GEORGIA

BACKTRACKING ON REFORM: AMENDMENTS UNDERMINE ACCESS TO JUSTICE

SUMMARY

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, during criminal investigations in Georgia.

Georgia's legal system, like many civil law systems, codifies most procedural rights during criminal investigation and trial into a single piece of legislation, the criminal procedure code. The code sets out the rights of persons under investigation for criminal offenses and delineates the respective roles of the law enforcement agencies, security forces, and courts while carrying out criminal investigations and trials. Georgia has no special military courts, and the code's procedures for criminal investigations and trials apply to both civilians and those serving in the military and security forces.

On May 15, 1999, a new code went into force in Georgia, which had been drafted after consultation with Georgian defense lawyers actively working in the area of criminal law. It had been adopted by parliament after serious debate and signed by the president in February 1998. Prior to its adoption, the new code had also been reviewed by Council of Europe experts to advise the Georgian government on the code's conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the European Convention), to which all member states of the Council must be party, and with standards developed in the case law of the European Court of Human Rights. This new code was intended, among other things, to set out clear procedural protections for criminal suspects consistent with international law. Georgia was accepted as a full member of the Council of Europe on April 27, 1999.

However, on May 13 and 28, 1999, shortly after Georgia became a full member of the Council, Georgia's parliament adopted 289 amendments to the new code. Several weeks later, on July 22 and July 23, the parliament adopted sixty-three additional amendments. Together, these amendments altered or replaced nearly half the articles in the new code.

As noted above, torture, ill-treatment, and violations of defendants' procedural rights are common and widespread during the pre-trial period in Georgia. Yet the 1999 amendments repealed the reformed complaints procedures and reestablished severe obstacles for criminal suspects or defendants who seek to end or obtain redress for such abuse. By reimposing restrictions on access to the courts to hear complaints regarding procedural violations prior to trial, the parliament made it extremely difficult for detainees to prove abuse and for abusive officials to be held accountable.

Complaints regarding procedural violations include, for example, attempts by police and procuracy officials to hinder detainees' access to lawyers, simply by refusing access during the early stages of the investigation, by misclassifying criminal suspects as "witnesses," who do not have a right to a lawyer, or by failing to inform counsel of key hearings related to their clients. In other instances, procuracy officials have sought to coerce detainees into accepting lawyers whom they have not freely chosen, who do not vigorously complain about the mistreatment of their clients, or who otherwise fail to represent their client's best interests. These efforts by the procuracy to restrict access to, or manipulate the choice of a lawyer, appear intended to suppress complaints of physical abuse that may have occurred during arrest and interrogation, in order to preclude perpetrators from being brought to justice and to prevent detainees from later proving that their confessions were coerced.

Criminal suspects and their lawyers also report that it is difficult, if not impossible, to obtain impartial forensic medical examinations to substantiate complaints of torture. Despite attempts at reform in the code, lawyers and others recently interviewed by Human Rights Watch indicate that the procuracy often simply denies lawyers' requests that their clients receive a forensic examination. Under current Georgian law, such refusal by the procuracy is not subject to judicial review, thereby leaving suspects with no effective recourse during the lengthy pre-trial period. The absence of any independent review of a procurator's denial is especially troubling with regard to forensic medical examinations because their evidentiary value depends on the timeliness of the examination. Under the code, the period of detention prior to trial may last as long as nine months; yet, a delay of even two weeks in performing a forensic examination can allow evidence of torture and physical abuse to heal and fade. In many cases, delays preclude forensic medical doctors from establishing the nature and cause of injuries, and hinder detainees' efforts to prove that their testimony was coerced.

In theory, a detainee's first appearance before a judge—the hearing on the legality of detention, which under the law must occur within three days of being detained—could provide an individual with the opportunity to submit a complaint about physical ill-treatment or violations of procedural rights, and therefore serve as a check on ill-treatment and other abuse during the interrogation period. But defense lawyers report that investigators sometimes attempt to avoid holding the hearing altogether, fail to bring the detainee to the proceeding, or pressure the detainee, ostensibly voluntarily, to waive his or her rights of attendance at the hearing.

Meanwhile, even if the detainee does appear before a judge, his ability to obtain judicial review of a complaint of ill-treatment or procedural violations is severely limited. According to lawyers interviewed by Human Rights Watch, the May and July amendments require that complaints of ill-treatment or other misconduct during detention must be heard by higher-level procuracy officials, thereby precluding defense counsel from presenting the judge with a complaint regarding investigative misconduct. The rules in the code governing such hearings appear to discourage judges from making full and impartial reviews of such complaints.

The amendments repealed the right of individuals to submit a complaint to a court prior to trial. Instead, the code now requires that the vast majority of complaints regarding procedural rights violations during the criminal investigation be heard and decided by the procuracy. However, the procuracy in Georgia is directly responsible for conducting the investigation in certain categories of serious criminal offenses, supervising the investigations of all other criminal offenses, and representing the prosecution before the courts. This calls into question the procuracy's status as an impartial judicial authority, and the propriety of the power it has been granted in the code to hear and decide complaints alleging ill-treatment or other violations of a defendant's rights during the pre-trial period.

The government of Georgia, with the assistance of the international community, is currently carrying out a high-profile reform of the court system. Georgian officials maintain that concerns about pervasive corruption have been a motivating factor in carrying out reform of the judiciary. However, the absence of judicial review for complaints of abuse during the pre-trial period not only severely hampers an individual's ability to substantiate an allegation that a confession or other testimony was obtained through torture, but also means that detainees remain at the mercy of corrupt officials, with no possible recourse during the pre-trial period. Lawyers and criminal justice professionals note that without independent scrutiny, law enforcement officials will continue to have unfettered power to coerce bribes from those under criminal investigation. There can be very little expectation that such a criminal justice system will ensure fair trials, and given this failure, that the judiciary can ever enjoy broad public trust—which government officials maintain is the goal of their reform efforts.

As a result of the findings contained in this report, Human Rights Watch is calling on the Georgian government to take a number of steps to amend the applicable laws and improve practices so as to safeguard against torture, and to meet United Nations and other international standards regarding fair trials and the treatment of persons held in pre-trial detention. This report reiterates the U.N. Human Rights Committee's April 1997 call for the government of Georgia to investigate and prosecute complaints of torture, as well as to conduct a systematic and impartial review of all past convictions that were based on confessions allegedly made under torture. Human Rights Watch also calls on the

international community to press the Georgian government vigorously to adopt legislation that meets international standards in order to safeguard detainees, to combat widespread corruption involving law enforcement, and to foster accountability for law enforcement and security force's actions in light of the substantial bilateral and multilateral security assistance Georgia currently receives. (See below for a full list of recommendations.)

This report is based on interviews carried out in Tbilisi between March 1999 and February 2000, with judges at district (city) and regional courts, the supreme and constitutional courts, defense lawyers, forensic medical experts, members of parliament and other government officials, and the victims of human rights abuses and their families.

BACKGROUND

Chronology of Amendments to the Code

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.[1] These reports include instances in which the government's political opponents have been subject to torture and deprived of fair trials. For example, the U.N. Human Rights Committee, the treaty-monitoring body established under the International Covenant on Civil and Political Rights (ICCPR), a treaty binding on Georgia, in May 1998 found in favor of four defendants. The four, all supporters of former president Zviad Gamsakhurdia, reported that they had been tortured, and that their right to choose their lawyer freely was denied. The Human Rights Committee in its consideration of the cases of Victor Domukhovsky, Zaza Tsiklauri, Petre Gelbakhiani, and Irakli Dokvadze, found that all four had been tortured, and that, in addition, Gelbakhiani and Tsiklauri had been denied the right to be defended by counsel of their own choosing by being forced to accept state-appointed lawyers.[2]

Torture in Georgia is not confined solely to political cases. Those suspected of ordinary criminal offenses also frequently report that they have been tortured. Further, corruption is rampant in Georgian law enforcement, and cases include incidents of arbitrary detention, followed by torture, and then extortion of family members to gain a detainee's release from custody. Physical abuse and police brutality have also been used against journalists, members of human rights organizations working to combat torture, members of nontraditional religious organizations, and those advocating the rights of minority ethnic groups such as Meskhetians. In many of these cases, victims faced reprisals and harassment by police or other officials for bringing the incidents to public attention, or for attempting to seek legal redress.

Georgian and international human rights organizations, alarmed by the great frequency of reports of torture and of impunity for such abuse, have repeatedly called on the government to adopt the comprehensive measures necessary to combat it. For its part, Human Rights Watch called on Georgian President Eduard Shevardnadze in April 1999 to formulate and to present for public discussion a comprehensive government plan to combat torture and ill treatment. This, we said, should include an end to tolerance of torture and other abuses by senior government officials, vigorous prosecution of perpetrators, including prosecution of responsible senior officials higher up in the chain of command; punishment befitting the seriousness of the crime; a commitment to make public the results of all investigations; and further reform of the criminal justice system, including reform of the police and other security forces involved in criminal investigations, of the procuracy and of the judiciary.

In February 1998, President Shevardnadze signed a new criminal procedure code, legislation outlining the rights of persons under investigation for criminal offenses and delineating the respective roles of police and other law enforcement agencies, the security forces, and the courts while carrying out criminal investigations and trials. The new code was drafted after substantial consultation with defense lawyers actively working in the area of criminal law, and it contained numerous safeguards and reformed procedures intended to ensure the rights of those involved in criminal investigations. On May 15, 1999, the new code went into force in Georgia, replacing the Soviet-era 1961 code. The adoption of the new code, along with measures to reform the court system, raised hopes that these steps would contribute to ending the practice of torture and unfair trials that have plagued Georgia, and that they would provide appropriate remedies in cases of abuse.

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[1] See for example, Amnesty International, *Georgia: Continuing Allegations of Torture and Ill-Treatment* (London: Amnesty International, February 2000), EUR 56/01/00.

[2] After finding that the detainees had been tortured, the Human Rights Committee stated that the four were entitled to be released. Tsiklauri and Domukhovsky were subsequently released, but as of early February 2000, Gelbakhiani and Dokvadze remained imprisoned. U.N. Human Rights Committee, May 29, 1998, Communications No. 623-624 & 626-627/1995: Georgia. 29/05/98. CCPR/C/62/D/623, 624, 626 &627/199. (Jurisprudence).

Yet, more than a year after the new code went into force in May 1999, there has been no discernible improvement in Georgia's record on torture. Reports of torture continue unabated—most involve individuals who are detained and abused shortly afterwards in police lockups, or who, while awaiting trial, were transferred from remand facilities to police lockups during the course of the criminal investigation. Other cases involve police beatings of detainees before they arrive at lockups—and some such beatings have resulted in deaths of detainees. A recent case provoked considerable media attention and strong protests from Georgian nongovernmental organizations because of the brazenness with which police acted, and the apparent lack of fear that they would be identified and punished. The case concerned Davit Vashakmadze, a Tbilisi resident, who pulled over the car he was driving near Freedom Square in downtown Tbilisi to answer a mobile telephone call on the evening of November 13, 1999. He and his companion were then approached by two police officers who, after Vashakmadze failed to produce his car registration, took them to a nearby location on the bank of the River Mtkvari, a popular night spot lined with restaurants, and brutally beat them for several hours. Other police officers also arrived at the scene and joined in the beating. A woman working at one of the nearby restaurants, hearing the victims' screams, approached the group to inquire what was going on, but was told by police to mind her own business. Vashakmadze died two days after the beating; his companion, Zaza Buadze, survived, but sustained serious injuries.[3] Although the vast majority of cases involve severe and brutal beatings by the police inside detention facilities, more recently Human Rights Watch has also received persistent reports of the use of electric shock torture in facilities such as the Tbilisi Main Police Department.

In the period leading up to Georgia's admission to the Council of Europe, Georgian government officials cited the new code, signed by the president in February 1998, as an example of Georgia's willingness to put past abusive practices behind it, and of its readiness to adhere to international standards. Georgia gained admittance to the Council of Europe on April 27, 1999.

But on May 13, 1999, before the new code had even gone into effect, the parliament of Georgia adopted the first of a series of amendments. On May 13 and 28, 289 amendments were adopted; shortly thereafter, on July 22 and 23, the parliament adopted sixty-three additional amendments. Taken together, these amendments altered or replaced nearly half of the new code.[4]

[3] The details of this incident, widely reported in the Georgian media, were confirmed by Mr. Buadze's lawyer Mamuka Chabashvili, in an interview with Human Rights Watch in Tbilisi in April 2000. Mr. Chabashvili told Human Rights Watch that after the incident one police officer had been administratively detained, and that upon request of the Buadze family, he had petitioned the procuracy to open investigations into the participation of two other police officers. Media articles regarding the incident include, "Crime Demands Criminal's Punishment," *Dilis Gazette*, November 22, 1999. Tbilisi, Georgia.

[4] On May 4, 2000, the president signed into law a further 129 amendments to the code which the parliament had adopted at the end of April. These amendments do not significantly alter or address any of the concerns raised in this report. Rather, some of these new amendments raise further concerns. For instance, article 429 (2) was amended to limit in certain cases the period during which participants, including the defense, may examine case materials at the conclusion of the preliminary investigation phase of a criminal investigation. If the defendant had no lawyer or a different lawyer during the preliminary investigation, the defense is now limited to a maximum period of ten days, or in especially complex cases thirty days, to examine all case materials collected by the prosecution prior to the commencement of a trial. This raises concern that defendants in some cases will have insufficient time to review thoroughly all evidence against them, and prepare an adequate defense.

As part of Georgia's accession process, the code, along with other legislation, was submitted in draft form to the Council of Europe for comment.[5] Such reviews are intended to ensure that the domestic legislation of applicant countries conforms with the European Convention, and with standards developed in the case law of the European Court of Human Rights. After countries ratify the European Convention, citizens may forward complaints alleging violations of the European Convention to the European Court in Strasbourg, once they have exhausted attempts to obtain redress through their own legal systems.[6]

In meetings with Human Rights Watch, Georgian government officials denied that the amendments were substantive, instead claiming that they were intended solely to correct technical mistakes made in the initial drafting of the code.[7] Other officials told Human Rights Watch that concerns it raised in a September 9, 1999 letter to the Council of Europe regarding the erosion of defendants' rights as a result of the amendments, reflected a "misunderstanding" of the amendments on the part of Human Rights Watch.[8] Later, officials failed to address the issue when Human Rights Watch wrote to the government regarding cases of abuse, noting the code's failure to provide detainees with access to the courts to hear the complaints detailed.[9] Similarly, government officials did not respond to concerns raised by Georgian nongovernmental organizations, such as Article 42, a Tbilisi-based organization of lawyers providing *pro bono* legal assistance, who held a press conference on November 17,1999, to call attention to the erosion of defendant's rights.

[5] Human Rights Watch interview with Caterina Bolognese, Directorate of Legal Affairs, Council of Europe, Strasbourg, June 23, 1999.

[6] Notably, the European Convention requires that the domestic remedy be effective. Article 13 of the European Convention states: Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity. In certain cases involving torture, the European Court has ruled that it is not necessary to exhaust domestic remedies before an individual may apply for relief. In the case of Aksoy v. Turkey (judgment of 18 December 1996, 100/1995/606/694), the European Court, found a violation of article 13, inter alia. It held that a prosecutor took no action, although aware of injuries and under duty to investigate, and as such the individual was absolved from the obligation to exhaust domestic remedies. The European Court reiterated that, "Where an individual has arguable claim to have been tortured by agents of the State, the notion of 'effective remedy' entails, in addition to payment of compensation where appropriate, thorough and effective investigation capable of leading to identification and punishment of those responsible."

