

# GEORGIA

## Summary of Amnesty International's concerns

### Introduction

Since Georgia's early years of independence, marked by armed hostilities in various parts of the country as well as severe economic dislocation, the country has achieved a greater stability and taken various concrete steps towards building democratic institutions and reforming its judicial and legal systems. Recent moves welcomed by Amnesty International have included the appointment in October 1997 of a Public Defender, a new post introduced under the 1995 Constitution to monitor the defence of individual rights and freedoms, and complete abolition of the death penalty in November that year.<sup>1</sup>

Amnesty International remains concerned, however, that some of the guarantees and laws adopted to protect human rights are not fully implemented or observed. These areas of concern are described below. This paper also details alleged human rights violations in two areas of Georgia currently outside the *de facto* control of the Georgian authorities - Abkhazia and South Ossetia.

### Allegations of torture and ill-treatment in detention

"Torture, inhumane, brutal or degrading treatment or punishment" is prohibited under the Georgian Constitution<sup>2</sup>, which also forbids the physical or mental coercion of a detainee<sup>3</sup> and rules that evidence obtained by breaking the law is inadmissible and has no legal force.<sup>4</sup> It is also a criminal offence for investigators and others to force a person to give testimony by use of threats or other illegal actions.<sup>5</sup> These conditions are, of course, in addition to the guarantees against torture contained in the international standards to which Georgia is party.

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<sup>1</sup> See *Concerns in Europe: July to December 1997*, AI Index: EUR 01/01/98, February 1998.

<sup>2</sup> Article 17.

<sup>3</sup> Article 18 (4), which reads "Physical and mental coercion of a person detained or otherwise restricted is not allowed". It should be noted, however, that while the prohibitions on torture under Article 17 are absolute, the rights under Article 18 may be suspended under a state of emergency (Article 46 of the Constitution).

<sup>4</sup> Article 42 (7).

<sup>5</sup> Article 195 of the Criminal Code. Such actions are punishable by from three to 10 years' imprisonment if accompanied by the use of violence or taunts towards the person questioned.

Nevertheless, the issue of torture and other ill-treatment has been a major one in Georgia over recent years. Amnesty International has frequently expressed its concern about persistent allegations of torture,<sup>6</sup> as have other foreign and domestic non-governmental organizations.<sup>7</sup> Indeed the Georgian government itself, in a report to the United Nations (UN) Committee against Torture in 1996,<sup>8</sup> admitted that it was seriously concerned about torture in custody; weaknesses in ensuring efficient and impartial investigation of complaints about torture; and the fact that those responsible frequently went unpunished. These and other aspects were listed as of concern by the Committee against Torture in its own review of Georgia's report,<sup>9</sup> and were again reflected the following year by the UN Human Rights Committee which, after its review of Georgia in April 1997, expressed deep concern among other things about the torture of detainees, including the use of torture to extract confessions, and deplored the fact that such acts usually went unpunished, causing a lack of confidence in the authorities which deterred victims from lodging complaints.<sup>10</sup> The Human Rights Committee was also deeply concerned about prison conditions, which it described as "disastrous", and noted with disquiet that some court proceedings had not met international fair trial standards. The Committee's recommendations included undertaking systematic and impartial investigations of all complaints of torture and ill-treatment, bringing those responsible to justice and compensating victims; systematically excluding confessions obtained under duress; and reviewing all convictions based on confessions allegedly extracted under torture.

Some progress has been made since these strong words from these UN Committees, but, regrettably, allegations of torture and ill-treatment continue. Examples are detailed below in this section. The allegations have related mainly to periods of short-term detention by the police (when beatings are sometimes reported to have been accompanied by extortion, with relatives facing financial or other demands in exchange for the detainee's release), or during the period of pre-trial detention (when detainees have alleged physical and psychological duress in

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<sup>6</sup> See for example *Georgia: Summary of Amnesty International's concerns*, AI Index: EUR 56/04/96, October 1996, *Georgia: Comments on the Initial Report submitted to the United Nations Committee against Torture*, AI Index: EUR 56/05/96, October 1996, *Georgia: Further brief summary of Amnesty International's concerns*, AI Index: EUR 56/03/97, February 1997 and *Georgia: Time to abolish the death penalty*, AI Index: EUR 56/01/97, January 1997.

<sup>7</sup> See for example Bulletin No. 1, May 1998, by the Georgian non-governmental organization "Former Political Prisoners for Human Rights".

<sup>8</sup> UN Doc. CAT/C/28/Add.1, 17 June 1996.

<sup>9</sup> See Concluding Observations of the Committee against Torture; Georgia 21/11/96, A/52/44, paras. 111-121.

<sup>10</sup> See Concluding Observations of the Human Rights Committee, Georgia, CCPR/C/79/Add. 75, 5 May 1997.

order to force confessions or obtain other information). In one extreme case a warrant is out for the arrest of a police officer for the rape, in a police station, of a young woman under 18. In another the head of a local council is said to have refused to let police intervene as an angry crowd beat and tortured a man to death. The army, too, has not been immune from allegations of brutal hazing of conscripts by, or with the tacit consent of, older soldiers and officers.

