and was realized by the NGOs Civil Society Development Union and the Union for the Protection of the Rights of Detainee's and Prisoners³. Implementing NGOs had access to all pre trial isolators of the country transferred to the Ministry of Justice after October 2001. Conclusions and recommendations of the report were shared with relevant structures and the public. At the time of the monitoring (August-December 2001), the report noted that rights to visit and correspondence in the pre trial isolators were not enforced. According to the report, main reasons are rooted in the law, behavior of investigators/law enforcement agencies and lack of awareness among detainees and their families. In February 2002 the National Assembly adopted the Law on Treatment of Arrestees and Detainees which clearly contains stronger rights to visit and correspondence. Major work has to be done regarding the implementation of these new provisions.

It can be noted that since the transfer of the penitentiary to the Ministry of Justice, NGOs and media got easier access to detention places and several NGOs have been authorized to implement projects in detention places, i.e. National League for Democratic Reforms removing shadows from detention buildings in order to increase lightning and ventilation in cells.

Several reports, including concluding observations of the UN Committee Against Torture on Armenia following the periodic report presented by the country in November 2000, underlined among other things the lack of independent supervision mechanism/body over places of detention⁴. Supervision of detention places is actually the responsibility of the general prosecutor's office. The Human Rights

³ Monitoring Report on the Right to Communicate with Outside World

⁴ Concluding Observations of the UN Committee against Torture: Armenia, 17/11/2000

Commission to the President has access to and visited penitentiary institutions as well as military garrisons. Armenia does not have an ombudsman institution yet. Armenian leadership and the Council of Europe agreed to adopt a law establishing such a structure after the adoption of the amended Constitution in order to guarantee the creation of a parliamentary ombudsman independent from the executive power it shall supervise (the current Constitution does not allow this).

Article 47 of the law on the treatment of arrestees and detainees adopted in February states that “public supervision of activities of places of arrest and detention shall be carried out by a group of public observers established by the head of the appropriate authorized government body. The procedures for public supervision of activities of arrest and detention, as well as the composition and powers of the group of public observers shall be defined by the head of the appropriate authorized government body”⁵.

This provision actually corresponds to the establishment of a national monitoring mechanism over pre trial and post trial detention places. Following the invitation of the Ministry of Justice, human rights NGOs submitted their draft of the regulation defining the mandate, status, composition, prerogatives, activities of the group of civil society representatives and its relations with state bodies. On the basis of the NGO proposals and experience of other countries having a similar structure, the Ministry prepared its draft regulation, which has been submitted to ODIHR for comment.

It was agreed to hold soon further consultation/discussion in order to finalize the regulation on the establishment of the monitoring group. Issues such as the nature of relations/degree of dependence between the group and the Ministry of Justice, the conditions and criteria for being part of the group, the group’s prerogatives in detention places (meetings with detainees, access to documentation), coverage of the mandate (police stations, isolator under the ministry of national security, mental health institutions, administrative detention places under the military), functions of the group (monitoring, policy/legal recommendations, project implementation), work methodology and instruments of the group will be tackled during this event.

The penitentiary reform process represents an example of cooperation between the civil society, governmental institutions and interested international organizations. The establishment of a monitoring group conducting regular activities in detention places shall be an interesting experience for other OSCE participating states willing to create such a structure. This issue was actually discussed at the OSCE Supplementary Human Dimension Meeting on Prison organized in Vienna in July 2002 in the third session dedicated to monitoring.⁶

⁵ See Law on Treatment of Arrestees and Detainees, article 4

⁶ Final Report on the OSCE Supplementary Human Dimension Meeting, www.osce.org/odihr

ANNEXES

ARMENIA

COUNCIL OF EUROPE	
Date of accession	25 Jan 2001
ECPT	
Signature	11 May 2001
Ratification	18 June 2002
Entry into force	1 st October 2002
Date of visit	6 to 17 October 2002
Date of publication	-
ECHR	
Signature	25 Jan 2001
Ratification	26.04.2002
Entry into force	26.04.2002
Parliamentary Assembly Monitoring Committee	
Co-Rapporteurs	Mrs Irena Belohorska, Slovakia Mr Jerzi Jaskiernia, Poland
Date of visits	15-19 October 2001 19-23 August 2002
Publication of report	13 Sept. 2002 (Doc. 9542)
Resolution	RES 1305 (2002)

UNITED NATIONS	
Date of Admission	31 July 1992
CAT	
Ratification	13 Sep 1993
Entry into force	13 Oct 1993
Declaration under art. 22	No
Last examination of State Report	CAT/C/43/Add.3 14-15/17 Nov 2000
Next report due	12 Oct 2002
Next examination date	-
ICCPR	
Accession	23 Jun 1993
Entry into force	23 Sep 1993
Last examination of state report by HRC	CCPR/C/92/Add.2 64 th session ; 26 Oct 1998
Next report due	1 Oct 2001
Next examination due	-
Optional protocol	First
Ratification	23 Jun 1993
	Second
	-

Opinion No. 221 (2000)¹⁷ Parliamentary Assembly Council of Europe : Armenia Application for membership of the Council of Europe

1. The Republic of Armenia applied to join the Council of Europe on 7 March 1996. In Resolution (96) 21 of 15 May 1996 the Committee of Ministers invited the Parliamentary Assembly to give an opinion on this request in accordance with Statutory Resolution 51 (30A).
2. The Armenian Parliament obtained Special Guest status with the Parliamentary Assembly of the Council of Europe on 26 January 1996. This application was considered in the light of the adoption of Recommendation 1247 (1994) on the enlargement of the Council of Europe, in which the Assembly stated that “in view of their cultural links with Europe, Armenia, Azerbaijan and Georgia would have the possibility of applying for membership provided they clearly indicate their will to be considered as part of Europe”.
3. Delegations from the Assembly observed the presidential election in March 1998 and the general elections in July 1995 and May 1999.
4. Since 1996 Armenia has been taking part in various activities of the Council of Europe through the intergovernmental co-operation and assistance programmes, and in the work of the Assembly and its committees through its special guest delegation.
5. Armenia is a party to the European Cultural Convention and the Council of Europe’s Framework Convention for the Protection of National Minorities, a member of the Open Partial Agreement on the Prevention of Protection against and Organisation of Relief in Major Natural and Technological Disasters, and an associate member of the Venice Commission, with which it has developed close co-operation. The Assembly also takes note of the fact that Armenia has requested accession to the European Convention on Extradition and the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, and that it has recently signed six other Council of Europe conventions.
6. The Assembly considers that Armenia is moving towards a democratic, pluralist society, in which human rights and the rule of law are respected, and, in accordance with Article 4 of the Statute of the Council of Europe, is able and willing to pursue the democratic reforms initiated in order to bring its entire legislation and practice into conformity with the principles and standards of the Council of Europe.
7. In asking the Assembly for an opinion on the membership application, the Committee of Ministers reiterated that a closer relationship between the Caucasian countries and the

¹⁷ *Assembly debate* on 28 June 2000 (21st Sitting) (see Doc. 8747, report of the Political Affairs Committee, rapporteur: Mr Volcic, and Doc. 8756, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Spindelegger).

Text adopted by the Assembly on 28 June 2000 (21st Sitting).

Council of Europe would demand not only the implementation of substantial democratic reforms, but also their commitment to resolve conflicts by peaceful means.

8. The Parliamentary Assembly believes that the accession of both Armenia and Azerbaijan could help to establish the climate of trust necessary for a solution to the conflict in Nagorno-Karabakh.

9. The Assembly considers that the OSCE's Minsk group is the optimum framework for the negotiation of a peaceful settlement to the conflict.

10. The Assembly takes note of the letter from the President of Armenia in which he undertakes to respect the cease-fire agreement until a final solution is found to the conflict and to continue the efforts to reach a peaceful negotiated settlement on the basis of compromises acceptable to all parties concerned.

11. The frequency of meetings between the presidents of the two countries has been stepped up. The speakers of the parliaments of Armenia, Azerbaijan and Georgia have decided to institute regional parliamentary co-operation, consisting in particular of meetings of the speakers of the parliaments and parliamentary seminars to be held in the capitals of the three countries and in Strasbourg. The first meeting in the region, which was held in Tbilisi in September 1999, made it possible to establish an atmosphere of trust and *détente* between the parliamentary delegations of Armenia and Azerbaijan.

12. The Assembly calls on the Armenian and Azerbaijani authorities to pursue their dialogue with a view to achieving a peaceful settlement of the conflict in Nagorno-Karabakh and giving new impetus to regional co-operation.

13. The Parliamentary Assembly takes note of the letters from the President of Armenia, the speaker of the parliament, the Prime Minister and the chairmen of the political parties represented in the parliament, and notes that Armenia undertakes to honour the following commitments:

Conventions:

- a. to sign, at the time of its accession, the European Convention on Human Rights (ECHR), as amended by Protocols Nos. 2 and 11 thereto, and Protocols Nos. 1, 4, 6 and 7;
- b. to ratify the ECHR and Protocols Nos. 1, 4, 6 and 7 thereto during the year following its accession;
- c. to sign and ratify, within one year of its accession, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its protocols;
- d. to sign and ratify, within one year of its accession, the European Charter for Regional or Minority Languages;
- e. to sign and ratify, within one year of its accession, the European Charter of Local Self-Government;
- f. to sign and ratify, within two years of its accession, the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and its additional protocols, and the Council of Europe conventions on extradition, on mutual assistance in criminal matters, on laundering, search, seizure and confiscation of

the proceeds from crime, and on the transfer of sentenced persons, and in the meantime to apply the fundamental principles contained therein;

g. to sign the European Social Charter within two years of its accession and ratify it within three years of accession, and to strive forthwith to implement a policy consistent with the principles of the Charter;

h. to sign the General Agreement on Privileges and Immunities of the Council of Europe and the protocols thereto at the time of its accession, and to ratify these within one year of its accession;

The conflict in Nagorno-Karabakh:

a. to pursue efforts to settle this conflict by peaceful means only;

b. to use its considerable influence over the Armenians in Nagorno-Karabakh to foster a solution to the conflict;

c. to settle international and domestic disputes by peaceful means and according to the principles of international law (an obligation incumbent on all Council of Europe member states), resolutely rejecting any threatened use of force against its neighbours;

Domestic law:

a. to adopt, within one year of its accession, the second (specific) part of the Criminal Code, thus abolishing *de jure* the death penalty and decriminalising consensual homosexual relationships between adults;

b. to adopt, within six months of its accession, the law on the ombudsman;

c. to adopt, within one year of its accession, a new law on the media;

d. to adopt, within one year of its accession, a new law on political parties;

e. to adopt, within one year of its accession, a new law on non-governmental organisations;

f. to adopt, within six months of its accession, the law on the transfer of responsibility for the prison system, including pre-trial detention centres and work colonies, from the Ministry of the Interior and the Ministry for National Security to the Ministry of Justice thus ensuring the thorough reform and demilitarisation of the system, and to ensure the effective implementation of this law within six months after it has been adopted, except as regards the effective transfer of the pre-trial detention centres and work colonies, which must be implemented within one year after the law has been adopted;

g. to adopt, within one year of its accession, the law on the civil service;

h. to amend, before the next local elections, the current legislation governing the powers of local authorities so as to give them greater responsibilities and independence, taking into account the recommendations made in this respect by the Congress for Local and Regional Authorities of Europe (CLRAE);

i. to remedy the deficiencies of the new electoral law before the next elections, in particular as regards the procedural aspects of the work of the electoral committees and the authorities responsible for drawing up electoral registers;

Human rights:

a. to fully implement the reform of the judicial system, in order to guarantee, *inter alia*:

- the full independence of the judiciary;

- full and immediate access to a defence lawyer in criminal cases (compulsory for minors); if necessary, the costs should be borne by the state;
 - b.* to ensure that all churches or religious communities, in particular those referred to as “non-traditional”, may practise their religion without discrimination;
 - c.* to co-operate fully with NGOs in ensuring that the rights of prisoners and conscripts are respected;
 - d.* to adopt, within three years of accession, a law on alternative service in compliance with European standards and, in the meantime, to pardon all conscientious objectors sentenced to prison terms or service in disciplinary battalions, allowing them instead to choose, when the law on alternative service has come into force to perform non-armed military service or alternative civilian service;
 - e.* to turn the national television channel into a public channel managed by an independent administrative board;

Monitoring of commitments:

- a.* to co-operate fully in the implementation of Assembly Resolution 1115 (1997) on the setting up of an Assembly committee on the honouring of obligations and commitments by member states of the Council of Europe (Monitoring Committee); and
- b.* to co-operate fully in the monitoring process established pursuant to the declaration adopted by the Committee of Ministers on 10 November 1994 (95th session).

14. The Parliamentary Assembly notes that Armenia shares fully its understanding and interpretation of commitments entered into as spelt out in paragraph 13, and intends:

- i.* to ensure that parliament is kept fully informed about the investigation into the events of 27 October 1999, in conformity with the existing legislation;
- ii.* to grant access to the Constitutional Court, within two years of accession, also to the government, the Prosecutor-General, courts of all levels, and – in specific cases – to individuals;
- iii.* to reform the Judicial Council in order to increase its independence within three years of accession;
- iv.* to institute, without delay, a follow-up procedure which conforms to Council of Europe standards to complaints received on alleged ill-treatment in police custody, pre-trial detention centres, prisons and the army, and to ensure that those found guilty of such acts are punished in accordance with the law;
- v.* to consider, at least partially, time served in a disciplinary battalion as compulsory military service, and to ensure that the sentence of time to be served in such a battalion can be shortened if the soldier conducts himself well;
- vi.* to pay special attention to the fate of homeless children and those in conflict with the law.

15. On the basis of these commitments, the Assembly is of the opinion that, in accordance with Article 4 of the Statute of the Council of Europe, Armenia is able and willing to fulfil the provisions of Article 3 of the Statute, setting forth the conditions for membership of the Council of Europe: “Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council (of Europe).”

16. With a view to ensuring compliance with these commitments, the Assembly decides to monitor the situation in Armenia closely, with immediate effect from the date of accession, pursuant to its Resolution 1115 (1997).

17. On the understanding that the commitments set out above are firm and will be fulfilled within the stipulated time limits, the Assembly recommends that the Committee of Ministers:

- i. invite Armenia to become a member of the Council of Europe;
- ii. allocate four seats to Armenia in the Parliamentary Assembly;

and requests that the necessary additional resources be made available.

18. Furthermore, in order to enable Armenia to honour its commitments and obligations as a member state, the Assembly also recommends that the Committee of Ministers develop its assistance to the Armenian authorities in the framework of the activities for the development and consolidation of democratic stability (Adacs). In addition, the Assembly recommends that the Council of Europe Development Bank provide assistance where appropriate.

**Honouring of obligations and commitments by Armenia -
Resolution 1304 (2002) Parliamentary Assembly
Monitoring Committee (Council of Europe)¹⁸**

1. The Assembly acknowledges that, since its accession on 25 January 2001, Armenia has made substantial progress towards honouring the obligations and commitments it accepted as listed in Opinion No. 221 (2000).

2. On the matter of *conventions*, the Assembly notes with satisfaction that:

i. Armenia has ratified the European Convention on Human Rights and its Protocols Nos. 1, 4 and 7, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its Protocols, the General Agreement on Privileges and Immunities and its Protocols, the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters, the Convention on the Transfer of Sentenced Persons, the European Charter for Regional or Minority Languages and the European Charter of Local Self-Government;

ii. Armenia has signed 20 other treaties, including the European Social Charter, the Outline Convention on Transfrontier Co-operation and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

3. The Assembly cannot accept that Armenia has not honoured its commitment to ratify Protocol No. 6 to the European Convention on Human Rights, concerning the abolition of the death penalty, within a year of its accession.

4. Concerning *domestic law*, the Assembly acknowledges the major effort Armenia has made in the last year and a half, and particularly welcomes the adoption of a new Electoral Code, the law on political parties, the law on NGOs and the law on the civil service.

5. It takes note of the adoption at first reading of the new Criminal Code. It notes that homosexual relations between consenting adults have been decriminalised. However, it is shocked by the National Assembly's decision to maintain capital punishment for people who commit certain crimes, in violation of its commitment to abolish the death penalty in the Criminal Code within the year following its accession. It takes note of the position presented by the Armenian delegation to the Parliamentary Assembly that the Criminal Code will be finally adopted before the end of 2002.

6. The Assembly calls for the complete abolition of the death penalty, without any exceptions or restrictions. The Assembly notes the existence of a *de facto* moratorium since 1991 and takes note of the formal assurances of the authorities that no death sentence has been carried out since then.

¹⁸ *Assembly debate* on 26 September 2002 (31st Sitting) (see Doc.9542, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, rapporteurs: Mrs Belohorská and Mr Jaskiernia). *Text adopted by the Assembly* on 26 September 2002 (31st Sitting).

7. However, the Assembly welcomes the assurance given to the rapporteurs by the president of the Republic of Armenia to sign, once the Criminal Code has been approved, a decree commuting the sentence of the persons currently sentenced to death to life imprisonment.

8. The Assembly urges the authorities to pursue the reform of the judicial system, in full co-operation with the Council of Europe, and in particular:

i. to approve the draft Criminal Code taking fully into account the recommendations the Council of Europe's experts will be making to them;

ii. to revise the Code of Criminal Procedure without delay, bringing it into line with the Council of Europe's standards;

iii. to amend the law on the police, in order to clarify the roles of the different judicial bodies in terms of investigation and arrest, in keeping with the recommendations made by the Council of Europe's experts;

iv. to fully guarantee the independence of the judges, in keeping with Council of Europe standards;

v. to open a training centre for judges, operating under the supervision of the Judicial Service Commission.

9. The Assembly further invites the authorities to revise the Administrative Code without delay. It urges them to abolish the provisions concerning administrative detention and to refrain from applying them in the interim. It warns the authorities of the abuses their application leads to, which are seriously at variance with the principles of the Organisation.

10. It invites the authorities to defer the adoption of the law on the ombudsman no longer.

11. The Assembly notes that in spite of the commitment entered into, the draft law on the media has still not been submitted to the National Assembly.

12. The Assembly notes that the allocation of radio and television broadcasting licences gave rise to strong protests in April 2002; it calls on the authorities to amend the law on broadcasting without delay, taking into account the recommendations made by the Council of Europe; it takes note of the authorities' firm commitment to organise a new call for tenders for new frequencies on 25 October 2002.

13. The Assembly welcomes the attention the authorities are giving to a draft law on alternative military service. Whatever the case, it draws attention to the authorities' commitment to introduce an alternative service that is in conformity with European standards. It regrets that the authorities continue to prosecute and sentence young conscientious objectors.

14. The Assembly encourages the authorities to speed up the reforms in the local government area, and to improve the recently enacted law on local self-government; it regrets that certain legislation has not been enacted prior to the local elections to be held in October, in spite of commitments to that effect.

15. The Assembly urges the authorities to register the Jehovah's Witnesses as a religious organisation.

16. The Assembly encourages the authorities to embark resolutely on the battle against corruption, and to implement the recommendations made in the national anti-corruption strategy. It also invites them to sign and ratify the Council of Europe's Criminal and Civil Law Conventions on Corruption.

17. The Assembly welcomes the transfer of the prisons and detention centres from the Ministry of the Interior to the Ministry of Justice, and acknowledges the significant improvements in detention conditions. It calls on the authorities to continue their efforts, in particular to improve medical care for detainees. In this respect it salutes the considerable work accomplished in Armenia in recent years by the International Red Cross.

18. It notes, however, that the detention centre of the Ministry of National Security has not yet been transferred to the Ministry of Justice, and asks the authorities, pending an effective transfer, to ensure that the conditions of detention there are in conformity with European standards.

19. Concerning the revision of the Constitution which is currently in progress, the Assembly takes note of the authorities' determination to adopt the draft text of the new Constitution by next spring and to submit it to the nation for approval by referendum. It asks the authorities to continue their co-operation with the Venice Commission and to heed the recommendations made. It nevertheless invites the authorities to examine the possibility in the draft Constitution of increasing the parliamentary supervision role of the National Assembly.

20. The Assembly calls on the authorities seriously to investigate the acts of torture, violence, ill treatment and bribery perpetrated by law enforcement bodies.

21. With the increase in the number of seats allocated by proportional representation, the Assembly urges the political parties to open up their lists to Armenian women, in order to secure gender parity in parliament.

22. The Assembly is sensitive to the consequences of land and property privatisation operations in urban or rural areas for many modest or poor families, refugees or persons belonging to the Yezidi community. It asks the Armenian authorities to give all their attention to this question and to find equitable solutions that do not disadvantage one group to the advantage of another, more affluent group.

