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**CIVIL AND POLITICAL RIGHTS, INCLUDING: THE QUESTIONS  
OF TORTURE AND DETENTION**

**Preliminary note by the Special Rapporteur on torture and other cruel, inhuman  
or degrading treatment or punishment, Manfred Nowak**

**MISSION TO GEORGIA\***

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\* The present note is circulated in the language of submission and in Russian.

1. The present document contains a preliminary note concerning the mission of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, to Georgia from 19 to 25 February 2005, at the invitation of the Government. The final report will be published as a document of the sixty-second session of the Commission.

2. The visit to Georgia was his first mission since he was appointed Special Rapporteur on 1 December 2004. The one-week visit to Georgia also covered the territories of Abkhazia and South Ossetia, which are not under the Government's control. According to the Special Rapporteur, the main purposes of the visit were to assess the prevailing situation of torture and other cruel, inhuman or degrading treatment or punishment, to promote preventive mechanisms to eradicate torture and ill-treatment, and to begin a process of cooperation with the Government.

3. Over the course of his visit the Special Rapporteur met with the President, the Minister for Foreign Affairs, the Chairman of Parliament, the Chairman of the Human Rights and Civil Integration Committee of Parliament, the Chairman of the Foreign Relations Committee of Parliament, a member of the Legal Committee of Parliament, the Deputy Minister of Justice, the Deputy Minister of Internal Affairs, the Deputy Secretary of the National Security Council, the General Prosecutor and the Public Defender, among other officials.

4. He also met with representatives of numerous non-governmental human rights organizations (NGOs), including the American Bar Association (Central European and Eurasian Law Initiative), Article 42 of the Constitution, Former Political Prisoners for Human Rights, the Georgian Centre for Psychosocial and Medical Rehabilitation of Torture Victims, the Georgian Committee against Torture, the Georgian Medical Association, the Georgian Young Lawyer's Association, the Human Rights Information and Documentation Centre, the Liberty Institute, Penal Reform International, and the Rehabilitation Centre for Victims of Torture "Empathy".

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

6. The Special Rapporteur noted the enormous and rapid change the country was experiencing following the "Rose Revolution" in late 2003, and credited those who assumed leadership on the platform of human rights and democratic principles. He noted the commitment and efforts the Government had undertaken to tackle corruption, uphold the rule of law, and reform the law enforcement and criminal justice system, among other things. He also acknowledged the socio-economic challenges the country faced, as well as the ongoing conflicts on its territory.

7. Based on his meetings with officials, defence lawyers and independent forensic medical experts, the substantiated information received from NGOs, his visits to places of detention (Vake-Saburtalo District Police Station, Vake-Saburtalo Police Station No. 2, Tbilisi Head Department of Internal Affairs, the Ministry of Security, Prison No. 1, Prison No. 7, Prison No. 5 (women's pre-trial facility and colony) and the Prison Hospital) and interviews with detainees, the Special Rapporteur concluded that torture and ill-treatment by law enforcement officials still exists in Georgia.

8. The cases he examined bore common characteristics. Torture and ill-treatment were primarily perpetrated in the first 72 hours of police custody to extract confessions for alleged offences; the methods of torture included, among other things, beatings with fists, butts of guns and truncheons and the use of electric shocks, and cigarette burns; injuries sustained by the victims included, among other things, broken bones, cigarette burns, scars, as well as neuro-psychological changes; the grounds of prosecution of the detainees were based on these confessions, in violation of article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and there was an absence of any inquiry into allegations of torture at the pre-trial hearing stage, nor any serious and effective investigation and prosecution of the allegations of torture and ill-treatment, which contributes to the culture of impunity for violations by the authorities.

9. The Special Rapporteur distinguished the practice of torture and ill-treatment from the deplorable conditions of detention, primarily of those persons detained in pre-trial detention facilities of the Ministry of Justice. Notwithstanding constraints on resource allocation, according to the Special Rapporteur, many of these conditions are exacerbated by structural problems in the criminal justice system. In particular, the courts and prosecutors almost exclusively resort to pre-trial detention - up to nine months - of accused persons, irrespective of the gravity of alleged offences, contributing to severe problems of overcrowding and strain on the already deteriorating infrastructure. The Special Rapporteur considers that this recourse to pre-trial detention is contrary to the principle of presumption of innocence and to the exceptional rule of deprivation of liberty laid down by international law (article 9, paragraph 3, of the International Covenant on Civil and Political Rights).