Obviously there are many factors involved in the issues of why torture has been such a persistent problem in a range of Georgia's places of detention, and what can be done about it. It takes time to overcome a Soviet-era mentality of policing and penal issues, and Georgia's economy is not sufficiently strong to provide levels of pay which would make the temptations of corruption less attractive, let alone ensure all of the comprehensive personnel training and repairs to infrastructure needed. There is much more that could be done that is not dependant on finance, however, and there are other aspects to the problem which owe less to economics and more to what is perceived by many to be a climate of impunity among law enforcement officials.

As the UN Human Rights Committee noted, the lack of a concerted, robust response by the authorities to numerous reports of torture has undermined confidence in official commitment to tackle this issue. Many alleged victims simply do not believe that their complaints will result in a rigorous, comprehensive and impartial investigation. Others are deterred from lodging complaints by a fear of reprisals, believing that any attempt on their part to bring those responsible to account - or simply to stop the ill-treatment - will only result in greater abuses against them or their relatives.

In many such instances, therefore, there may be no detailed, contemporaneous medical examination which could be used as one of the tools to test such allegations in court. Defendants in pre-trial detention too intimidated to lodge a complaint at the time of their alleged ill-treatment, and who choose to make such claims public when they finally appear in open court, can find judges reluctant to consider the issue if there is no record of complaint or accompanying medical examination from around the time of the alleged abuse. In other cases, even if the judge decides to permit a medical examination as a result of such claims, injuries may have healed or the time which has elapsed may be too great to permit an injury to be unambiguously ascribed to the torture or ill-treatment alleged.

There have of course been prosecutions for police excesses and brutality. In October 1997, for example, Temur Makharadze, head of a directorate in the General Prosecutor's Office responsible for supervising investigations and human rights protection with law enforcement bodies, said that 1,500 officials of the Interior Ministry had been punished for various legal violations over the previous two years, and that 94 criminal cases had been instituted against policemen for exceeding their authority.<sup>11</sup> Police officer P. Bezhanishvili, for example, was given four years' imprisonment in 1997 after the death of a man from head injuries in December the previous year. David Amashukeli had been arrested on suspicion of drug abuse following an altercation in the street, but doctors at the drug examination centre

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<sup>11</sup> Iprinda News Agency, 3 October 1997.

where he was taken reportedly stated that he had been so severely beaten that they were unable to carry out tests for drugs. The officer was found guilty of striking David Amashukeli several times around the head with a truncheon.

Not all cases have had positive outcomes, however. For example Amnesty International is currently seeking further information on the current status of Gela Kavtelishvili, a former deputy chief of the Tbilisi police department for combatting drug addiction and drug trafficking, who was convicted in May 1997 of charges which included using electric shocks on suspects while investigating a murder, in an effort to force them to confess. Witness Jumber Khidasheli, testifying at the beginning of the trial in August 1996, told the court that he had been insulted, beaten and tortured by the use of electric shocks in an effort to force him to confess to the killing.<sup>12</sup>

Gela Kavtelishvili was sentenced to four years' imprisonment. At the end of 1997, however, some of the witnesses in the trial alleged to Amnesty International that he was still free, and threatening them. During a mission to Georgia in May Georgian officials confirmed to Amnesty International delegates that Gela Kavtelishvili was still at liberty, pending the outcome of various appeals. As pre-trial detention, and detention following conviction pending appeal, are widely used in Georgia even for more minor offences, Amnesty International has expressed its concern that leaving a relatively high-level official at liberty after conviction on charges of ill-treatment does not send a strong, positive message about the state's commitment to deal sufficiently rigorously with the continuing issue of ill-treatment in detention.

For whatever reason, acts of torture and ill-treatment have gone unpunished, thereby entrenching an atmosphere of impunity. Amnesty International's recommendations on steps that can and should be taken to address the issue of torture and ill-treatment are given at the end of this section.

### ***Individual cases of alleged ill-treatment***

The following are among recent allegations of ill-treatment which have been raised by Amnesty International with the Georgian authorities. In each case the organization has urged a comprehensive and impartial investigation, with the results made public, any perpetrators identified brought to justice, and victims properly compensated.

- on 7 September 1997 it was reported that a 16-year-old woman had been raped in a police station in Marnueli, where she had gone to deliver food to her husband who was detained on suspicion of murder.<sup>13</sup> It was also alleged that a police officer had put a gun to the woman's forehead and threatened to kill her if she reported the incident. In March 1998 the Deputy

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<sup>12</sup> See *Georgia: A summary of Amnesty International's concerns*, AI Index: EUR 56/04/96, October 1996.

<sup>13</sup> Kavkasioni, No. 166, September 24, 1997 pp. 1, 3

Procurator General of Georgia, responding to a number of allegations of torture and ill-treatment raised by Amnesty International, confirmed that the assault had taken place. The woman, whom he named, was said to have been under 18 and to have been raped in an office in the administrative section of Marnueli Regional police station. An arrest warrant has been issued for the police officer concerned, who was then the subject of a police search after he had gone into hiding.