[7] Human Rights Watch interview with Mikhael Saakashvili, member of parliament and leader of the parliamentary faction representing Georgia's ruling party, the Citizen's Union, Tbilisi, August 1999. Saakashvili had been chairman of the parliament's legal committee during debate and adoption of the criminal procedure code.

[8] Human Rights Watch interview with Lana Gogoberidze, Georgian ambassador to the Council of Europe, Council of Europe Parliamentary Assembly session, Strasbourg, September 20 to 25, 1999.

[9] See, for example, Annex 1: Natelashvili Complaint and the Government of Georgia's Response, in this report.

When the new code was signed by the president in February 1998, it did not fully comply with international standards.[10] However, the new legislation, taken in its entirety, had been a significant and serious attempt to introduce reforms to Soviet-era criminal procedure, specifically to balance the powers of the prosecution and defense (the principle of equality of arms) during criminal proceedings, and to eliminate procedures that facilitate torture in a criminal justice system that heavily relies on confessions to secure convictions. The new code allowed an individual under criminal investigation, or others involved in a criminal investigation, to submit a complaint of abuse by law enforcement officials to a court of law for review. Individuals who were under investigation would have enjoyed this right from the moment authorities officially designated them to be suspects in the criminal investigation—which for those held in detention, must occur no longer than twelve hours after being taken into custody. However, the May and July 1999 amendments effectively abolished the newly recognized right to obtain such judicial review before it could even be implemented. Because a suspect or defendant is severely hampered from submitting allegations of ill-treatment or violations of procedural rights to independent judicial review, the procuracy, police, and other security forces are able to continue to commit such abuse with impunity.

Criminal Investigations

Under article 66 of the code, designated staff of certain governmental agencies are authorized to conduct an inquiry—the first step of a criminal investigation—to determine if a crime has been committed. These agencies are the Ministry of Internal Affairs, the Ministry of State Security, the Special State Security Service (known informally as the Presidential Guard),[11] the Border Guard, commanders of military units, wardens of remand and post-conviction facilities, the tax service, the customs services, and ship captains at sea.[12] Procuracy officials dealing with crimes under their jurisdiction also have the power to conduct inquiries.

The Ministry of Internal Affairs may conduct inquiries into all crimes, except those that are referred to another agency's jurisdiction. The procuracy supervises the actions of those empowered to conduct inquiries, and settles all questions regarding jurisdictional disputes, under article 56 of the code. The code refers to the designated staff of those agencies empowered to conduct inquiries as inquiry investigators. The commanders of military units, for example, are empowered to conduct inquiries regarding crimes committed by their subordinates in the military unit, and any crimes that might involve civilians but that occur on the territory of their units.[13]

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[10] In analyzing the human rights violations described in this report, Human Rights Watch examined not only the international human rights treaties to which Georgia is a party, but also other norms of international law, which are not treaties and therefore not binding, but which do offer authoritative guidance and reflect international consensus as to the manner in which states should comply with their human rights obligations. These include, for example, the U.N. Standard Minimum Rules for the Treatment of Prisoners, the U.N. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the U.N. Basic Principles on the Role of Lawyers.

Georgia is a party to two treaties that focus exclusively on the prohibition of torture and two others that include an express prohibition against this human rights violation. They include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment, the International Covenant on Civil and Political Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

[11] The Special State Security Service is responsible for providing on-site security of oil-related infrastructure and facilities, according to *The Armed Forces in Georgia*, (Washington, D.C.: Center for Defense Information, March 1999) p. 28. Article 66 (2-I) of the code empowers this body to conduct inquiries of crimes committed by its own personnel, and inquiries into crimes involving the objects that it guards.

[12] As of January 1, 2000, remand prisons and post-conviction penitentiaries are under the responsibility of the Ministry of Justice.

[13] For those serving under his or her command, the commander of a military unit has discretion to determine if an incident or action should be considered a disciplinary offense or a criminal offense. If the commander determines that it is a criminal offense, he or she will then forward the case to the military procuracy, an office subordinated to the general procuracy. Investigators from the military procuracy carry out the preliminary investigation according to procedures outlined in the code, and the case is heard in the civilian court system.

Nongovernmental organizations report that the discretion to decide whether or not an offense is disciplinary is frequently

Once it is determined that a crime has been committed, and a suspect is charged, an investigator from one of three agencies—the Ministry of Internal Affairs, the procuracy, or the Ministry of State Security—is responsible for gathering evidence for trial in the next stage of the investigation, known as the preliminary investigation.

abused. For instance, due to vagueness in regulations governing disciplinary offenses, a commander may initially improperly designate the offense as a disciplinary one to escape the obligation to adhere to time limits for detaining individuals without charge and other provisions in the criminal procedure code, which are intended to protect detainees and which would have been applicable if the offense had been properly designated as criminal from the outset.

Which agency is ultimately responsible for conducting the preliminary investigation is determined by the type of crime, as outlined in article 62 of the code. The investigators of the Ministry of Internal Affairs have jurisdiction over crimes such as assault, theft, and production, transport, and possession of illegal drugs.[14] Procuracy investigators are tasked with investigating what are considered serious violent crimes, such as murder and rape involving civilians, as well as crimes involving most law enforcement and other government officials, which may involve such offenses as illegal detention of citizens, abuse of authority, and bribery. The military procuracy, an office subordinated to the Procuracy General, carries out the preliminary investigation of crimes allegedly committed by certain special units of law enforcement, the armed forces, and other security force personnel.[15]

Meanwhile, investigators of the Ministry of State Security are responsible for the investigation of crimes such as treason, public disclosure of state secrets, terrorist acts and sabotage of state-owned industrial facilities or other infrastructure, the import, export or transit of illegal drugs or nuclear weaponry, and illegal border crossing.

After the inquiry, the responsible investigator brings charges against a suspect, with the sanction of the procuracy. Under the code, a judge must rule within seventy-two hours of an arrest on the lawfulness of the individual's detention. The code does not make it obligatory for a detainee or a defense lawyer to be present at such a hearing, and the detainee and defense lawyer may waive their presence if the detainee so chooses. At such a proceeding, the judge rules on whether the type of "restraining measure" requested by the investigator is appropriate to the crime the individual is alleged to have committed. Restraining measures include pre-trial detention, being freed on bail, release under police or other supervision, or being freed on another's recognizance.

Once the preliminary investigation is concluded, which can take as long as nine months if the individual has been detained, the defense is presented with the full case file containing all evidence that has been collected by the investigator. The defense may petition the investigator to collect further evidence or question additional witnesses. The case is then forwarded to a court for trial, which the code considers a court investigation.

Georgia's Court System

The court system is composed of district (city) courts, which serve as first instance courts for most cases depending on the offense charged, regional courts (located in Tbilisi and Kutaisi), the high courts of the autonomous republics of Abkhazia and Adjaria, and the Supreme Court. Only the Constitutional Court adjudicates alleged violations of constitutional rights, and issues arising from incompatibility with the constitution. Cases involving crimes committed by members of the security forces are heard in the civilian courts under the same procedures outlined in the code for civilians, and no special military courts exist.[16]

A high-profile reform of the Georgia court system is currently under way with the assistance of the international community, including the World Bank. The reform includes such measures as qualification examinations and training for judges and measures to improve administration of the court system to enable it to better handle its case load. Presently the Georgian court system continues to be widely criticized by defense lawyers and others as being heavily

[14] On June 1, 2000, a new criminal code went into force in Georgia. As per new jurisdictions, assault refers to article 125 of the criminal code, theft (article 177) , and production, transport, and possession of illegal drugs (article 260). Crimes investigated by the procuracy include, murder (article 108), rape (article 137), illegal detentions of citizens (article 147), abuse of authority (article 333), and bribery (articles 338 and 339). Offenses within the jurisdiction of the Ministry of State Security include treason (article 307), public disclosure of state secrets (article 313), terrorist acts such as bombings (article 323), sabotage of state-owed facilities or infrastructure (article 318), the import, export or transit through Georgia of illegal drugs (article 262), offenses related to illegal possession or production of nuclear weaponry (articles 230-235) and illegal border crossings (article 334).

[15] There are no special military courts in Georgia and all crimes are investigated and tried in front of civilian courts, according to procedures outlined in the code.

[16] Special martial courts may be created during war within the system of regular courts according to the Organic Law of Georgia on the Courts of General Jurisdiction.

subject to executive influence, unwilling to respond appropriately when confronted by even blatant prosecutorial misconduct, and for endemic corruption among judges. Because judicial corruption has been a problem in Georgia, judges have been granted substantially higher salaries than most civil servants. However, reports that judicial salaries are several months in arrears had raised concern that this anti-corruption measure may prove ineffective.[17] Nevertheless, defense lawyers have told Human Rights Watch that the reform efforts have occasionally resulted in improvements in some judges' responses to prosecutorial misconduct when such issues have been raised at trial.

RESTRICTIONS ON ACCESS TO COUNSEL

The criminal justice system continues to put great emphasis on "isolating" detainees in lockups and remand facilities during criminal investigations, and incommunicado detention continues to be a serious concern in Georgia. Visits from family members and other outside contact is severely limited during the pre-trial period and subject to the control of the procuracy. What is more, even defense lawyers often find it difficult to meet with their clients, and there are persistent complaints that investigators impede lawyers from visiting their clients, or in some cases, prevent detainees from retaining lawyers of their own choosing. The amendments to the criminal procedure code severely weakened judicial oversight of the power of the procuracy during the pre-trial period, and defendants face enormous hurdles in trying to submit evidence of ill-treatment or other rights violations. The near absence of judicial oversight prior to trial is particularly troubling, as this is the time when most torture and ill-treatment occurs.

The right to consult with a lawyer of one's choice is critically important, not only because of the procedural protection it affords defendants in the preparation of their defense, but also because it may be the only opportunity that a detainee has to inform another person of torture or other ill-treatment occurring in detention. In Georgia, where torture and other ill-treatment is routine, attempts by the procuracy to manipulate the family's or detainee's choice of a lawyer, or to impede a lawyer's access to her client, often appear specifically intended to prevent complaints about abuses from becoming known.

[17] "Judges Demand Their Salaries," *Caucasus Press*, January 7, 2000. Mikhael Saakashvili, leader of the ruling Citizens Union parliamentary faction, is quoted in the report as stating, "Leaving judges without salaries, we push them to corruption."

For instance, defendants accused of participation in the February 1998 assassination attempt against President Shevardnadze, a high-profile political case that involved a total of fourteen defendants, made several complaints regarding access to a lawyer. For example, Zurab Ejibia stood in court on the opening day of the Supreme Court's proceedings on August 12, 1999, and stated that, although he had been in detention for more than a year, it was the first time that he had seen the lawyer representing him.[18] To Human Rights Watch's knowledge, Ejibia's court appearance was the first opportunity that he had had to make a public statement, and thus to complain about his lack of a lawyer during his lengthy period of pre-trial detention. Another defendant in the case complained that he had not been allowed to attend a preliminary hearing usually held several days before the trial starts. Tariel Bukia stated on the first day of the trial that the judge had been incorrect when he stated in court at a prior preliminary hearing (known as a planning session) that Bukia and other defendants had not wished to attend the preliminary hearing. In fact, according to Bukia, he had wanted to attend the preliminary hearing, but the authorities had not allowed him to be present.[19] (It is unclear why Bukia, rather than his lawyer who was in the court room at the time, drew this complaint to the attention of the judge and the public.)

Restrictions on Consultation with Counsel

[18] This session of the trial was monitored by Human Rights Watch.

[19] This preliminary hearing of the trial was also monitored by Human Rights Watch, and the judge's statement indicating that the defendants had voluntarily chosen not to appear was noted. The preliminary hearing refers to what is also known as a planning session, which was held on July 27, 1999.

Under Georgian criminal procedure, defense lawyers are the only persons expressly allowed to visit detainees. The code contains no provision that expressly permits family members or others such as doctors to visit detainees, and any such visit requires the permission of the investigator handling the case, which is rarely granted.[20] In fact, a lawyer is frequently the only person other than officials to see an individual while in detention awaiting trial. However, Human Rights Watch has received persistent complaints that procuracy and other investigators, employing a variety of tactics, prevent lawyers from visiting their clients.[21]

The Georgian criminal procedure code states that all detainees must be *informed* of their right to a lawyer from the moment they are detained, but it is vague as to whether the right to consult with a lawyer begins at that same moment, or only after the detained person is formally deemed a suspect. Under article 72 (3), the code requires that detaining authorities inform an individual immediately after detention regarding his right to consult with a lawyer. The code does not expressly state, however, that a detainee has the right to consult with a lawyer during this initial period of detention prior to being deemed a suspect. The code is explicit only about this right at the point when a detainee is deemed a suspect, and cites this right under "Suspect's Rights" in article 73 (1-d). However, article 73 (1-a) of the code allows an individual to be held in custody for a twelve-hour period without the requirement that the individual be officially deemed a "suspect."[22]

It is unclear whether the vague provisions of article 73 are actually used as the basis for denying detainees access to a lawyer. As discussed below, Human Rights Watch has ample evidence of detainees being denied access to a lawyer both during this initial detention period, as well as after the detainee has been formally deemed a suspect. In either situation, these practices clearly contravene Principle 17(1) of the U.N. Body of Principles, which states, "A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it." The Georgian government's failure to clarify in the new code that the right to consult with a lawyer begins at the time of detention is particularly troubling because this was a specific point of concern raised by the U.N. Human Rights Committee in its April 1997 review of Georgia's initial report on compliance with the International Covenant on Civil and Political Rights. The Committee stressed that "all persons who are arrested must immediately have access to counsel."[23]

Moreover, the code in article 73 (1-d), allows detainees to meet and consult with counsel in private, but not for longer than one hour per day. Under article 76 (2), all rights that apply to suspects also apply to defendants, so this daily restriction on the right to consult with counsel applies throughout the period of pre-trial detention and trial.

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[20] A new law, the Georgian Law on Imprisonment, went into effect on January 1, 2000, to effect the transfer of remand prisons and post-conviction facilities from the Ministry of Internal Affairs to the Ministry of Justice. The law contains no provisions allowing family members to visit pre-trial detainees, and stipulates that pre-trial detainees may only make telephone calls or receive correspondence with the permission of investigator, procurator, or court.

[21] A number of international standards detail the right of detainees to consult with legal counsel. For instance, Principle 8 of the U.N. Basic Principles on the Role of Lawyers, states that, "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials."

[22] Article 73 (1-a) states, "[A suspect has the right] within twelve hours of the moment of detention and of being brought to a police station or other body of inquiry, to obtain a copy of the decision on the opening of a criminal case, as well as copies of the notice finding him a suspect, and of the detention record."

[23] Cited in United Nations, Concluding Observations of the Human Rights Committee: Georgia. 01/04/97. CCPR/C/79/Add.75. Paragraph 27. The U.N. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, makes clear that the meaning of the term "to arrest," is the apprehension of an individual, stating under Use of Terms, "'Arrest' means the act of apprehending a person for the alleged commission of an offense or by the action of an authority."