10. The Special Rapporteur stressed that the authorities at all levels recognized these problems. He pointed to positive examples of measures taken by the Government, including: the establishment of monitoring mechanisms to visit places of detention, which include members of civil society; the draft proposals to amend the Criminal Code to include the offence of torture with the appropriate penalty, as well as amendments to the Criminal Procedure Code, which are expected to be expeditiously considered by Parliament; the imminent ratification of the Optional Protocol to the Convention against Torture; and the programme of construction of modern detention facilities to replace existing ones. The Special Rapporteur indicated that he received clear commitments from the Government, and was assured that his recommendations would be seriously considered. He saw the visit as the fruitful beginning of a cooperation for a common aim to eradicate torture and ill-treatment in the country.

11. In Abkhazia, the Special Rapporteur met with representatives of NGOs, including the Foundation for Civil Society and Man of the Future, the Centre for Humanitarian Programmes, the Abkhaz Red Cross, lawyers, the media, and representatives of the United Nations Observer Mission in Georgia (UNOMIG) Human Rights Office of Abkhazia, Georgia. He visited the detention facility of the de facto Ministry of Internal Affairs, where he met with the de facto Deputy-Minister of Internal Affairs, and the director and deputy-director of the detention facility. He expressed concern at the conditions of detention of pre-trial and convicted prisoners, including of female prisoners. In Abkhazia, the applicability of the death penalty, notwithstanding the present moratorium, and the conditions of prisoners on death row, were especially of concern.

12. In South Ossetia, the Special Rapporteur met with the de facto Minister for Foreign Affairs, the Human Rights Plenipotentiary, the de facto Minister of Justice, and the heads of the departments of the penitentiary and human rights compliance of the Ministry of Justice, as well as the Head of the Tskhinvali Field Office of OSCE. He visited Tskhinvali Prison and the detention facility of the Ministry of Interior. In both places he expressed concern at the conditions of detention. He also met with representatives of NGOs, including the Association of South Ossetian Women for Democracy and Human Rights, and Law Above Power.

13. The Special Rapporteur expressed his gratitude to the excellent cooperation of the Government in relation to his visit, including facilitation of meetings and compliance with the terms of reference for the visit. He also expressed his appreciation to the United Nations Resident Coordinator, UNOMIG and in particular, the UNOMIG Human Rights Office of Abkhazia, Georgia, and OSCE for their assistance.

14. The Special Rapporteur has issued the following preliminary recommendations addressed to the Government of Georgia, and the de facto authorities in the territories of Abkhazia and South Ossetia. He recommends that:

### **Impunity**

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

(b) The definition of torture in the Criminal Code be made fully consistent with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and be supported by an appropriate penalty;

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

(d) All allegations of torture and ill-treatment be promptly and thoroughly investigated;

(e) The principle of the inadmissibility of evidence obtained by torture, in accordance with article 15 of the Convention against Torture, is respected, that confessions made by persons without the presence of a lawyer and not confirmed before a judge be declared inadmissible and that consideration be given to video and audio taping of interrogations;

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

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

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

### **Conditions of detention**

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

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

(k) Pre-trial and convicted prisoners be strictly separated;

(l) Confinement in detention not exceed the official capacity;

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

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

(o) The Government of Georgia make the declaration provided for in article 22 of the Convention against Torture recognizing the competence of the Committee against Torture to receive and consider complaints from individuals who claim to be victims of a violation of the provisions of the Convention;

### **Prevention**

(p) The Government of Georgia ratify the Optional Protocol to the Convention against Torture as soon as possible, which would require the Government to establish a truly independent monitoring mechanism - where the members of the visiting commissions would be appointed for a fixed period and not subject to dismissal - to visit all places where persons are deprived of their liberty throughout the country. In the opinion of the Special Rapporteur, such a mechanism could be situated in an independent national human rights institution established in accordance with the Paris Principles, the basis of which might be the Public Defender's Office. This national institution should also be vested with investigatory powers in relation to allegations of torture and ill-treatment, and provided with the necessary financial and human resources, and appropriate capacity-building, to carry out its functions effectively;

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

(r) Law enforcement recruits undergo an extensive and thorough training curriculum, which incorporates human rights education throughout, including on the use of police equipment, and existing officers should undergo continuing education;

**Death penalty**

(s) The death penalty be abolished in Abkhazia;

**International cooperation**

(t) Relevant international organizations be requested to provide, in a coordinated manner, assistance in the follow-up to the above recommendations. To this end, the Office of the United Nations High Commissioner for Human Rights should continue its efforts to establish a permanent human rights presence within the United Nations Country Team, and ensure that adequate attention is paid to South Ossetia.

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