- on 26 September 1997 Joseph Topuria (also referred to as Topuridze) was reportedly verbally abused and then beaten by a traffic inspector in Tbilisi.<sup>14</sup> He lodged a complaint the same day with the Tbilisi City Police Traffic Department, but was allegedly beaten again, severely, by the Department's deputy head. A doctor who examined Joseph Topuria two days later is said to have recorded a dislocated jaw and other signs of beating. According to reports Joseph Topuria has twice approached the Isani District Procurator's Office, which both times refused to open an investigation. Recently the Isani District Court is said to have ruled that the District Procuracy should start an investigation, but any progress is currently not known to Amnesty International.

- on 27 September 1997, in the small town of Tsnori, Badri Tsindeliani was said to have been taken to the police station where he was held without charge, beaten about his head and body and on the soles of his feet, and had 300 lari (around US\$400) taken from him.<sup>15</sup> Seven police officers are alleged to have taken part in the beating, which is said to have lasted four hours, using their feet, fists and belts. Badri Tsindeliani was released the following morning, after the police officers had reportedly threatened to kill him if he did not keep silent. It was also reported that his money was not returned to him. A subsequent medical examination is said to have found that Badri Tsindeliani suffered from concussion as well as injuries to his eye and ear. No investigation is known to be under way in connection with the alleged assault.

- Gogi Shiukashvili was detained at around 2.00pm on 25 January 1998 by police from the Gldani district, Tbilisi, at a car repair workshop in Gldani, on suspicion of stealing wheels.<sup>16</sup> Gogi Shiukashvili alleges that he was beaten initially without explanation, and then in an attempt to make him say that another person detained was his brother. He was then transferred to the Tbilisi City Police Administration where he claims that he was severely beaten with truncheons over a period of 15 days until he confessed in writing to stealing wheels and several other crimes

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<sup>14</sup> Information from unofficial sources and the non-governmental organization The Liberty Institute.

<sup>15</sup> Bulletin No. 1, May 1998, of the Georgian non-governmental organization Former Political Prisoners for Human Rights.

<sup>16</sup> Ibid.

which he had not committed. Gogi Shiukashvili was then transferred again, this time to investigation-isolation prison No. 1. He alleges that for around the first two weeks he was at this prison he was virtually unable to move, owing to the beatings he had received prior to the transfer, and that 18 other detainees in his cell were witnesses to his condition. He is quoted as saying "I was beaten by truncheons. My nose was broken as a result of the tortures and beating. Presently I have severe headaches, I lose consciousness for several hours and forget everything. I wake up at night and tremble." Amnesty International understands that the Tbilisi City Procurator is investigating these allegations.

- On 19 February 1998 police in Tbilisi are said to have detained Malkhaz Kamsiashvili, who claimed that he was severely beaten both while being taken into custody and afterwards at the City Police Administration.<sup>17</sup> He claimed he was made to stand naked in freezing water, and was hit repeatedly on the stomach in an attempt to force him to confess. Malkhaz Kamsiashvili reportedly spent some time in the republican hospital for prisoners as a result of his injuries. It is further claimed that a medical examination on the basis of which it might have been possible to confirm or refute his allegations of ill-treatment was arranged only after 20 days.

- on or around 11 March 1998 local officials allegedly failed to intervene as a man was beaten and tortured to death by a crowd in the western Georgian town of Tsalendjikha. According to the sparse information available Sergo Kvaratskhelia, a stone carver, had been accused of defiling a grave and stealing money and drugs that had been buried with the deceased. He was severely beaten by those who thought him responsible and spent three days in hospital, but was then abducted by an angry crowd. The local (district) police are said to have called for help to the regional police station, which sent a contingent of some 40 armed officers. However, a crowd of some 20 to 25 people reportedly tortured Sergo Kvaratskhelia to death, and mutilated him, after the head of the district administration refused to let the police intervene in events, allegedly saying: "Don't interfere, these people know what they are doing". The heads of the district and regional police forces were also said to have been present at the time (the names of all three men are known to Amnesty International).

The head of the district police was said to have been removed from his post after a protest meeting in Tsalendjikha the following day, and the head of the regional police to have been dismissed in connection with another incident (he is now reportedly a customs officer). At the time, of writing the head of the district administration was still reported to be in post. The mother and brother of the man whose grave was defiled, and two other local men, have reportedly been arrested.

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<sup>17</sup> Ibid.

- On 16 March 1998, police officers from the Saburtalo district of Tbilisi detained 17-year-old Levan Gagua on suspicion of murdering his stepmother.<sup>18</sup> They are reported to have taken him to the second floor of Saburtalo district police station, where Levan Gagua was threatened with rape unless he repeated in the presence of his lawyer everything a policeman told him to say. It is also alleged that later that night four police officers drove Levan Gagua to the banks of the Mtkvari river where they again threatened to rape him and then shoot him, claiming that he had tried to escape. Levan Gagua was then transferred to the Tbilisi City Police Administration, where he claims that he eventually confessed in writing to murdering his stepmother after being tortured over a period of five days by use of an electric current passing through wires attached to his fingers. Amnesty International understands that Levan Gagua has now submitted in writing details about the alleged torture to investigator Gia Nukridze, who has initiated an investigation about these reports.