Even given these restrictions, there are reports that procuracy and other investigators use a variety of tactics to deny altogether or delay an individual access to an attorney. Lawyers state that they are often kept waiting at lockups or remand prisons, sometimes for hours, while authorities claim they are attempting to locate detainees. They noted that in some cases their client is not produced, even after a long wait; instead authorities instructed them to return the next day or on subsequent days. Lawyers also reported cases in which other tactics are employed.

Denial of Access to Counsel for "Witnesses"

One such tactic is the misleading classification of an individual who is in fact a suspect in a criminal investigation as a "witness." Prior to amendment, the 1998 code granted those who were deemed witnesses by investigators the right to have a lawyer present during questioning. However, the May and July 1999 amendments—including amendments to article 94 and article 305 (5)—abolished this right.

The provision appears to have been adopted in the new code to combat what defense lawyers say is a common tactic police use to deprive individuals of a lawyer and other rights that they should properly be accorded as suspects. By misleadingly classifying suspects as witnesses, procuracy and other investigators are able to deprive them of the right to counsel and other rights—such as to be informed of the offense they are under suspicion of having committed—to which suspects are entitled under the code. For instance, lawyers for Dato Natelashvili, a twenty-one-year-old Tbilisi resident, told Human Rights Watch that Natelashvili was picked up at his home at 8:30 a.m. on June 26, 1998 and taken in for questioning in his capacity as a witness.[24] When his mother, Tamar Lomzadze, asked police about a lawyer for her son, police told her that he was in the police station for questioning only as a witness, and therefore there was no need for her to obtain a lawyer.[25] At approximately 2:30 p.m., after almost six hours in custody, investigators officially deemed Natelashvili a suspect. It was only at that point that Mrs. Lomzadze learned that her son was actually suspected of having committed a theft and attempted to contact a lawyer.

In another case, a thirty-four-year-old convicted prisoner, Gotcha Patsuria was transferred from Ksani Corrective Labor Colony on August 25, 1999, to Investigative Isolator No. 5, a pre-trial detention facility at the Ministry of Internal Affairs headquarters in Tbilisi. Patsuria's mother, Tsira Patsuria, told Human Rights Watch that after the transfer she was not allowed to visit her son.[26] Furthermore, she said, the procuracy investigator had rejected several requests by the lawyer she had retained to meet with her son because he had been designated a "witness" in an investigation.

On October 18, 1999, Patsuria's mother met with procuracy investigator Mamuka Guramia in the reception area of the General Procuracy in Tbilisi. She told Human Rights Watch that "They did not allow the lawyer to see him, and they did not bring the doctor to him...I asked the investigator to allow me to see him [her son], but he said my son was being kept as a witness."[27] Tsira Patsuria stated that Guramia refused to acknowledge that her son was under suspicion of having committed any crime, even after she asked him directly what crime her son was suspected of having committed, and why her son had been moved to a pretrial detention facility and her visits to him had been denied by remand prison authorities. Patsuria's lawyer also told Human Rights Watch that investigators had not allowed him to meet with his client on the grounds that Patsuria had been classified as a witness.[28]

[24] Human Rights Watch interview with Mikhael Marchelashvili, Tbilisi, December 6, 1999.
[25] Human Rights Watch interview with Tamar Lomzadze, Tbilisi, December 6, 1999.
[26] Human Rights Watch interview with Tsira Patsuria, Tbilisi, October 19, 1999.
[27] Ibid.
[28] Human Rights Watch interview, Tbilisi, September 22, 1999. The lawyer asked that his name not be used, stating that it might damage his relations with procuracy investigators. He noted, "personal relations mean very much."

Tsira Patsuria believes that her son had been transferred, and had not been allowed to consult with a lawyer, as retribution for her attempts to seek the conviction of a police officer who had been acquitted of murdering another of her sons. She later reported that on November 26 or 27, the procuracy officially charged her son with assault, resulting in the death of the victim.[29]

The procuracy and other investigators have substantial coercive powers under the code regarding those they deem to be witnesses. Article 94 (3) of the code states that—under articles 370 and 371 of the criminal code—it is a criminal offense for someone considered a "potential witness" to refuse to provide testimony when ordered to do so by a procuracy or other investigator. Those who are deemed witnesses by investigators during criminal investigations are compelled directly into custody. Witnesses have the right to appeal their designation or complain about any mistreatment to higher-level procuracy officials, not to a court.

Access to Counsel of One's Choice

Human Rights Watch has also received numerous reports that procuracy investigators sometimes prevent detainees from being represented by the lawyer of their choice. Coercing detainees to accept state-appointed or other lawyers who do not vigorously represent their interests appears in some cases specifically intended to prevent lawyers from making complaints of abuse known to the public.

[29] Human Rights Watch interview, Tbilisi, December 3, 1999.

For instance, Soso Baratashvili, lawyer for former Georgian Finance Minister Guram Absnadze, a defendant accused of involvement in the February 9, 1998 assassination attempt on President Shevardnadze, reported that his client had initially been coerced into accepting counsel not of his choosing. According to Baratashvili, his client was initially forced to accept a lawyer who, although not a state-appointed lawyer, had formerly worked as an investigator and did not represent Absnadze's interests.[30] After Absnadze's extradition to Georgia in March 1999, officials showed Absnadze a list of lawyers and told him to pick one from the list, but Absnadze believed that none of those on the list would vigorously represent his interests. Absnadze's extradition from Russia and continued detention in Georgia, however, provoked numerous protests from nongovernmental organizations, and subsequently, he was allowed to retain Baratashvili, the counsel of his choice.

In the case of Dato Natelashvili, whose case is cited above, procuracy officials appear to have used a different tactic to deprive him of his right to a lawyer of his own choosing. Lawyers and family members alleged that this was intended to cover up his torture while in detention. In early November 1999, defense lawyer Zurab Rostiashvili told Human Rights Watch that the procuracy had designated him and his partner Mikhael Marchelashvili as "witnesses" in the criminal case against Natelashvili to preclude them from meeting with their client. They showed Human Rights Watch a summons from Tbilisi City Procuracy officials demanding that they appear at noon on November 24, 1999 at the procuracy offices. Procuracy officials then notified Natelashvili's mother that the lawyers had been removed from the case and told her to retain a different lawyer.[31] The lawyers had submitted a complaint regarding this action to higher-level procuracy officials, as required by the code, but had received no response.

Natelashvili's mother, Tamar Lomzadze, told Human Rights Watch that she believed the procuracy's designation of the two lawyers as "witnesses" was solely a pretext to prevent them from seeing her son, who at the time was being held incommunicado in the lockup of the Tbilisi Main Police Department, a facility intended for uncharged detainees.

Natelashvili had been detained on June 26, 1999. After being charged with theft he had spent most of his detention in a remand prison for charged detainees, the Ministry of Internal Affairs Investigative Isolator No. 1 at Ortachala, but when his brother, Mikhael, went there on November 21 with a food parcel, he learned that authorities had transferred his brother to the temporary lockup on November 19 without having informed any family member of the transfer.

On November 22, Mikhael Natelashvili and his brother's two lawyers went to the Tbilisi Main Police Department and requested a meeting with Dato, but were denied a visit by authorities at the facility. "The head of the prison [lockup] said that he had orders from the investigator that we weren't allowed to meet with him. We complained to the procuracy about this," Rostiashvili said. It was then that the procuracy designated the two lawyers as "witnesses" in the case to strip them of their right to continue working on it, the lawyer noted. He added that he believed that officials had tried to remove him from the case because he had previously complained to investigators that they were reluctant to collect evidence and question witnesses that might exonerate his client.

[30] Human Rights Watch interview, Tbilisi, July 23, 1999.

[31] Human Rights Watch interview with Zurab Rostiashvili, Tbilisi, November 23, 1999.

On November 25, authorities allowed Natelashvili to meet with a new lawyer, Marina Pkhaladze, whom his family had retained. Pkhaladze told Human Rights Watch that during their morning meeting at the Tbilisi Main Police Department, Natelashvili was unable to sit upright without intense pain and began to cry uncontrollably.[32] According to Pkhaladze, Natelashvili had told her that he was beaten and subjected to electric shock torture for two days after his transfer to the facility in order to coerce him to sign a confession to murder. Natelashvili asked that he be transferred from the facility, but expressed great fear of retaliation about making a complaint known to the authorities, according to Pkhaladze.

After the meeting, Natelashvili was transferred to a remand prison, and his lawyers subsequently obtained a written complaint from him addressed to prison authorities and the procurator general, dated November 30, 1999, stating that he had been beaten and tortured by application of electric shocks over a period of several days shortly after he had been moved from the remand facility to the lockup. The complaint requested that a forensic medical examination be performed.[33] Human Rights Watch later forwarded a copy of this complaint to Georgian authorities, and subsequently received a response from the authorities stating that two of the lawyers had been designated witnesses because they had attempted to interfere with the investigation by tampering with a witness. The response noted that all three had thereafter been allowed to resume their work on the case. Yet, by February 4, 2000, no forensic medical examination had been performed on Dato Natelashvili, despite the complaint and request for such an examination he had submitted on November 30, 1999.[34]

Restrictions on Substitution of Defense Counsel

Article 83 (7) gives the procuracy the right to prevent individuals from substituting defense counsel during the criminal investigation if the procuracy determines that the reason for requesting the change is deliberately to delay the proceedings.[35] An individual may not appeal this decision to a court, but only to higher-level procuracy officials during the lengthy period prior to trial.

The procuracy's power under article 83 (7) to preclude a detainee from changing representation prior to trial should be subject to judicial review, especially given the evidence discussed above that the procuracy often violates a detainee's right to have a lawyer of her own choosing as outlined in Principle 1 of the U.N. Basic Principles on the Role of Lawyers, which states, "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings."

RESTRICTIONS ON ACCESS TO IMPARTIAL MEDICAL EXAMINATIONS

[32] Human Rights Watch interview, Tbilisi, December 6, 1999.

[33] This complaint, and the response from the Georgian authorities is included in Annex 1 of this report.

[34] Human Rights Watch interview with Zurab Rostiashvili, Tbilisi, February 4, 2000.

[35] Article 83 (7) reads, "It is impermissible to substitute lawyers, if the challenge is intended to delay judicial proceedings, and is aimed at hampering them. In the case that substitution of lawyers is denied, the inquiry investigator, investigator, with the procurator's permission, issues a reasoned statement explaining their motivation, which can be appealed to a higher-level procuracy official within five days. A superior [procuracy] official is obliged to review such an appeal and issue a decision within seventy-two hours. Upon hearing a matter in court under similar conditions, a judge shall render a ruling."

Torture most frequently takes place under conditions in which only the officials perpetrating the abuse and the victim are present, or in the presence of witnesses who may be reluctant to testify. A medical examination can therefore be a crucial tool to establish the cause of any injuries, and may provide important evidence that torture has occurred or that a confession or other testimony has been coerced. Such medical evidence is not only useful to substantiate a complaint of torture, but could also contribute to the prosecution of abusive law enforcement officials.[36]

If a medical examination is conducted promptly—within three or four days of the incident—it can usually establish the cause of a detainee's injuries. But delays in performing the examination in most cases greatly reduce its value—depending on the type and location of injuries on the body, a delay of even two weeks in performing an examination makes it difficult for doctors to establish the cause and sometimes even the nature of injuries. It is currently difficult, however, for those under criminal investigation to obtain objective medical examinations in a timely manner to substantiate reports of physical abuse.

Access to Forensic Examinations

In the Soviet-era criminal procedure code in force before May 1999, prior to trial a detainee or defense lawyer was required to petition the investigator handling the case or a higher-level procuracy official to obtain a forensic medical examination, which could only be performed by a state-employed examiner. The express permission of the investigator or a higher-level procuracy official was needed, therefore, before an official forensic medical examination could be performed prior to trial.

Currently, provisions in the 1998 code are vague with regard to access to forensic medical examinations. A detainee may request an examination from an investigator, but the code itself does not specifically require that an investigator issue an order to the state forensic medical examiners office before an examination can take place.[37]

In a significant departure from previous practice, article 364 of the 1998 code allows the defense to obtain and present in court "alternative" expert opinions from independent experts not employed by the government.[38] This provision governs all types of expert opinion and stipulates that the defense need only inform the procuracy if it is not satisfied with the expert examination that has been ordered by the procuracy or other investigator and provided by government experts.

However, the code contains a provision in article 366 (an article that specifically governs forensic medical examinations) that appears to conflict with article 364. Although the code does not expressly require the consent of an investigator, article 366 requires a suspect, defendant, or victim in a criminal case to secure the permission of an investigator before he or she can "attend" expert examination. Human Rights Watch has not received any specific

[36] Ministry of Health regulations currently in force regulate the work of state forensic medical examiners in Georgia. Article 24 of the U.S.S.R. Ministry of Health Decree No. 1208, December 11, 1978, entitled, "Rules on Forensic Medical Examination on the Degree of Bodily Injury," states, "A forensic medical expert does not qualify injuries as abuse or torture; a decision on this issue is within the competence of the inquest investigation, preliminary investigation and courts. Forensic medical examiners should determine only [the following]: 1.) The fact of the injuries existence and their character; 2.) The age of the injuries; 3.) The device with which the injuries were made and the manner in which they were made."

[37] Article 366 of the code is entitled, "The Rights of Suspects, Accused, and Victims Regarding Appointment and Holding of Expert Examination." Point (f) of article 366 allows suspects, those accused and victims "to attend expert examination only with the permission of inquiry investigator, investigator or procurator; to give clarifications to the expert, and after receiving the expert's concluding statement, to ask the expert for explanation on methods used and the results."

[38] Article 364 reads, "A party is entitled to obtain expert analysis at his own initiative and expense in order to determine the circumstances, which in his opinion may facilitate defending his own interests. The party must immediately inform inquest investigator, investigator or procurator in charge of the criminal case about the expert analysis and its object. [*Eds. note: objects that are subject to expert analysis are listed in article 360, and they may include physical evidence, the body of a live person, the mental condition of a person, corpses, and documents.*] The expertise institution is obliged to hold an expert analysis [that is] appointed and paid for by [one of] the parties. By demand of [one of] the parties, the expert's concluding statement should be attached to the criminal case and assessed together with other evidence."

complaints to date that the requirement in article 366 has been used to delay or preclude detainees from forensic medical examinations.

But lawyers note that other impediments to obtaining the examination continue to exist, and that they are left with little recourse should an investigator or higher-level procuracy officials decline to order an examination. They note that regulations governing the Ministry of Health Judicial Medical Expert Center—staff of which would conduct such examinations—continue to require an order from the procuracy or other investigator, or from a judge, before doctors will conduct the examination.[39] Moreover, under the Georgian Law on Imprisonment, the permission of an investigator, a procuracy official, or judge must be secured before an individual can be visited while in detention.

The vagueness of the code regarding the right of access to forensic medical examinations, combined with the regulations stipulating the need for procuracy permission, is particularly troubling given numerous reports that investigators often refuse to authorize forensic medical examinations, and that procuracy officials have repeatedly refused to overturn such decisions. The case of Giga Shukashvili is illustrative. Shukashvili, a twenty-seven-year-old Tbilisi resident, was detained on January 25, 1998, and taken to the Guldani District Police Station, where, he reported, police severely beat him and coerced him into signing false testimony regarding the theft of car tires. On January 26, he was taken to the Tbilisi Main Police Department, where, he reported, he was placed in a room with six, and at times more, inmates. These inmates, who were allegedly police informers, subjected him to severe and brutal beatings intermittently over a period of about eighteen days until he signed a confession that he had participated in a series of car thefts. On February 13 or 14, after having signed the confession, he was transferred to Investigative Isolator No. 1. On March 19, 1998, Shukashvili complained to the procuracy that he had been coerced through mental and physical abuse into signing the confessions.