23. The Assembly expresses its disappointment at the lack of development of regional co-operation in the Caucasus region, and recalls that the accession to the Organisation of the three countries concerned gave rise to great hopes of democratic stabilisation in the region.

24. Concerning the settlement of the conflict in Nagorno-Karabakh;

i. The Assembly acknowledges and welcomes the undeniable efforts Armenia has made to maintain regular high-level contacts with Azerbaijan and the positive influence that they have on the Armenians in Nagorno-Karabakh with a view to arriving at a suitable peaceful solution;

ii. The Assembly strongly hopes that the negotiation process in progress will soon lead to an acceptable settlement of the Nagorno-Karabakh conflict, in keeping with the principles of the Council of Europe and of international law;

iii. It recalls that it can envisage closing the monitoring procedure only if the state concerned has honoured all its main commitments, which, in the case of Azerbaijan and Armenia, include an agreement on the peaceful settlement of the Nagorno-Karabakh conflict – including the question of the occupied territories and other issues dealt with by the Minsk Group –, which has been going on for more than fourteen years now.

25. In view of the above considerations, and the obligations and commitments which remain to be fulfilled, the Assembly, while acknowledging that Armenia has made substantial progress since its accession, decides to continue the monitoring procedure, in close collaboration with the Armenian delegation.

26. The Assembly expects the Armenian authorities, without delay, to ratify Protocol No. 6 to the European Convention on Human Rights and adopt a Criminal Code in conformity with the standards and principles of the Organisation. If that does not occur before June 2003, the Assembly may decide to annul the ratified credentials of the Armenian parliamentary delegation to the Council of Europe at the June 2003 part-session of the Parliamentary Assembly, in conformity with Article 12 of Resolution 1115 (1997) and Rule 9 of its Rules of Procedure.

[\[1\]](#).

Conclusions and Recommendations of the Committee against Torture : Armenia

CAT/C/XXV/Concl/1. (Concluding Observations/Comments)
Twenty-fifth session 13-24 November 2000

1. The Committee considered the second periodic report of **Armenia** (CAT/C/43/Add.3) at its 440th, 443rd and 447th meetings, held on 14, 15 and 17 November 2000 (CAT/C/SR.440, 443 and 447) and adopted the following conclusions and recommendations.

I. Introduction

2. The Committee notes that the second periodic report of **Armenia** was not prepared in full conformity with the June 1998 guidelines for the preparation of periodic reports. It nevertheless welcomes with satisfaction the Armenian delegation's oral introduction of the report and willingness to engage in a dialogue.

II. Positive aspects

3. The Committee takes note with satisfaction of the following elements:
- i Ongoing efforts to establish a legal system based on universal human values in order to safeguard fundamental human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment;
 - ii The moratorium on the application of the death penalty and the fact that the death penalty is not provided for in the draft Penal Code;
 - iii The fact that a person may not be extradited to another State if there are substantial grounds for believing that he would be in danger of being subjected to torture or sentenced to death.
 - iv The human rights training programme for government law enforcement officials and, in particular, employees of the Ministry of the Interior and National Security;
 - v Cooperation between government authorities and non-governmental organizations;
 - vi The State party's decision to establish the post of Ombudsman.

III. Factors and difficulties impeding the application of the Convention

4. The Committee takes note of the transition problems the State party now faces.

IV. Subjects of concern

5. The Committee is concerned about the following:
- i. The fact that the draft Penal Code does not include some aspects of the definition of torture contained in article 1 of the Convention;
 - ii. The fact that the rights of persons deprived of liberty are not always respected;
 - iii. The existence of a regime of criminal responsibility for judges who commit errors in their sentences on conviction, since it might weaken the judiciary;
 - iv. The lack of effective compensation for victims of acts of torture committed by government officials in contravention of the provisions of article 14 of the Convention;

v. Poor prison conditions and the fact that prisons come under the authority of the Ministry of the Interior;

vi. The ongoing practice of hazing ("dedovshchina") in the military, which has led to abuses and violations of the relevant provisions of the Convention. This practice also has a devastating effect on victims and may sometimes even lead to their suicide.

6. The Committee notes with concern that the State party has not taken account in its second periodic report of the recommendations the Committee made in connection with the initial report of **Armenia** in April 1996. In particular, it has not communicated the results of the inquiry on the allegations of ill-treatment that were brought to the Committee's attention.

V. Recommendations

7. The Committee makes the following recommendations:

i. Although Armenian legislation contains various provisions on some aspects of torture as defined by the Convention, the State party must, in order genuinely to fulfil its treaty obligations, adopt a definition of torture which is fully in keeping with article 1 and provide for appropriate penalties;

ii. Counsel, family members and the doctor of their own choice must be guaranteed immediate access to persons deprived of liberty;

iii. While welcoming the plan to transfer responsibility for prison administration from the Ministry of the Interior to the Ministry of Justice, the Committee invites the State party to establish a truly independent and operational system for the inspection of all places of detention, whether Ministry of the Interior, Ministry of Justice or Ministry of Defence facilities;

iv. The Committee recommends that the State parties should conduct impartial investigations without delay into allegations of hazing ("dedovshchina") in the military and institute proceedings in substantiated cases;

v. The Committee invites the State party to bring the regime of criminal responsibility for judges into line with the relevant international instruments, including the Basic Principles on the Independence of the Judiciary adopted in 1985 and the Guidelines on the Role of Prosecutors adopted in 1990;

vi. The Committee encourages the State party to continue education and training activities on the prevention of torture and the protection of individuals from torture and ill-treatment for police and for the staff of prisons, including Ministry of the Interior facilities and military prisons;

vii. The Committee recommends that, as soon as possible the State party should adopt the draft Penal Code, which abolishes the death penalty, in order to resolve the situation of the many persons who have been sentenced to death and who are being kept in uncertainty amounting to cruel and inhuman treatment in breach of article 16 of the Convention;

viii. The Committee would like to receive replies to the recommendations it made in connection with **Armenia's** initial report, particularly the allegations of ill-treatment which were brought to its attention and were to be the subject of an immediate and impartial inquiry whose results were to be transmitted to the Committee;

ix. The Committee invites the State party, to include the necessary statistics disaggregated by gender and geographical region in the next report to be submitted in October 2002;

x. The Committee encourages the State party to make the declarations provided for in articles 21 and 22 of the Convention.

Concluding observations of the Human Rights Committee : Armenia. 19/11/98.

1. The Committee considered the initial report of Armenia (CCPR/C/92/Add.2) at its 1710th and 1711th meetings (CCPR/C/SR.1710-1711) held on 26 October 1998 and adopted the following concluding observations at its 1721st and 1725th meetings (CCPR/C/SR.1721 and 1725) held on 2 and 4 November 1998.

A. Introduction

2. Although it notes the long delay in the submission of the report, the Committee welcomes the initial report of the State party, covering events that occurred from the country's independence, and the dialogue with the delegation on the implementation of the provisions of the Covenant. It appreciates the frankness with which the State party acknowledges the current problems, which are partly attributable to the fact that the country is in a period of transition, and its willingness to provide further information in writing.

B. Positive aspects

3. The Committee commends the State party for the process currently under way to bring its legislation fully into line with its international obligations. It welcomes the establishment of the Constitutional Commission to review the Constitution and the adoption of the law on the independence of the judiciary, the law on the Public Prosecutor's Office, the Criminal and Civil Codes, the law on civil and criminal procedure, the Labour Code, the Electoral Code, the law on citizenship and the laws on the rights of the child. It looks forward to receiving these new laws once they come into force.

4. The Committee notes with satisfaction the establishment of the Commission on Human Rights as an advisory body to the President of the Republic, with competence to review draft legislation affecting human rights and fundamental freedoms. It notes the setting up of a Human Rights Department within the Ministry of Foreign Affairs. The Committee further welcomes the proposal to establish the office of Ombudsmen with power to deal with individual complaints.

5. The Committee commends the State party for its expressed intention to abolish the death penalty by 1 January 1999, which will automatically affect all persons currently on death row.

6. The Committee welcomes the release of political prisoners in Armenia following the last presidential elections. In this connection, it notes with satisfaction that non-governmental organizations have been given the important role of visiting prisoners and making spot checks. In this connection, the Committee notes the role played by the Committee of Soldiers' Mothers in addressing complaints within military garrisons. In addition, the Committee notes the agreement with the International Committee of the Red Cross giving ICRC representatives access to detainees in Armenia.

C. Principal subjects of concern and recommendations

7. The Committee expresses its grave concern about the incompatibility of several provisions of the Constitution with the Covenant: for example, article 22 of the Constitution, which guarantees freedom of movement only to Armenian citizens, contravenes article 12 of the Covenant; articles 23, 44 and 45 of the Constitution, which allow derogation under a state of emergency and limitations to the freedom of thought and religion, contravene articles 4, paragraph 2, and 18 of the Covenant. The inconsistency of domestic law with provisions of the Covenant not only engenders legal insecurity, but is likely to lead to violations of rights protected under the Covenant.

8. The Committee notes that the independence of the judiciary is not fully guaranteed. In particular, it observes that the election of judges by popular vote for a fixed maximum term of six years does not ensure their independence and impartiality.

9. The Committee is concerned that pursuant to article 101 of the Constitution only representatives of the executive and legislative branches may have recourse to the Constitutional Court. The Committee recommends that the State party amend its Constitution so as to enable individuals, in appropriate circumstances, to bring questions concerning human rights guaranteed in the Constitution, many of which are also protected in the Covenant, to the Constitutional Court.

10. The Committee takes note that the new Criminal Code provides for the abolition of the death penalty, and recommends that the death sentences of all persons currently on death row be immediately commuted. The Committee hopes that the State party will consider ratification of the Second Optional Protocol to the Covenant aiming at the abolition of the death penalty.

11. The Committee is concerned that all the grounds for pre-trial detention are not listed in the present law. While noting that the new Criminal Code provides for a maximum period of three months' detention, the Committee is concerned that very few detainees benefit from bail, and urges the State party to observe strictly the requirements of article 9, paragraph 3, of the Covenant.

12. The Committee expresses its concern about allegations of torture and ill-treatment by law-enforcement officials. The Committee recommends the establishment of a special independent body to investigate complaints of torture and ill-treatment by law enforcement personnel.

13. The Committee is concerned about the poor conditions prevailing in prisons. It reminds the State party that all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person, and recommends that the State party observe the Standard Minimum Rules for the Treatment of Prisoners.

14. The Committee observes that de facto discrimination against women persists as a matter of custom and stresses that this problem should be addressed in the light of Armenia's obligations under the Covenant.

15. The Committee is concerned about discrimination against women in employment and their under-representation in the conduct of public affairs. Furthermore, the Committee regrets the disproportionate level of unemployment among women, which has been explained by the delegation as being due to economic hardship.

16. The lack of data on cases of domestic violence should not be interpreted to mean that no such incidents occur. The Committee therefore recommends that specific protection and punitive measures be taken with respect to all forms of violence against women, including rape. The Committee urges the State party to compile relevant data for submission in the next periodic report.

17. The Committee is concerned as to the existence of the phenomenon of street children in Armenia. The State party must urgently address this issue under article 24 of the Covenant.

18. The Committee regrets the lack of legal provision for alternatives to military service in case of conscientious objection. The Committee deplores the conscription of conscientious objectors by force and their punishment by military courts, and the instances of reprisals against their family members.

19. The Committee is concerned that registration of religions is required and that the number of followers required for registration has been increased. The Committee also notes that non-recognized religions are discriminated against in their entitlement to own private property and to receive foreign funds.

20. The Committee is concerned about the compatibility of the 1991 Press Law with freedom of expression under article 19 of the Covenant, in particular that the notion of "State secrets" and of "untrue and unverified information" (article 6 of the Press Law) are unreasonable restrictions on freedom of expression. Furthermore, the Committee is concerned about the extent of the Government's monopoly in respect of printing and distribution of newspapers.

21. The Committee expresses its concern about the strict governmental control over electronic media, which may raise issues under article 19 and which results in serious limitations to the exercise of the rights guaranteed in article 25, in particular with regard to elections.

22. The Committee expresses its concern about the State party's position that it is not possible to ensure that small national minorities have access to educational facilities in their language of origin. The Committee recommends that measures be taken in conformity with article 27 of the Covenant.

23. The Committee commends the State party for its efforts in disseminating information on human rights, including human rights education in school curricula. In particular, the Committee observes that human rights training of the legal profession and of the judiciary is necessary for democracy. Therefore, the Committee

recommends that such training be provided. The Committee urges the State party to disseminate widely its initial report and the Committee's concluding observations.

24. The Committee has fixed the date for submission of Armenia's second periodic report to be October 2001.

AZERBAIJAN

COUNCIL OF EUROPE	
Date of accession : Council of Europe	25 Jan 2001
ECPT	
Signature	25 December 2001
Ratification	15 April 2002
Entry into force	1 st August 2002
Date of CPT visit	24 Nov- 6 Dec. 2002
Publication of report	-
ECHR	
Signature	25 Jan 2001
Ratification	15 April 2002
Entry into force	15 April 2002
Parliamentary Assembly Monitoring Committee	
Co-Rapporteurs	Mr Andreas Gross, Switzerland Mr Guillermo Martinez-Casan, Spain
Date of visit	29 Oct. – 2 Nov. 2001 15 – 22 July 2002
Publication of report	18 Sept. 2002 (Doc. 9545 Revised)
Resolution	RES1305 (2002)

UNITED NATIONS	
Date of Admission : United Nations	9 March 1992
CAT	
Accession	16 Aug 1996
Entry into force	15 Sep 1996
Declaration under art. 22	No
Last examination of State Report	CAT/C/59/Add.1 30 April – 01 May 2003
Next report due :	2007
Next examination date :	-
ICCPR	
Accession	13 Aug 1992
Entry into force	13 Nov 1992
Last examination of state report by HRC	CCPR/C/AZE/99/2 26 Oct. 2001
Next report received :	
Next examination due :	1 Nov. 2005
Optional protocol	First -
Accession	Second 22 Jan 1999

Opinion No. 222 (2000)¹⁹ Parliamentary Assembly CoE : Azerbaijan Application for membership of the Council of Europe

1. The Republic of Azerbaijan applied to join the Council of Europe on 13 July 1996. In Resolution (96) 32 of 11 September 1996 the Committee of Ministers invited the Parliamentary Assembly to give an opinion on this request in accordance with Statutory Resolution 51 (30A).
2. The Parliament of the Republic of Azerbaijan obtained Special Guest status with the Parliamentary Assembly of the Council of Europe on 28 June 1996. This application was considered in the light of the adoption of Recommendation 1247 (1994) on the enlargement of the Council of Europe, in which the Assembly stated that “in view of their cultural links with Europe, Armenia, Azerbaijan and Georgia would have the possibility of applying for membership provided they clearly indicate their will to be considered as part of Europe”.
3. Assembly delegations observed the general election in November 1995 and the presidential election in October 1998. A delegation from the Congress of Local and Regional Authorities of Europe (CLRAE) observed the first municipal elections in December 1999 and in March 2000. Serious shortcomings in some elections were noted. Thus, the Assembly should observe the forthcoming parliamentary elections.
4. Since 1996 Azerbaijan has been taking part in various Council of Europe activities through the intergovernmental co-operation and assistance programmes, and in the work of the Assembly and its committees through its Special Guest delegation.
5. Azerbaijan is already a party to the European Cultural Convention and to the Convention on the Recognition of Qualifications concerning Higher Education in the European Region, as well as to the Open Partial Agreement on Prevention of, Protection against and Organisation of Relief in Major Natural and Technological Disasters. In March 2000, the country deposited the instruments of ratification to eight other European conventions to which it will shortly become a party. Further requests by Azerbaijan to accede to Council of Europe conventions are currently under consideration.
6. The Assembly considers that Azerbaijan is moving towards a democratic, pluralist society in which human rights and the rule of law are respected, and, in accordance with Article 4 of the Statute of the Council of Europe, is able and willing to continue the democratic reforms initiated in order to bring its entire legislation and practice into conformity with the principles and standards of the Council of Europe.

¹⁹ . *Assembly debate* on 28 June 2000 (21st Sitting) (see Doc. 8748, report of the Political Affairs Committee, rapporteur: Mr Baumel, and Doc. 8757, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Clerfayt).
Text adopted by the Assembly on 28 June 2000 (21st Sitting).

7. To its great satisfaction, the Assembly has been informed that Azerbaijan abolished the death penalty in 1998.

8. In asking the Assembly for an opinion on the membership application, the Committee of Ministers reiterated that "a closer relationship between the Caucasian countries and the Council of Europe would demand not only the implementation of substantial democratic reforms, but also their commitment to resolving conflicts by peaceful means".

9. The Parliamentary Assembly considers that the accession of both Azerbaijan and Armenia could help to establish the climate of trust needed for a solution to the Nagorno-Karabakh conflict.

10. The Assembly considers that the OSCE Minsk Group is the optimum framework for negotiating a peaceful settlement to this conflict.

11. The Assembly takes note of the letter from the President of Azerbaijan reiterating his country's commitment to a peaceful settlement of the Nagorno-Karabakh conflict and stressing that Azerbaijan's accession to the Council of Europe would be a major contribution to the negotiations process and stability in the region.

12. The frequency of the meetings between the presidents of the two countries has been stepped up. The speakers of the parliaments of Azerbaijan, Armenia and Georgia have decided to institute regional parliamentary co-operation, consisting in particular of meetings of the speakers of the parliaments and parliamentary seminars to be held in the capitals of the three countries and in Strasbourg. The first meeting in the region, which was held in Tbilissi in September 1999, made it possible to establish an atmosphere of trust and *détente* between the parliamentary delegations of Azerbaijan and Armenia.

13. The Assembly calls on the Azerbaijani and Armenian authorities to continue their dialogue with a view to achieving a peaceful settlement of the Nagorno-Karabakh conflict and giving new impetus to regional co-operation.

14. The Parliamentary Assembly takes note of the letters from the President of Azerbaijan, the speaker of the parliament, the Prime Minister and the chairmen of the political parties represented in Parliament, and notes that Azerbaijan undertakes to honour the following commitments:

i. as regards conventions:

- a. to sign, at the time of its accession, the European Convention on Human Rights (ECHR) as amended by Protocols Nos. 2 and 11 thereto, and Protocols Nos. 1, 4, 6 and 7;
- b. to ratify the ECHR and Protocols Nos. 1, 4, 6 and 7 thereto during the year following its accession;
- c. to sign and ratify, within one year of its accession, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its protocols;

- d. to sign and ratify, within one year of its accession, the Council of Europe's Framework Convention for the Protection of National Minorities;
- e. to sign and ratify, within one year of its accession, the European Charter for Regional or Minority Languages;
- f. to sign and ratify, within one year of its accession, the European Charter of Local Self-Government;
- g. to sign and ratify, within two years of its accession, the European Outline Convention on Transfrontier Co-operation between Territorial Communities and Authorities and its additional protocols and the Council of Europe conventions on extradition, on mutual assistance in criminal matters, on laundering, search, seizure and confiscation of the proceeds from crime, and on the transfer of sentenced persons, and in the meantime to apply the fundamental principles contained therein;
- h. to sign the European Social Charter within two years of its accession and ratify it within three years of its accession, and to strive forthwith to implement a policy consistent with the principles contained in the Charter;
- i. to sign and ratify, within two years of its accession, the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption;
- j. to sign the General Agreement on Privileges and Immunities of the Council of Europe and the additional protocols thereto at the time of its accession, and to ratify these within one year of its accession;

ii. as regards the resolution of the Nagorno-Karabakh conflict:

- a. to continue efforts to settle the conflict by peaceful means only;
- b. to settle international and domestic disputes by peaceful means and according to the principles of international law (an obligation incumbent on all Council of Europe member states), resolutely rejecting any threatened use of force against its neighbours;

iii. as regards domestic law:

- a. to revise legislation on elections, particularly the Law on the Central Electoral Commission and the Electoral Law, taking account of the recommendation put forward by the international observers during previous elections, so that the next general elections in autumn 2000 can confirm definitively the progress made and their results can be accepted by the majority of the political parties that will participate in the elections, and can be considered as free and fair by international observers;
- b. to amend, before the next local elections, the current legislation governing the powers of local authorities so as to give them greater responsibilities and independence, taking into account the recommendations made in this respect by the Congress for Local and Regional Authorities in Europe (CLRAE);
- c. to continue the reforms aimed at strengthening the independence of the legislature *vis-à-vis* the executive, so that the former can exercise the right to put parliamentary questions to members of the government;
- d. to adopt, within one year of its accession, the Code of Criminal Procedure, taking account of the observations by the Council of Europe experts;
- e. to adopt, within one year of its accession, the law on the Ombudsman;
- f. to adopt, within one year of its accession, a law on combating corruption and, within two years of its accession, a state programme on combating corruption;

f. to adopt, within two years of accession, a law on alternative service in compliance with European standards and, in the meantime, to pardon all conscientious objectors presently serving prison terms or serving in disciplinary battalions, allowing them instead to choose (when the law on alternative service has come into force) to perform non-armed military service or alternative civilian service;

iv. as regards human rights and fundamental freedoms:

- a. to sign an agreement with the International Committee of the Red Cross (ICRC) guaranteeing unrestricted and unreserved access by the latter to prisoners;
- b. to release or to grant a new trial to those prisoners who are regarded as “political prisoners” by human rights protection organisations, especially Mr Iskander Gamidov, Mr Alikram Gumbatov and Mr Raqim Gaziyev;
- c. to prosecute members of the law-enforcement bodies who have infringed human rights (particularly the prohibition of torture) in the course of their duties;
- d. to guarantee freedom of expression and the independence of the media and journalists, and particularly to exclude the use of administrative measures to restrict the freedom of the media;
- e. to re-examine and amend the law on the media, within two years of its accession at the latest;
- f. to turn the national television channel into a public channel managed by an independent administrative board;
- g. to adopt, within three years of its accession, a law on minorities which completes the provisions on non-discrimination contained in the constitution and the penal code and replaces the presidential decree on national minorities;
- g. to re-examine and amend, at the latest within one year of its accession, the rules governing registration of associations and appeals procedures;

v. as regards the monitoring of commitments:

- a. to co-operate fully in the implementation of Assembly Resolution 1115 (1997) on the setting up of an Assembly Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee); and
- b. to co-operate fully in the monitoring process established pursuant to the declaration adopted by the Committee of Ministers on 10 November 1994 (95th session).

