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Georgia: alternative report to UNCAT

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Despite the Rose Revolution that

took place in Georgia and a lot of positive steps forward, torture and inhuman and degrading treatment still represent a significant problem for the democratic development of the country. The main reasons why the abuse of human rights remains such a painful issue in Georgia are deeply rooted impunity and the lack of a long-term vision.

The Georgian Young Lawyers' Association, in collaboration with other human rights NGOs operating in Georgia and the Geneva-based international NGO, World Organization Against Torture (OMCT), submitted an alternative report on the human rights situation in Georgia to the 36th session of the UN Committee Against Torture.¹ The main concerns raised by the NGOs may be divided into two parts: legislative issues and problems in practice.

Legislative issues

- Despite numerous positive amendments to the domestic criminal legislation, it is still far from being in compliance with relevant international agreements. The prohibition of torture is not an absolute right according to the Constitution and it can be restricted during a state of emergency or martial law, which contradicts the absolute and non-derogable nature of the right as is guaranteed by the main international agreements prohibiting torture.
- As torture usually takes place during pre-trial detention, it is very important to ensure the existence of alternative non-custodial preventive measures and their application, especially for nonviolent, minor or less serious offences. Criminal legislation currently in force encourages the courts to impose preliminary detention as a preventive measure even more frequently than they have previously done so. Since December 2005, only bail and personal guarantees have remained as preventive measures in the Criminal Procedure Code. Other articles providing for such non-custodial preventive measures as placement under police surveillance, a written undertaking not to leave a particular place and to behave properly, and house arrest have been abolished.
- Vague provisions within the criminal legislation guaranteeing compulsory medical examination for detainees enable law enforcement agencies to ignore them. Thus, injuries sustained during arrest, or later in preliminary detention facilities, go unreported and perpetrators remain unpunished.
- Georgian legislation provides no explicit right to reparation. However, it does include some guarantees with respect to compensation. The right to compensation can be exercised through civil as well as criminal litigation, though the outcome of the complaint will be ultimately related to the result of the criminal case in question. However, the failure to identify the perpetrator does not prevent a victim from bringing an action before the civil courts on the basis of state liability. As a matter of practice, the perpetrators of torture are not identified, mainly because of the victim's

fear of retaliation. The us, this provision is an important guarantee of the right to receive compensation, even in the absence of an identified perpetrator. Unfortunately, the enactment of this provision has already been postponed by Parliament four times. Each time the date for the entry into force of this article approaches, new amendments are made suspending its application. Currently the application of this article is postponed until January 2007.

- In 2004, the concept of plea bargaining was introduced into the Criminal Procedure Code of Georgia. Since its introduction, plea bargaining has become, in practice, a means for the illegal extraction of property (money) from the defendants, as well as a means for the perpetrators of torture to avoid conviction. It is noteworthy, that following the recommendations of Human Rights Watch, a number of positive amendments relating to the prohibition of torture were made to the articles of the Criminal Code Procedure regulating plea bargaining. Nevertheless, in the absence of a clear definition or a limitation of the type of crimes on which a plea bargain can be reached, there still is a chance for such an agreement to be reached in torture cases or other serious crimes.

- Despite the amendments (June 23, 2005) to the definition of torture (Article 144), the number of cases initiated since then still raise serious doubts regarding the implementation of the article in practice and the effective investigation of the cases concerned.

Problems in practice

- After the Rose Revolution, the Government declared the fight against crime and its perpetrators to be its top priority. The us, as new policemen were selected, so-called 'demonstrative detentions' were held in Georgia. The e so-called special operations carried out by the law enforcement bodies of Georgia in many cases are characterized by excessive severity and too frequently result in the death of those persons who are supposed to be detained. The e unlawful and excessive actions of police officers would appear to be condoned by the official statements of

the President of Georgia, as well as the Minister of Interior. Arms are not used in exceptional cases as a means of a last resort, but are used as standard practice. The e outcome of the special operations mentioned above is fatal not only for the suspects but for the police officers as well. Moreover, innocent citizens suffer from such practices. In 2005, 15 suspects (some of whom had not at the time been considered to be suspects) were shot to death during special operations. In the first quarter of 2006, 17 individuals were killed during special operations. The e number of citizens killed in the first three months of 2006, has already exceeded the total number during the previous year, which demonstrates, and is a direct result of, a deeply rooted impunity.

- The e situation in the penitentiary system is still alarming. Conditions in most of the institutions within the penitentiary system do not comply with minimum standards. Prisons are overcrowded so that three to four prisoners have to share one bed and sleep in turn. There are only open sanitary facilities in the cells and prisoners have to eat at the same place where they urinate, creating horribly unsanitary conditions. Laundry is not cleaned very often and cells are not ventilated, creating an unbearable smell. There is not enough space for each prisoner. Cell lighting is very poor. Quite often prisoners are not able to take exercise, because of insufficient space. Prisoners' food and the medical service within the penitentiary establishments are very poor.

- The e number of deaths in custody is still very high, exacerbated by the failure of the government to carry out an effective investigation leading to the determination of the truth. In 2004, 43 inmates died within the penitentiary system. In 2005 the number increased to 47.

- The e lack of integrated national statistics with respect to torture cases, investigations initiated and the results achieved is a persistent problem in Georgia.

On 4 May 2006, the Committee Against Torture considered the third periodic report of Georgia on the implementation

of the rights contained in the UN Convention Against Torture (UNCAT) and adopted its recommendations, which reflect the main concerns raised in the alternative report.

The e Committee remained concerned that despite extensive legislative reforms, impunity and intimidation still persist in Georgia, in particular in relation to the use of excessive force, including torture and other forms of ill-treatment by law enforcement officials, especially prior to and during arrest, during prison riots and in the fight against organized crime. The e Committee expressed its concern about the relatively low number of convictions and disciplinary measures imposed on law enforcement officials in light of numerous allegations of torture and other acts of cruel and inhuman or degrading treatment, as well as the lack of public information about such cases. The Committee expressed its particular concern about the high number of sudden deaths in custody and the absence of detailed information on the causes of death in each case. It also underlined the poor conditions in many penitentiary facilities, as well as the overcrowding and the fact that there is no explicit law that provides for reparation.

The conclusions and recommendations of the CAT can be found at:

<http://www.ohchr.org/english/bodies/cat/cats36.htm>
1 P. Mutzenberg (ed.) May 2006, Human Rights Violations in Georgia: Alternative Report to the United Nations Committee against Torture. Available online at:
http://www.omct.org/pdf/procedures/2006/cat_36th/altern_reports/georgia_cat36_0406_eng.pdf.