- On 6 May 1998, at around 10.30am four plainclothes police officers from the Gldani district of Tbilisi are said to have detained a 29-year-old Kurd named Jemal Teloyan near the Akhmeteli metro station.<sup>19</sup> The men reportedly did not introduce themselves or show any form of identification before driving Jemal Teloyan off in a white Zhiguli to Gldani district police station. There they are said to have beaten him severely, including by punching him while sitting on him as he lay on the floor. The officers reportedly said that Jemal Teloyan had a gun at home that he should bring to them. It is alleged that the officers then approached Jemal Teloyan's mother, whom they knew worked as a trader near the Akhmeteli metro station, brought her to the police station and demanded that she bring money to obtain her son's release. According to one report the sum mentioned was US\$1,000. The mother is said to have raised a sum of money and handed it over to the officers, whereupon Jemal Teloyan was released. It is further alleged that two of the four police officers involved (the name of one of these two has been given to Amnesty International) visited Jemal Teloyan at home several times after his release and made verbal threats against him in order to force him not to report the incident. Jemal Teloyan subsequently went into hiding. Amnesty International understands that officials from the Ministry of Internal Affairs visited the family after Jemal Teloyan's father submitted a written complaint, but is not aware of the outcome of any investigation instituted.

- Allegations of ill-treatment also came to light when defendants at a major political trial, many of whom had been in custody since 1995, began giving evidence after the start of proceedings in December 1997. Jaba Ioseliani, head of the now disbanded paramilitary Mkhedrioni (Horsemen) organization, and fourteen other defendants are on trial for a range of offences

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<sup>18</sup> Ibid.

<sup>19</sup> From unofficial sources and relatives interviewed by Amnesty International delegates in Tbilisi, Georgia, in May 1998. Jemal Teloyan himself was said to have gone into hiding at that time, for fear of reprisals.

including involvement in a failed assassination attempt on President Eduard Shevardnadze in August 1995. Thirteen of the defendants claim that they were beaten or otherwise ill-treated during interrogations in pre-trial detention.<sup>20</sup> Gocha Gelashvili, for example, claimed when he gave testimony at the end of January 1998 that he had suffered two broken ribs and a broken right arm. He named a former Interior Minister and a Tbilisi police chief as being among those who had tortured him. Another defendant, Gocha Tediashvili, also named the former minister as one of those responsible for allegedly torturing him including by pulling out his teeth with pliers. Gocha Tediashvili also claims that he had explosive material placed in his mouth, which was only removed when he agreed to confess as instructed by the investigators. A court-ordered forensic medical examination of five defendants was carried out at the beginning of the year. Although it was able to record the presence of certain injuries, such as the fracture of Gocha Gelashvili's right arm, caused by the impact of a heavy blunt object, it was not possible to draw conclusions as to the circumstances surrounding the injuries owing, among other things, to the passage of time since the injuries were said to have been sustained.<sup>21</sup>

#### *Allegations of ill-treatment in the army*

Beatings and ill-treatment have also been reported in the army, where poor living and sanitary conditions together with brutal hazing are said to have been the cause of many desertions. Elena Tevdoradze, Chairperson of the parliamentary Sub-Committee on Penal Reform, visited Rustavi corrective labour colony earlier this year, where 160 deserters were said to be serving sentences. She is quoted as saying that almost all those imprisoned said that they had deserted because of the brutal treatment of new recruits, poor food supplies and sanitary conditions, and widespread corruption - and that they preferred prison to requesting a pardon and being returned to the army.<sup>22</sup> At a Defence Ministry meeting in June, the chief of the general staff of the Georgian armed forces, Maj-Gen Joni Pirtskhalaishvili, is said to have reported that 150 criminal offences had been committed in the armed forces during the first five months of the year, including murder and the infliction of bodily injuries, and that four suicides had been recorded. He was also quoted as saying that to date no significant measure had been taken to resolve the problems of desertion and living conditions in the army.<sup>23</sup>

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<sup>20</sup> Various sources reporting from the trial. See for example PNA 18 December 1997 and Rezonansi No. 5, 5 - 11 January 1998.

<sup>21</sup> From an appeal by one of the defendant's lawyers, handed to Amnesty International in May 1998 in Tbilisi. The appeal disputes some of the methods, scope and conclusions of the medical examination, and urges a second examination.

<sup>22</sup> Rezonansi No. 81, 27 March 1998, page 4.

<sup>23</sup> Iprinda News Agency, 6 June 1998.

Lack of funding is a major contributory factor to the miserable conditions described by recruits. So also, however, is the practice known in Russian as “*dedovshchina*” - the brutal hazing of new recruits which, at best, involves forcing recruits to perform menial tasks, often outside official duties, and, at worst, can lead to beatings and suicide. Often such activity is alleged to have been with the consent or active participation of army officers, who reportedly condone these practices as a means of maintaining discipline.<sup>24</sup> A representative of the non-governmental Association for the Protection of Conscripts' Rights, which has set up a “Telephone of Trust” for conscripts to report problems, told Amnesty International delegates in May that this telephone line had received some 15-20 complaints of “*dedovshchina*” in the previous month alone. In such cases the association seeks Defence Ministry permission to enter barracks and interview the officers and conscripts concerned, in an effort to confront the problem. Although such an intervention may often resolve the issue in that particular case, it is said that offending officers are rarely transferred from the barracks, or charged.