15. The Parliamentary Assembly notes that Azerbaijan shares fully its understanding and interpretation of the commitments entered into, as spelt out in paragraph 14 and intends:

- i. to re-examine and amend the law on the Bar, at the latest within three years of its accession;
- ii. to re-examine the conditions of access to the Constitutional Court and grant access also to the Government, the Prosecutor General, courts at all levels and – in specific cases – to individuals, at the latest within two years of its accession;
- iii. to re-examine and amend the procedures for appointing judges and the duration of their term of office, at the latest within three years of its accession.

16. On the basis of these commitments, the Assembly is of the opinion that, in accordance with Article 4 of the Statute of the Council of Europe, Azerbaijan is able and willing to fulfil the provisions of Article 3 of the Statute, setting forth the conditions for membership of the Council of Europe: “Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council (of Europe).”

17. With a view to ensuring compliance with these commitments, the Assembly has decided to monitor the situation in Azerbaijan closely, with immediate effect from the date of accession, pursuant to its Resolution 1115 (1997).

18. On the understanding that the commitments set out above are firm and will be fulfilled within the stipulated time limits, the Assembly recommends that the Committee of Ministers:

- i. invite Azerbaijan to become a member of the Council of Europe;
 - ii. allocate six seats to Azerbaijan in the Parliamentary Assembly;
- and requests that the necessary additional resources be made available.

19. Furthermore, in order to enable Azerbaijan to honour its commitments and obligations as a member state, the Assembly also recommends that the Committee of Ministers support the specific co-operation and assistance programmes required for implementation of the obligations and commitments entered into by this country.

Honouring of obligations and commitments by Azerbaijan Resolution 1305 (2002) Parliamentary Assembly Monitoring Committee (Council of Europe)

1. The Assembly welcomes the efforts Azerbaijan has made since its accession on January 2001 toward honouring its obligations and commitments, which it accepted in Opinion No.222 (2000). Nevertheless, it notes that in a number of spheres Azerbaijan still needs to take substantial measures to improve the situation of the majority of the people in the country and honour their commitments.

2. With regard to signature and ratification of conventions;

i. The Assembly is pleased to note that Azerbaijan signed and ratified 31 conventions, including most of those included in their formal commitments.

ii. Nevertheless, some important conventions remain to be signed and ratified including the European Outline Convention on Transfrontier Co-operation and additional protocols, the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption, within the time limits specified in the Assembly Opinion No. 222 (2000).

iii. Some already signed conventions need to be further ratified including the European Social Charter, the European Charter for Regional or Minority Languages, the Convention on Mutual Assistance in Criminal Matters and its additional protocols and the Convention on Laundering.

3. With regard to legal reforms;

i. The Assembly recognises that Azerbaijan has – in close co-operation with the Council of Europe experts – adopted laws or revised its legislation in many fields, including the law on the institution of Ombudsman, the Law on the Bar and the Code of Criminal Procedure. The Assembly recommends continuing this co-operation with the Council of Europe and calls Azerbaijan to improve in particular the law on Advocates and Advocacy, the Criminal Procedure Code to ensure their full compatibility with the organisation's principles and standards.

ii. The Assembly welcomes the co-operation initiated with the Council of Europe regarding the draft law on the Constitutional Court, the Anti-corruption law, the law on Advocates and Advocacy and the Electoral Code; and hopes that the recommendations made by the experts of the Council of Europe will be duly taken into consideration in the laws to be adopted. It also particularly calls for a continuation of the co-operation in appraising and improving the Media legislation and urges Azerbaijan to draft a law on National Minorities.

iii. The Assembly recalls that the honouring of commitments not only resides in the formal reform of the legal framework but also in the respect and the proper implementation of the existing legislation in the daily life of the people of Azerbaijan. The Assembly urges Azerbaijan to take the necessary steps to ensure that the newly reformed legal framework is evenly and systematically implemented in Azerbaijan.

iv. The Assembly is informed that Azerbaijan has only partially honoured its commitment on ratifying conventions related to the fight against corruption. It recalls that the fight against corruption implies a commitment in the interest of an equitable evolution of society and a fair distribution of resources and encourages the Azeri authorities to take whatever steps are necessary to fight efficiently the ramping corruption that still exists in the Azeri society. The Assembly strongly encourages

Azerbaijan to address their commitment regarding the adoption of an anti-corruption law and submit its draft to the Council of Europe for appraisal as well as to draw up speedily a national programme for fighting corruption.

v. The Assembly regrets the absence of progress in the development of local self-government in Azerbaijan. The Assembly calls upon the Azeri authorities proceed with the adaptation of their legislation to the principles of the European Charter of Self Government as well as to define and implement a genuine decentralisation strategy taking into consideration all recommendations of the Council of Europe Directorate General I and the Congress of Local and Regional Authorities of Europe (CLRAE).

vi. The Assembly urges the Azeri authorities to speed up their efforts and co-operate actively with the Council of Europe in checking on the Azeri domestic law's compatibility with the European Convention on Human Rights (ECHR).

4. With regard to separation of power, rule of law and democratic institutions;

i. The Assembly notes that the executive still exercises in Azerbaijan a predominant role. It expresses deep concern over the undue interference of the executive in the functioning of institutions. The Assembly particularly calls for a reinforcement of impartiality in the procedure of nomination of judges.

ii. It is to be regretted that the Parliament exercises no oversight of the government's activities, which means that the public at large is similarly excluded from this process. The Assembly calls for reinforcement of the role of the Parliament and the establishment of its independence from and its controlling role vis-à-vis the executive. The Assembly notes that its Committee on the Honouring of Obligations and Commitments by Member States intends to help this process by undertaking a more detailed evaluation of the current powers of Parliament and their exercise.

iii. The Assembly was informed that the Parliament was consulted on the organisation of a referendum only after the presidential decree had established the date of the referendum and regrets that the debate regarding this issue rapidly took place at very short notice. Although Azerbaijani law does not require the President to conduct any preliminary consultations with the Parliament, it would nevertheless have been desirable to sense "*a priori*" the opinion of the Parliament in issues as important for the future political life of the country, and its stability and inter-party political dialogue, as amendments to the Constitution. Not only the 39 amendments to the Constitution should have been discussed and approved much earlier by the Parliament, but the politically sensitive issue of regrouping the 39 changes into 8 questions should have been decided by the Parliament rather than by the administration. The Assembly recommends reinforcing the legislative role of the Parliament, in particular in the elaboration of laws and in the debate on major political issues.

iv. The Assembly welcomes the efforts made that enabled the first Ombudsperson to be elected in Azerbaijan in July 2002. It conveys its best wishes for the newly established institution in Azerbaijan and underlines the importance of the independence of the Ombudsperson as well as his essential role in facilitating the effective implementation of the ECHR in Azerbaijan.

v. The Assembly congratulates the Azeri authorities for fulfilling their commitment and giving access to the Constitutional Court to the ordinary courts, the newly created Ombudsman Institution and in specific cases to individuals. It welcomes the introduction in the Constitution of such provisions. It encourages the

Azerbaijan to maintain close co-operation with the Council of Europe for finalising and adopting the statute of the Constitutional Court.

5. With regard to pluralist democracy;

i. The Assembly notes the co-operation initiated with the Council of Europe with regard to amending the electoral code and hopes not only that the experts will be consulted for appraisal of the final version, but that their recommendations will be scrupulously taken into consideration. During the last parliamentary elections (2000-2001) as well as during the referendum of 24 August 2002, numerous dysfunctions and procedural irregularities were observed. The current reforming process should take all these observations into consideration for the drafting of the new code. In particular the Assembly hopes that the provisions regulating the composition of the electoral commissions, the participation of local observers, the adjudication of electoral complaints, the registration of candidates, accuracy of voters' lists, training of the members of elections commissions and the transparency of the entire election process will be congruent with the Council of Europe and OSCE standards. The Assembly requests from the Azeri authorities that the law in question should guarantee equal access of all political parties to the electoral process and that it should be implemented at least 6 months before the presidential elections.

ii. The Assembly is disappointed that no consultation was initiated with the Council of Europe on the text and the organisation of the 24 August 2002 Referendum. Nevertheless the Assembly welcomes the fact that the Azeri authorities decided to present the constitutional changes in the form of 8 questions, which enabled the voters to vote separately on the different issues submitted to referendum. As during most of the previous elections, numerous frauds marred the election process and could cast serious doubts as to the validity of the results of the impressive vote, indicating a turnout of over 83% of registered voters, out of which more than 96% voted in favour of the amendments proposed. It is welcomed that because of obvious falsifications, the results of the vote were cancelled in about 251 constituencies by the electoral authorities. It is to be regretted that this referendum which could have offered the Azeri nation an opportunity for real confidence in the electoral process and helped in developing a democratic culture in Azerbaijan with a better design of the procedures, failed to do so. Finally, it is welcomed that for the first time - with the assistance of the OSCE office in Baku - round tables were organised on television on the eve of the referendum between representatives of the government, opposition and civil society to debate publicly the controversy and political impact of this referendum.

iii. The Assembly notes a growing need to grant citizens the fundamental right to take part in the political life of the country. The Assembly urges Azerbaijan to promote confidence and an inclusive climate in politics, particularly in associating members of the opposition in the round tables on the new electoral code.

iv. The Assembly calls on Azerbaijan to ensure that the forthcoming Presidential elections are held - on the basis of the newly reformed electoral code - fully in respect of international standards in order to achieve a broad political consensus.

6. With regard to human rights and fundamental freedoms;

i. The Assembly has noted certain steps undertaken by the Azeri authorities to improve the human rights situation. Nevertheless, it calls for effective arrangements to protect freedom of expression, of association and of peaceful assembly, necessary

for a sound development of democratic society in Azerbaijan. It calls particular attention to the promotion of the specific rights of religious and national minorities.

ii. Having noted the absence of real dialogue between the ruling party and opposition forces, as they are almost not represented in Parliament, the Assembly calls for efforts to be made not only on the governmental side but also on the opposition side to reach a satisfactory level of cooperation and dialogue necessary for the development of a real pluralist democracy. It particularly recommends that the authorities offer the opportunity for non-represented parties to express their opinions in a peaceful manner by organising regular exchanges of views on important subjects and draft laws.

iii. The Assembly is disturbed and shocked by a number of reported human right violations and urges the Azeri authorities to take all necessary measures to guarantee all citizens with those basic freedoms. It calls for improvement of the working modalities and registration procedures of local non-governmental organisations and for a better and fair administration of requests for public demonstrations. The Assembly reiterates that it is unacceptable to the Council of Europe that the development of civil society is hampered by excessive administrative or political barriers.

iv. The Assembly deplores the cases of overreaction leading to undue use of weapons by police forces against civilians that were reported lately. The Assembly is very concerned about the government's response to public protests related to social issues. It strongly calls for the police forces to react in an adequate and proportionate manner when civilians and citizens are involved in police intervention and appeal to the authorities to address and remedy the causes of the social unrest.

7. With regard to freedom of the media;

i. The Assembly is pleased to note progress in the field of media legislation. It welcomes the co-operation initiated with the Council of Europe in this sphere. The Assembly expects that this fruitful co-operation will enable the Azeri authorities to enact a law on public and private broadcasting and a decree on the creation of a national council on radio-TV broadcasting that are fully in line with the Council of Europe standards.

ii. The Assembly is very concerned with cases of interference with freedom of expression, pressure brought on the independent media and harassment of journalists and calls on Azerbaijan to take all necessary steps to guarantee freedom of expression and the independence of the media and journalists, and particularly to exclude the unacceptable use of administrative measures to restrict the freedom of the media.

iii. The Assembly calls upon the Azeri authorities to speedily engage in a dialogue with the Council of Europe in order to ensure that the decree of 11 September 2002 does not contradict the commitment of Azerbaijan in promoting freedom of the media.

8. With regard to political prisoners;

i. The Assembly welcomes the several pardon decrees issued by the President since accession of the country to the Council of Europe. It takes note that among the pardoned prisoners a significant number were considered as political prisoners by the experts of the Council of Europe.

ii. The Assembly is aware that new trials of persons considered by the experts as political prisoners have started. It is concerned with reports of blatant violations of

their procedural and other rights. It reiterates that these trials should respect all provisions for a fair trial as defined in the ECHR including that they be accessible to journalists. It considers that these trials, begun several months ago, cannot be dragged out for a long period and must be rapidly concluded.

iii. The Assembly is profoundly disturbed by the fact that 7 out of the 17 pilot cases of persons found to be political prisoners by the experts of the Council of Europe are still detained and were neither pardoned nor granted retrial, namely: AMIRASLANOV Elchin Samed Oglu (case N°5), EFENDIYEV Natig (case N°7) who is apparently suffering of serious illness, KAZYMOV Arif Nazir Oglu (case N°15), ABDULLAYEV Galib Jamal Oglu (case N°16), GUSEYNOV Suret Davud Oglu (case N°17), SAFIKHANOV Ilgar (case N°18), GUSEYNOV Guseynbala (case N°25).

iv. The Assembly urges the Azeri authorities to speedily take the necessary steps to ensure the fulfilment of their obligations and recalls that particularly in the case of ill detainees, liberation for humanitarian reasons should be envisaged.

v. The Assembly reiterates that for a Council of Europe member state the holding of political prisoners is totally unacceptable. It insists that the Azeri authorities show real determination to eradicate a practice which is a blot on Azeri society, and avoid new imprisonments on the sole ground of political activities.

vi. The Assembly recalls that a democratic state, member of the Council of Europe should promote internal stability through a constructive dialogue with all political forces in the country and should avoid solving social and political discontent through practices resulting in new imprisonments of political prisoners.

vii. Finally, the Assembly stresses the importance of continued co-operation with the experts of the Council of Europe. It particularly requests the Azeri authorities to provide speedily the Council of Europe with the requested documentation including all the transcripts of judgments necessary for the examination of the remaining cases.

9. With regard to the settlement of the Nagorno-Karabakh conflict;

i. The Assembly recognises and welcomes the undoubted efforts Azerbaijan has made to maintain regular high-level contacts with Armenia with a view to reach a suitable and peaceful solution to this conflict.

ii. However the Assembly is concerned with the prevailing frustration in Azeri society at the deadlocked negotiations on the conflict, which is more and more frequently expressed.

iii. The Assembly strongly hopes that the ongoing negotiation process - including the recent meeting of the Presidents of both countries in Nakhitchevan - will soon lead to an acceptable settlement of the territorial conflict in line with the principles of the Council of Europe and international law.

iv. It recalls that the closing of the monitoring procedure can only be envisaged upon fulfilment of all major commitments, which includes, in the case of the two countries involved, an agreement on the peaceful settlement of the Nagorno-Karabakh conflict including the occupied territories, which has been pending for more than 8 years now.

10. In the light of the above considerations, the Assembly concludes that certain progress has been made since accession. However the Assembly has to insist that Azerbaijan needs to make significant progress in honouring all of its obligations and commitments as a member state of the Council of Europe. Therefore the Assembly

decides to pursue the monitoring procedure in respect of Azerbaijan in close co-operation with the Azeri delegation.

11. The Assembly urges the Azerbaijani authorities -in particular- to speedily improve the media legislation, the electoral code and to define and implement, together with the Council of Europe and the Congress of Local and Regional Authorities of Europe, a decentralisation strategy, aiming at increasing local governments' competences, responsibilities and resources.

Assembly debate on 26 September 2002 (31st Sitting) (see Doc. 9545, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, rapporteurs: MM. Gross and Martínez Casañ). *Text adopted by the Assembly* on 26 September 2002 (31st Sitting).

Conclusions and recommendations of the Committee against Torture : Azerbaijan

1. The Committee considered the second periodic report of Azerbaijan (CAT/C/59/Add.1) at its 550th and 553rd meetings, held on 30 April and 1 May 2003 (CAT/C/SR.550, and 553), and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the second periodic report of Azerbaijan, as well as the oral information provided by the high-level delegation. The Committee particularly welcomes the State party's assurances that the concerns and recommendations adopted by the Committee will be pursued seriously.
3. The report, which mainly addresses legal provisions and lacks detailed information on the practical implementation of the Convention, does not fully comply with the reporting guidelines of the Committee. The Committee emphasizes that the next periodic report should contain more specific information on implementation.

B. Positive aspects

4. The Committee notes the following positive developments:
 - a) The efforts by the State party to address the Committee's previous concluding observations, through, in particular, the important Presidential Decree of 10 March 2000;
 - b) The declaration under article 22 of the Convention enabling individuals to submit complaints to the Committee;
 - c) The ratification of several significant human rights treaties, in particular the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
 - d) The extensive legal and legislative reforms by the State party, including the adoption of a new Criminal Code and a new Code of Criminal Procedure;
 - e) The introduction of the offence of torture in the new Criminal Code, and the State party's report of some convictions for this crime;
 - f) The transfer of remand centres of the Ministry of Internal Affairs to the authority of the Ministry of Justice;
 - g) The creation of the post of Ombudsman ;

- h) The assurances by the State party that it is taking action to reduce the occurrence of tuberculosis in places of detention;
- i) The agreement concluded with the International Committee of the Red Cross, enabling ICRC representatives to have unrestricted access to convicted persons in places of detention, as well as the State party's assurance that access for non-governmental organizations to visit and examine conditions in penitentiary establishments is unlimited.

C. Subjects of concern

5. The Committee is concerned about:

- (a) Numerous ongoing allegations of torture and ill-treatment in police facilities and temporary detention facilities, as well as in remand centres and in prisons;
- (b) The fact that the definition of torture in the new Criminal Code does not fully comply with article 1 of the Convention, because, inter alia, article 133 omits references to the purposes of torture outlined in the Convention, restricts acts of torture to systematic blows or other violent acts, and does not provide for criminal liability of officials who have given tacit consent to torture;
- (c) The lack of information on the implementation of article 3 of the Convention regarding the handover of a person to a country where he/she faces a real risk of torture, and on the rights and guarantees granted to the persons concerned.

6. The Committee is also concerned about the substantial gap between the legislative framework and its practical implementation, and about:

- (a) The apparent lack of independence of the judiciary despite the new legislation;
- (b) Reports that some persons have been held in police custody much beyond the time-limit of 48 hours established in the Code of Criminal Procedure, and that in exceptional circumstances, persons can be held in temporary detention for up to 10 days in local police facilities;
- (c) The lack, in many instances, of prompt and adequate access of persons in police custody or remand centres to independent counsel and a medical doctor, which is an important safeguard against torture; many persons in police custody are reportedly forced to renounce their right to a lawyer, and medical experts are provided only on the order of an official, and not at the request of the detainee;
- (d) The fact that, despite the recommendation of the Special Rapporteur on torture, the remand centre of the Ministry of National Security continues to operate, and that it remains under the jurisdiction of the same authorities that conduct the pre-trial investigation;

- (e) Reports of harassment and attacks against human rights defenders and organizations;
- (f) The particularly strict regime applied to prisoners serving life sentences;
- (g) Reports that the ability of detained persons to lodge a complaint is unduly limited by censorship of correspondence and by the failure of the authorities to ensure the protection of the complainants from reprisals;
- (h) The reported failure of the State party to provide prompt, impartial and full investigations into the numerous allegations of torture and ill-treatment, as well as insufficient efforts to prosecute alleged offenders;
- (i) The fact that no independent body with a mandate to visit and/or supervise places of detention has been established, and that access by non-governmental organizations to penitentiary facilities is impeded;
- (j) The fact that very few victims have obtained compensation;
- (k) Reports that, in many instances, judges refuse to deal with visible evidence of torture and ill-treatment of detainees and do not order independent medical examinations or return cases for further investigation.