In April 1998, Shukashvili's lawyer submitted a petition to procuracy investigator Malkhaz Machavariani protesting Machavariani's decision not to authorize a forensic medical examination.[40] Shukashvili's mother, Nelly Lagvilava, told Human Rights Watch that she then wrote Procurator General Hamlet Babilashvili on May 7 to request that procuracy officials overturn Investigator Machavariani's decision.[41] There was no response from the procurator general; Ministry of Internal Affairs Special Department staff responded instead.[42] In a letter dated July 6, Ministry of Internal Affairs Inspection Department Chief M. Liparteliani wrote to the family denying the request, stating that a forensic medical examination was unnecessary because Shukashvili had stated in his testimony that he could not identify the police officials responsible for the beating.

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

[40] Human Rights Watch has a copy of the petition on file.

[41] Human Rights Watch interview, Tbilisi, July 19, 1999.

[42] Other lawyers interviewed recounted similar experiences with officials regarding replies to petitions and complaints. They stated that they would address a petition or complaint to the appropriate investigator or procuracy official, only to receive a refusal from an official other than to whom it had been addressed. If the lawyer then sought to appeal the refusal to a higher-level procuracy official, the official would not accept the petition and instruct the lawyer to obtain a refusal from the official to whom they had originally submitted the complaint before it would be considered at a higher level.

Shukashvili was not able to obtain permission for the medical examination until July 27, 1998, after his case went to court and the judge ordered an examination. The examination found traces of injuries, but could not conclude how and when they had been sustained. Shukashvili subsequently identified some of the police officers responsible for the abuse, but he was then detained for several hours on May 25, 1999, at Mtsatsminda District Police Station, apparently in an effort to get him to withdraw his complaint.[43] According to his sister, individuals whom Shukashvili identified as connected with the police officers who abused him subsequently visited their home and threatened them if they should not withdraw the complaint.[44]

More recently, Tbilisi defense lawyer Keti Beqauri told Human Rights Watch that access to examinations continues to be arbitrary. Beqauri cited a current case in which a senior procuracy official overruled a lower-level investigator's refusal to order a forensic medical examination after the detainee, her client, reported that he had been beaten, and she strenuously complained to procuracy officials about the abuse and refusal to order the examination. But she noted that in a second, unrelated case, which had not yet gone to trial, investigators refused to authorize a forensic medical examination after a client told her that he had been beaten.[45] The detainee had been held in the Tbilisi Main Police Department on charges of distributing drugs. When the investigator refused to order a medical examination, Beqauri appealed to the Tbilisi City Procuracy in October. But by mid-December 1999, two months later, she had received no answer. She told Human Rights Watch that she thought that the lack of response was indicative of the procuracy's negative attitude toward the request, and that it would be useless to appeal it to the next higher procuracy official, the procurator general. Instead, she said, she would wait until the trial commenced to petition the judge for the examination.

In another case, that of Lasha Kartvelishvili, a twenty-nine-year-old Tbilisi resident, police and procuracy officials refused to allow an independent forensic medical examination to be carried out, or to allow the detainee be moved from a police lockup to a Ministry of Justice remand prison even though the detainee had been charged, and a judge had ordered his pre-trial detention. Kartvelishvili was detained late on the night of February 4, 2000, after an altercation that resulted in the shooting death of a police officer. According to his mother, Gulnazi Kartvelishvili, he was arrested at the home of a friend and initially taken to the Mtsatsminda District Police Station in Tbilisi, and then transferred to the Tbilisi Main Police Department.[46] He initially accepted representation from a state-appointed lawyer and signed a confession on February 4 that he had shot the police officer. But the family retained a private lawyer, Levan Buadze, on February 7, who met with Kartvelishvili on the evening of February 8. During the meeting, Kartvelishvili told the lawyer that he had been severely beaten. On the evening of February 9, the Rustavi 2 television evening news program showed footage of Kartvelishvili seated at a table in a long-sleeved shirt with a large, dark and pronounced bruise covering his left eye and portions of the left side of his face.[47] On the footage, Kartvelishvili stated that he had shot the police officer, and that his injuries were the result of a fall down a flight of stairs.

Kartvelishvili's lawyer, Buadze, told Human Rights Watch, that on February 7 he filed a petition with the responsible Tbilisi City Procuracy investigator to move Kartvelishvili from the lockup to a remand facility and to allow him to be examined by an independent forensic medical doctor.[48] On February 8, Kartvelishvili's father sent a petition to General Procurator Babilashvili requesting that he be moved, and on February 9, Buadze again petitioned the procuracy investigator to transfer Kartvelishvili from the lockup and to allow an independent medical examination to be carried out. A subsequent petition filed by the lawyer with the Tbilisi City Procuracy on February 16 reiterated the

[43] Human Rights Watch interview, Tbilisi, July 29, 1999.

[44] Shukashvili's mother reported that police harassment continues. She was quoted as stating that the police had approached their neighbors to request that they file a false accusation that her son was responsible for a theft in the neighborhood as a pretext to detain him. "Mtsatsminda Police Are Trying To Send My Son Back to Prison," *Resonanzi*, February 18, 2000.

[45] Human Rights Watch interview, Tbilisi, December 16, 1999. Beqauri requested that the detainee's name be withheld because the case was pending.

[46] Human Rights Watch interview, Tbilisi, February 10, 2000.

[47] This footage was viewed by Human Rights Watch.

[48] Human Rights Watch interview with Levan Buadze, Tbilisi, February 17, 2000.

requests and protested the procuracy investigator's reply to the initial petitions, which said that an official forensic medical examination had been carried out on February 4, that it showed that Kartvelishvili had sustained his injuries falling down a flight of stairs, and that there was therefore no need for any further examination.

Tbilisi City Police Chief Soso Alavidze was reported to have stated at a February 17 press conference that the procuracy had written to him to request that he keep Kartvelishvili in the facility as there were insufficient Ministry of Justice prison guards to transfer him from the lockup to a remand facility.[49] Alavidze was also reported to have commended the police officers who detained Kartvelishvili for not killing him as he fled his arrest, adding, "He has less injuries than a person [usually] gets while trying to escape from the police."[50] On the evening of February 18, Kartvelishvili's family reported that he was finally transferred from the lockup of the Tbilisi Main Police Department, and that no independent doctor had been allowed into the facility to examine or treat him.

It is unclear why permission from the procuracy or police investigator should be needed at all for a detainee to undergo a forensic medical examination, or even if permission were needed, why a detainee cannot be authorized to request one from a court from the moment he or she has been detained. Those who are under criminal investigation and at liberty should also be given access to such examinations when they deem it necessary to substantiate abuse by a law enforcement official. The Ministry of Health regulation together with the code's requirement that an investigator's refusal to allow the examination must be challenged before higher-level procuracy officials—instead of immediately to a court—severely reduces the likelihood that a detainee will receive a prompt examination before evidence of abuse fades.

Lack of Impartiality of State-Provided Examinations

In Georgian courts, only a state-employed forensic medical examiner—which in the vast majority of criminal cases is an employee of the Ministry of Health Judicial Medical Expert Center—can testify about the cause of a detainee's injuries.[51] The center is headquartered and has laboratory facilities in the capitol, Tbilisi, with additional forensic medical examiners who report to the service based in districts outside of the capitol.

Expert medical and other analysis can frequently be a deciding factor at trial. Yet lawyers and their clients have complained that state experts are often biased and lack objectivity. Lia Tsinandeliani, then head of the Ministry of Justice's Center of Expert Analysis and Special Research, which performs expert analysis on non-medical issues, noted the emphasis on government-provided expert opinion in the Georgian legal system, and the intense pressure on expert witnesses. Tsinandeliani told Human Rights Watch that bribery and pressure by the parties to render a decision favorable to one side or the other is a serious problem for the experts in her center. She reported that there have even been death threats against some experts.[52] She noted that she had attempted to draft legislation to bring about reform of the center, so as to insulate experts from such pressure and bribery, and to ensure that they were capable of rendering objective opinions. Her draft legislation containing proposals for reforms was rejected by higher-level ministry officials, and she subsequently left her position.

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[49] "Alavidze Blames the Guard Service for Failure to Transfer Kartvelishvili," *Seven Days*, February 18, 2000.

[50] "Soso Alavidze Will Not Apologize Even on Elene Tevdoradze's Insistence," *Akhali Taoba*, February 18, 2000.

[51] The Ministries of Justice, Internal Affairs, and State Security each have their own facilities for expert analysis. These facilities do not provide medical examinations, but conduct expert laboratory analysis of ballistics and fire arms, finger prints, fiber and other substances, as well as in other subjects such as accounting. The Ministry of Justice facility is open to the public, and provides services for a fee, while the facilities of the Ministries of Internal Affairs and State Security are not open to the public.

A number of other entities are empowered to render expert opinion including on medical topics, but to Human Rights Watch's knowledge have done so only in an extremely limited number of cases due to a lack of resources. The Ministry of Defense has a small facility that is authorized to render expert opinion on both medical and other topics in criminal cases involving military personnel; however, it is not clear that the facility continues to operate. The procuracy also employs a limited number of experts that render expert opinions in some areas, and the Tbilisi State University Department of Forensic Medical Science has also reportedly rendered expert medical opinion, but in a very limited number of cases.

[52] Human Rights Watch interview, Tbilisi, June 10, 1999. Ms. Tsinandeliani resigned her position in August 1999, and was subsequently replaced.

Expert medical opinions by Ministry of Health Judicial Medical Expert Center examiners are especially sensitive because they can be an important factor leading to the prosecution of abusive law enforcement officials. In cases reviewed by Human Rights Watch, there was a disturbing pattern of Ministry of Health forensic medical examiners rendering "inconclusive" reports or downplaying detainees' injuries when to do otherwise would have led to the investigation and prosecution of law enforcement officials.

For example, Eka Tavartkiladze, a twenty-eight-year-old resident of Tbilisi, fell to her death from the window of a police officer's sixth-floor apartment window on August 15, 1997. Three police officers present at the time were charged with assisting a suicide but subsequently acquitted. Court records obtained by Human Rights Watch include statements by the officers that Ms. Tavartkiladze had been suspected in the theft of one of the officer's property. It is unclear, however, why the officers held Ms. Tavartkiladze for more than five hours in an apartment, instead of at the police station, where they apparently questioned her and claimed she confessed to the theft.

The Ministry of Health forensic medical examiners' report, dated December 3, 1997, included pages of detailed description of the gruesome injuries Eka Tavartkiladze sustained, including extensive bruises all over her body, three broken ribs, and a skull fracture. Yet, the report was inconclusive. While it stated that it was unlikely that she had sustained all of these injuries as a result of the fall, it went on to say that it was not possible to determine with complete certainty if she had sustained them before her death. The judge cited this report in his decision to acquit the three police officers.

In another such case, Ivane Kolbaya, a thirty-two-year-old Lanchkhuti resident, fell to his death from a fifth-floor window while in the custody of the Tbilisi Main Police Department on March 22, 1999. Police stated that Kolbaya fell during a break in questioning by police officials regarding his alleged involvement in the theft of parquet flooring and other items. Levan Chachuah, deputy chief of the Ministry of Health forensic medical center, told Human Rights Watch that forensic medical examiners do not have the capacity to determine conclusively whether the trauma marks they found on the victim's body were a result of the fall or were sustained prior to his death.[53] Ministry of Internal Affairs officials claimed at the time of Ivane Kolbaya's death that he had committed suicide, and in May 1999 that a second subsequent investigation had confirmed their initial finding of suicide.

In another case, three police officers from the Ministry of Internal Affairs traffic inspection department in Rustavi, a small town near Tbilisi, flagged down a motorist, a sixty-year-old Rustavi resident named Levan,[54] in the early hours of August 9, 1999, and severely beat him, according to his wife. Yet a Rustavi-based Ministry of Health forensic medical examiner concluded that his injuries were not serious.

Levan failed to stop for police on that night because he did not have his driver's licence and had drunk vodka. He attempted to flee, damaging two police cars in the process. Three police officers pursued and caught him, then severely beat him into unconsciousness near the gates of the warehouse at which he was employed.

After the beating, Levan was detained and initially taken to a small police checkpoint nearby, then to the Rustavi Ministry of Internal Affairs facility for the intoxicated where, according to his wife, he was told to wash and to write a statement that he had sustained his injuries by banging his head during arrest. She added:

"His sister called me and told me he was asking for clothes...they had torn his shirt and he had lost his shoes; his trousers were covered with drops of blood." She recalled later seeing him when he arrived home, "....it was summer then, and so he was sleeping with his shirt off, and I could see the bruises on his chest."[55]

Levan had suffered a severe cut to his mouth that became infected and required surgery. He continued to suffer intense pain and severe bleeding. Doctors in Rustavi were unable to determine the cause and referred him to the Tbilisi Neurological Institute.

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[53] Human Rights Watch interview, Tbilisi, March 26, 1999.

[54] "Levan" is not his real name. The name of his wife has also been changed. Human Rights Watch interview, Tbilisi, December 22, 1999.

[55] Human Rights Watch interview, Tbilisi, December 22, 1999.

There, doctors initially refused to diagnose and treat him until they knew how he had sustained his injuries. After finding out that he had been beaten by the police, Levan's wife was told by an official that the doctors at the Neurological Institute complained about the beating to the Rustavi Ministry of Internal Affairs. They took x-rays and found that Levan had sustained a skull fracture, and kept him in the hospital for five days for treatment.

The police officers responsible for the beatings were put under procuracy investigation as a result of the complaint from the Tbilisi Neurological Institute, but a Rustavi-based Ministry of Health forensic medical examiner, who examined Levan as part of this investigation, concluded that his injuries were light, despite the evidence of the skull fracture. This tended to support the police officers' assertion that they had not severely beaten Levan, but only subdued him when he resisted arrest.

Even after his treatment at the Tbilisi Neurological Institute, Levan continued to experience pain, and his wife sought further treatment for him in Rustavi. However, she could not obtain copies of his original x-rays. She approached doctors at the Tbilisi Neurological Institute three times seeking copies of the x-rays, but was refused each time. She found their reluctance odd in view of their previous concern, and feared that they might have been pressured to withhold the x-rays. The police officers responsible for the beatings remained at large while the procuracy investigated them.

Attempts at Reform Undermined

Growing concern on the part of the legal community and nongovernmental organizations regarding the procuracy's control of access to expert opinion during criminal proceedings, and complaints regarding the impartiality of state-employed experts, has prompted attempts at reform. However, efforts to provide for more impartial expert opinion have not proved successful in the area of forensic medical evidence.

As noted above, one example of such a reform is article 364, which allows the defense, and other parties such as victims, to obtain and present "alternative" expert opinions from independent experts not employed by the government. This provision governs all types of expert opinion and stipulates that the defense need only inform the procuracy if it is not satisfied with the expert examination that has been ordered by the procuracy or other investigator and provided by government experts.