The association's relations with the Defence Ministry are said to have improved since the appointment of a new Minister, Davit Tevzadze, in April 1998. Amnesty International hopes that the Minister, who is said to have described army conditions as “unbearable” at a press conference the following month, will ensure that vigorous steps are taken to address the issue of ill-treatment in the army.

#### ***Amnesty International's recommendations for ending torture and ill-treatment***

Torture and ill-treatment of persons under any circumstances are expressly prohibited under international agreements to which Georgia is party, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and the International Covenant on Civil and Political Rights. Amnesty International recognizes the problems that may exist within the law enforcement system, for example those caused by lack of funding for professional staff, training and infrastructure, or those caused by a lack of public confidence in the willingness of such a system to address abuses. These problems can never be used as an excuse, however, for torture and deliberate ill-treatment. Amnesty International recommends that the Georgian authorities:

- , criminalize torture as a distinct crime with appropriate punishments under national law, as defined in the Convention against Torture;<sup>25</sup>

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<sup>24</sup> Zurab Sparsiashvili, writing in the February - March 1998 issue of the journal Army and Society in Georgia - maintains that the low pay and low prestige of officers makes it difficult to attract the right personnel. Many are said to regard a career as an army officer as a last resort, and police officers dismissed for shortcomings are reported on occasion to enlist in the army as officers.

<sup>25</sup> Articles in Georgia's existing Criminal Code already envisage criminal responsibility under Article 110 for “intentional infliction of severe bodily injuries”, Article 111 for “intentional infliction of

- , inform all detainees of their rights, including the right to complain to the authorities against ill-treatment;
- , ensure that detainees under interrogation are informed promptly of the charge or charges against them, and that they are allowed prompt and regular access to a lawyer of their own choice, as well as to relatives and an independent medical practitioner;
- , implement prompt and impartial investigations of all complaints of torture or ill-treatment of detainees, and in cases where there are reasonable grounds to believe that torture or ill-treatment has occurred even if no complaint has been made (in line with Article 12 of the Convention against Torture);
- , as part of such investigations, ensure prompt, impartial and professional medical examinations of persons alleging torture or who may have been tortured;
- , bring those responsible for torture or ill-treatment of detainees to justice in the courts;
- , ensure that every victim of torture has access to the means of obtaining redress and an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible (in line with Article 14 of the Convention against Torture);
- , ensure that information regarding the absolute prohibition against the use of torture and ill-treatment is fully included in the training of law enforcement personnel and other persons who may be involved in the custody, interrogation and treatment of any individual subjected to any form of arrest, detention or imprisonment;
- , establish an effective system of independent inspection of all places of detention;
- , address the concerns and all the recommendations of the United Nations Committee against Torture and Human Rights Committee.

## **Review of alleged unfair trials of political prisoners**

Amnesty International has a very wide definition of a political prisoner, encompassing all those cases in which there is a significant political element (for example those who are accused of

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less severe bodily injuries” and Article 116 for “torture”. None of these, however, contains the definition of torture as given under the Convention against Torture, including specific mention of torture as an act carried out “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” (Article 1 of the Convention against Torture).

criminal offences but whose actual or imputed motive for such crimes is political). In its previous publications (see footnote six) Amnesty International has described in detail its concerns about some major political trials which have taken place since Georgian independence, and in which proceedings appear to have fallen short of international standards for fair trials. Violations reported have included the use of torture to obtain confessions; denial of prompt and regular access to a defence lawyer; and denial of access to case materials. In view of these allegations, and in line with a similar recommendation by the UN Human Rights Committee,<sup>26</sup> Amnesty International recommends:

, that officials conduct a full judicial review of all such cases in which it has been alleged, for example, that testimony was extracted under physical or psychological duress, or that there have been violations of international fair trial standards.

### **Failure to implement the law on a civilian alternative to compulsory military service**

Military service is compulsory for young men aged from 18 to 27. Although there have been laws since 1990 providing a civilian alternative for those unable to perform military service, these have remained on paper only. Those with conscientious objections have therefore remained at risk of prosecution for seeking to exercise their internationally-recognized right to refuse compulsory military service.

As far back as June 1990 what was then the Georgian Soviet Socialist Republic passed a law "On work (alternative) service", superseded in June the following year by a law "On civilian, alternative work service".<sup>27</sup> This 1991 law granted the right to perform a civilian service of non-punitive nature to those unable to carry out compulsory military service because of their conscience and convictions. No such service was ever set up and implemented, however, in part because of the severe economic dislocation and armed hostilities in parts of the country which marked the first years of independence.