D. Recommendations

7. The Committee recommends that the State party:
 - (a) Ensure that the offence of torture in national legislation fully complies with the definition provided in article 1 of the Convention;
 - (b) Guarantee that, in practice, persons cannot be held in initial preventive detention (police custody) longer than 48 hours, and eliminate the possibility of holding persons in temporary detention in local police facilities for a period of up to 10 days;
 - (c) Clearly instruct police officers, investigative authorities and remand centre personnel that they must respect the right of detained persons to obtain access to a lawyer immediately following detention and a medical doctor on the request of the detainee, and not only after the written consent of detaining authorities has been obtained. The State party should ensure the full independence of medical experts;
 - (d) Transfer the remand centre of the Ministry of National Security to the authority of the Ministry of Justice, or discontinue its use;
 - (e) Fully ensure the independence of the judiciary, in accordance with the Basic Principles on the Independence of the Judiciary;

- (f) Ensure the prompt creation of the new bar association and take measures to guarantee an adequate number of qualified and independent lawyers able to act in criminal cases;
 - (g) Ensure the full independence of the Ombudsman;
 - (h) Ensure the full protection of non-governmental human rights defenders and organizations;
 - (i) Ensure that all persons have the right to review of any decision about his/her extradition to a country where he/she faces a real risk of torture;
 - (j) Intensify efforts to educate and train police, prison staff, law enforcement personnel, judges and doctors on their obligations to protect from torture and ill-treatment all individuals who are in State custody. It is particularly important to train medical personnel to detect signs of torture or ill-treatment and to document such acts;
 - (k) Ensure the right of detainees to lodge a complaint by ensuring their access to an independent lawyer, by reviewing rules on censorship of correspondence and by guaranteeing in practice that complainants will be free from reprisals;
 - (l) Review the treatment of persons serving life sentences, to ensure that it is in accordance with the Convention;
 - (m) Institute a system of regular and independent inspections of all places of detention and facilitate in practice, including by issuing instructions to appropriate authorities, access by non-governmental organizations to these places of detention;
 - (n) Ensure that prompt, impartial and full investigations into all allegations of torture and ill-treatment are carried out and establish an independent body with the authority to receive and investigate all complaints of torture and other ill-treatment by officials. The State party should also ensure the Presidential Decree of 10 March 2000 is implemented in this respect;
 - (o) Ensure that in practice, redress, compensation and rehabilitation are guaranteed to victims of torture;
 - (p) Widely disseminate in the country the reports submitted to the Committee, the conclusions and recommendations of the Committee, as well as the summary records of the review, in appropriate languages.
8. The Committee requests the State party to provide in its next periodic report:
- (a) Detailed information, including statistical data, on the practical implementation of its legislation and the recommendations of the Committee, in particular regarding the rights of persons under police custody and pre-trial detention, the implementation of the 1998 Compensation Act or other relevant legislation,

the implementation of article 3 of the Convention, and the mandate and activities of the Ombudsman;

- (b) Detailed statistical data, disaggregated by crimes, geographical location, ethnicity and gender, of complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, as well as related investigations, prosecutions, and penal and disciplinary sentences.

9. The Committee welcomes the assurances given by the delegation that complementary written information will be submitted regarding the questions that remained unanswered.

10. The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7 (c), (f), (h), (i) and (n) above.

Concluding observations of the Human Rights Committee : Azerbaijan. 12/11/2001.

1. The Committee considered the second periodic report submitted by the Azerbaijan Republic (CCPR/C/AZE/99/2) at its 1974th and 1975th meetings (see CCPR/C/SR.1974 and 1975), held on 26 October 2001. The Committee adopted the following concluding observations at its 1983rd meeting (CCPR/C/SR.1983), held on 1 November 2001.

A. Introduction

2. The Committee has examined the second periodic report of Azerbaijan. The Committee welcomes the frank and constructive explanation by the delegation of measures undertaken by the State party, since the presentation of its initial report. It further commends the delegation for supplying it with updated information about the legal situation in Azerbaijan, but regrets that it was not provided with more information with regard to the implementation of Covenant rights in practice.

B. Positive aspects

3. The Committee commends the State party for undertaking in a period of transition from totalitarian rule, and armed conflict with the resulting displacement of a large proportion of the population, the process of bringing its legislation into line with its international obligations. The Committee appreciates the enactment of a significant number of laws in order to harmonize domestic legislation with the requirements of the Covenant.

4. The Committee welcomes the abolition of the death penalty in 1998 as well as the State party's accession to the Second Optional Protocol to the Covenant, though with a reservation relating to wartime. It further welcomes the information provided by the delegation about the ratification of the Optional Protocol.

5. The Committee notes with satisfaction that under article 151 of the Constitution, international legal obligations, including the rights stipulated in the Covenant, prevail over domestic legislation in the event of a conflict between them.

6. The Committee expresses its satisfaction at the fact that an agreement has been reached between the State party and the International Committee of the Red Cross, by which the ICRC is authorized to visit Azerbaijani prisons and detention facilities.

7. The Committee welcomes the reform of the criminal procedure system and ministerial responsibilities, particularly the transfer of the jurisdiction over detention facilities from the Ministry of the Interior to the Ministry of Justice.

C. Principal subjects of concern and recommendations

8. While commending the constitutional provision stipulating that in a state of emergency the restriction of citizens' rights and liberties is subject to the State's international obligations (art. 71 (3)), the Committee is concerned that the notifications submitted by the State party on resorting to article 4 of the Covenant have been quite broad and vague.

The State party should ensure that the draft law on states of emergency, as well as any future application of that law, are compatible with article 4 of the Covenant and that in practice no derogation from rights should be made unless the conditions of article 4 have been met.

9. The Committee is concerned at the lack of an independent mechanism for investigating complaints against members of the police and prison guards. This fact may account for the small number of recorded complaints, in contrast to information about large numbers of violations received from non-government sources (arts. 2, 7, 9). The State party should establish an independent body with authority to receive and investigate all complaints of excessive use of force and other abuses of power by law-enforcement officials, and initiate criminal and disciplinary proceedings against those found responsible.

10. While welcoming the steps taken to bring its law into compliance with international standards to prevent torture, the Committee is deeply concerned at the reported failure to ensure application of such legal provisions and at continuing reports of the use of torture and cruel, inhuman or degrading treatment or punishment. The Committee notes that the delegation could not provide clarifications on the number of investigations and prosecutions in regard to torture, particularly under the new Criminal Code, or on remedies provided to victims and their families, including rehabilitation and compensation (arts. 2, 7)

The State party should take all necessary measures to ensure the full implementation of its domestic and international obligations relating to torture and cruel, inhuman or degrading treatment or punishment. The State party should ensure the prompt, impartial and full investigation of all allegations of torture, the prosecution of persons responsible, as well as compensation to victims, or as the case may be, their families.

11. The Committee is concerned that the legal right of detainees to access to counsel, medical advice and members of the family is not always respected in practice (arts. 7, 9).

The State party should ensure scrupulous respect for these rights by its law enforcement agencies, procuracy and judiciary.

12. The Committee is concerned at the problem of overcrowding in prisons. The Committee notes that insufficient information has been provided by the State party concerning measures undertaken in this regard (art. 10).

The State party should take measures to overcome overcrowding in prisons and should ensure that all persons deprived of their liberty are treated with humanity and respect for their dignity in compliance with the requirements of article 10.

13. The Committee is concerned at the lack of independent and transparent scrutiny of prison facilities.

The State party should institute a system for independent inspections of detention facilities, which should include elements independent of Government so as to ensure transparency and compliance with article 10.

14. While appreciating the steps that have been initiated by the State party to reform the judiciary, including Presidential Decree of 17 January 2000 to improve the procedures for the appointment of judges, the Committee is concerned at reports of irregularities during the selection procedure in practice. Furthermore, the Committee is concerned at the lack of security of tenure for judges, and at the fact that decisions concerning the assignment of judges and affecting their seniority appear to be made at the discretion of the administrative authorities, may expose judges to political pressure and jeopardize their independence and impartiality. The Committee considers that the new Law on the Bar may compromise lawyers' free and independent exercise of their functions (art. 14).

The Committee recommends the institution of clear and transparent procedures to be applied in judicial appointments and assignments, in order to ensure full implementation of the legislation in practice and to safeguard the independence and impartiality of the judiciary. The State party should furthermore ensure that the criteria for access to and the conditions of membership in the Bar do not compromise the independence of lawyers. The State party should provide information on the distinction between "licensed lawyer" and member of the Bar.

15. The Committee is deeply concerned that it received no information on the extent of the problem of trafficking in women, as the State party is reportedly a country of both origin and transit. While acknowledging the need for legislation to combat trafficking of women, the delegation noted that trafficking is not defined as a separate criminal offence if the victim is not a minor; moreover, the delegation gave no conclusive information on action to combat such trafficking (arts. 3, 8).

The State party should take resolute measures to combat this practice, which constitutes a violation of several Covenant rights, including those in articles 3 and 8, by imposing sanctions against those found responsible.

16. The Committee is concerned that the State party has not undertaken adequate measures to help women prevent unwanted pregnancies and to ensure that they do not undergo life-threatening abortions.

The State party should take adequate measures to help women prevent unwanted pregnancies and avoid resorting to life-threatening abortions, and to adopt appropriate family planning programmes to this effect.

17. With regard to articles 3, 9 and 26 of the Covenant, the Committee is concerned at the incidence of violence against women, including rape and domestic violence. The Committee takes note with concern that domestic violence is apparently not acknowledged to be a problem. The Committee notes as well that information on these matters is not systematically maintained, that women have a low level of awareness of their rights and the remedies available to them, and that complaints are not being adequately dealt with.

The State party should take effective measures to combat violence against women, including marital rape. The State party should also organize an effective information

campaign to address all forms of violence against women. The Committee urges that reliable data be systematically collected and maintained on the incidence of violence and discrimination against women in all their forms.

18. The Committee is concerned that the traditional attitudes to women still prevail, whereby a woman's primary role is as wife and mother (articles 3 and 26 of the Covenant).

The State party should take measures to overcome traditional attitudes regarding the role of women in society. It should organize special training programmes for women and regular awareness campaigns in this regard.

19. The Committee notes that, despite recent improvements, the proportion of women participating in public life and the private sector workforce, particularly at senior levels of the executive and in Parliament, remain at unacceptably low levels (art. 3).

The State party should take appropriate steps towards achieving a balanced representation of women in these fields.

20. With regard to the rights of aliens, the Committee considers that the provisions in the State party's legislation providing for the principle of reciprocity in guaranteeing Covenant rights to aliens are contrary to articles 2 and 26 of the Covenant. The Committee is equally concerned that according to article 61 of the Constitution, the right to immediate access to legal representation is guaranteed only to citizens.

The Committee recommends that the State party take appropriate measures to guarantee all rights of aliens in accordance with articles 2 and 26 of the Covenant.

21. The Committee takes note of the fact that the law makes no provision for the status of conscientious objector to military service, which may legitimately be claimed under article 18 of the Covenant.

The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination.

22. The Committee is concerned at the extensive limitations on the right to freedom of expression of the media. While noting the explanations given by the delegation with regard to this issue, the Committee remains concerned at reports of harassment and criminal libel suits used to seek to silence journalists critical of the Government or public officials, as well as the closure of print media outlets and the imposition of heavy fines, aimed at undermining freedom of expression (art. 19).

The Committee urges the State party to take the necessary measures to put an end to direct and indirect restrictions on freedom of expression. Criminal defamation legislation should be brought into line with article 19 by ensuring a proper balance between the protection of a person's reputation and freedom of expression.

23. The Committee is concerned at reported obstacles imposed on the registration and free operation of non-governmental human rights organizations and political parties (arts. 19, 22, 25).

The Committee urges the State party to take all necessary steps to enable national non-governmental human rights organizations to function without hindrance. With regard to political parties, the Committee urges the State party to take all necessary

measures to ensure that registration is not used to silence political movements opposed to the Government and to limit the rights of association guaranteed by the Covenant. In particular, legislation should clarify the status of associations, non-governmental organizations and political parties in the period between the request for registration and the final decision; such status should be consistent with articles 19, 22 and 25 of the Covenant.

24. The Committee is concerned at the serious interference in the electoral process, whilst noting the delegation's statement with respect to the punishment and dismissal of those responsible and the cancellation of the results of elections in 11 districts where serious violations had been found and the holding of new elections in those districts.

The State party should take all necessary measures to ensure that the electoral process is conducted in accordance with article 25 of the Covenant.

25. The Committee is concerned at the apparently low level of awareness amongst the public of the provisions of the Covenant (art. 2).

The State party should widely publicize the provisions of the Covenant and the availability of the complaint mechanism to individuals as provided upon the entry into force in the State party of the Optional Protocol.

26. The State party should widely publicize the present examination of its second periodic report by the Committee and, in particular, these concluding observations.

27. The State party is requested, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations regarding measures taken to ensure the compatibility with article 4 of the draft law on states of emergency (paragraph 8 above); investigation of all allegations of torture, the prosecution of those responsible and compensation provided to victims, or, as the case may be, their families (para. 10); legal and practical measures taken to combat violence against women and trafficking (paras. 15 and 17); measures taken to ensure that any restrictions on freedom of expression do not exceed those permissible under article 19 (3) of the Covenant (para. 22); as well as measures taken to ensure that general elections adequately reflect popular choice (para. 24). The Committee requests that information concerning the remainder of its recommendations be included in the third periodic report, to be submitted by 1 November 2005.

Report of the UN-Special Rapporteur, Sir Nigel Rodley : Azerbaijan

Resolution 2000/43

Introduction

1. Following a request by the Special Rapporteur in November 1999, the Government of the Republic of Azerbaijan invited him to undertake a fact-finding mission to the country within the framework of his mandate. The objective of the visit, which took place from 7 to 15 May 2000, was to enable the Special Rapporteur to collect first-hand information from a wide range of contacts in order to better assess the situation regarding torture and ill-treatment in Azerbaijan and thus to be in a position to recommend to the Government of Azerbaijan a number of measures to be adopted with a view to putting an end to torture and other forms of ill-treatment.

Conclusions

105. The Special Rapporteur acknowledges with appreciation the full facilities granted him by the authorities. The mission's terms of reference were scrupulously respected. In particular, no obstacles were raised to his visiting (or revisiting) places of detention on an unannounced basis, nor to his speaking to persons held in such places in the sole presence of members of his team.

106. Azerbaijan, formerly a republic of the Soviet Union, has only been independent since August 1991. Its population of some 7 million is more or less evenly spread in terms of urban and rural residence. The cities are more prosperous than the countryside. The country has important natural resources, notably petroleum, together with extraction and refining facilities, as well as developed agriculture permitting or, at least, promising self-sufficiency.

107. Historically and culturally it conceives of itself as a bridge between Europe and Asia. Politically, it aspires to be part of the European geostrategic polity: it is a member of the Organization for Security and Cooperation in Europe and a candidate for membership of the Council of Europe.

108. While formally now a multi-party democracy, many Azerbaijanis question whether the resounding majorities achieved in presidential and parliamentary elections are an accurate reflection of the real voting pattern. On the other hand, the present political leadership seems to have provided a certain stability after real threats to the coherence of the State in the early 1990s, although the Government has been confronted by armed challenges in the mid-1990s. Reforms under way to the elections law are pointed to as a possible solution to the question of the legitimacy of the political authorities.

109. There is also a widespread belief both within and outside the country that corruption²⁰ is prevalent and that this extends to the administration of justice. This was indicated as one

²⁰ See in particular: "Anticorruption in Transition: A Contribution to the Police Debate", World Bank, September 2000.

of the reasons behind a radical reform of the judiciary being carried out under the auspices of the World Bank.

110. As far as specific issues relating to the treatment of prisoners are concerned, notable improvements were identified. The achievement of the abolition of the death penalty in February 1998 was consistently cited with justifiable pride by official interlocutors with whom the Special Rapporteur spoke. The moving of correctional facilities and remand centres ("investigation isolators") from the jurisdiction of the Ministry of Internal Affairs to that of the Ministry of Justice was also cited as an important contribution to the improvement of conditions of detention. Certainly a combination of a substantial reduction in the prison population, notably in the wake of successive presidential amnesties, and considerable improvements in material conditions and regime effected (with others planned) by the Ministry of Justice have led to a drastic decrease in complaints about prison conditions. The Deputy Minister responsible for the system took genuine pleasure in showing the Special Rapporteur the long-term meeting facilities for private family contacts in centre No. 1.

111. There is evidently, as the Deputy Minister himself pointed out, much more to be done in improving the remand centres, jurisdiction over which was only transferred to the Ministry of Justice in 1999. There are five of these, three of which were visited by the Special Rapporteur in Baku (Bailov, Shuvelan and the detention facility of the Ministry of National Security), the fourth being located in the city of Ganja and the fifth in Naxçivan region. Limited resources dictated a very basic diet for inmates at Bailov and, presumably, other institutions. It was clear that the culture of the personnel who had until recently been employees of the Ministry of Internal Affairs was still in need of adjustment.

112. Two prisoners at Gobustan were found in quarantine, having finally been medically examined five days after admission. One appeared to have tuberculosis.

113. However, the main focus of the Special Rapporteur's mission was on the treatment of those in the hands of law enforcement officials, mainly agents of the Ministry of Internal Affairs. The key types of place of deprivation of liberty where such officials enjoy control are, on the one hand, regional police offices and local police units under them (police stations), where people may be held for up to three hours, and temporary detention facilities (IVS), where they may be held for up to three days but under certain circumstances for up to 10 or even 30 days.

114. The Special Rapporteur believes, on the basis of numerous testimonies he received, not least from those whose evident fear led them to request anonymity and who thus had nothing personally to gain from making their allegations, that torture or similar ill-treatment is widespread. Indeed, it is believed by so many to be automatic, that the mere threat or hint of adverse consequences for failure to comply with investigators' wishes (such as to sign a confession) is assumed to mean torture. For some, the mere fact of detention has the same implication.

115. The Special Rapporteur would have needed substantially more time in the country to be able to corroborate whether this perception is well founded, but it was clear that the detainees and investigating authorities frequently did nothing to dispel the association. The

Special Rapporteur points out that the fear of physical torture may itself constitute mental torture.

116. The Special Rapporteur was also concerned at the fact that a person could be transferred from a remand centre back to police custody, albeit on the order of a prosecutor, thus enhancing the risk and, more palpably, the renewed fear of ill-treatment. This could, of course, lead to a perception of coercion even when questioning in the context of a continuing investigation was in fact taking place in a remand centre under Ministry of Justice jurisdiction.

117. In fact, it is the Special Rapporteur's intuitive impression that there has been a reduction in the incidence of physical torture in the past two years or so, especially as far as detainees held in connection with alleged criminal activities committed for political motives are concerned. Nevertheless, he was convinced by numerous testimonies he received in Gobustan and elsewhere that systematic, prolonged torture had been inflicted on any detainees thought to have been involved in the attempted escape from that institution in January 1999.

118. Under these circumstances, the palpable fear he encountered in those held in the remand centre at Ministry of National Security headquarters seemed understandable, particularly as the premises effectively serve as a police station, temporary detention facility and remand centre where persons can be held until conviction and sentencing. Also, the officer in charge of the detention cells made clear that he and his staff did not monitor what transpired between investigators and detainees during interrogation sessions. There was no question of any ill-treatment while detainees were in the detention area under his jurisdiction. Indeed, the regime the Special Rapporteur found there was exemplary.

119. The Special Rapporteur is aware that substantial legal reforms could have a significant impact on the problem. Ill-treatment has evidently been facilitated by the power of prosecutors to order detention in temporary detention facilities (under Ministry of Internal Affairs jurisdiction) for up to 30 days. Limited access to lawyers, especially by those who are either ignorant of the function of a lawyer or who have to rely on often poorly paid and motivated State-assigned lawyers and who may thus waive what rights they have (fear may also lead to such waiver), means that legal provisions for access do not sufficiently guarantee the safety of detainees.