Zviad Kordzadze, a defense lawyer in private practice and member of the Georgian Young Lawyers Association, told Human Rights Watch that he and other lawyers are currently actively using these provisions to obtain "alternative" independent expert opinions on certain disputed issues, citing a case in which he had been able to obtain a review of financial documents by an accounting expert who refuted the government's experts.[56] He praised the provisions allowing for independent expert examination, noting that the independent assessment led to the eventual exoneration of his client. However, Kordzadze added that in the case of forensic medical examinations, regardless of the provisions in the code, no such alternative independent opinions are available in practice to defense lawyers.

[56] Human Rights Watch interview, Tbilisi, September 8, 1999.

Other provisions in the code shed light on the various obstacles to obtaining examinations from independent forensic medical doctors. Articles 96 and 359 of the code discuss the role of expert testimony. Article 96 (2), a general provision that governs the testimony of all types of experts, states that both those individuals working for an official expert institution (under state control), and those private individuals who are licensed, but who do not work at such facilities, may render expert opinion in court.[57] Article 359 (2), which governs forensic medical and criminal experts specifically, also states that expert analysis can be carried out by a state institution, or in particular cases by a private individual, although it does not elaborate on what such particular cases might be.

A recently adopted presidential decree regarding licenses for examiners stipulates that a forensic medical doctor must be an employee of a state-licensed institution in order for the forensic doctor to hold a licence. The licensing decree, reported to have been re-adopted in October 1999, precludes those forensic medical doctors who do not work at a state forensic medical institution from rendering opinions as evidence in court.[58]

In the very limited instances known to Human Rights Watch in which individuals have attempted to use the code's provisions on "alternative" independent expert opinion to obtain independent forensic medical evidence, these independent opinions have been challenged in court by officials of the Ministry of Health forensic service, the procuracy, or one of the parties in the case due to the licensing decree.

At least one doctor, Maya Nikoleishvili, a former Ministry of Health forensic medical examiner, has attempted to testify in court cases as a forensic medical expert even though she is currently not a state employee. Nikoleishvili, with thirteen years of experience in forensic medical science in St. Petersburg and Tbilisi, reported that her testimony is frequently subject to challenge by officials of the Ministry of Health forensic medical examiners, the procuracy, or by one of the parties in a case.[59] She noted that some judges refused to admit her testimony, citing the existence of the decree, but did give an example of the case of one judge in Zestaponi who ignored the licensing decree, cited the provision in the criminal procedure code allowing for independent expert opinion, and allowed her testimony into evidence. Nikoleishvili stated that in this case she had been retained by the victim's family, and that her testimony bolstered the procuracy's position.

Nikoleishvili noted that, in several cases she had worked on, officials of the Ministry of Health forensic medical examiner's office had testified, and shown judges the presidential decree to preclude her from testifying:

> At the trials, they have been telling me, "you have no license, you have no right to do this." But when I say I am knowledgeable, that I'm qualified, they say, "no, show your license," and I've tried to convince them that knowledge is more important, but it doesn't make a difference. Before I used to tell them that even the state experts don't have licenses, but after this [October] decree, the state examiners now automatically have licenses.[60]

Thus, despite the code's seeming acceptance of independent forensic medical opinion, the licensing regulation has precluded the testimony of forensic medical doctors not employed by the state from being admissible in court in all but a very limited number of cases.

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[57] Article 96 (2) states, "Any person who has special knowledge, works for an expertise institution or is licensed, can be appointed as an expert." Article 359 (2) states, "Judicial medical and criminal expertise is conducted by an expert institution, or in particular cases, by an expert or private person from other establishments."

[58] Human Rights Watch was not able to obtain a copy of this October decree. However, a copy of Presidential Decree No. 4, dated January 4, 1997, that was obtained, states that in order to be licensed as a forensic medical examiner, a doctor must be an employee of a state forensic medical facility. Zaza Topuria, a Ministry of Health official in charge of licensing medical institutions, including forensic medical institutions, told Human Rights Watch in an interview on July 16, 1999, that this decree had expired on July 1, 1999, and that it would likely be reissued in the future under the same terms. Hence, Human Rights Watch believes that the only testimony acceptable in Georgian courts to establish the cause of a detainee's injuries is that of a government forensic medical expert.

[59] Human Rights Watch interview, Tbilisi, December 15, 1999.

[60] Ibid.

Nikoleishvili and other lawyers interviewed by Human Rights Watch noted that a significant factor hindering detainees from requesting an examination is the fear that they will remain in a detention facility and will be subject to retaliation by authorities if they complain and ask for examination to substantiate a complaint of abuse. It is unclear whether the transfer in January 2000 of detention facilities from the Ministry of Internal Affairs to the authority of the Ministry of Justice will result in any substantial improvement in the treatment of detainees, or in a commitment to protect detainees from official retaliation for complaining of abuse. A factor that adds to this concern is the absence of any provision in the code or the Georgian Law on Imprisonment allowing detainees to be examined or treated by their own doctor while in detention.

Nikoleishvili noted that in practice, family members are usually more willing to demand examination in cases in which a detainee has died in custody. However, pressure and threats from investigators can discourage family members from seeking examination even in a case when the detainee has died.

Nikoleishvili cited the case of Zaza Tsotsolashvili, who fell to his death from the sixth-floor window of the Ministry of Internal Affairs headquarters on December 4, 1999. Ministry of Internal Affairs staff claimed that Tsotsolashvili committed suicide by jumping out of a window during questioning. (Tsotsolashvili is the sixth detainee known to Human Rights Watch to have fallen out of a window under suspicious circumstances while in the custody of the Ministry of Internal Affairs since 1995. In April 1999, Human Rights Watch wrote to the Georgian authorities about the five previous cases.[61]) Nikoleishvili stated that family members had told her after Tsotsolashvili's death that they had been threatened by procuracy officials and warned not to ask her to examine the body or even attend the examination. She said that procuracy officials had two of Tsotsolashvili's brothers under investigation at the time and that the family greatly feared that the procuracy would retaliate against the two other sons if signs of abuse were discovered on Tsotsolashvili's body.

Nikoleishvili also stated that she believed investigators were resistant to independent medical examinations because the conclusions of such examinations could make it difficult for investigators to solicit bribes from detainees.[62] She noted that, when a suspect or a family member was able to pay a bribe, the investigator would often write his report so as to lead to reduced charges, or exoneration at trial. In such cases, investigators did not want the family of a crime victim to obtain independent expert opinion that would demonstrate that the accused should have been given higher charges (for instance, premeditated murder in cases when investigator might be bribed to deem the case to be self-defense).

> The accused person, the accused party [is the one who] pays. In one case, two boys were fighting and one died. Money is paid to [the investigators to] write a statement that this person isn't responsible...when the code goes toward the direction of allowing independent examinations, and the judges rule according to the evidence and to justice, it will be a source of decreasing corruption because currently they are able to guarantee to people that if they pay they can write things for them and help them, but after that, they [will not be able to] guarantee that if they write something, that is the way it [the case] is going to be decided.[63]

[61] The five cases raised in April 1999 include the cases of Ivane Kobalya, who fell to his death from the Tbilisi Main Police Station on March 22, 1999, and Eka Tavartkiladze, detailed above. The three other cases are Gulchora Dursunova, Akaki Iobashvili, and Zaal Ramishvili. The letter appears in Annex 2 of this report.

[62] Human Rights Watch has documented other cases in which investigators physically abused a detainee, and subsequently demanded a bribe from family members to secure the detainee's release. They include the case of Jemal Teloyan, detained on May 6, 1998, reported to have been severely beaten by Guldani District police, and then released later the same day after his mother paid a bribe equivalent to approximately $1,000. In other cases, family members who have been solicited for a bribe in exchange for a detainee's release, reported the case to Human Rights Watch because they were concerned that they would not be able to raise the full amount. In such cases, they expressed fear of retaliation if they made public complaints after having paid all or part of the amount solicited.

[63] Human Rights Watch interview, Tbilisi, December 15, 1999.

As noted above, the code contains no provision regarding a detainee's right to be visited and treated by his own doctor, as required under international standards.[64] Such a provision would be an important safeguard for pre-trial detainees, since one's own doctor might be more willing to testify as to the nature of injuries. However, Constitutional Court judge Gia Meparishvili, one of the principal authors of the code, told Human Rights Watch that allowing detainees the right to be treated by their own doctors was unnecessary because under article 73 (f), the code gives a detainee the right to request a free medical examination after the first interrogation.[65] The code does not specify who will perform the examination, but Meparishvili told Human Rights Watch that this examination will be provided by Ministry of Health doctors. Human Rights Watch welcomes the provision of a free medical examination for those who cannot afford one, but does not view this provision as a substitute for a detainee's right to be visited and treated by his or her own doctor as called for under international standards.

RESTRICTIONS ON ACCESS TO THE COURTS

Under the code in effect prior to May 15, 1999, those under criminal investigation, or those deemed by the authorities to be involved in criminal investigations, such as witnesses or victims, did not have the right to submit a complaint to a court of law. However, in a significant departure from Soviet-era criminal procedure, under the 1998 code, provision was made for criminal suspects, defendants, witnesses, victims, experts, court translators and certain others to submit complaints to the courts during the pre-trial period.

Article 73(j) stated that criminal suspects had the right "to make complaints to a procurator or a judge about the acts and decisions made by an inquiry investigative body, inquiry investigator, or investigator."[66] This right also applied to criminal defendants (article 76(2)). Other participants, such as witnesses, victims and experts in the criminal investigation would also have enjoyed this right under other provisions of the code.[67]

Backtracking on Pre-trial Access to Courts

[64] Rule 91 of the U.N. Standard Minimum Rules for the Treatment of Prisoners reads, "An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred."

[65] Human Rights Watch interview, Tbilisi, June 8, 1999. Meparishvili has since resigned his position and is currently chair of the parliamentary committee on legal affairs.

[66] These complaint procedures apply to all criminal investigations, and are not limited to police and procuracy investigations. The "inquiry investigator" refers to the individual responsible for carrying out inquiries who may serve in any of the Georgian law enforcement and security forces empowered to carry out inquiries. For instance, in the case of military units, the commander of the military unit is considered the inquiry investigator. The "investigator" refers to investigators from the procuracy (which includes the military procuracy), the Ministry of Internal Affairs and State Security. Thus, the amendments to the complaints procedures impacted all criminal investigations including those involving crimes committed by members of the security forces other than the police and procuracy.

[67] The rights of other participants to submit complaints to a court prior to trial (which were abolished by a series of amendments on May 28) had been previously outlined in article 69 (g), to give that right to victims, article 94 to witnesses, article 99 to those giving specialized expert testimony, article 101 to court translators, and article 103 to those attending and providing signed statements regarding the results of searches conducted by law enforcement personnel.

However, the May and July 1999 amendments severely eroded these rights during the criminal investigation. For example, a May 28 amendment to article 73 of the code abolished the right of suspects to petition a court about procedural irregularities or ill-treatment committed by the police, procuracy, or other investigator before trial.[68] Under the code, defendants have the same rights as suspects. Thus, the May amendments required detainees during the pre-trial period to submit any complaint first to the investigator handling the case, then to higher-level procuracy officials for review, and if the procuracy failed to satisfy the complaint, only then to a court of law.

However, a second set of amendments, adopted on July 22, 1999 revoked entirely the suspect's right—previously guaranteed under article 232 (8) of the 1998 code—to petition a court if the procuracy failed to satisfy a complaint.[69] Similarly, an amendment adopted on July 22, 1999 precluded individuals from submitting a civil suit to attempt to overturn a procuracy decision during a criminal investigation except in those cases established in the code.[70]

The circumstances in which a defendant has direct access to a court during the pre-trial period are outlined in article 140, which governs the conduct of court proceedings to review the lawfulness of detention (see below), and in article 242 (1-3), which states that a court can be approached after the procuracy declines a petition regarding the confiscation of property, or declines a petition requesting that a criminal case either be opened or halted. However, all other types of complaints of procedural violations—such as a detainee alleging that he has been denied access to a lawyer or a forensic medical examination—are not heard by a court, but by procuracy officials, during the pre-trial period.

Thus, under current Georgian criminal procedure, any complaint alleging misconduct by a police or other investigator during the pre-trial period must be submitted first to the investigator handling the case, and then subsequently may be submitted to higher-level procuracy officials. However, during the pre-trial period, the complaint cannot be submitted directly to the court except in the very limited cases discussed above.

In practice, this means that, in many cases, the official who allegedly committed the violation is the person who initially hears and decides the detainee's complaint. Thus, an investigator who may have assaulted a detainee is the official responsible for determining whether or not that detainee is allowed to have a forensic medical examination that could prove the abuse. And when the investigator refuses to permit such forensic examinations, the detainee's appeal against this decision is decided by a higher level procurator—the investigator's superior. The close relationship between the investigator and the superior inevitably means that detainees are reluctant to file complaints.

The absence of judicial oversight is particularly troubling since defendants may be detained for up to nine months during the pre-trial period (article 162). For those who are not detained, but under investigation, the procurator general

[68] Article 73 of the code outlines the rights of suspects during criminal investigations. Article 76 (2) states that all provisions applying to suspects under article 73 also apply to the "accused," or individual who has been charged.

Prior to amendment, under article 73 (j) these rights included, "to make complaints to a procurator or a judge about the acts and decisions made by an inquiry investigative body, inquiry investigator, or investigator."

Following a May 28 amendment, article 73 (1-j) now reads, "to appeal the acts and decisions of the inquiry investigator, the inquiry investigative body or investigator to a procurator, [the acts and decisions] of a procurator to a higher-level procurator, and in some cases specified by this code, to the court."

[69] The July 22 amendment abolished paragraph 8 of article 232. Paragraph 8 had previously stated, "If a suspect, accused, defender, victim, or civil plaintiff or respondent, and their representatives do not agree with a procurator's decision denying their petition, [they] have the right to appeal the refusal of the petition in the court appropriate to [where] the preliminary investigation [is carried out]."

[70] Article 86 of the code lists the rights and obligations of civil plaintiffs. After amendment on July 22, article 86 (I) now reads, "to appeal against the acts of the inquiry investigator, body of inquiry, investigator and procurator to a procurator if the appeal is not satisfied, or to a court in the cases established in this code."

Prior to amendment, article 86 (I) read, "to appeal against the acts of the inquiry investigator, body of inquiry, investigator and procurator to a procurator, if the appeal is not satisfied, to a court."

may extend the investigation period indefinitely (article 271 (4-d)). During these periods, they are inevitably open to abuse by investigators and other officials, yet have no effective means of appeal or redress.

Judicial Review of the Lawfulness of Detention

In theory, a detainee's first appearance before a judge—at the hearing to determine the lawfulness of detention—could provide an individual with the opportunity also to submit a complaint about physical ill-treatment or violations of procedural rights, and therefore serve as a check on ill-treatment and other abuse during the interrogation period.

Article 140 (7) of the code requires a judge to rule within seventy-two hours on the procuracy's petition requesting a "restraining measure" prior to trial.[71] Such a "restraining measure" might include detention prior to trial, being freed on bail, release under police or other supervision, or being freed on another's recognizance. At this hearing, the judge may order an initial period of pre-trial detention of up to three months. Subsequently, the investigator can request that the period of pre-trial detention be extended for a maximum period of nine months for preliminary investigation.[72] A hearing must be held to review each request for an extension.