The advent of more stable times still did not mark the establishment of such provisions for conscientious objectors. In one case that became known to Amnesty International, for example, a young man named Kakhaber Galashvili was given an 18-month prison sentence for

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<sup>26</sup> Recommendation No. 26 reads: "The Committee recommends that the State Party undertake systematic and impartial investigations into all complaints of ill-treatment and torture, bring to trial persons charged with violations as a result of these investigations, and compensate the victims. Confessions obtained under duress should be systematically excluded from judicial proceedings and, given the admission of the State Party that torture had been widespread in the past, all convictions based on confessions allegedly made under torture should be reviewed." ( UN ref. CCPR/C/79/Add.75, 5 May 1997)

<sup>27</sup> Proceedings of the Supreme Soviet of the Republic of Georgia, No. 6 (611), June 1991.

refusing his call-up papers. A Jehovah's Witness, Kakhaber Galashvili became eligible for conscription in 1994 and had subsequently twice (on 27 October 1995 and 23 April 1996) declared his objections to military service, stating that it conflicted with his religious beliefs. He was arrested on 29 May 1996, and on 5 July he was sentenced to 18 months' imprisonment by Rustavi City Court for "evading call-up to the armed forces or alternative work labour" (Article 81 of the Criminal Code). The Georgian authorities informed Amnesty International that he was released on 29 October 1996, but it is not clear whether this was following an appeal or some other review of his sentence. Unofficial sources believe that there may have been several such cases in recent years, but concrete details have been hard to obtain.

In September 1997 the Georgian parliament passed a new law on alternative service, which again grants the right to carry out civilian work to those unable to perform military service by virtue of their conscientiously-held beliefs. Amnesty International understands that the length of such an alternative service has been set at three years, one year longer than that for military service (apparently those serving alternative service are presumed to have greater free time and shorter working hours than military conscripts confined to barracks). Although set to come into force from 1 January this year, the law has nevertheless not been implemented or accompanied by the necessary mechanisms which would enable objectors to take advantage of its provisions.

One young man said to have fallen foul of this lack of provision is Amiran Meskheli, who was reportedly forcibly and illegally conscripted after writing an article on the army for a local newspaper.<sup>28</sup> After his article - an interview with an anonymous soldier on homosexuality in an army unit - appeared in the independent newspaper Orioni (from the Samtskhe-Djavakheti region), Amiran Meskheli was allegedly called up for military service without being served the relevant conscription papers or undergoing the necessary medical examination, and was sent to the military unit described in his article.<sup>29</sup> He applied to perform a civilian alternative service, and when this was refused he began a court action against the conscription office, the central conscription commission, and the Office of State. The respondents did not appear for the first hearing set for 17 August, and the proceedings were postponed until 3 September 1998.

Amnesty International is urging the Georgian authorities to:

implement in practice the law on alternative service, and ensure that it provides a fully civilian alternative of non-punitive length to all those whose religious, ethical, moral,

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<sup>28</sup> Resonance, No. 224, 18 August 1998.

<sup>29</sup> Although the Soviet-era criminalization of homosexual acts between consenting adult males was repealed six years ago (by a decree dated 3 August 1992 of the State Council then in power), there is rarely any public discussion of this subject. Homosexual rape remains a crime (in January 1998 the newspaper Akhali Taoba reported that a Georgian army sergeant had been sentenced by Dmanisi court to six years' imprisonment for raping a private, who later committed suicide).

- humanitarian, philosophical, political or other conscientiously-held beliefs preclude them from performing military service;
- , pending such implementation, to refrain from imprisoning anyone for refusing to perform compulsory military service on grounds of conscience;
- , establish independent and impartial decision-making procedures for applying a civilian alternative to military service;
- , ensure, after the introduction of a civilian alternative service, that all relevant persons affected by military service, including those already serving in the army, have information available to them about the right to conscientious objection and how to apply for an alternative service.

## **Concerns in the disputed region of Abkhazia**

The Georgian government is currently unable to exercise *de facto* control over two areas of its territory, as a result of hostilities in the late 1980s and early 1990s. One is South Ossetia (see below) and the other is Abkhazia, a former autonomous republic within Georgia in Soviet times and which is situated in the north-west of the country. Both these areas have their own legislative, executive and judicial structures operating independently of those in Georgia, but neither territory has been recognized internationally as a separate entity. Amnesty International has been addressing authorities in these two regions as those with *de facto* control (and responsibility), and not as a recognition of their status *de jure*.

Escalating tensions between Abkhazians and Georgians came to a head in August 1992 after Georgian troops entered the territory, taking the regional capital of Sukhumi (known to the Abkhazians as Sukhum) and precipitating fierce fighting. In September the following year Abkhazian forces broke a July cease-fire, and swiftly took control of the region. The conflict, with atrocities reported on both sides, left an estimated 10,000 people dead and some 250,000 displaced, including most of the local Georgian population. A tense and uneasy peace has since been maintained and monitored by a contingent of peacekeeping forces from the Commonwealth of Independent States (CIS, mainly from Russia), and a small United Nations Observer Mission (UNOMIG).