Recommendations

120. Accordingly, the Special Rapporteur makes the following recommendations:

i. The Government should ensure that all allegations of torture and similar ill-treatment are promptly, independently and thoroughly investigated by a body capable of prosecuting perpetrators;

ii. Prosecutors should regularly carry out inspections, including unannounced visits, of all places of detention. Similarly, the Ministries of Internal Affairs and of National Security should establish effective procedures for internal monitoring of the behaviour and discipline of their agents, in particular with a view to eliminating practices of torture and ill-treatment; the activities of such procedures should not be dependent on the existence of a formal complaint. In addition, non-governmental organizations and other parts of civil society should be allowed to visit places of detention and to have confidential interviews with all persons deprived of their liberty;

- iii. Magistrates and judges, like prosecutors, should always ask a person brought from police custody how they have been treated and be particularly attentive to their condition;
- iv. Where there is credible evidence that a person has been subjected to torture or similar ill-treatment, adequate compensation should be paid promptly; a system should be put in place to this end;
- v. Confessions made by a person under police detention without the presence of a lawyer should not be admissible as evidence against the person;
- vi. Given the numerous reports of inadequate legal counsel provided by State-appointed lawyers, measures should be taken to improve legal aid services;
- vii. Video and audio taping of proceedings in police interrogation rooms should be considered;
- viii. Given the numerous situations in which persons deprived of their liberty were not aware of their rights, public awareness campaigns on basic human rights, in particular on police powers, should be considered;
- ix. The Government should give urgent consideration to discontinuing the use of the detention centre of the Ministry of National Security, preferably for all purposes, or at least reducing its status to that of a temporary detention facility;
- x. The Special Rapporteur welcomes the continuation of the provision of advisory services by the Office of the High Commissioner for Human Rights; he notes that the publication in the Professional Training Series entitled Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police has been translated into Azeri; accordingly, the Government is invited to give favourable consideration to putting emphasis, in the technical cooperation programme, on training activities for the police and possibly investigators of the Ministry of National Security once recommendation (i) has been implemented;
- xi. The Government should also consider requesting advisory services from the Office of the High Commissioner for Human Rights regarding training activities for officials from the General Prosecutor's Office;
- xii. The Government is invited to consider favourably making the declaration provided for in article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, whereby the Committee against Torture could receive individual complaints from persons alleging non-compliance with the terms of the Convention. It is also invited similarly to consider ratifying the Optional Protocol to the International Covenant on Civil and Political Rights so that the Human Rights Committee can receive individual complaints.

GEORGIA

COUNCIL OF EUROPE	
Date of accession	27 Apr 1999
ECPT	
Signature	16 Feb 2000
Ratification	20 Jun 2000
Entry into force	1 Oct 2000
Date of CPT visit	6 – 18 May 2001
Publication of report	25 July 2002
ECHR	
Signature	27 April 1999
Ratification	20 May 1999
Entry into force	20 May 1999
Parliamentary Assembly Monitoring Committee	
Co-Rapporteurs	Mr Diana, Italy Mr Eörsi, Hungary
Date of visits	10 – 13 May 2000 31 Oct - 5 Nov 2000
Publication of report	13 Sept. 2001 (Doc. 9191)
Resolution Recommendation	RES 1257(2001) REC 1533(2001)

UNITED NATIONS	
Date of Admission	31 July 1992
CAT	
Accession	26 Oct 1994
Entry into force	25 Nov 1994
Declaration under art. 22	No
Last examination of State Report	CAT/C/48/add.1 1-2/7 May 2001
Next report due	25 Nov 2003
Next examination date	-
ICCPR	
Accession	3 May 1994
Entry into force	3 Aug 1994
Last examination of state report by HRC	CCPR/C/GEO/200/2 74 th session ; 18 Mar-5 Apr 2002
Next report due	April 2006
Optional protocol	First
Accession	Second
	3 May 1994
	22 Mar 1999

Opinion No. 209 (1999)²¹ Parliamentary Assembly CoE : Georgia Application for membership of the Council of Europe

1. Georgia applied to join the Council of Europe on 14 July 1996. By Resolution (96) 33 of 11 September 1996, the Committee of Ministers invited the Parliamentary Assembly to give an opinion on this application, in accordance with Statutory Resolution 51 (30A).
2. The Parliament of Georgia applied for Special Guest status with the Parliamentary Assembly on 4 March 1993 and obtained it on 28 May 1996. Examination of this application was linked to the adoption of Recommendation 1247 (1994) on the enlargement of the Council of Europe, in which the Assembly stated that "in view of their cultural links with Europe, Armenia, Azerbaijan and Georgia would have the possibility of applying for membership provided they clearly indicated their will to be considered as part of Europe".
3. An ad hoc committee of the Assembly observed the parliamentary elections held in Georgia on 5 November 1995 and noted that, in spite of what they considered to be some minor irregularities, "the election had proceeded calmly and apparently in acceptably normal and lawful conditions".
4. Since 1996, Georgia has been participating in various Council of Europe activities under the intergovernmental co-operation and assistance programmes, and in the work of the Parliamentary Assembly and its committees through its delegation of Special Guests.
5. Georgia has ratified the European Cultural Convention and the Convention on the Transfer of Sentenced Persons, and signed the Convention on the Recognition of Qualifications concerning Higher Education in the European Region.
6. The Assembly considers that Georgia is a pluralist democratic society, respectful of human rights and the rule of law, and is able and willing, in the sense of Article 4 of the Statute, to continue the democratic reforms in progress in order to bring all the country's legislation and practice into line with the principles and standards of the Council of Europe.
7. Georgia has experienced two armed conflicts, in Abkhazia (1992-94) and in South Ossetia (1990-93). The Assembly believes that the country has demonstrated its resolve to settle conflicts by peaceful means, as is well illustrated by the substantial improvement in relations with South Ossetia.
8. The Assembly considers that the adoption of a declaration of friendship with the Abkhaz and Ossetian peoples, as well as increased contact at every level, would help to establish and consolidate a climate of confidence in relations with Abkhazia and South Ossetia.
9. The Assembly calls on Georgian and Abkhaz leaders to accelerate talks on the status of

²¹ Assembly debate on 27 January 1999 (4th Sitting) (see Doc. 8275, report of the Political Affairs Committee, rapporteur: Mr Davis; and Doc. 8296, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Kelemen).

Text adopted by the Assembly on 27 January 1999 (4th Sitting).

Abkhazia within the internationally recognised borders of Georgia and on the return of all displaced persons to Abkhazia.

10. The Parliamentary Assembly expects Georgia to undertake:

i. with regard to conventions

- a. to sign the European Convention on Human Rights (ECHR), as amended by its Protocols Nos. 2 and 11, at the time of accession;
- b. to ratify the ECHR and Protocols Nos. 1, 4, 6 and 7 thereto within a year after its accession;
- c. to sign and ratify, within a year after its accession, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its protocols;
- d. to sign and ratify, within a year after its accession, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages;
- e. to sign and ratify, within three years after its accession, the European Charter of Local Self-Government, the European Outline Convention on Transfrontier Co-operation and its additional protocols and the Council of Europe conventions on extradition, on mutual assistance in criminal matters, and on laundering, search, seizure and confiscation of the proceeds from crime, and in the meantime to apply the fundamental principles of these instruments;
- f. to sign and ratify the Council of Europe's Social Charter within three years after its accession and, in the meantime, to endeavour to implement a policy in accordance with the principles it contains;
- g. to sign and ratify the General Agreement on Privileges and Immunities of the Council of Europe and the protocols thereto within a year after its accession;
- h. to sign and ratify the Geneva Convention relating to the Status of Refugees and the 1967 Protocol thereto within two years after its accession;

ii. with regard to domestic legislation

- a. to create, within four years after its accession, the legal framework for the establishment of a second parliamentary chamber, in conformity with the constitutional requirements;
- b. to enact, within two years after its accession, a legal framework determining the status of the autonomous territories and guaranteeing them broad autonomy, the exact terms of which are to be negotiated with the representatives of the territories concerned;
- c. to adopt a law on the electronic media within a year after its accession;
- d. to adopt a law on attorneys within a year after its accession;
- e. to adopt, within two years after its accession, a legal framework permitting repatriation and integration, including the right to Georgian nationality, for the Meskhetian population deported by the Soviet regime, to consult the Council of Europe about this legal framework before its adoption, to begin the process of repatriation and integration within three years after its accession and complete the process of repatriation of the Meskhetian population within twelve years after its accession;
- f. to amend the law on the Ombudsman within six months after its accession, so that a report on the Ombudsman's activities shall be presented to Parliament and made public every six months;
- g. to take the necessary legislative measures within two years after its accession and administrative measures within three years after its accession in order to permit the restitution of ownership and tenancy rights or the payment of compensation for the

property lost by people forced to abandon their homes during the 1990-94 conflicts;

- h. to amend, within three years after its accession, the law on autonomy and local government to enable all the heads of councils to be elected instead of being appointed;
- i. to adopt, within two years after its accession, a law on minorities based on the principles of Assembly Recommendation 1201 (1993);

iii. with regard to the implementation of reforms

- a. to maintain and continue the reforms of the judicial system, the public prosecutor's office and the police force;
- b. to continue and reinforce the fight against corruption in the judiciary, the public prosecutor's office and the police force;
- c. to adopt the law concerning the transfer of responsibility for the prison system from the Ministry of the Interior to the Ministry of Justice within three months after its accession and to ensure the effective implementation of this law within six months after it has been adopted;
- d. to review the scale of sanctions with a view to the reduction of the length of detention
- e. and to foresee alternative sentences to prison sentences;

iv. with regard to human rights

- a. to ensure strict observance of the human rights of detainees, to abolish within six months after its accession the existing prison system, which puts prisoners with prior political activities in the same cells as other prisoners, and to continue to improve conditions of detention in prisons and pre-trial detention centres;
- b. to give human rights training to prison staff and to the police, with the assistance of the Council of Europe;
- c. to respect the maximum length of preventive detention;
- d. to implement within six months after its accession the right of a detainee to choose his (own) lawyer;
- e. to review the cases of persons convicted or detained for their part in the political upheavals of 1991-92 within two years after its accession;
- h. to prosecute resolutely and impartially the perpetrators of war crimes committed during
 - g. the conflicts in Abkhazia and South Ossetia, even within its own armed forces;

v. with regard to the conflict in Abkhazia

- a. to continue the efforts to settle the conflict by peaceful means and do everything in its power to put a stop to the activities of all irregular armed groups in the conflict zone and to guarantee the safety of the collective peace-keeping forces of the Commonwealth of Independent States (CIS), the United Nations Observer Mission (UNOMIG) and representatives of all international organisations involved;
- b. to facilitate the delivery of humanitarian aid to the most vulnerable groups of the population affected by the consequences of the conflict;

vi. with regard to the monitoring of commitments to co-operate fully with the implementation of the Assembly's Resolution 1115 (1997) on the setting up of an Assembly committee on the honouring of obligations and commitments by member states of the Council of Europe (Monitoring Committee), as well as with the monitoring process set up under the Declaration of the Committee of Ministers dated 10 November 1994 (95th session).

11. On the basis of these commitments the Assembly believes that Georgia is able and willing, in accordance with Article 4 of the Statute of the Council of Europe, to fulfil the conditions of membership of the Council of Europe as set forth in Article 3 of the Statute in the following terms: "Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council (of Europe)".

12. With a view to ensuring compliance with these commitments, the Assembly decides, pursuant to Resolution 1115 (1997), to monitor the situation in Georgia closely as from the country's accession.

13. On the basis of the commitments set out above, the Assembly recommends that the Committee of Ministers:

- i. invite Georgia to become a member of the Council of Europe;
- ii. allocate five seats to Georgia in the Parliamentary Assembly.

**Honouring of obligations and commitments by Georgia;
Recommendation 1533 (2001) Parliamentary Assembly
Monitoring Committee (Council of Europe)**

1. The Assembly refers to its Resolution 1257 (2001) on the honouring of obligations and commitments by Georgia, in which:

- i. it welcomes the efforts made by Georgia to honour some of its obligations and commitments entered into upon its accession to the Council of Europe on 27 April 1999, in particular the ratification of some conventions, the adoption of several legislative texts, reforms of the penitentiary system and administration of justice, and initiatives to combat corruption;
- ii. it calls on Georgia to accelerate reforms under way and to implement them properly and according to Council of Europe standards, in particular as regards the functioning of the judiciary and conditions of detention;
- iii. it urges Georgia to strengthen co-operation with the Council of Europe in order to ensure full compatibility of Georgian legislation with the Organisation's principles and standards;
- iv. it expresses its deep concern as regards respect for human rights and the behaviour of the police and other law enforcement bodies, and urges the Georgian authorities to adopt radical measures to bring definitively the country into line with the principles and standards of the Council of Europe;
- v. it welcomes progress made in granting autonomous status to Adjara in April 2000, but regrets that no substantial progress has been made on a political settlement of the South Ossetian and Abkhaz conflicts and on the return of all displaced persons who wish to do so, to Abkhazia;
- vi. it concludes that Georgia is far from honouring its obligations and commitments as a member state of the Council of Europe, and resolves to pursue the monitoring procedure in respect of this country, in close co-operation with the Georgian delegation.

2. The Assembly recommends that the Committee of Ministers pursue co-operation with the Georgian authorities, in particular on the following subjects:

- i. legal expertise on a number of bills which have been prepared recently, including a new draft law on the police, a draft law amending the law on the prosecutor's office and a draft law on development of alternative punishment;
- ii. legal expertise on relevant new legislation, including the amended Code of Criminal Procedure;
- iii. implementation of the recommendations made by Council of Europe experts on criminal procedures, the role of the prosecutor's office, police arrest, pre-trial investigation and pre-trial detention;

- iv. implementation of the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment following its visit to Georgia in May 2001;
 - v. continuation of legal expertise of the draft law “on repatriation of persons deported from Georgia in the 1940s by the Soviet regime”.
3. The Assembly also invites the Committee of Ministers to consider strengthening co-operation with the Georgian authorities:
- i. as regards expertise by the European Commission for Democracy through Law (Venice Commission) of the newly adopted Election Code, in order to assess that the current electoral legislation takes full account of the recommendations made in 1999 by the Parliamentary Assembly Ad hoc Committee on the Observation of Elections and by the OSCE Office for Democratic Institutions and Human Rights (ODIHR);
 - ii. as regards implementation of the recommendations made in 1999 by the Congress of Local and Regional Authorities of Europe (CLRAE) to enhance local and regional self-government in Georgia, and legal expertise on the law amending the Law on Local Self-Government;
 - iii. as regards assistance in the preparation and observation of the forthcoming local elections;
 - iv. as regards expertise on the expected draft law on the electronic media.

**Honouring of obligations and commitments by Georgia;
Resolution 1257 (2001) Parliamentary Assembly
Monitoring Committee (Council of Europe)**

The Assembly welcomes the efforts Georgia has made since its accession on 27 April 1999 towards honouring some of its obligations and commitments, which it accepted in Opinion No.209 (1999).

1. With regard to the signature and ratification of conventions, the Assembly is pleased to note that:
 - vii. Georgia has ratified, within the deadlines in Opinion No. 209, the European Convention on Human Rights as well as its Protocols Nos. 4, 6 and 7;
 - viii. to date, Georgia is the only member state which has, on 15 June 2001, ratified Protocol No. 12 to the European Convention on Human Rights;
 - ix. Georgia has also ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its Protocols Nos. 1 and 2, the European Convention on Extradition and its protocols, the European Convention on Mutual Assistance in Criminal Matters, the General Agreement on Privileges and Immunities and its protocols, and signed the revised European Social Charter;
 - x. Georgia has also ratified the Geneva Convention relating to the Status of Refugees and the 1967 Protocol thereto.

3. The Assembly nevertheless, regrets that Georgia:
 - vi. did not ratify within one year after its accession the Additional Protocol to the European Convention on Human Rights it signed on June 1999, or the Framework Convention for the Protection of National Minorities it signed in January 2000;
 - vii. has not signed or ratified the European Charter for Regional or Minority Languages, the European Charter of Local Self-Government, the European Outline Convention on Transfrontier Co-operation and its additional protocols, or the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

4. With regard to domestic legislation, the Assembly recognises that Georgia has adopted laws in many fields, including an electoral code, a law on the Bar, a new law on imprisonment, a general administrative code, a law amending the Law on the Ombudsman and a law amending the Law on Local Self-Government, but is preoccupied by the lack of enforcement and recalls the need for a proper implementation of existing legislation.

5. The Assembly also supports initiatives taken to combat and eradicate endemic and widespread corruption in the country and in this context welcomes the implementation of the National Anti-Corruption Programme.

6. With regard to the implementation of reforms, the Assembly acknowledges that measures have been taken to improve the functioning of the judiciary, especially in respect of the fight against corruption and incompetence in the

judiciary, the monitoring of the execution of judgments, and the reform of the prosecutor's office. It also notes positive steps undertaken to reform the penitentiary system, that is, the transfer of the prison administration from the Ministry of the Interior to the Ministry of Justice, the building of a new prison, and measures to fight corruption.

7. In order to solve the persisting problems in the administration of justice, the Assembly calls on Georgia to accelerate these and other reforms under way and to implement them according to Council of Europe standards, in particular as regards the functioning of the judiciary and the conditions of detention in prisons and pre-trial detention centres.
8. With regard to domestic legislation and implementation of reforms, the Assembly urges Georgia to strengthen co-operation with the Council of Europe in order to ensure full compatibility of Georgian legislation with the Organisation's principles and standards, and in particular:
 - v. to co-operate with the Council of Europe legal experts on a number of bills which have been prepared recently, including a new draft law on the police, a draft law amending the law on the prosecutor's office, a draft law on development of alternative punishment and to ensure that they are enacted by the Georgian Parliament by January 2003 at the latest;
 - vi. to implement the recommendations made by Council of Europe experts on criminal procedures, the role of the prosecutor's office, police arrest, pre-trial investigation and pre-trial detention;
 - vii. in close co-operation with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, to implement the recommendations made following its visit in May 2001;
 - viii. to submit for expertise the newly adopted Election Code to the European Commission for Democracy through Law (Venice Commission) in order to assess whether the current electoral legislation takes full account of recommendations made in 1999 by the Parliamentary Assembly Ad hoc Committee on the Observation of Elections and by the OSCE Office for Democratic Institutions and Human Rights (ODIHR);
 - ix. to co-operate with the Congress of Local and Regional Authorities of Europe (CLRAE) in a constructive manner, and in particular:
 - a. to implement recommendations the Congress made in 1999 to enhance local and regional self-government in Georgia, including the adoption of amendments to existing legislation, new legislation and administrative measures, in accordance with the European Charter of Local Self-Government;
 - b. to transmit for expertise the text of the law amending the Law on Local Self-Government;
 - c. to accept assistance in the preparation and observation of the forthcoming local elections;
 - d. to organise without delay a colloquy on regionalisation which could help to clarify Georgian regional structure and territorial organisation.
 - vii. to step up co-operation within the Group of States Against Corruption (GRECO) with a view to applying its recommendations on the fight against corruption;

- viii. to accelerate the work undertaken with the Council of Europe and the UNHCR on the question of the repatriation of the deported Meskhetian population, including ongoing legal expertise of the draft law “on repatriation of persons deported from Georgia in the 1940s by the Soviet regime”, with a view to granting them the same status of rehabilitation as that already given to deportees of other ethnicities who were repatriated to Georgia under the Soviet regime.
9. As regards the freedom of the press and mass media, the Assembly calls on Georgia to draft and adopt a law on the electronic media, in order to regulate media activity and to guarantee the independence, pluralism and objectivity of the Georgian electronic media, and to consult the Council of Europe’s experts on any new draft legislation.
10. In respect of the Code of Criminal Procedure, the Assembly regrets that the new code which was initially drafted in close consultation with Council of Europe experts was expurgated by numerous amendments adopted by the Georgian Parliament in the weeks following the accession of the country to the Organisation, in May and June 1999, and that a new package of amendments was adopted in June 2001 without previous consultation of Council of Europe experts. It strongly urges the Georgian authorities to substantially improve co-operation with the Council of Europe in this respect.
11. The Assembly regrets that little progress has been made as regards respect for human rights:
- i. it expresses its deep concern with regard to allegations of ill-treatment or torture of detainees in police custody and pre-trial detention, cases of arbitrary arrests and detentions, the violation of the rights of persons under police arrest or in pre-trial detention – in particular their right to consult a lawyer and to communicate with their family – complaints on violation of procedural rights, cases of intimidation, violation of the right to privacy, phone tapping, and so on;
 - ii. it is alarmed by the behaviour of the police and other law enforcement bodies and condemns any disproportionate violence used by security forces against peaceful demonstrators;
 - iii. it is also strongly concerned about repeated cases of violence by Orthodox extremists against believers of minority religious groups, such as Jehovah’s Witnesses and Baptists.
12. The Assembly urges the Georgian authorities to conduct a proper investigation into all cases of human rights violations and the abuse of power, to prosecute their perpetrators irrespective of their functions, and to adopt radical measures to bring definitively the country into line with the principles and standards of the Council of Europe.
13. The Assembly invites the Georgian authorities to authorise publication of the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its visit to Georgia in May 2001.