However, defense lawyers report that investigators sometimes attempt to avoid holding the hearing altogether—on occasion failing to bring the detainee to the proceeding, or pressuring the detainee ostensibly voluntarily to waive his or her attendance at the hearing.

Even if a detainee is brought before a judge, the amendments to the code severely restrict the ability of the detainee or his defense counsel to submit complaints of abuse to the court and to obtain adequate judicial review of the procedural and substantive conditions of detention. Lawyers interviewed by Human Rights Watch stated that in practice, the judges tend to rule only on the narrow issue of the appropriateness of the restraining measure. Further, since the May and July 1999 amendments specify that complaints of ill-treatment or other misconduct during detention must be heard by higher-level procuracy officials, defense counsel is precluded from presenting the judge with a complaint regarding violations by investigators.

Although Human Rights Watch found some defense lawyers who did attempt to bring allegations of abuse to the attention of the judge during the hearing on the legality of detention, the rules in the code instructing participants, including the judge, on how such hearings are to be conducted appear to discourage judges from fully and impartially reviewing complaints of procedural violations during these hearings.

Presence of Defendants and Their Counsel at Hearings on Lawfulness of Detention

[71] A related article, article 146 (7), requires that charges be pressed against a detainee within forty-eight hours of the time that he or she is brought to a detention facility, and that he or she must be released if a court has not decided within the following twenty-four hours to order a pre-trial detention. Article 146 (7) reads in full, "The term limit before pressing of charges should not exceed forty-eight hours from the moment of a detainee's being brought to the inquiry investigative facility. If within the following twenty-four hours, a court does not make a decision to arrest or use another type of restraining measure, the person should be immediately released."

[72] Under article 162 of the code, if a case is considered especially complex, the term of detention may be extended after three months, for no longer than a total of nine months.

Provisions governing the conduct of hearings on the lawfulness of detention appear to facilitate government attempts to avoid any effective hearing being held. Under article 140, such hearings are closed to the public and to a detainee's family members; the only participants allowed at the hearings are the judge, the procuracy, the investigator, the detainee, and his or her lawyer.[73] Under article 140, the participation of the investigator or procuracy official is obligatory, while the participation of both the detainee and his defense lawyer are optional. What is more, there is not even a requirement that a detainee, his or her lawyer, family member, or any other member of the public be notified that a hearing has been scheduled.

Tamila Gochelashvili, a defense lawyer with eight years of experience practicing in Tbilisi, told Human Rights Watch that she and her colleagues are frequently not even notified when a hearing on the lawfulness of detention is scheduled. Gochelashvili described a hearing on the lawfulness of detention on June 2, 1999, in Krtsanisi district court for a client charged with large-scale misappropriation of state property (article 96 of the criminal code).

> I was afraid that I would not be notified about the hearing date, because as a rule they do this very often, they won't notify lawyers about the hearing date. So I went to the court and wrote a petition [asking that the court] not hold the hearing without me because the evidence in the case was not lawful [lawfully obtained] and I did not want them to hold the hearing without me....Lawyers should keep their ears open and be ready for anything, because it happens...There is no mechanism, no rule in the code for notifying lawyers. This is why we have to stay day and night at the courts to be aware of what is going on.[74]

Gochelashvili said that notices announcing the schedule of hearings on the legality of custody are not routinely posted in courthouses, and that defense lawyers must rely on the procuracy to learn when the hearings are scheduled.

Another lawyer, Khatuna Salukvadze, who has worked as a lawyer since 1989, said that in a recent high-profile political case, she was not notified of the hearing and that even a protest to the court failed to get her client brought before a judge.[75] Her client, Temur Papuashvili, a forty-four-year-old Tbilisi resident, was detained on May 22, 1999, on charges of treason and preparation of a terrorist act, and died in the Ministry of Internal Affairs' Investigative Isolator No. 5 on January 5, 2000. Salukvadze said she had been hired shortly after Papuashvili was detained on May 22.

> Neither the accused, nor I, the lawyer, was notified about the restraining measure hearing that was held by Supreme Court Judge Tsiskarisvhili on May 24...I appealed for two days to the Supreme Court cassation chamber with a petition asking that Papuashvili be brought to the hearing...but Judge Tamar Kurasvhili, the chair of the cassation chamber, refused, and they usually don't write the reason for their refusals.

In other cases, lawyers said that investigators simply put pressure on detainees or tried to mislead them into not attending the hearings. "I've had cases where they don't bring the accused [defendant]...they are obliged to go and to inform the accused, but they pressure them...they fool them by telling them, 'you'll only be taken there and back, do you want this? Why do you need it? Stay in bed and get some rest,'" said Valerian Kirvalidze, a Mhsketa-based lawyer with twenty-one years of experience in the Georgian criminal justice system.[76]

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[73] Article 140 (6), reads, "The judge hears the petition independently, in closed session, with the attendance of the procurator and the agency having submitted the petition. During the court hearing [the following] can participate, the accused, a person against whom there is a petition to commit to a medical institution for examination (if his or her health condition allows it), [a person against whom there is a petition] to force him or her to resign, or [a person against whom there is a petition for] any other restraining measure, as well as their defenders and legal representatives."

[74] Human Rights Watch interview, Tbilisi, August 30, 1999.

[75] Human Rights Watch interview, Tbilisi, January 13, 2000.

[76] Human Rights Watch interview, Tbilisi, December 21, 1999.

Salukvadze, the lawyer cited above, recounted another case, in which she believed there was an attempt to pressure her client, twenty-three-year-old Tbilisi resident Irakli Djahoteli, not to attend his hearing. Djahoteli was detained on September 7, 1999, on suspicion of drug possession, and held in the Ministry of Internal Affairs' Investigative Isolator No. 5. According to Salukvadze, Djahoteli alleged that the deputy warden of the facility had tried to force him to sign a written statement that he did not wish to participate in the hearing, but that he had refused to sign it, and then was brought before the judge.

In other cases, officials attempt to avoid hearings in cases involving extension of the period of detention. For instance, defense lawyer Zurab Rostiashvili told Human Rights Watch that he believed that one procuracy investigator had resorted to falsifying documents in one case in which he was involved, after failing to file the necessary application with the court to get an extension of the pre-trial detention.[77] Under the code, there must be judicial review of requests for an extension of detention past the initial three-month maximum. Such hearings, however, are governed by the same rules as set out in article 140, requiring that they be closed to the public with no requirement for advance notification that they are to take place. Rostiashvili told Human Rights Watch that the detention period of his client, Jondu Javishvili, who was accused under article 104 of the criminal code with murder with aggravating circumstances, should have expired on May 13, 1999, three months after Javishvili was detained. Yet, by May 19, 1999, the procuracy had yet to file a petition requesting that the pre-trial detention period be extended:

> On May 20, I applied to the prison authorities as well as to the procuracy to release him, but they didn't release him...and instead they rushed to [Tbilisi city] court and applied for an extension....I waited until May 20 because there really was no cause to prolong the detention, the evidence wasn't really strong. It was my mistake, I should have waited even longer [to make it clear that investigators had insufficient evidence on hand to prolong the detention], because on May 21 the Tbilisi court didn't accept the investigator's petition, saying that the Supreme Court should have heard this.[78]

> They [procuracy officials] applied to the Supreme Court on May 24 and Judge Jemal Lionidze prolonged the detention for six months...but in the case file there appeared a petition as if they had applied to the Tbilisi City Court for extension on May 14...and the investigator wrote there that the judge had agreed to schedule a hearing on May 14....It is obvious that the investigator is lying, if he had such an appointment with the judge, why wasn't I notified?[79]

Rostiashvili said that during the proceedings at the Supreme Court he strongly protested the investigator's notation on the falsified petition, stating that on May 14, "the judge did not discuss the case but the reason for this is not known to us..." Rostiashvili said that Judge Lionidze skirted the issue of this notation, which the lawyer maintained was false and had been added to make it appear as if a petition seeking extension had been filed with the court, but that the court had failed to hold the hearing. The judge apparently brushed aside the allegations that the procuracy had failed to file the extension, and had subsequently falsified the petition, by stating that judicial reforms in progress had made such things understandable.

Under international human rights standards, a person who has been detained is entitled to have his initial arrest and ongoing detention subject to review by a judicial authority.[80] Upon his initial detention, article 5 of the European Convention on Human Rights states that:

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[77] Human Rights Watch interview, Tbilisi, December 7, 1999.

[78] The procuracy in this case requested a six month extension of the detention due to the fact that the case was especially complex, and as such the Supreme Court rules on such requests, according to article 162 (3) of the code.

[79] Ibid.

[80] Article 9 (3) of the International Covenant on Civil and Political Rights also guarantees this right. It states, "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release...."

(3) Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorized to exercise judicial power ....[81]

At this first hearing in Georgia, the judge is occupied solely with determining whether there are reasonable grounds to consider that the detainee has committed a crime and whether ongoing detention is justified. The European Court, in the Schiesser case, has made clear that, for purposes of an article 5(3) hearing, the detainee must be physically present:

[81] Paragraph 1c of article 5 of the European Convention states, "[T]he lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so."

> [U]nder Article 5(3), there is both a procedural and a substantive requirement. The procedural requirement places the "officer"[i.e. the presiding judicial officer] *under the obligation of hearing himself the individual brought before him*...; the substantive requirement imposes on him the obligations of reviewing the circumstances militating for or against detention, of deciding, by reference to legal criteria, whether there are reasons to justify detention and of ordering release if there are no such reasons.[82]

Similarly, legal scholars have concluded that:

> It is for the detaining authority to bring the detained individual before the judge. This means to take him from the cell to the court room, so that the judge can personally see and hear him. The independence of the judge and the personal meeting between the two are fundamental safeguards for anyone falling within the scope of Article 5(1)(c) and hence Article 5(3). It is not enough for the detainee's legal counsel or other representative to attend this meeting.[83]

Furthermore, detaining authorities have an additional obligation under the European Convention—the detainee must be given the right to initiate legal proceedings to challenge the legality of the detention. Article 5 (4) of the European Convention states:

> Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.[84]

The European Court, in interpreting article 5(4), has stated that:

> [I]t is essential that the person concerned should have access to a court and the opportunity to be heard either in person, or, where necessary, through some form of representation, failing which he will not have been afforded the "fundamental guarantees of procedure applied in matters of deprivation of liberty."[85]

The European Court has noted that the concept of equality of arms may be considered violated when the detainee is not physically present, at least in those cases where the detainee is not represented by counsel. For example, in the Kampanis case, the court found a violation of article 5 (4) "on the basis of lack of respect for the principle of equality of arms" where the "domestic court had refused to give a prisoner leave to appear before it in order to present arguments in support of his application for release, whereas the court heard the prosecutor argue against the release."[86]

The Georgian authorities' failure to bring detainees promptly before a judicial authority following detention is a clear violation of article 5(3) of the European Convention. The European Court's interpretation of this article in its case law is clear–the detainee must be brought before the judicial officer, and must be physically present at the hearing.

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[82] European Court of Human Rights judgement, Schiesser case of December 4, 1979, Application No. 00007710/76, Series A no. 34, pp. 13-14, para. 31.

[83] Donna Gomien, David Harris, and Leo Zwaak, *Law and practice of the European Convention on Human Rights and the European Social Charter* (Strasbourg: Council of Europe Publishing, 1996), p. 146.

[84] Article 9 (4) of the International Covenant on Civil and Political Rights also guarantees this right. It states, "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

[85] European Court of Human Rights judgement, Winterwerp case of October 24, 1979, Series A no. 33, p. 24, para. 60.

[86] Case of Kampanis v. Greece, judgment of 13 July 1995 (Series A no. 318B), cited in Gomien, Harris, and Zwaak, *Law and Practice of the European Convention*, p. 151.

Meanwhile, Georgian authorities have a second and separate obligation under article 5(4) of the European Convention and other international standards. That is, to provide detainees with the right *to initiate* legal proceedings to challenge the legality of the detention. The failure to provide for the presence of the detainee and/or his representative at such hearings is a violation of this standard.[87]

Ability to Submit Complaints of Ill-treatment at Article 140 Hearings

While in the cases cited above, investigators appear to have flouted outright the requirement to bring a detainee before a judge during hearings on the lawfulness of detention, even when a detainee is presented in court, the rules governing article 140 hearings hinder defense efforts to present evidence of ill-treatment that has occurred during the course of the investigation.

Pursuant to article 140, the judge rules on a petition submitted by the investigator, and approved by the procuracy, requesting that an individual be detained or that another type of restraining measure (such as bail) be employed. As noted above, many lawyers interviewed by Human Rights Watch stated that, in practice, the judges rule only on the narrow issue of the appropriateness of the restraining measure. They noted that, while the code requires the judge to determine whether the detention, and any evidence gathered in the course of the investigation, meets procedural norms, the May and July amendments—which specify that complaints of ill-treatment or other misconduct during detention may only be heard by higher-level procuracy officials—preclude defense counsel from submitting a complaint of investigative misconduct to the judge. Instead, lawyers said they would attempt to raise complaints with higher level procuracy officials as they had been accustomed to doing under the Soviet-era criminal procedure.

Some lawyers, however, said that they attempt to use the hearings to complain about mistreatment if they can specifically link the allegation of abuse to the issue of the appropriateness of the restraining measure sought by the procuracy. Eka Beselia, a defense lawyer in private practice in Tbilisi, told Human Rights Watch that she intended to present evidence at an article 140 hearing that her client had been tortured, by arguing that his coerced confession constituted the evidence upon which the procuracy's request to extend her client's detention was based.[88] Her client, Kakha Barbakadze, twenty-eight years old, had been detained with three others on suspicion of theft at the outskirts of Tbilisi early on September 25, 1999. Barbakadze and the others were held at the Tbilisi Main Police Department lockup for a month, then transferred to a remand prison. Barbakadze alleged that he had been beaten while detained at the lockup to coerce him to sign a confession, and forced initially to accept a state-appointed lawyer who did not represent his interests as his defense counsel. According to Beselia: "During the period during which they were abused [Barbakadze and the three other individuals arrested along with him], there was a state-appointed lawyer who, of course, didn't complain or ask for a forensic medical exam...."

Other Obstacles to Full and Impartial Review

Lawyers interviewed by Human Rights Watch stated that judges are reluctant to consider defendants' allegations that evidence against them was obtained unlawfully during hearings on the lawfulness of detention. And article 140 may reinforce some judges' disinclination to hold a full review of evidence presented by the defense of procedural violations.

[87] The U.N. Body of Principles requires the detainee to be present at hearings intended to provide for the opportunity to challenge the legality of a detention. Principle 32 reads: (1) A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful. (2) The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditions and at no cost for detained persons without adequate means. *The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.* [Emphasis added.]

[88] Human Rights Watch interview, Tbilisi, December 22, 1999. Unless otherwise noted, all information cited stems from this interview.

Article 140 (8) states that a judge is allowed to summon and question persons whose testimony supports the procurator's petition for a restraining measure, such as pre-trial detention (which also applies to a request for extension of the order of detention). The defense may offer objections to the procurator's petition, but article 140 does not stipulate that the defense has the right to submit petitions or complaints, or to call witnesses in support of defense petitions or complaints.[89] In practice, defense lawyers do submit petitions opposing the procuracy's petition to, for example, extend the period of detention. But lawyers noted that judges are reluctant to call defense witnesses who might provide independent confirmation of the defense's claim that there is insufficient evidence to detain an individual. As defense lawyer Valerian Kirvalidze stated:

> I had one case where I asked the judge for witnesses to be questioned, but he did not satisfy this petition...he said he was not looking for information concerning the person's guilt, and that there were proofs and evidence that to his mind were enough. But they would have refuted what was said [by the investigator].