Flashpoints of conflict remain, especially in the southern district of Gali (called Gal by Abkhazians). This district lies on the Abkhazian side of the Inguri river border with Georgia, and over 90% of its pre-war population of some 90,000 was Georgian (mainly ethnic Mingrelians). Friction and distrust have marked relations here between the estimated 30,000 Georgians who have gradually returned and the Abkhazian forces. The civilian population of Gali district has endured an often wretchedly poor security situation, with the Abkhazian militia unable to maintain law and order in the region. Indeed, in addition to attacks by criminal elements, there

have been allegations that the population has been subjected to numerous acts of robbery, looting, beatings, arbitrary detention and even murder by forces under Abkhazian control.<sup>30</sup> In their turn Abkhazian law enforcement officials and CIS peacekeeping forces in the area have been subjected to frequent and often lethal attacks - over 60 CIS soldiers and a similar number of Abkhazian fighters have been reported killed since the CIS force was deployed in July 1994.<sup>31</sup>

The attacks have been blamed on Georgian guerilla forces, with groups calling themselves the White Legion and the Forest Brothers being among the most prominent. Abkhazian officials and CIS forces have also accused the Georgians of giving at the very least tacit backing to such groupings, claims which are denied by the Georgian government (see below).

In May this year an increasingly tense situation in the Gali district finally exploded into the worst fighting seen in Abkhazia since the end of the war. An attack by Georgian guerillas on a group of Abkhazian militia in the village of Repi on 18 May 1998 was the catalyst for a large-scale Abkhazian response against an increase in such actions, sparking hostilities which also, for a while, drew in troops from Georgia's Interior and Defence Ministries. Although hostilities subsided after a cease-fire agreement was reached on 25 May, by the time the fighting had died down over 200 people were estimated to have been killed and most of the Georgian population, said to number some 30 to 40,000 people, had once more fled across to the Georgian side of the Inguri river border.<sup>32</sup> Many left after what has been described as the systematic torching of their villages, in which an estimated 1,400 houses were destroyed.

Amnesty International is gravely concerned about reports that amid the fighting the civilian population of Gali district was the target of deliberate violence by Abkhazian militia or, at times, armed Abkhazians operating without militia documents but with apparent impunity. Civilians were allegedly deliberately killed, shot at and otherwise ill-treated, and had their homes deliberately set on fire and their property looted to prevent them returning. Some individuals attempting to return from Georgian-controlled Zugdidi in western Georgia to their residences in Gali to assess damage or collect personal belongings are also said to have been arbitrarily detained by Abkhazian fighters, in some cases as hostages.

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<sup>30</sup> See for example *Georgia: Summary of Amnesty International's concerns*, AI Index: EUR 56/04/96, October 1996, and *Concerns in Europe: January to June 1997*, AI Index: EUR 01/06/97, August 1997.

<sup>31</sup> PNA, 30 July 1998 - The Abkhazian Deputy Interior Minister reported that 61 Abkhazian militiamen had died and 68 had been injured during this time, with Georgian guerillas conducting 338 terrorist operations.

<sup>32</sup> Both sides have offered varying casualty figures. On 28 May the Georgian authorities reported that at least 239 people had died in clashes, including 200 Abkhazian fighters and 25 civilians. The Abkhazian side has reportedly claimed to have killed some 100 Georgian guerillas and Interior Ministry officers.

Amnesty International acknowledges that security considerations in such conflict and post-conflict situations often make independent investigation of such allegations extremely difficult, and that reports may also often come from sources with a very partisan point of view. The organization regrets, however, that it has as yet received no response from the Abkhazian authorities about its concerns (set out in more detail below), and so is unable to reflect their assessment of the claims made against forces said to be under their control.

### *Alleged deliberate and arbitrary killings*

Deliberate and arbitrary killings had been alleged before the latest outbreak of fighting in May, and Amnesty International has approached the Abkhazian authorities with its concerns on a number of occasions (without, unfortunately, receiving substantive responses).<sup>33</sup> Among recent allegations of deliberate killings, for example, was that of a 48-year-old villager, said to have been killed by Abkhazian fighters in the village of Dikhazurga on 26 May when he refused to show them where Georgian guerillas were hiding. On 6 June at Chuburkhinji six residents who had returned to tend their crops were reportedly forced at gunpoint from their homes in the village by Abkhazian fighters, who led them to the Inguri river, forced them into the water, and then fired on them as they swam across. One of the men, Bochia Kortua, while recovering in a Zugdidi hospital from bullet wounds, reported that two men named as Dzandzava and Ubilava were killed as a result, and three others wounded (including his 75-year-old father and a man named as Tsulaia). One 55-year-old resident of Otobaia village (his name is known to Amnesty International), speaking in June at Zugdidi hospital where he was suffering from second and third degree burns, claimed that he sustained his injuries after six uniformed and armed Abkhazians entered his home on 26 May, made a fire from all the linen, bed sheets and beds, and then threw him onto the fire.

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<sup>33</sup> Amnesty International has raised its concerns in writing, and during two visits by its delegates - in September 1997 and May 1998.

Amnesty International has urged the Abkhazian authorities to:

ensure the safety of all residents, regardless of their ethnic origin, by, among other things, instigating prompt, impartial and comprehensive investigations into all instances in which Abkhazian forces were alleged to have deliberately and arbitrarily killed civilians, or tortured or otherwise ill-treated them. The results of such investigations should be made public, with any perpetrators brought to justice within the bounds of international law and proper compensation made to the victims.