14. In respect of commitments related to the status of the autonomous territories and the settlement of territorial conflicts by peaceful means, the Assembly welcomes progress made in granting autonomous status to Adjara in April 2000, but regrets that no substantial progress has been made on a political settlement of the South Ossetian and Abkhaz conflicts, in spite of the efforts of the Georgian Government.
15. However, the Assembly recognises that the conditions have not been met for the Georgian authorities to fulfil their commitments to enact a legal framework determining the status of the autonomous territories and to elaborate a legal framework for the establishment of a second parliamentary chamber.
16. As regards the Abkhaz conflict, the Assembly:
 - i. calls on Georgian and Abkhaz leaders to continue their talks on the status of Abkhazia and on the return of all displaced persons who wish to do so, to Abkhazia;
 - ii. recalls that Georgia must take legislative and administrative measures providing for restitution of property or compensation for property lost by persons forced to abandon their homes in the 1990 to 1994 conflicts.
17. In the light of the above considerations, the Assembly concludes that, although some progress has been made since accession, Georgia is far from honouring its obligations and commitments as a member state of the Council of Europe. The Assembly resolves to pursue the monitoring procedure in respect of Georgia in close co-operation with the Georgian delegation.

CPT Report on the visit to Georgia from 6 to 18 May 2001

CPT / Inf (2002) 14, published on 25 July 2002

Recapitulation and conclusions

180. Since the proclamation of its independence in 1991, Georgia has encountered a series of grave problems: civil war, a serious economic crisis, a deteriorating social situation. The Georgian authorities made clear to the CPT's delegation that these problems inevitably had negative repercussions on areas covered by the Committee's mandate. This has been borne in mind by the CPT, especially when considering material conditions and activities offered to detained persons. However, armed conflict and economic and social problems can never justify deliberate ill-treatment.

Police establishments

181. The CPT's delegation received numerous allegations of physical ill-treatment by the police of persons suspected of criminal offences. In some cases, the severity of the ill-treatment alleged was such that it could be considered as amounting to torture. The allegations related to both the time of apprehension and subsequent questioning by police officers. The types of ill-treatment alleged mainly concerned 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.

The allegations referred almost exclusively to operational police officers in charge of gathering evidence (the "body of inquiry"). A few allegations were also heard of ill-treatment by investigating officers. Hardly any allegations were received of ill-treatment by custodial staff working in temporary detention isolators.

Certain of the persons who made allegations of ill-treatment were found on examination by medical members of the delegation to display physical marks or conditions consistent with their allegations. Further, in a number of other cases, the delegation found medical evidence (in the register of traumatic lesions observed upon arrival in prison and in prisoners' medical files) which was consistent with allegations of police ill-treatment made by persons interviewed.

In the light of all the information at its disposal, the CPT has been led to conclude that criminal suspects deprived of their liberty in Georgia run a significant risk of being ill-treated at the time of their apprehension and/or while in police custody (in particular when being interrogated), and that on occasion resort may be had to severe ill-treatment/torture.

182. The Committee has stressed that the best possible guarantee against ill-treatment is for its use to be unequivocally rejected by police officers. This implies strict selection criteria at the time of recruitment of such staff and the provision of adequate professional training. As regards the latter, the Georgian authorities should

seek to integrate human rights concepts into practical professional training for handling high-risk situations, such as the apprehension and interrogation of suspects.

Further, the CPT has recommended that the relevant national authorities as well as senior police officers make it clear to police officers that the ill-treatment of persons in their custody is not acceptable and will be dealt with severely.

As regards more specifically allegations of ill-treatment at the time of apprehension, the CPT has recommended that police officers be reminded that no more force than is strictly necessary must be used when apprehending suspects, and that once apprehended persons have been brought under control, there can never be any justification for their being struck.

183. Another effective means of preventing ill-treatment by police officers lies in the diligent examination by the judicial authorities of all complaints of such treatment brought before them and, where appropriate, the imposition of a suitable penalty. This will have a very strong dissuasive effect.

In this connection, the CPT has stressed the importance of all persons in respect of whom the preventive measure of remand in custody is applied being physically brought before the judge who is responsible for ordering that measure. This will provide a timely opportunity for a person who has been ill-treated to lodge a complaint. Further, even in the absence of an express complaint, the fact of having the person concerned brought before the judge will enable the latter to take action in good time if there are other indications (e.g. visible injuries; a person's general appearance or demeanour) that ill-treatment might have occurred, and in particular to order immediately a forensic medical examination.

184. The CPT has proposed some strengthening of formal safeguards against the ill-treatment of persons deprived of their liberty by the police. In particular, the Committee has recommended that the Georgian authorities take steps to ensure that the rights of notification of custody to a relative and of access to a lawyer and a doctor, apply as from the very outset of deprivation of liberty; this is not the case at present.

The CPT has welcomed the introduction of a form setting out the rights of persons in police custody, and has recommended that it be given systematically to all persons apprehended by the police at the very outset of their custody. Other proposals made by the Committee concern the drawing up of a code of conduct for police interviews, improvements to custody records, and systems of independent inspections of police detention facilities.

185. Conditions of detention in the temporary detention isolators visited varied from tolerable to totally inadequate. In-cell lighting and ventilation represented a problem in all the isolators visited. Further, persons held overnight were not always provided with mattresses and blankets. In most cases, there were no arrangements for supplying detained persons with food, and no possibility for outdoor exercise. A similar pattern of deficiencies was encountered in the cells of District Divisions of Internal Affairs. The CPT has recommended that conditions of detention in both

temporary detention isolators and cells in District Divisions of Internal Affairs be reviewed, in the light of the general criteria set out in the Committee's report.

State Security detention facilities

186. Conditions of detention in the temporary detention isolator of the Ministry of State Security in Tbilisi were found to be on the whole very good; they could serve as a model for other temporary detention isolators in Georgia. However, the CPT has recommended that the possibility of offering detained persons outdoor exercise for at least one hour a day be examined.

Prison establishments

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187. The CPT's delegation heard no allegations of torture or other forms of deliberate ill-treatment of inmates by staff in the penitentiary establishments visited, and gathered no other evidence of such treatment.

At Prison No 1, some inmates interviewed by the delegation referred to the existence of power structures among prisoners, which apparently resulted in cases of extortion and intimidation, allegedly with some collusion of staff. In this connection, the CPT has sought information on the measures introduced by the Georgian authorities to tackle inter-prisoner intimidation/violence.

188. Material conditions of detention at Prison No 5 were extremely unsatisfactory. The establishment's premises were in a very advanced state of decay, which resulted in an entirely inappropriate environment for both prisoners and staff.

The poorest conditions of detention were found in the basement of the main detention block. The CPT's delegation immediately requested that these facilities be taken out of use. The other areas of the main detention block as well as the section for women also offered very poor conditions of detention. The vast majority of the cells were overcrowded and in a few of them, the number of prisoners exceeded the number of beds available. In most of the accommodation, access to natural light and fresh air as well as artificial lighting left much to be desired. Further, beds and bedding were often in a pitiful state and the prison did not provide inmates with personal hygiene products.

By contrast, conditions of detention were acceptable in the section for sentenced working prisoners.

189. The overall deterioration of the fabric of Prison No 1 was less advanced than at Prison No 5, and some signs of attempts at improving the existing facilities were discernible. The establishment offered acceptable (and, on occasion, even generous) living space to the vast majority of inmates. However, in other respects (lighting, ventilation, hygiene) the establishment displayed, with few exceptions, a pattern of deficiencies similar to those observed in Prison No 5. Once again, the small workforce of sentenced prisoners enjoyed distinctly better conditions of detention.

190. Material conditions of detention in the disciplinary cells at both establishments ("kartzet") were totally unacceptable and were the subject of an immediate

observation under Article 8 (5) of the Convention. Subsequently, the Georgian authorities informed the CPT that these cells had been withdrawn from service.

191. Bearing in mind the budgetary constraints under which the Georgian Prison Service operates, the CPT recognises that it will not be possible to transform the current situation radically overnight. Nevertheless, the decision to deprive someone of their liberty entails a correlative duty upon the State to provide decent conditions of detention.

The CPT has made a series of recommendations designed to improve the material conditions of detention for inmates at Prisons No 5 and No 1. In particular, it has called for the removal of the slatted blinds or metal screens currently blocking the windows of prisoner accommodation; natural light and fresh air are basic elements of life which everyone is entitled to enjoy, and their absence generates conditions favourable to the spread of diseases.

192. As regards activities, the majority of prisoners at both establishments spent almost all their time locked up in their cells, without being offered any organised activities (work, vocational training, education) worthy of the name. The CPT recognises that the provision of organised activities in remand prisons (such as Prison No 5), where there is likely to be a high turnover of inmates, poses particular challenges. However, it is not acceptable to leave prisoners to their own devices for months at a time.

The aim should be to ensure that all prisoners (including those on remand) spend a reasonable part of the day (i.e. 8 hours or more) outside their cells engaged in purposeful activities of a varied nature. The regime offered to prisoners serving lengthy sentences – like those held in Prison No 1 - should be even more favourable. The CPT has made several recommendations on these matters.

193. The CPT has addressed a number of specific issues concerning prison health care services (staff and facilities; medical screening on admission; medical records and confidentiality). The Committee has also stressed the need for the Georgian authorities to establish a comprehensive policy on health care in prisons, based on the fundamental principle that prisoners are entitled to the same level of medical care as persons living in the community at large ("equivalence of care") and other generally recognised principles, such as patient's consent, confidentiality of medical information, and professional independence. In this connection, a greater involvement of the Ministry of Health in the provision of health care in the prison system has been advocated.

194. The Republican Prison Hospital, to which prisoners are transferred for treatment from all over Georgia, did not have the staff and material resources which would enable it to function as a real hospital facility. Given the state of the equipment and the lack of medication and related materials, the establishment was not in a position to provide proper screening, diagnosis and treatment. In fact, the facility could more appropriately be described as a "warehouse for sick prisoners". The CPT has made a series of recommendations designed to remedy the shortcomings observed.

195. Tuberculosis in Georgian prisons has emerged as a major problem in recent years and ultimately represents an important threat to public health in society at large. The approach followed as regards the procedure for TB screening and treatment differed from one establishment to the other: the DOTS method for tuberculosis control (as approved by the World Health Organisation) was being applied at Prison No 1, with the support of the ICRC; however, this was not the case at Prison No 5 and the Republican Prison Hospital.

The CPT has made a series of recommendations concerning the approach to tuberculosis at Prison No 5. It has also recommended that the Georgian authorities step up their efforts to introduce international standards in the field of the control of tuberculosis, as defined by the WHO and ICRC, throughout the prison system, including at the Republican Prison Hospital. Further, the CPT has stressed that the problem of tuberculosis can only be solved by the combined efforts of all relevant Ministries.

196. The CPT has made a number of recommendations and comments about a variety of other issues of relevance to its mandate (staff; contact with the outside world; discipline; complaints and inspection procedures). In particular, the Committee has recommended that the Georgian authorities deliver to both managerial and basic grade staff the clear message that accepting or demanding undue advantages from prisoners is not acceptable and will be the subject of severe sanctions.

Psychiatric establishments

197. The delegation heard no allegations, and gathered no other evidence, of deliberate ill-treatment of patients by health-care staff at the Strict Regime Psychiatric Hospital in Poti. However, a few allegations were heard of physical ill-treatment as well as verbal abuse of disruptive or agitated patients by security staff. In this context, the CPT has recommended that the management of Poti Hospital make it clear to security staff that ill-treatment of patients is unacceptable and will be the subject of severe sanctions. The Committee has also recommended that detailed regulations concerning the duties of security staff be adopted as a matter of urgency, and that the procedures for the selection and training of such staff be reviewed.

198. As regards health care staff at Poti Hospital, notwithstanding the good intentions and genuine efforts of the two psychiatrists, the absence of other staff qualified to provide therapeutic and rehabilitative activities precluded the development of a therapeutic milieu based on a multidisciplinary approach. Moreover, the current resources in terms of nurses and orderlies could not be considered as sufficient to meet the hospital's needs. The CPT has recommended inter alia that steps be taken to employ specialists qualified to provide therapeutic and rehabilitative activities (psychologists, psychotherapists, occupational therapists, social workers).

199. Patients' living conditions reflected the fact that no major repairs had been carried out at the hospital in the last ten years; most of the patients' rooms and their equipment were in a state of advanced dilapidation. On the positive side, all rooms benefited from good access to natural light and had adequate ventilation. However, there were major shortcomings as regards artificial lighting, the state of repair and cleanliness of patients' rooms and of communal sanitary facilities, as well as the

availability of basic personal hygiene products. Further, several patients alleged that the food was insufficient in quantity.

Recommendations aimed at remedying these shortcomings have been made; the overriding objective should be to provide a positive therapeutic environment for patients.

200. Psychiatric treatment consisted almost exclusively of pharmacotherapy. No psycho-social rehabilitative activities were offered to patients; the CPT has recommended that the Georgian authorities strive to develop the possibilities for such activities at Poti Hospital. The CPT has also expressed reservations about the standard plans for psychiatric treatment established by the Ministry of Health; such a rigid approach interferes with the professional independence of doctors and limits their choice when setting up individualised treatment plans.

201. As regards means of restraint, the delegation was informed that physical restraint was rare at Poti Hospital. Restraint was ordered or subject to the approval of a doctor, and was normally only applied for as long as it took for tranquillisers to start producing their effect.

At the delegation's request, two extremely dilapidated and dirty rooms used for the seclusion of agitated or violent patients were withdrawn from service.

In the light of all the information gathered, the CPT has recommended that detailed instructions on the use of means of restraint be drawn up. The Committee has also stressed that health-care staff must have the main responsibility for the restraint of agitated and/or violent patients; assistance by security staff should only be provided at the request of health-care staff and conform to the instructions given by the latter.

Military detention facilities

202. Material conditions in the disciplinary unit ("gauptvachta") of Kutaisi Garrison left a lot to be desired. Cells were dimly lit and poorly ventilated, sanitary arrangements were inadequate, and the establishment as a whole was in a bad state of repair. Further, servicemen undergoing disciplinary punishment were not provided with any bedding at night and slept on bare benches or platforms. The CPT has recommended that urgent steps be taken to remedy these shortcomings, as well as to ensure that all servicemen (including those remanded in custody) are offered outdoor exercise for at least one hour per day.

203. More generally, the CPT has recommended that the Georgian authorities draw up specific regulations concerning placement in a "gauptvachta". The regulations should specify inter alia the procedures to be followed (including an oral hearing of the soldier concerned on the subject of the offence he is alleged to have committed, a written statement of the exact charge and a possibility to appeal against sanctions imposed) and the maximum periods of detention.

Action on the CPT's recommendations, comments and requests for information

204. The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I.

205. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the CPT requests the Georgian authorities:

i. to provide within six months an interim report giving details of how it is intended to implement the CPT's recommendations and, as the case may be, containing an account of action already taken (N.B. the Committee has indicated the urgency of certain of its recommendations);

ii. to provide within twelve months a follow-up report providing a full account of action taken to implement the CPT's recommendations.

The CPT trusts that it will also be possible for the Georgian authorities to provide in the above-mentioned interim report reactions to the comments formulated in this report which are listed in Appendix I as well as replies to the requests for information made.

List of the CPT's recommendations, comments and requests for information

I. Introduction

Requests for information

- steps taken to eradicate corruption in places of deprivation of liberty (paragraph 10).

II. A Police establishments

1. Preliminary remarks

Recommendations

- the Georgian authorities to take urgent steps to ensure that the legal restrictions on the duration of police custody are respected in practice (paragraph 19).

Requests for information

- the comments of the Georgian authorities on the issues raised in paragraph 18 of the report, as well as a full account of the legally permitted period of police custody of criminal suspects and its various stages (paragraph 18).

2. Torture and other forms of physical ill-treatment

Recommendations

- a very high priority to be given to professional training for police officers of all ranks and categories, including training in modern investigation techniques. Experts not belonging to the police force should be involved in this training (paragraph 25);
- an aptitude for interpersonal communication to be a major factor in recruiting police officers and, during their training, considerable emphasis to be placed on acquiring and developing interpersonal communication skills (paragraph 25);
- the relevant national authorities as well as senior police officers to make it clear to police officers that the ill-treatment of persons in their custody is not acceptable and will be dealt with severely (paragraph 25);
- police officers to be continuously reminded that no more force than is strictly necessary must be used at the time of the apprehension of a suspect and that once apprehended persons have been brought under control, there can never be any justification for their being struck (paragraph 26);
- appropriate measures (including, if necessary, legislative amendments) to be taken to ensure that all criminal suspects in respect of whom it is proposed to apply the preventive measure of remand in custody are physically brought before the judge who is responsible for ordering such a measure (paragraph 28);
- whenever criminal suspects brought before a judge at the end of police custody allege ill-treatment by the police, the judge should record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the judge

should request a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment (paragraph 29);

- reports by forensic doctors in respect of detained persons, as well as the record drawn up by doctors following a medical examination of a newly-arrived prisoner, to contain: (i) a full account of statements made by the person concerned which are relevant to the medical examination (including his description of his state of health and any allegations of ill-treatment); ii) a full account of objective medical findings based on a thorough examination and (iii) the doctor's conclusions in the light of (i) and (ii), indicating the degree of consistency between any allegation made and the objective medical findings. The results of every examination, including the above-mentioned statements and the doctor's conclusions, should be made available to the detained person and his lawyer (paragraphs 32 and 34);
- all medical examinations to be conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a particular case - out of the sight of law enforcement officials and other non-medical staff (paragraphs 32 and 34).

Comments

- steps must be taken to ensure that the examination of persons admitted to temporary detention isolators is performed by qualified medical personnel and in a systematic and thorough manner (paragraph 34).

Requests for information

- up-to-date information, in respect of 2000 and 2001, on:
 - the number of complaints of ill-treatment made against police officers and the number of criminal/disciplinary proceedings which were instituted as a result;
 - an account of criminal/disciplinary sanctions imposed following such complaints (paragraph 24);
- detailed information on complaints and disciplinary procedures applied in cases involving allegations of ill-treatment by the police, including the safeguards incorporated to ensure their objectivity (paragraph 24);
- preventive measures taken with a view to providing support to police officers exposed to highly stressful or violent situations (paragraph 27);
- the future of the independent forensic practice in the light of the forthcoming entry into force of a Law on Forensic Medicine, and a copy of this new law (paragraph 30);
- comments of the Georgian authorities on the fact that no cases of injuries recorded upon the arrival of prisoners at Prison No 2 in Kutaisi have been referred to the competent prosecutor since the beginning of 2001 (paragraph 33);
- a detailed description of the procedure followed by prison security divisions in cases involving injuries recorded upon arrival (paragraph 33);
- in respect of 2001:
 - the number of cases of prisoners bearing injuries upon arrival at pre-trial prisons (with a breakdown into individual pre-trial prisons);
 - an account of the action taken by the relevant authorities following the recording and reporting of such cases (paragraph 33).

3. Safeguards against ill-treatment of persons deprived of their liberty

Recommendations

- all persons deprived of their liberty by the police in Georgia - for whatever reason - to be granted the right to inform a close relative or a third party of their choice of their situation, as from the very outset of their deprivation of liberty (i.e. from the moment when they are obliged to remain with the police) (paragraph 37);
- any possibility to exceptionally delay the exercise of the right to have the fact of one's custody notified to a relative or a third party to be clearly circumscribed in law, made subject to appropriate safeguards (e.g. any delay to be recorded in writing with the reasons therefor and to require the approval of a senior police officer or prosecutor) and strictly limited in time (paragraph 38);
- the Georgian authorities to take steps to ensure that the right of access to a lawyer for persons in police custody applies as from the very outset of their deprivation of liberty (and not only when the person is formally declared a suspect). The right of access to a lawyer must be enjoyed by anyone who is under a legal obligation to attend - and stay at - a police establishment, e.g. as a "witness" (paragraph 41);
- the right of persons deprived of their liberty by the police to be examined by a doctor to be guaranteed from the very outset of their deprivation of liberty (and not only after they have been formally declared suspects) (paragraph 43);
- specific instructions to be issued on the subject of the right of persons in police custody to have access to a doctor, which should stipulate inter alia that:
 - a request by a detained person to see a doctor should be granted;
 - a person taken into police custody has the right to be examined, if he so wishes, by a doctor of his own choice, in addition to any medical examination carried out by a doctor called by the police (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his own expense);
 - all medical examinations should be conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a particular case - out of the sight of police staff;
 - the result of every examination, as well as any relevant statements by the detained person and the doctor's conclusions, should be formally recorded by the doctor and made available to the detainee and his lawyer;
 - the confidentiality of medical data is to be strictly observed (paragraph 45);
- the form setting out the rights of persons apprehended by the police to be given systematically to all such persons at the very outset of their custody (and not only when they are formally declared suspects). The contents of this form should reflect the recommendations made in paragraphs 37, 41, 43 and 45 of the report. The form should be available in an appropriate range of languages. Further, the persons concerned should be systematically asked to sign a statement attesting that they have been informed of their rights (paragraph 48);
- the Georgian authorities to supplement the provisions already existing in the Code of Criminal Procedure by drawing up a code of conduct for police interviews (paragraph 50).