The initial hearing to review the lawfulness of the detention, and any subsequent extension hearings, represent the only opportunities cited in the code during which a detainee may be physically brought before a judge. There are no provisions in the code that would allow any judicial review of alleged ill-treatment or procedural violations during the intervals between these hearings.

The physical presence of the detainee in court is intended to provide a safeguard against torture or other ill-treatment, which are widespread during pre-trial detention in Georgia. When a detainee is denied an opportunity to be brought before an independent judicial authority during the pre-trial period, and has no opportunity, therefore, to present evidence of torture or other ill-treatment, the Georgian government is effectively failing to meet its obligations under international human rights law. For example, the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires those subjected to torture or other ill treatment to have a right to complain and to have their allegations promptly and impartially examined (under article 13), and to ensure that no statement established to have been made as a result of torture be invoked in *any proceedings* against the detainee (under article 15).

Procuracy Adjudication of Detainee Complaints

International standards hold that measures affecting the human rights of individuals detained prior to trial, and those sentenced prisoners in post-conviction facilities, should be under the effective control of a judicial or other authority whose status and tenure affords the strongest possible guarantees of competence, impartiality, and independence in law. For instance, Principle 4 of the U.N. Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment (Body of Principles), states:

> Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to, the effective control of a judicial or other authority.

[89] Paragraph 8 of article 140, reads, "A judge has the right to summon and question a person whose testimony substantiates the petition, and ask the petitioner to submit necessary documents and physical objects substantiating the petition." An amendment adopted on July 22, 1999 added this sentence, "At the same time, the judge shall not consider the issue of the person's guilt and shall only clarify whether the requirements prescribed by this code have been met when gathering evidence and during the course of [their] procedural attachment."

Principle 33 of the U.N. Body of Principles holds that a detainee or imprisoned person, and his or her defense counsel or other persons knowledgeable about the case, have the right to submit complaints regarding the detainee's treatment to prison authorities and, when necessary, to authorities vested with remedial powers.[90] Principle 33 recommends that such complaints be promptly dealt with, and that in the case of inordinate delay, the individual be allowed to bring the complaint before a judicial or other authority. The U.N. Body of Principles specifies that, "The words "a judicial or other authority" means "a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence."

Since adoption of the May and July 1999 amendments, the Georgian criminal procedural code requires that the vast majority of complaints prior to trial be heard by the procuracy. In past cases brought before it, the European Court has found that a procuracy with powers similar to those of the Georgian procuracy cannot provide the guarantees of impartiality or independence required by international law. Georgia's procuracy is responsible both for investigating a wide range of crimes prior to trial and for prosecuting all crimes at trial. Under article 56 of the Georgian code, the procuracy also has supervisory oversight of staff of other ministries that are responsible for investigating crimes that are not investigated directly by the procuracy. The procuracy thus investigates cases under its jurisdiction, supervises the actions of investigators of all agencies during inquiries, and of the Ministry of Internal Affairs and State Security during both inquiries and preliminary investigations. The procuracy may overturn any decision made by such investigators during the course of an investigation.

The European Court has held that procuracies with powers similar to those of the Georgian procuracy are executive, not judicial, authorities for purposes of judicial review of the lawfulness of detention.

For instance, in the case of Assenov and Others v. Bulgaria, the court found that officials of the Bulgarian procuracy, which plays both an investigative and prosecutorial role and which is linked closely in law to, and responsible for the supervision of, investigative bodies such as the police,[91] could not be considered a judicial authority empowered to review the lawfulness of a detention.[92] In a similar finding in the case of Nikolova v. Bulgaria, the European Court reiterated that those empowered to exercise judicial authority must be independent of the executive,

[90] Principle 33 states in full, "1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary to appropriate authorities vested with reviewing or remedial powers. 2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights. 3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant. 4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in the case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint."

[91] European Court of Human Rights judgment, Assenov and Others v. Bulgaria (90/1997/874/1086) of October 26, 1998. Paragraphs 66-68 describe the Bulgarian procuracy's powers. Paragraph 68 states, "According to the relevant provisions of the CCP [Criminal Code of Procedure] and legal theory and practice, the prosecutor performs a dual function in criminal proceedings. During the preliminary stage he supervises the investigation. He is competent, inter alia, to give mandatory instructions to the investigator; to participate in examinations, searches or any other acts of investigation; to withdraw a case from one investigator and assign it to another, or to carry out the entire investigation, or part of it, himself. He may also decide whether or not to terminate the proceedings, order additional investigations, or prepare an indictment and submit the case to court. At the judicial stage he is entrusted with the task of prosecuting the accused."

[92] In the Assenov judgment, the court in paragraphs 144 to 150, found that the Bulgarian procuracy could not be considered an impartial judicial authority for the purposes of review of the lawfulness of a detention. Paragraph 146 states, "The Court reiterates that judicial control of interferences by the executive with the individual's right to liberty is an essential feature of the guarantee embodied in article 5 (3)....Before an "officer" can be said to exercise "judicial power" within the meaning of this provision, he or she must satisfy certain conditions providing a guarantee to the person detained against any arbitrary or unjustified deprivation of liberty...Thus, the "officer" must be independent of the executive and the parties...."

and of the parties in the case.[93] The court added that, if it appears that an official of the procuracy may later intervene in subsequent criminal proceedings on behalf of the prosecuting authority, his independence and impartiality may be in doubt.

Other factors suggest that the Georgian procuracy is an executive authority distinct from the courts. Procuracy officials take qualifying examinations that are separate and distinct from those taken by judges, and under article 7 (6) of the Organic Law of Georgia on the Procuracy, the procurator general has discretion to determine the rules for such qualification examinations. Furthermore, appointment, disciplinary and removal procedures for procuracy officials are different from those of judges. Article 7 (6) of the law on the procuracy gives the procurator general the sole authority to appoint and remove lower level procuracy officials. Meanwhile, disciplinary measures involving procuracy staff are decided by the board of the Procuracy General, which is headed by the procurator general, and whose other members are senior procuracy officials, and when necessary the Ministers of Internal Affairs and National Security. Under article 8 (5) of the law on the procuracy, the procurator general makes the final decision when there is a conflict between him or herself, and the board of the procuracy.

[93] European Court of Human Rights judgment, Nikolova v. Bulgaria (application no. 31195/96) of March 25, 1999.

But some judges and government officials interviewed by Human Rights Watch stated that, under article 91 of the Georgian constitution, the procuracy is afforded the status of a judicial authority, and thus that the code's delineation of the procuracy's power to hear and decide complaints prior to trial is proper.[94] However, Georgia's procuracy has a dual function—both to investigate crimes prior to trial and to represent the prosecution in court—similar to that of the Bulgarian procuracy in the two cases discussed above. It is highly likely, therefore, that the Georgian procuracy would be considered an executive authority under the jurisprudence of the European Court.

Other Potential Venues to Redress Complaints

The Constitutional Court

The Georgian legal system provides the individual with an opportunity to seek redress in the Constitutional Court if he or she believes a normative act has violated a constitutional right. Article 39 of the Law on the Constitutional Court of Georgia specifies that individuals may directly petition the Constitutional Court if they believe that their constitutional rights, as outlined in section 2 of the constitution, have been violated. Normative acts in Georgia include laws such as the criminal procedure code, decisions made by those authorities considered to be part of the executive based on such laws impacting more than a single individual or single legal entity (law subordinated acts), and presidential or ministerial decrees.[95]

At this time it is unclear how the Constitutional Court will respond to complaints from individuals alleging that the criminal procedure code is itself in violation of constitutional rights. Human Rights Watch is aware of at least one individual who has brought a complaint to the Constitutional Court alleging that one of the recently adopted amendments to the criminal procedure code violates his constitutional rights. Zaza Kobulashvili submitted a petition to the court for review on June 25, 1999, alleging that portions of article 680 of the new code contravene guarantees to judicial redress outlined in article 42 of the constitution. However, the lawyer who submitted the case told Human Rights Watch that, as of mid-December 1999, the Constitutional Court had yet to assign a hearing date for the case.[96]

[94] Article 91 (1) of the constitution reads, "The Georgian procuracy is a judicial authority, which carries out criminal investigations, supervises investigations, enforces sentences, and supports the prosecution of state indictments."

[95] Normative acts, which include law-supordinated acts (administrative decisions that affect the interests of more than a single individual or single legal entity), are distinct from what are termed individual acts (administrative decisions that effect one individual or legal entity).

[96] Human Rights Watch interview with Soso Baratashvili, December 14, 1999.

To Human Rights Watch's knowledge, no case has been heard by the Constitutional Court alleging that specific provisions in the code that preclude detainees from submitting a complaint for judicial review during the pre-trial period violate the constitution or international standards. Article 42 of the Georgian constitution guarantees citizens the right to judicial redress.[97] But article 42 does not specify if citizens enjoy the right to submit complaints to a court during a criminal investigation before trial has commenced.

Georgia's constitution requires in article 6 that Georgian legislation be consistent with universally recognized norms and principles of international law, and that they take precedence over domestic normative acts such as the criminal procedure code*, if international norms do not contradict the constitution* [emphasis added]. [98] However, given that the procuracy is defined as a judicial authority in article 91 of the constitution, it is unclear how the court would rule in a case alleging that the procuracy in fact functions as an executive body and, therefore, does not provide the independent and impartial review during pre-trial detention that is required by international law.

Even if the Constitutional Court should prove willing to hear complaints from detainees prior to trial, as the sole potential judicial venue to seek redress for procedural complaints, the Constitutional Court cannot be considered an effective venue for redressing complaints without undue delay. The new nine-member court has returned relatively few judgments since it began to hear cases in September 1996. There is a substantial lag between the time a petition is filed, and when the court actually begins to hear a case. An official at the Constitutional Court told Human Rights Watch that a delay of six or seven months between the time a suit is registered with the court and a preliminary hearing, known as a planning session, is held is common.[99] According to statistics provided by the court at the end of October 1999, since it began hearing cases in September 1996, it received 118 petitions and returned just twenty-five judgments. A further twenty-nine cases were then under consideration, while the remaining sixty-four had either been dismissed for lack of grounds, rejected as not in the court's jurisdiction, or withdrawn by plaintiffs.

The Administrative Code

Newly-adopted administrative procedures do not offer a venue for those under criminal investigation to obtain judicial review of complaints. An administrative code was adopted in June 1999 and went into force in January 2000. It allows individuals to challenge administrative decisions made by executive bodies before boards, known as collegial administrative bodies, created within executive authorities. However, this new code, under article 3, specifically precludes individuals who are under criminal investigation from using the new procedures to challenge the administrative decisions made by any executive authority. Article 3 of the administrative code also precludes individuals from using the procedures to challenge administrative decisions made by those authorities considered part of the judiciary. Dmitri Metreveli, acting chief of the international coordinator's office of the Procuracy General, confirmed that the procuracy's administrative decisions are not subject to challenge under the new code due to the procuracy's designation as a judicial authority under article 91 of the constitution.[100]

The Ombudsman's Office

In Georgia, the ombudsman's office offers assistance to those who believe that abuse has occurred or a right has been violated. However, the law does not provide the ombudsman the right to forward a complaint to a court with a recommendation that it be reviewed prior to trial. Under the 1996 law on the ombudsman of Georgia, the office has the power to receive complaints from those in pre-trial detention as well as a wide variety of other types of complaints of human rights violations. The ombudsman has the right to request documents and materials related to a complaint, to

[97] Article 42 (1) of the constitution reads, "Every individual has the right of appeal to the courts to protect his rights and freedoms."

[98] Article 6 (2) of the constitution reads, "The legislation of Georgia corresponds with universally recognized norms and principles of international law. International treaties or agreements concluded with and by Georgia, if they do not contradict the constitution of Georgia, take precedence over domestic normative acts."

[99] Human Rights Watch interview with Guram Berishvili, responsible for statistics and tracking of cases at the Constitutional Court, Tbilisi, October 25, 1999.

[100] Human Rights Watch interview, Tbilisi, February 21, 2000.

visit persons while in detention, and to review documentation related to the lawfulness of their detention. Article 18 of the law gives the ombudsman the right to order that expert examination be carried out. Article 21 allows the ombudsman to make a recommendation to a court to review a complaint once a court's judgement of a case has entered into force, if the ombudsman believes that the complaint might have had a substantial impact on the outcome of it.

According to the ombudsman's office, article 21 precludes the ombudsman from forwarding complaints to a court of law for review prior to the conclusion of a trial.[101] However, even if the ombudsman enjoyed such a right, this would be no substitute for a suspect or defendant's right directly to submit complaints to a court of law to seek redress for abuse. The Georgian ombudsman's office cannot be considered capable of providing individuals the strongest possible legal guarantees of competence, impartiality, or independence to hear complaints of human rights violations. Nongovernmental organizations interviewed by Human Rights Watch noted that the Georgian ombudsman's office has been the subject of numerous, persistent complaints from victims who claim that it fails to use even those limited powers that it has been granted by law to seek redress for abuses. Some nongovernmental organizations noted that David Salaridze, Georgia's first ombudsman, who held the post until July 1999, was formerly a procuracy official and subsequently deputy minister of internal affairs and, due to his background, was reluctant to act vigorously on complaints of procedural violations during criminal investigations.[102]

CONCLUSIONS

The amendments adopted in May and July 1999 severely eroded the newly established rights of those under investigation to submit a complaint to the courts of general jurisdiction during criminal investigations. The repeal of reforms intended to protect those under criminal investigation is alarming given persistent reports of rampant physical abuse of detainees to secure confessions and other serious procedural irregularities during criminal investigations in Georgia.

Physical abuse is frequently followed by other types of violations of individual's rights that appear specifically intended, after the fact, to cover up that abuse, and so to preclude perpetrators from being brought to justice, as well as to prevent detainees from proving that confessions used against them at trial were coerced. Violations of procedural rights that appear intended to prevent complaints of abuse from becoming known to the public at large through the media, or from being substantiated before a court, include restricting or denying access to lawyers, or coercing detainees into accepting lawyers they have not freely chosen, who do not vigorously complain about mistreatment or otherwise vigorously represent their client's interests.

Meanwhile, delays in judicial consideration of complaints from those seeking forensic medical examinations are especially troubling. It is now extremely difficult for victims to substantiate that they were tortured in custody, and even when examination from a state authority is authorized, there is little confidence that its findings will be impartial. Delays preclude forensic medical doctors in many cases from establishing the nature and cause of injuries, and hinder detainees from substantiating their allegations that confessions later used against them in court by the procuracy were coerced.

The government currently appears unwilling to enact even simple measures—which require no additional budgetary expenditures—to curb abuses, such as insuring that a detainee's doctor may visit and treat the defendant in pre-trial detention. A presidential decree, which was reauthorized in October 1999, appears to preclude detainees from obtaining examinations by private independent doctors, even though the criminal procedure code allows the defense to obtain independent expert review and opinion of a wide range of other types of evidence.