Comments

- the fundamental safeguards offered to persons in police custody would be reinforced if a standard, single and comprehensive custody record were to be kept for all persons brought into a police station. This register should record all aspects of the custody and all the action taken in connection with it (including time of and reason(s) for the arrival at the police station; time of issuing the order of detention; when informed of rights; signs of injury, mental disorder, etc; contact with and/or visits by a relative, lawyer, doctor or consular officer; when offered food; when questioned; when released, etc.) (paragraph 52);
- to be fully effective from the standpoint of preventing ill-treatment, visits by a prosecutor to a police establishment should be unannounced and should include direct contact with detained persons, as well as an inspection of the establishment's cellular facilities (paragraph 53).

Requests for information

- details on the system of legal aid for detained persons, in particular the procedure for appointment of ex officio lawyers, their remuneration, etc. (paragraph 42);
- copies of recent reports drawn up by the National Defender of Georgia and the Parliamentary Committee on Human Rights following visits to police establishments (paragraph 54).

4. Conditions of detention

Recommendations

- the Georgian authorities to take steps to ensure at temporary detention isolators that:
 - in-cell lighting (including access to natural light) and ventilation are adequate;
 - the state of repair and hygiene of cells and common sanitary facilities are satisfactory, and in-cell toilet facilities are equipped with a partition;
 - detained persons are supplied with essential personal hygiene products (soap, toilet paper, etc.) and ensured access to washing facilities;
 - all detained persons are provided with a clean mattress and blankets;
 - detained persons are offered food - sufficient in quantity and quality - at normal meal times;
 - detained persons have access to outdoor exercise for at least one hour per day
 (paragraph 61);
- the Georgian authorities to review conditions of detention in District Divisions of Internal Affairs. In particular, steps should be taken to ensure that:
 - cell lighting and ventilation are adequate;
 - persons detained overnight are provided with clean mattresses and blankets;
 - all detained persons are provided with food every day at appropriate time
 (paragraph 63).

Comments

- at the Temporary detention isolator in Gori, four detainees were held in a cell measuring only some 8 m², and this despite the fact that many of the establishment's cells were empty (paragraph 57);
- cells measuring less than 4 m² are only suitable for very short periods of detention, and should under no circumstances be used as overnight accommodation (paragraph 62);

- the Georgian authorities are invited to examine the possibility of offering to persons held in custody for 24 hours or more outdoor exercise for at least one hour a day (paragraph 63).

II. B. State Security detention facilities

Recommendations

- the Georgian authorities to examine the possibility of offering persons detained in the temporary detention isolator of the Ministry of Security in Tbilisi outdoor exercise for at least one hour a day (paragraph 66).

Comments

- the CPT considers that the official capacity of the temporary detention isolator of the Ministry of Security in Tbilisi should be reduced to 21; indeed, a cell of 11 m² constitutes cramped accommodation for four persons (paragraph 66).

II. C. Prison establishments

1. Preliminary remarks

Requests for information

- more precise information on the current plans to re-allocate prisoners within the existing prison estate and the measures adopted or envisaged to reduce the number of persons sent to prison (paragraph 70).

2. Ill-treatment

Requests for information

- in respect of 2000 and 2001:
 - the number of complaints lodged concerning ill-treatment by prison officers in Georgia and the number of disciplinary and/or criminal proceedings initiated as a result of those complaints;
 - an account of the outcome of the above-mentioned proceedings (verdict, sentence/sanction imposed) (paragraph 71);
- further information on the measures introduced to tackle inter-prisoner intimidation/violence (paragraph 72).

3. Conditions of detention

Recommendations

- vigorous steps to be taken at Prisons No 5 and No 1:
 - to ensure that material conditions throughout the main detention blocks reach the standards prevailing in the sections for sentenced working prisoners, in terms of general state of repair and cleanliness, lighting and ventilation. This will involve removing the devices currently blocking the windows of prisoner accommodation (and fitting, in those exceptional cases where this is deemed necessary, alternative security devices of an appropriate design);

- to provide all inmates with adequate amounts of essential hygiene products and cleaning materials, and with facilities for washing their clothes and bed linen;
- to ensure the regular supply of clean mattresses and other bedding (paragraph 87);
- as regards more specifically conditions of detention at Prison No 5:
 - immediate steps to be taken to provide every inmate with a bed;
 - cell occupancy rates to be reduced progressively to an acceptable level. A standard of 4 m² per prisoner should be aimed at for the purpose;
 - custodial staff to be issued clear instructions that female inmates are to be allowed to leave their cells without delay during the day for the purpose of using a toilet facility, unless overriding security considerations require otherwise;
 - female inmates to be guaranteed access to a hot shower/bath at least once a week (paragraph 87);
- immediate measures to be taken at Prison No 1 in order to ensure a better allocation of prisoners among all the available accommodation (paragraph 87);
- the Georgian authorities to:
 - strive to develop the programmes of activities for inmates at Prisons No 5 and No 1, having regard to the remarks made in paragraph 94 of the report;
 - take urgent measures to ensure that juvenile inmates at Prison No 5 are offered educational and recreational activities which take into account the specific needs of their age group. Physical education should form a major part of that programme; in this regard, the possibility of allowing juveniles to use the sports hall in the building housing the sentenced working prisoners should be considered;
 - find ways to improve the outdoor exercise facilities at Prisons No 5 and No 1, in order to allow prisoners to physically exert themselves (paragraph 95).

Requests for information

- clarification as to the criteria used to allocate prisoners to cells which offer better conditions of detention than those found in other prisoner accommodation areas (paragraph 88);
- the criteria according to which some of the inmates at Prison No 5 were allowed greater freedom of movement within the establishment (paragraph 93).

4. Health-care services

Recommendations

- the Georgian authorities to step up their efforts to establish a comprehensive policy on health care in prisons, in the light of the remarks made in paragraphs 96 and 97 of the report (paragraph 97);
- immediate steps to be taken at Prison No 5 to:
 - fill the vacant doctors' posts and appoint a Head doctor;
 - substantially increase the sessional hours of a dentist;
 - provide a replacement for as long as the radiologist is unable to fulfil his duties;
 - reinforce the establishment's nursing staff (paragraph 98);

- immediate steps to be taken to reinforce the health-care service at Prison No 1 by nursing staff (paragraph 99);
- the Georgian authorities to reinforce the psychiatric/psychological services at Prisons No 1 and No 5 (paragraph 100);
- efforts to be made to improve the overall conditions in the health-care services in Prisons No 1 and No 5, in the light of the remarks made in paragraph 101 of the report. Urgent steps are required at Prison No 5 to upgrade the equipment of the dental surgery and the X-ray room and to replace the ECG apparatus (paragraph 101);
- the Georgian authorities to take measures without delay to ensure the supply of appropriate medicines to the prisons visited and, if necessary, to other prison establishments in Georgia (paragraph 102);
- a personal and confidential medical file to be opened for each prisoner, containing diagnostic information as well as an ongoing record of the prisoner's state of health and of his treatment, including special examinations he has undergone. The prisoner should be able to consult his medical file, unless this is unadvisable from a therapeutic standpoint, and to request that the information it contains be made available to his family or lawyer. In the event of transfer, the file should be forwarded to the doctors of the receiving establishment (paragraph 106);
- steps to be taken to ensure that practice in Georgian prisons is brought in accordance with the considerations referred to in paragraph 107 as regards medical confidentiality (paragraph 107);
- the Georgian authorities to take measures at Prison No 5 to:
 - introduce systematic screening of prisoners for tuberculosis;
 - ensure a regular supply of anti-tuberculosis drugs in sufficient quantities;
 - introduce appropriate monitoring of the distribution and taking of anti-tuberculosis drugs; in this connection, the number of health-care staff involved in the monitoring of treatment of prisoners with tuberculosis should be increased;
 - ensure the allocation of prisoners suffering from tuberculosis according to strict diagnostic criteria;
 - provide material conditions in the dormitories for tuberculosis patients which are conducive to the improvement of their health. In particular, urgent measures are needed to reduce the occupancy levels in those dormitories and improve access to natural light and ventilation. Care should also be taken to ensure that the prisoners concerned are able to maintain a standard of personal hygiene consistent with the requirements of their state of health;
 - provide an adequate diet for prisoners with tuberculosis (paragraph 112);
- the Georgian authorities to step up their efforts to introduce international standards in the field of the control of tuberculosis, as defined by the WHO and ICRC, throughout the prison system. In this connection, prison doctors should receive appropriate training and be provided with written instructions concerning new approaches to tuberculosis control (paragraph 112);
- urgent steps to be taken to provide sufficient diagnostic means, including to the Medical Commission set up at the Ministry of Justice, which would ensure that prisoners are admitted to the Republican Prison Hospital according to strict diagnostic criteria and that the period of hospitalisation is not prolonged unjustifiably (paragraph 123);
- serious efforts to be made with regard to the Republican Prison Hospital to:

- improve material conditions for patients in the hospital, in the light of the remarks made in paragraph 116 of the report;
- upgrade the X-ray, ECG and laboratory equipment;
- provide the surgical ward with the resources and equipment which would make it qualify for a license;
- ensure that the hospital is regularly supplied with appropriate medication and materials;
- fill the vacant doctors' and nurses' posts;
- accommodate patients with TB separately from other patients;
- introduce the DOTS strategy for tuberculosis control (paragraph 123);
- every instance of the physical restraint of a patient in the Republican Prison Hospital to be recorded in a specific register established for that purpose (as well as in the patient's file). The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by patients or staff (paragraph 123).

Comments

- whatever institutional arrangements are made for the provision of health care in prisons, it is essential that prison doctors' clinical decisions should be governed only by medical criteria and that the quality and effectiveness of their work should be assessed by a qualified medical authority (paragraph 97);
- the Georgian authorities are invited to make alternative arrangements for dental care at Prison No 1 (paragraph 99);
- the approach described in paragraph 32 concerning the record to be drawn up following a medical examination of a newly-arrived prisoner should also be followed whenever a prisoner is medically examined following a violent episode in prison (paragraph 105);
- the problem of tuberculosis can only be solved by the combined efforts of all relevant Ministries. Tuberculosis in prisons represents an important threat to public health in society at large. It is therefore imperative to introduce adequate methods of detection and prevention, to provide appropriate treatment and to ensure that treatment begun in prison continues after release (paragraph 113);
- the Georgian authorities are invited to explore the possibility of providing appropriate activities/means of recreation to sick prisoners held for prolonged periods of time in the Republican Prison Hospital (e.g. access to books and newspapers; radio/TV). As regards female patients, steps should be taken to provide them with at least one hour of outdoor exercise per day at an appropriate time of the day, in a yard of an adequate size (paragraph 123).

5. Other issues of relevance to the CPT's mandate

Recommendations

- the Georgian authorities to deliver to both managerial and basic grade staff the clear message that receiving or demanding undue advantages from prisoners is not acceptable and will be the subject of severe sanctions; this message should be reiterated in an appropriate form at suitable intervals (paragraph 126);
- the Georgian authorities to give high priority to the advancement of prison staff training, both initial and ongoing. In the course of such training, considerable

emphasis should be placed on adherence to official policies, practices and regulations of the prison service. The development of interpersonal communication skills should also have a prominent part in training; building sound and constructive relations with prisoners should be recognised as a key feature of a prison officer's professional role (paragraph 127);

- the question of remand prisoners' visits to be reviewed, in the light of the remarks made in paragraphs 128 and 129 of the report (paragraph 129);
- steps to be taken to increase the capacity of the visiting facilities at Prison No 5 and the possibility explored of moving to more open visiting arrangements for prisoners (paragraph 129);
- the Georgian authorities to explore the possibility of providing inmates at Prison No 5 with access to a telephone, if necessary, subject to appropriate supervision (paragraph 134);
- steps to be taken to guarantee that all prisoners facing disciplinary charges:
 - are heard in person by the deciding authority on the subject of the offence they are alleged to have committed;
 - are able to appeal to a higher authority against any sanctions imposed (paragraph 136);
- the Georgian authorities to take the necessary measures to ensure throughout the country that all prisoners placed in disciplinary cells are offered at least one hour of outdoor exercise per day (paragraph 139);
- the Georgian authorities to ensure forthwith that all prisoners (both remand and sentenced), throughout the penitentiary system, have confidential access to the bodies authorised to receive complaints. Where required, practical measures should be taken to make sure complaints are transmitted confidentially (for example: providing envelopes; installing locked complaint boxes accessible to prisoners, to be opened only by specially designated persons) (paragraph 142).

Comments

- the censoring of all remand prisoners' correspondence and recording its main content in a special register almost certainly represents a wasteful use of limited staff resources (paragraph 130).
- requests for information
- further information on whether prisoners' correspondence with their legal advisers, the investigation authorities and courts, as well as relevant national and international authorities, is censored (paragraph 130);
- more information on the actual number and duration of visits to strict regime prisoners and the precise criteria for eligibility for additional visits (paragraph 131);
- clarification as to the maximum authorised duration of disciplinary confinement in respect of remand prisoners (paragraph 135);
- further information on changes to the system of disciplinary punishments for prisoners (paragraph 140);
- the results of the activities of the prison monitoring board composed of representatives of various non-governmental organisations, and possible plans concerning its future (paragraph 143);
- the Georgian authorities' comments on the issues highlighted in paragraph 143 concerning the system of control of penitentiary establishments (paragraph 143).

II. D. Psychiatric establishments

1. Preliminary remarks

Requests for information

- detailed information about any plans to close down the Strict Regime Psychiatric Hospital in Poti and transfer the patients to Kutiri Psychiatric Hospital (paragraph 145).

2. Ill-treatment

Recommendations

- the management of Poti Hospital to make it clear to security staff that ill-treatment of patients is unacceptable and will be the subject of severe sanctions (paragraph 147).

3. Staff

Recommendations

- the Georgian authorities to take steps at Poti Strict Regime Psychiatric Hospital to:
 - employ specialists qualified to provide therapeutic and rehabilitative activities (psychologists, psychotherapists, occupational therapists, social workers);
 - increase the number of nurses and orderlies employed at the hospital;
 - increase the psychiatrist/patient ratio;
 - provide nursing staff with qualified (initial and ongoing) training in psychiatry;
 - ensure that orderlies receive adequate training before being assigned to ward duties (paragraph 149);
- detailed regulations concerning the duties of security staff employed at psychiatric hospitals to be adopted as a matter of urgency (paragraph 151);
- steps to be taken to review the procedures for the selection of security staff and their initial and ongoing training. In this connection, the Georgian authorities might consider the possibility of security staff working inside psychiatric establishments being recruited and trained by the Ministry of Health (paragraph 151);
- the management of Poti Hospital and of other psychiatric establishments of a similar type to take steps to ensure that the therapeutic role of staff does not take second place to security considerations (paragraph 151).

4. Patients' living conditions

Recommendations

- steps to be taken to improve material conditions at Poti Strict Regime Psychiatric Hospital, having regard to the remarks made in paragraphs 153 to 155 of the report. The overriding objective should be to provide a positive therapeutic environment for patients. This involves, in the first place, having sufficient living space per patient. Efforts should also be made to offer more congenial and personalised surroundings for patients (paragraph 156);
- more particularly, steps to be taken at Poti Hospital in order to:
 - maintain all accommodation areas in a clean and hygienic condition;
 - provide patients with lockable space for their personal belongings;
 - guarantee that all patients have ready access at all times to properly equipped and clean sanitary facilities;

- provide patients with a range of basic personal hygiene items and ensure that all patients are able to take a hot shower at least once a week;
- ensure that patients' bedding and clothes are cleaned at regular intervals;
- verify that patients are receiving food in sufficient quantity (paragraph 156);
- in the event of Poti Hospital remaining in service for some time, all patient accommodation areas to be thoroughly refurbished, and the hospital's kitchen re-equipped (paragraph 156).

Requests for information

- the Georgian authorities' comments on the fact that some patients were accommodated in distinctly better conditions (paragraph 153).

5. Treatment and regime

Recommendations

- the Georgian authorities to strive to develop the possibilities for therapeutic and psycho-social rehabilitation activities at Poti Hospital; as a first step, the hospital's garden could be used for occupational therapy (paragraph 161);
- the conditions under which patients take outdoor exercise at Poti Hospital to be improved (paragraph 161);
- patients' weight to be checked on admission and subsequently at regular intervals (paragraph 162);
- a systematic screening for tuberculosis of all newly-arrived patients to be introduced at Poti Hospital (paragraph 162).

Comments

- efforts should be made to improve patients' access to specialised somatic care, in particular conservative dental treatment (paragraph 162).
- requests for information
- the comments of the Georgian authorities on the issues highlighted in paragraph 157 concerning the standard treatment plans established by the Ministry of Health, as well as copies of current standard treatment plans (paragraph 157).

6. Means of restraint

Recommendations

- detailed instructions on the use of means of restraint to be drawn up. Such instructions should make clear that initial attempts to restrain aggressive behaviour should, as far as possible, be non-physical (e.g. verbal instruction) and that where physical restraint is necessary, it should in principle be limited to manual control. Instruments of restraint should only be used as a last resort, and removed at the earliest opportunity; they should never be applied, or their application prolonged, as a punishment (paragraph 166);
- every instance of the physical restraint of a patient to be recorded in a specific register established for that purpose (in addition to the patient's file). The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by patients or staff (paragraph 166).

Comments

- health-care staff must have the main responsibility for the restraint of agitated and/or violent patients. Any assistance by security staff in such cases should only be provided at the request of health-care staff and must conform to the instructions given by such staff (paragraph 166).

7. Safeguards in the context of involuntary hospitalisation

Recommendations

- the Georgian authorities to take the necessary measures to guarantee the confidentiality of patients' complaints to the supervising prosecutor and other outside bodies. Further, patients should be systematically informed about the possibility of making a confidential complaint (paragraph 170);
- an introductory brochure setting forth the hospital routine and patients' rights to be devised and issued to each patient on admission, as well as to their families. Patients unable to understand this brochure should receive appropriate assistance (paragraph 170).

Requests for information

- the comments of the Georgian authorities on the claims of some patients at Poti Hospital that they had not been informed of the outcome of the medical commission's deliberations (paragraph 169);
- clarification as to whether the patient and his lawyer can consult the patient's medical file (paragraph 169);
- the Georgian authorities' views on the possibilities for improving patients' contact with the outside world (paragraph 171);
- copies of the supervising prosecutor's inspection reports drawn up in 2000 and 2001 in respect of Poti Hospital (paragraph 172);
- whether Poti Hospital receives visits from any other outside body responsible for the inspection of patients' care (paragraph 172);
- more information on recent legislative developments in the area of psychiatry, such as amendments to the Law on Psychiatric Assistance and the new Law on Patients' Rights, including copies of the relevant legal texts (paragraph 173).

II. E. Military detention facilities**Recommendations**

- urgent steps to be taken at the Kutaisi Garrison disciplinary unit ("gauptvachta") to:
 - improve access to natural light, ventilation and artificial lighting in the cells;
 - improve the state of repair and hygiene of the cells and common toilet facilities;
 - equip all cells with beds and provide detained servicemen with mattresses and blankets at night; if necessary, the relevant legal provisions should be amended;
 - enable detained servicemen to have a hot shower at least once a week;
 - ensure that all servicemen, including those remanded in custody, are offered outdoor exercise for at least one hour per day (paragraph 177);

- the Georgian authorities to draw up specific regulations concerning placement in a "gauptvachta". The regulations should specify inter alia the procedures to be followed (including an oral hearing of the soldier concerned on the subject of the offence he is alleged to have committed, a written statement of the exact charge and a possibility to appeal against sanctions imposed); the maximum periods of detention; regime, etc. (paragraph 179)

Requests for information

- clarification as regards the length of disciplinary confinement and possible extensions (paragraph 174).

Conclusions and Recommendations of the Committee against Torture : Georgia

**CAT/C/XXVI/Concl.1/Rev.2. (Concluding Observations/Comments)
Twenty-sixth session 30 April – 18 May 2001**

1. The Committee considered the second periodic report of Georgia (CAT/C/48/Add.1) at its 458th, 461st and 467th meetings, held on 1, 2 and 7 May 2001 (CAT/C/SR.458, 461 and 467), and adopted the following conclusions and recommendations.

Introduction

2. The Committee welcomes the second periodic report of Georgia and the opportunity to have a dialogue with the delegation. It greatly appreciates the extensive additional update provided by the delegation of **Georgia** both orally and in writing during the consideration of the report.

Positive Aspects

3. The Committee takes note with satisfaction of the following elements:
- i. The ongoing efforts by the State party to reform the legal system and revise its legislation, including a new code of criminal procedure and criminal code, based on universal human values in order to safeguard fundamental human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment;
 - ii. The submission by the State party of a Core Document as requested by the Committee during the consideration of the initial report;
 - iii. The transfer of the prison service from the control of the Ministry of the Interior to the Ministry of Justice as recommended by the Committee;
 - iv. The information provided by the representatives of the State party that the Government of **Georgia** proposes to make declarations recognizing the competence of the Committee under articles 21 and 22 of the Convention.

Factors and difficulties impeding the application of the Convention

4. The Committee takes note of the problems and difficulties faced by the State party due to the secessionist conflicts in Abkhazia and South Ossetia following independence and the resulting internal and external mass displacement of a large number of the population, which has created the increased risk of human rights violations in that part of the territory.

Subjects of concern

5. The Committee expresses concern about the following:
- i. The admitted continuing acts of torture and other acts of cruel, inhuman or degrading treatment or punishment in **Georgia** committed by law enforcement personnel;
 - ii. The failure to provide in every instance prompt, impartial and full investigations into the numerous allegations of torture, as well as insufficient efforts to prosecute alleged offenders in non-compliance with articles 12 and 13 of the Convention, resulting in a state of impunity of alleged offenders;

i. Amendments to the new Criminal Procedural Code in May and July 1999 shortly after its entry into force, compromising some of the human rights protections previously provided for in the code, particularly the right of judicial review of complaints of ill-treatment;

v. The instances of mob violence against religious minorities, in particular Jehova's witnesses, and the failure of the police to intervene and take appropriate action despite the existence of the legal tools to prevent and prosecute such acts and the risk of this apparent impunity resulting in such acts becoming widespread;

vi. The lack of adequate access for persons deprived of liberty to counsel and doctors of their choice as well as visits of family members;

vii. Certain powers of the procuracy and the problems created by its methods of functioning, which raises serious concerns regarding the existence of an independent mechanism to hear complaints; as well as doubts as to the objectivity of the procuracy, and the objectivity of the courts and medical experts.

viii. The unacceptable conditions in prisons, which may violate the rights of persons deprived of their liberty as contained in article 16.

Recommendations

6. The Committee recommends that:

i. The State party amend its domestic penal law to include a definition of torture which is fully consistent with the definition contained in article 1 of the Convention, and provide for appropriate penalties;

ii. In view of the numerous allegations of torture and ill-treatment by law-enforcement personnel, the State party take all necessary effective steps to prevent the crime of torture and other acts of cruel and inhuman or degrading treatment or punishment;

iii. Measures be taken to ensure that all persons deprived of their liberty or arrested by law enforcement officials: i) are informed promptly of their rights, including the right to complain to the authorities against ill-treatment, the right to be informed promptly of the charges against them and the right to counsel and doctor of their choice; ii) have prompt access to counsel and doctor of their choice as well as family members;

iv. The State party should desist from the practice by its law enforcement officers of characterizing suspects under detention as witnesses, which has had the effect of denying them the right to have the assistance of a lawyer;

v. In order to ensure that perpetrators of torture do not enjoy impunity, urgent steps be taken to: i) establish an effective and independent complaints mechanism; ii) make provisions for the systematic review of all convictions based upon confessions that may have been obtained through torture; iii) make adequate provisions for compensation and rehabilitation of victims of torture;

vi. Urgent measures be taken to improve conditions of detention in police and prison establishments;

vii. Concrete measures be taken to reform the procuracy in line with the reform of the judicial system and to ensure the full implementation of the legal provisions safeguarding human rights in practice;

viii. In view of the insufficiency of statistical information available to the Committee during the consideration of the report, to provide the Committee in its next periodic report with appropriate, comprehensive statistics disaggregated by gender, ethnicity, geographical region, as well as complaints, type of prosecution and results, including all criminal offences relevant to the punishment of torture and other acts of cruel, inhuman or degrading treatment or punishment;

- ix. Steps be taken to continue education and training activities on the prevention of torture and the protection of individuals from torture and ill-treatment for police and for the staff of prisons, as well as for forensic experts and medical personnel in prisons in examining victims of torture and documenting acts of torture;
- x. Effective measures be taken to prosecute and punish violence against women as well as trafficking in women, including adopting appropriate legislation, conducting research and raising awareness of the problem as well as including the issue in the training of law enforcement officials and other relevant professional groups.
- xi. The Committee's conclusions and recommendations, and the summary records of the review of the State party's second periodic report, should be widely distributed in the country.

Concluding observations of the Human Rights Committee: Georgia

19/04/2002 CCPR/CO/74/GEO.

1. The Committee considered the second periodic report of Georgia (CCPR/C/GEO/2000/2) at its 1986th and 1987th meetings (CCPR/C/SR.1986 and 1987), held on 18 and 19 March 2002. At its 2001st and 2002nd meetings (CCPR/C/SR.2001 and 2002), held on 28 March 2002, it adopted the following concluding observations.

Introduction

2. The Committee welcomes the detailed report and its timely presentation by the State party. It regrets, however, that although information is provided on legislation relating to the Covenant obligations, the necessary information on the practical implementation of the Covenant is lacking.

Positive aspects

3. The Committee appreciates the significant progress achieved in Georgia since the submission of its previous report. That progress is the basis for a positive political, constitutional and legal framework for the implementation of rights enshrined in the Covenant.

4. The Committee commends the State party for its abolition of the death penalty and the ratification of the Second Optional Protocol to the Covenant.

5. The Committee welcomes the creation of the Rapid Reaction Group, the function of which is to visit police stations and other places of detention to carry out investigations promptly in response to complaints.

Principal subjects of concern and recommendations

6. The Committee expresses satisfaction at the creation of a Constitutional Court but it remains concerned that current procedures impede access to the Court.

The State party should reform the procedures for access to the Constitutional Court in order to guarantee full protection of the human rights enshrined in the Covenant.

7. The Committee expresses its concern at the still very large number of deaths of

detainees in police stations and prisons, including suicides and deaths from tuberculosis. The Committee also remains concerned about the large number of cases of tuberculosis reported in prisons.

The State party should take urgent measures to protect the right to life and health of all detained persons as provided for in articles 6 and 7 of the Covenant. Specifically, the State party should improve the hygiene, diet and general conditions of detention of and provide appropriate medical care to detainees as provided for in article 10 of the Covenant. It should also ensure that every case of death in detention is promptly investigated by an independent agency.

8. The Committee remains concerned at the widespread and continuing subjection of prisoners to torture and cruel, inhuman or degrading treatment or punishment by law enforcement officials and prison officers.

The State party should ensure that all forms of torture and similar ill-treatment are punishable as serious crimes under its legislation, in order to comply with article 7 of the Covenant.

The State party should also set up an effective system to monitor the treatment of all prisoners, in order to ensure full protection of their rights under articles 7 and 10 of the Covenant.

The State party should also ensure that all complaints of ill-treatment are properly investigated by an independent authority, that those responsible are brought to justice and that victims are appropriately compensated.

Immediately upon first being deprived of liberty and during all stages of detention, free access to a lawyer and to doctors should be ensured.

All statements obtained by force from detained persons should be investigated and may never be used as evidence, except as evidence of torture.

The State party should provide training in human rights, particularly on the prohibition of torture, to police and prison officers.

9. The Committee is concerned at the length of the period (up to 72 hours) that persons can be kept in police detention and before they are informed of the charges against them. It is also concerned at the fact that, until the trial takes place, the accused cannot make a complaint before a judge regarding abuse or ill-treatment during the period of detention.

The State party should ensure that detainees are informed promptly of the charges against them, in accordance with article 9 of the Covenant. Detainees should be given the opportunity to make a complaint before a judge regarding any ill-treatment during the investigation phase, as required by articles 7 and 14 of the Covenant.

10. The Committee expresses its concern at the fact that a person may be detained and imprisoned or prevented from leaving his or her residence because of non-fulfilment of contractual obligations.

The State party should bring its civil and criminal legislation into line with articles 11 and 12 of the Covenant.

11. The Committee expresses its concern at the difficulties that detainees and persons charged with an offence have in gaining access to lawyers, particularly court-appointed lawyers. Although the law provides for the latter, budgetary problems are obstructing the enjoyment of this right.

The State party should ensure the full enjoyment of the right to be represented by a lawyer in accordance with article 14, paragraph 3 (d), of the Covenant; this includes appropriate budgetary provisions for an effective system of legal aid.

12. The Committee expresses its concern at the existence of factors which have an adverse effect on the independence of the judiciary, such as delays in the payment of salaries and the lack of adequate security of tenure for judges.

The State party should take the necessary measures to ensure that judges are able to carry out their functions in full independence, and should ensure their security of tenure pursuant to article 14 of the Covenant. The State party should also ensure that documented complaints of judicial corruption are investigated by an independent agency and that the appropriate disciplinary or penal measures are taken.

13. Although the Committee recognizes that some progress has been made in efforts to achieve equality for women in political and public life, it remains concerned at the low level of representation of women in Parliament and in senior public- and private-sector jobs.

The State party should take appropriate measures to fulfil its obligations under articles 3 and 26 in order to improve the representation of women in Parliament and in senior positions in the public and private sectors as provided in article 3 of the Covenant. The State party should also consider measures, including educational ones, to improve the situation of women in society.

14. The Committee notes with concern that domestic violence against women remains a problem in Georgia.

The State party should take effective measures, including the enactment and implementation of appropriate legislation, training of police officers, promotion of public awareness and, in more concrete terms, human rights training to protect women against domestic violence, in accordance with article 9 of the Covenant. The State party should provide concrete information on the situation of domestic violence.

15. The Committee remains concerned at the continuation of practices which involve trafficking in women in Georgia.

The State party should take measures to prevent and combat this practice by enacting a law penalizing trafficking in women, and should fully implement the provisions of article 8 of the Covenant. The Committee recommends that preventive measures be taken to eradicate trafficking in women and provide rehabilitation programmes for the victims. The laws and policies of the State party should provide protection and support for the victims.

16. Although the Committee welcomes the appointment of an Ombudsman, it notes with concern that her functions are not clearly defined and her power to implement recommendations is limited.

The State party should clearly define the functions of the Ombudsman, ensure her independence from the executive, provide for a direct reporting relationship with the legislature, and give her authority in relation to other State agencies in accordance with article 2 of the Covenant.

17. The Committee notes with deep concern the increase in the number of acts of religious intolerance and harassment of religious minorities of various creeds, particularly Jehovah's Witnesses.

The State party should take the necessary measures to ensure the right to freedom of thought, conscience and religion as provided in article 18 of the Covenant. It should also:

- (a) Investigate and prosecute documented cases of harassment against religious minorities;
- (b) Prosecute those responsible for such offences;
- (c) Conduct a public awareness campaign on religious tolerance and prevent, through education, intolerance and discrimination based on religion or belief.

18. The Committee expresses its concern at the discrimination suffered by conscientious objectors owing to the fact that non-military alternative service lasts for 36 months compared with 18 months for military service; it regrets the lack of clear information on the rules currently governing conscientious objection to military service.

The State party should ensure that persons liable for military service who are conscientious objectors can opt for civilian service the duration of which is not discriminatory in relation to military service, in accordance with articles 18 and 26 of the Covenant.

19. The Committee expresses its concern with respect to obstacles facing minorities in the enjoyment of their cultural, religious or political identities.

The State party should ensure that all members of ethnic, religious and linguistic minorities enjoy effective protection from discrimination and that the members of such communities can enjoy their own culture and use their own language, in accordance with article 27 of the Covenant.

20. The Committee is concerned at the harassment of members of non-governmental organizations, particularly those defending human rights.

The State party should ensure that non-governmental organizations can safely carry out their functions in a manner consonant with the principles of a democratic society.

D. Dissemination of information about the Covenant

21. The Committee requests the State party to publicize the text of these concluding observations in the appropriate languages and to ensure that the next periodic report is widely disseminated among the public at large, including non-governmental organizations active in Georgia.

22. Pursuant to article 70, paragraph 5, of the rules of procedure of the Committee, the State party is requested to transmit, within 12 months, information on measures adopted to deal with the issues raised in paragraphs 7, 8 and 9 of the present concluding observations.

23. The Committee requests the State party to submit its third periodic report by 1 April 2006.

APT Seminar on "Prevention of torture in the Caucasus: what role for national NGOs" Gudauri, Georgia, 19-20 October 2001

Programme

Friday 19 October 2001

9h00 - 9h30	Registration
9h30 - 10h15	Opening session APT President Mr Marco Mona GYLA President Ms Tinatin Khidasheli Swiss DDC Ms Ilaria Dali-Bernasconi
10h15 – 10h45	Presentation of the structure of the Council of Europe – Commitments undertaken by the three Caucasus countries upon accession (cf. background documents) <i>Presentation by Barbara Bernath, APT</i>
10h45 – 11h15	COFFEE BREAK Session 1: European standards regarding torture and ill-treatment and implementation
11h15 – 12h00	Standards regarding torture and ill-treatment defined by the European Committee for the Prevention of Torture and the European Court on Human Rights <i>Presentation by Malcolm Evans, Professor at Bristol University, UK</i>
12h00 – 13h00	European standards and legislative reforms – The case of Georgia <i>Presentation by Tinatin Khidasheli, GYLA</i>
13h00 - 14h30	LUNCH BREAK
14h30 - 15h30	Discussion in 3 working groups on the relevance of standards for each country and the role of NGOs in legislative reform
15h30 – 16h00	Presentation of the working groups Discussion
16h00 - 16h30	COFFEE BREAK

16h30 –18h00

Discussion continued

Saturday 20 October 2001**Session 2 Prevention of torture and national control mechanisms**

9h – 10h00

Prevention of torture through national visiting mechanisms

Presentation by Mr Rod Morgan, Her Majesty's Chief Inspector of Probation, UK

Mandate of ombudsperson in the prevention of torture

Presentation by Mr Teimuraz Lombaze, Deputy Public Defender of Georgia

10h00 – 11h00

Discussion in 3 working groups on national control mechanisms, ombudsperson and the role of NGOs

11h00 –11h30

COFFEE BREAK

11h30 –12h30

Presentation of working groups
Discussion

12h30 - 14h00

LUNCH BREAK

SESSION 3 : Prevention of torture and international monitoring bodies

14h00 – 15h

Prevention of Torture

Presentation by Petya Nestorova, CPT Secretariat

The European Committee for the

The work of the Organisation for Security and Co-operation in Europe,

*Presentation by Pascale Roussy, Head of the Human Dimension Office, OSCE**Mission in Georgia and by Christine Mardirossian, Human Rights Officer, OSCE Office in Armenia*

15h-16h00

international monitoring bodies

Discussion on how to make use of

16h00 –16h30

COFFEE BREAK

16h30 – 17h00
Discussion

Presentation of working groups

17h-18h

Closing session
Final report on the seminar

APT Seminar

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USEFUL ADDRESSES

1. INTERNATIONAL ORGANISATIONS

International Committee of the Red Cross

17 Avenue de la Paix, 1211 Geneva, Switzerland
Telephone (41) 22 734 60 01 Fax (41) 22 734 82 80
E-mail: webmaster.gva@icrc.org
Website: www.icrc.org

United Nations Office of the High Commissioner for Human Rights

Office of the United Nations
8-14 Avenue de la Paix, 1211 Geneva 10, Switzerland
Telephone (41) 22 917 90 00 Fax (41) (0)22 917 90 12
E-mail: webadmin.hachr@unog.ch
Website: www.unhchr.ch

United Nations High Commissioner for Refugees

P.O Box 2500, 1211 Geneva 2, Switzerland
Telephone (41) 22 739 81 11 Fax (41) 22 739 73 67
Website: www.unhcr.ch

2. REGIONAL ORGANISATIONS

Council of Europe

67075 Strasbourg Cedex, France
Tel: +33 3 88 41 20 00
Fax: +33 3 88 41 27 81
Website: www.coe.int

European Court of Human Rights

Telephone (33) 3 88 41 20 32 Fax (33) 3 88 41 27 91
Website: www.echr.coe.int

European Committee for the Prevention of Torture (CPT)

Telephone (33) 3 88 41 23 88 Fax (33) 3 88 41 27 72
E-mail: cpt.doc@coe.int
Website: www.cpt.coe.int

Commissioner for Human Rights:

Fax : +33 (0) 3 90 21 50 53
Email : commissioner.humanrights@coe.int
Internet: <http://www.commissioner.coe.int/>

European Parliament

L-2929, Luxembourg
Telephone (352) 4300-1 Fax (352) 43 70 09
Website: www.europa.eu.int

Organization for Security and Co-operation in Europe

Office for Democratic Institutions and Human Rights
Aleje Ujazdowskie 19, 00557 Warsaw, Poland
Telephone (48-22) 520 06 00 Fax (48-22) 520 06 05
E-mail: office@odhir.pl
Website: www.osce.org/odih

2. NON-GOVERNMENTAL ORGANISATIONS

2.1. International NGOs

Amnesty International (International Secretariat)

1 Easton Street, London WC1X 8 DJ, United Kingdom
Telephone (44) 171 413 55 00 Fax (44) 171 956 11 57
E-mail: amnestyis@amnesty.org
Website: www.amnesty.org

Association for the Prevention of Torture (APT)

10 Route de Ferney, P.O. Box 2267, 1211 Geneva 2, Switzerland
Telephone (41) 22 919 21 70 Fax (41) 22 919 21 80
E-mail: apt@apt.ch
Website: www.apt.ch

Human Rights Watch (HRW)

485 Fifth Avenue, 3rd Floor, New York, NY 10017, USA
Telephone (1) 212 290 47 00 Fax (1) 212 736 13 00
E-mail: hrwny@hrw.org
Website: www.hrw.org

International Commission of Jurists (ICJ)

26 Chemin de Joinville, P.O. Box 160, 1216 Geneva, Switzerland
Telephone (41) 22.979.38.00 Fax (41) 22 979 38 01
Email: info@icj.org
Website: www.icj.org

International Federation of League of Human Rights (FIDH)

17 Passage de la Main d'Or, 75011 Paris, France
Telephone (33) 1 43 55 25 18 Fax (33) 1 43 55 18 80
E-mail: fidh@csi.com
Website: www.fidh.org

International Federation of Action by Christians for the Abolition of Torture (Fi.ACAT)

27 Rue de Maubeuge, 75009 Paris, France
Telephone (33) 1 42 80 01 60 Fax (33) 1 42 80 20 89
E-mail: fi.acat@wanadoo.fr

International Helsinki Federation for Human Rights

Wickenburggasse 14/7, 1080 Vienna, Austria
Telephone: (43) 1 408 88 22 Fax: (43) 1 408 88 22 50
E-mail: office@ihf-hr.org
Web site: www.ihf-hr.org

Inter-Parliamentary Union (IPU)

5, Chemin du Pommier
P.O. Box 330
1218 Le Grand-Saconnex, Switzerland
Telephone (41 22) 919 41 50 Fax (41 22) 919 41 60
Email: postbox@mail.ipu.org
Website: www.ipu.org

International Rehabilitation Council for Torture Victims

Borgergade 13, P.O. Box 2107, 1014 Copenhagen, Denmark
Telephone: (45) 33 76 06 00 Fax: (45) 33 76 05 00
E-mail: irct@irct.org
Website: www.irct.org

International Service for Human Rights

1 rue de Varembe, P.O. Box 16, 1211 Geneva 20, Switzerland
Telephone: (41 22) 733 51 23 Fax: (41 22) 733 08 26
Email: dir@ishr-sidh.ch
Website: www.ishr.ch

World Organisation against Torture (OMCT - SOS Torture)

8, rue du Vieux-Billard, P.O. Box 21, 1211 Geneva 8, Switzerland
Telephone (41 22) 809 49 39 Fax (41 22) 809 49 29
E-mail : omct@omct.org
Website: www.omct.org

Penal Reform International

169 Clapham Road, London SW9 0PU, United Kingdom
Telephone: (44) 207 721 76 78 Fax: (44) 207 721 87 85
E-mail: Headofsecretariat@pri.org.uk
Wbsite: www.penalreform.org

The Redress Trust

6 Queen Square, London WC1N 3AR, United Kingdom
Telephone: 44 (0) 171 278 9502 Fax: 44 (0) 171 278 9410
E-mail: redresstrust@gn.apc.org
Website: www.redress.org