The restrictions on access to the courts to review complaints severely hamper the individual's ability to substantiate that they have been a victim of torture. Any criminal justice system that severely impedes a victim's ability to

[101] Interview with Tamar Rukhadze, international coordination office, Ombudsman's Office, Tbilisi, February 18, 2000.

[102] The Ombudsman's Office is also sometimes referred to as the Public Defender's Office in Georgia. The office has been referred to as the Ombudsman's Office in this report to avoid confusion with the Advocate's Office under the Ministry of Justice's Lawyers' Collegium, which provides free state-appointed legal assistance in criminal and civil cases.

substantiate a claim of torture in court has a built-in bias and is inherently unfair. Given this failure, it is unlikely that the judiciary can ever enjoy broad public trust. Corruption within the law enforcement bodies also undermines public confidence in the judiciary. Yet detainees and others under criminal investigation continue to be denied effective access to an impartial authority which can provide redress when the procuracy investigators or other law enforcement agencies misuse the substantial powers granted to them in the code. This leaves law enforcement agencies with wide scope to coerce bribes from individuals whom they hold for criminal investigation, while providing little or no recourse or effective legal remedy for such misconduct.

RECOMMENDATIONS

To the government of Georgia:

- Reinstate the right in the criminal procedure code to allow those under criminal investigation to obtain judicial review of complaints without undue delay;

- Reinstate the right of those summoned as witnesses in criminal investigations to appear with counsel;

- Ensure immediate, unimpeded access to impartial forensic medical examinations for detainees, and for all other individuals, regardless of whether they are in detention, who wish to substantiate a report of abuse by a law enforcement or other official;

- Allow all detainees the right to be visited and treated by their own doctor from the moment they are in custody, in accordance with the U.N. Standard Minimum Rules for the Treatment of Prisoners;

- To combat incommunicado detention, include provisions in the criminal procedure code and the Georgian Law on Imprisonment explicitly stating that pre-trial detainees have the right to be visited by family members and friends, and that family members or others designated by detainees must be notified immediately of any transfer of a detainee from one facility to another;

- Amend the Georgian Law on Imprisonment to allow detainees in pre-trial detention facilities the right to make and receive telephone calls, and receive and send correspondence subject only to such restrictions and supervision as are necessary in the interests of the administration of justice and the security and good order of the institution, as called for under international standards. Family members and others should be allowed to appeal to a court of law a decision denying them the right to visit a detainee;

- Amend the code to clarify that persons detained are entitled to prompt access to a lawyer of their choosing and ensure that this right is fully respected in practice;

- Enact measures to ensure that, for those detainees who cannot afford a lawyer, legal counsel will be provided free of charge, and take necessary steps to ensure that such counsel will be free from government interference and will genuinely represent the interests of their clients;

- Make explicit in the code that the defendant or his lawyer may call a doctor or any other witness to testify at any stage in the criminal proceedings, including at hearings on the lawfulness of detention, about the detainee's condition or treatment during detention;

- Amend the code to guarantee that all criminal trials, including hearings to review the lawfulness of detention, and hearings to extend the length of pre-trial detention, are open to the public;

- Amend the criminal procedure code to make explicit that the procuracy is obligated to notify the detainee, his or her lawyer, and family members of a hearing on the lawfulness of detention, and of all hearings to extend pre-trial detention, and that advance notice of the time and date of such hearings must be publicly posted;

- Reinstate the rights of all those such as civil plaintiffs, witnesses, victims, those giving expert testimony, court translators and those providing signed statements regarding the results of a search by law enforcement to submit a complaint regarding irregularities or abuses prior to trial to a court of law without undue delay;

- Review all past convictions based on confessions allegedly made under torture, as recommended by the U.N. Human Rights Committee in its April 1997 concluding observations on Georgia's initial report on compliance with the International Covenant on Civil and Political Rights; and

- Make public the results of all investigations, and systematically and impartially investigate all complaints of ill-treatment and torture, and bring to justice those found responsible for abuses.

To the World Bank:

Since 1992, the World Bank has provided the Georgian government with an estimated U.S.$507 million in credits to assist in economic restructuring efforts in a wide variety of areas including tax collection, privatization, and the health and energy sectors.[103] In June 1999, the World Bank allocated $13.4 million of these credits for reform of the judiciary. The project calls for strengthened administration of the court system through training of administrators, improved management of the court's case-load through computerization, and improvement of the Ministry of Justice's capacity to enforce judgments. The project also envisions a system of audio recording to ensure the integrity of court protocols, and the physical rehabilitation of court buildings and other facilities.[104]

In an April 1998 assessment of the Georgian judiciary, the World Bank expressed a commitment to fostering increased public trust and respect for the judiciary, and to ensuring that the benefits of its lending will be of broad benefit to the public.[105] For instance, with regard to access to justice, the Bank recommended that a widespread public awareness and education campaign about the role of law and the judiciary in a modern society be conducted. We welcome the Bank's work to strengthen the judiciary and stated commitment to improved access to justice, and therefore recommend that:

- Reform of the office of the procuracy, and adoption of criminal procedures meeting international standards, including prompt access to judicial authorities to hear complaints of abuse, be adopted as a base policy trigger for future structural adjustment lending in the World Bank's Country Assistance Strategy;

- The Bank expand its capacity to conduct analysis of judicial systems and of criminal procedure to enable it to identify provisions in legislation that are not in compliance with international human rights law and standards, and to assist in the formulation of lending targets in these areas;

- The Bank expand coordination with other international organizations—such as the Council of Europe—that are active in the fields of legal reform and governance to ensure that engagement of these organizations is mutually supportive;

In addition:

- We urge that as a part of on-going work on judicial reform, the Bank work with Georgian authorities to ensure that notices regarding all scheduled court proceedings be publicly posted in court houses in advance of the proceedings, and that past records of all such schedules be kept on file and be made available to all members of the public.

To the Council of Europe:

[103] "World Bank Approves U.S.$114.9 million for Georgia," World Bank news release No. 99/2288/ECA, June 29, 1999, available via the internet at www.worldbank.org/html/extdr/extme/2288.htm.

[104] Ibid.

[105] "Georgia Judicial Assessment," April 10, 1998, Legal Department, Europe and Central Asia Region, World Bank.

Georgia gained admission to the Council of Europe on April 27, 1999. Shortly after Georgia's accession, approximately half of the provisions in the new code were amended or replaced.

We recommend that the Council of Europe's Parliamentary Assembly:

- Adopt a resolution deploring the current widespread torture and physical abuse of detainees in pre-trial detention, and urging Georgia to enact reform of the office of the procuracy, to adopt complaints procedures that allow effective and timely judicial review of complaints, and to adopt other recommendations in this report;

- Make the future admission of all new member states conditional on having already fully and effectively *implemented* important legislation such as the criminal procedure code that meets international standards, rather than promises that such reforms will be adopted and implemented after accession;

- Establish a Council of Europe representation office in Tbilisi with a mandate to monitor developments in legal reform and advise the government of Georgia on issues related to conformity with the European Convention on Human Rights. The office should also strive to coordinate its work with organizations such as the European Union, the OSCE, and international financial institutions, and provide information to the public and Georgian nongovernmental organizations on the European Convention, European Court of Human Rights, and standards developed in its case law;

- We urge the Committee for the Prevention of Torture as a matter of priority to examine impediments in law and practice to obtaining judicial review of complaints of torture and other procedural violations; and

- We urge the Council of Europe Commissioner for Human Rights to examine the findings and recommendations contained in this report, to raise the problem of access to justice in his on-going dialogue with the government of Georgia, and to work with the government to develop a program of action to address this problem.

To the Organization for Security and Cooperation in Europe:

- We urge the OSCE mission in Georgia to issue a public statement deploring the current widespread torture and physical abuse of detainees in pre-trial detention, and to urge the government to reform the office of the procuracy and adopt procedural rights during criminal investigations that meet international standards;

- In light of the findings in this report regarding pre-trial complaints, review the Georgian Law on the Ombudsman and advise the government of Georgia of any measures needed to strengthen the ombudsman's powers in law relating to the handling of complaints prior to trial; and

- We urge the OSCE to invite its Advisory Panel of Experts on the Prevention of Torture to scrutinize the findings contained in this report and to advise the OSCE and the government of Georgia on measures to improve access to justice for victims of torture and other abuse.

To the European Union:

A Partnership and Cooperation Agreement between the E.U. and Georgia, which was signed in 1996 and is conditioned on the Georgian government's demonstration of respect for human rights, went into force in mid-1999 after ratification by the parliaments of all E.U. member states. President Eduard Shevardnadze was reported to have issued a statement in November 1999 calling for Georgia's early admission as a full member of the E.U.[106]

[106] "Georgia May Become a Member of the European Union Much Earlier Than Expected, Eduard Shevardnadze Says," *Caucasus Press*, November 27, 1999.

The E.U. provides significant technical and humanitarian assistance to Georgia, and Georgia participates in large regional projects including the Traceca and Inogate programs, which are intended to promote regional integration and to develop transportation and communication routes. In addition, the E.U. funds a number of projects intended to support development of rule of law and respect for human rights, and European Commission representational staff routinely raise issues in private with government officials regarding the compatibility of legislation with the European Convention and other international standards.

Georgia's economy suffered one of the most severe collapses of any of the former Soviet republics after the dissolution of the Soviet Union in 1991.Without significantly strengthening the legal institutions necessary to ensure respect for the rule of law and human rights, Georgia is unlikely to establish a secure investment climate to attract significant domestic or foreign investment, to achieve sustainable long term economic development, or to meet other requirements to become a full member of the European Union.

Effective legal institutions, including further judicial oversight of the procuracy and other law enforcement agencies and security forces during criminal investigations, are essential to combat corruption and to improve the investment climate. As such, we recommend that the E.U. maximize its considerable leverage to bring about significant improvements in the legal institutions by:

- Making clear that further economic assistance, including that provided under the Traceca, which is unrelated to humanitarian needs and not intended to promote respect for rule of law and human rights, is conditional on the Georgian government's reform of the office of the procuracy, and adoption of criminal procedures that meet international standards and allow for effective judicial review of complaints;

- Making clear to the government of Georgia that failure to take meaningful steps to curb widespread physical abuse and torture, and that its repeal of basic safeguards of criminal procedure and access to justice, threatens the continued viability of its partnership and cooperation agreement, which is conditioned on respect for fundamental human rights;

- The European Parliament should adopt a resolution urging Georgia to reform the office of the procuracy, and its criminal procedures, and make clear that Georgia's poor human rights record and unwillingness to strengthen the legal institutions necessary to ensure respect for the rule of law jeopardizes its candidacy for membership in the E.U. This message should also be emphasized in the European Parliament's interparliamentary dialogue with Georgia.

To member countries of the North Atlantic Treaty Organization (NATO), and others engaged in bilateral security cooperation with Georgia:

The U.S. government, NATO member states and other allies, concerned with Georgia's strategic location bordering Russia and with ensuring Georgia's stability to provide security for the transport of oil and natural gas from the Caspian region, have become increasingly involved in training and suppling the Georgian security forces.

The U.S. government considers developments in Georgia to be a matter of U.S. national security interests, and administration officials, in seeking miliary and economic assistance from Congress for activities in Georgia, have stated, "U.S. national security interests are at stake in Georgia where regional and local instability threatens Georgia's evolution toward a democratic and free market state."[107] In outlining the importance of Georgia's strategic location, they further noted that, "A stable, independent Georgia will reduce chances of military conflict in a region bordering Russia, Turkey, and Iran, proliferation of weapons of mass destruction and the spread of international crime." Moreover, related

[107] "Georgia," *U.S. Secretary of State: Congressional Presentation for Foreign Operations for Fiscal Year 2000,* Government Printing Office, p. 656.

to Georgia's strategic military location, is its status as a gateway for oil and gas development in the Caspian region. U.S. policy makers have stated, "Georgia is located astride the principal export route for energy and natural resources from the Caspian area and Central Asia, and a liberal economic environment in Georgia is critical to allowing the free flow of trade to and from these regions."

Georgia is currently a member of NATO's Partnership for Peace program, and Georgian President Shevardnadze has said that he intends to seek full membership in NATO by the year 2005, although more recent statements indicate that it is possible that Georgia may even attempt to join even earlier.[108] The Partnership for Peace Framework Documents signed by member countries includes a commitment by NATO to consult with any country that perceives a direct threat to its territorial integrity, political independence, or security.[109] In its public statements, NATO maintains that membership in the Partnership for Peace initiative is strengthening security in numerous ways, including that, "it is strengthening democratic control of defense forces."[110]

Meanwhile, the U.S. engages in bilateral security cooperation with Georgia. President Shevardnadze was reported to have stated that the U.S. Central Intelligence Agency has, and continues, to "provide significant assistance" to the Presidential Guard, officially known as the Special State Security Service, through training of its staff.[111] Other U.S. security assistance includes International Military and Education and Training (IMET) programs and provision of Excess Defense Articles on a grant basis intended to enhance NATO interoperability. The U.S. also provides assistance to the Georgian Border Guard intended to allow Georgia to take control of its borders, while assistance is also provided to support the U.N. Observer Mission in Georgia to assist in resolution of the Abkhaz conflict. The Clinton Administration proposed $36.1 million in fiscal year 2000 to continue such activities.[112] Training takes place in the United States, and in Georgia at a number of facilities including in Kojori, Poti, and Lilo.[113]

We therefore recommend that the U.S. government and other countries that are engaged in bilateral security cooperation:

- make any further security assistance, including training activities and provision of equipment or weaponry to any staff of any security or law enforcement body that is empowered to carry out an inquiry or preliminary investigation into alleged crimes, conditional on the Georgian government's reform of the office of the procuracy, which includes adoption of criminal procedures that allow for effective and prompt judicial review of complaints of procedural violations during criminal investigations. Such conditionality should exclude activities intended to support the U.N. Observer Mission in Georgia;

- ensure that any future assistance provided to Georgian law enforcement agencies or other security forces intended to build capacity to collect and analyze forensic evidence is specifically conditioned on the Georgian government's provision of unimpeded access to prompt and impartial forensic medical examinations for all detainees from the moment they are in custody, and for all other individuals, whether in detention or not, who wish to substantiate a report of abuse by a law enforcement or other official.

[108] "Georgia Studies NATO Membership Application Procedure, Georgian Foreign Minister Says," *Caucasus Press*, December 28, 1999. President Shevardnadze is quoted in the report as stating, "it does not matter whether Georgia knocks at NATO's doors a bit earlier or later than the appointed year, 2005," The article noted that Shevardnadze had previously stated that should he be reelected in 2000, "Georgia will knock at NATO's door by 2005."

[109] Cited in "The Partnership for Peace Initiative," in *NATO Documents: Extending Security in the Euro-Atlantic Area*, available via the internet at www.nato.int/docu/ext-sec/s-pfp.htm.

[110] *NATO Documents*, Ibid.

[111] "Shevardnadze Says CIA Helps Protect Him," Agence France Presse, March 6, 2000.

[112] "Georgia," *Congressional Presentation FY 2000*.pg. 656.

[113] "Activities Reported Pursuant to Requirements of Section 581 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999, As Enacted in P.L. 105-277."

Appendix 1: Natelashvili Complaint and the Government of Georgia's Response

Appendix 2: Exchange of Letters with the Government of Georgia on Deaths in Custody

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