### ***Obstacles to the return of the civilian population***

Fire is also the agent used in what has been described as the widespread and systematic destruction of civilian housing in the Gali District (one international agency previously operating in Abkhazia estimated that some 1,400 houses had been rendered uninhabitable),<sup>34</sup> as part of a deliberate strategy to deter the return of the Georgian civilian population. On 26 May, for example, a day after a cease-fire was declared, journalists and residents who had fled from the village of Dikhazurga reported watching a mile away as Abkhazian forces torched homes in the village one by one. It is also alleged that there was a pattern of targeting houses rebuilt and/or reoccupied by those who had spontaneously returned, with unoccupied or decayed structures left unburned, in a manner that would discourage any future rehabilitation of villages and thus prevent large-scale return of the internally displaced population. According to the UN the burning of houses in the Gali district continued for some time after the May hostilities, and in areas where guerilla groups were suspected to have operated, the majority of houses seemed to have been destroyed. Many houses appeared to remain intact, however, in areas where the local population cooperated with the Abkhazian authorities.<sup>35</sup>

It is further reported that houses and villages were systematically looted before being burned, and that this looting appeared to have been well-organized, even to the point of the central Abkhazian militia department issuing "permits" for the transport of looted goods through checkpoints of the CIS peacekeeping forces (Abkhazian militia drafted into Gali have been deployed without adequate logistical support and rations, and so, in the words of the UN, have tended "to prey on the local population and the land to support themselves").<sup>36</sup> As most of the residents affected fled the swift onset of fighting with only a few personal effects, the loss of

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<sup>34</sup> The Georgian government put the number of destroyed houses at 1,731, in a statement to the UN Security Council on 16 June 1998 (UN ref: S/1998/516).

<sup>35</sup> Report of the UN Secretary General concerning the situation in Abkhazia, Georgia, UN ref: S/1998/647, 14 July 1998.

<sup>36</sup> Ibid.

their household goods, livestock, farming implements and crops has left them destitute and obviously further hampers their return.

Strict control by the Abkhazians of persons and traffic moving in and out of the Gali district is also obstructing the ability of the displaced persons to return. In his 10 June report to the Security Council, for example, the UN Secretary General writes "Many of these [displaced people] will not be able to return to their homes any time soon as a result of practices and policies of the Abkhazian authorities, which include, *inter alia*, a special regime for the entry of people into Abkhazia, charging of a 10-ruble fee for crossing the Inguri River and obstructing the passage of those who have Georgian residence identification in their passports".<sup>37</sup>

The UN Security Council itself, which in the past has also regularly condemned obstacles placed by the Abkhazians in the path of those displaced people seeking to return to their homes in Abkhazia, spoke out again after the events in May. Adopting Resolution 1187 (1998) at its meeting on 30 July, the Security Council, among other things, demanded "in particular that the Abkhaz side allow the unconditional and immediate return of all persons displaced since the resumption of hostilities in May 1998" and condemned "the deliberate destruction of houses by Abkhaz forces, with the apparent motive of expelling people from their home areas".<sup>38</sup>

Amnesty International is urging the Abkhazian authorities to:

- , take all appropriate and timely measures to ensure the voluntary return of refugees and displaced people, under conditions in which their safety, and the safety of any persons who have already spontaneously returned, could be guaranteed.
- , ensure that property and possessions of internally displaced persons are not used as objects of attack or reprisal, or destroyed or appropriated as a form of collective punishment.

### ***Alleged arbitrary detentions***

There are also reports that a number of Georgian civilians have been detained arbitrarily since the fighting began, usually for short periods.<sup>39</sup> In some cases it has been alleged that those detained were held as hostages, and/or with a ransom demanded for their release. Nodar

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<sup>37</sup> UN ref: S/1988/497, 10 June 1998.

<sup>38</sup> UN Security Council Press Release SC/6555, 3912th Meeting (PM), 30 July 1998.

<sup>39</sup> Vladimir Doborjginidze, deputy chairman of the State Commission for Prisoners of War, was quoted by PNA on 17 August 1998 as saying that the Abkhazian side had released 68 Georgians held since the May outbreak of hostilities.

Sharia, for example, was said to have been released at the beginning of June after relatives paid a substantial sum of Russian roubles (the currency in use in Abkhazia) to Abkhazian militia in the village of Kvemo Bargebi. Subsequently Sharia was said to have been detained again by Abkhazian militia, from the Ochamchira region, who were reportedly demanding 60 million an even larger sum for his release. On 22 July eight Abkhazian soldiers are said to have seized four ethnic Georgians and one Russian from the village of Orsantia in the Zugdidi region, on the Georgian side of the Inguri river, and to have taken them to the village of Otabaia in the Abkhazian controlled Gali district where they were being held to ransom. The four Georgians were named as Guram Beselia, Eter Khuperia, Rezo Kvaraia and Oler (also given as Onri) Sakheishvili; the name of the Russian detained was not reported. Eter Khuperia was released the same day, and claimed that the Abkhazians had threatened to shoot the other men unless they received the money demanded by 11.00am the following day. One of the alleged hostages, Oler Sakheishvili, was said to have been killed during the episode, and his body sent back with the other men once money had been handed over.

Before the May hostilities Amnesty International had received other allegations of arbitrary detention, with returnees to the Gali district frequently complaining that they had been detained after document checks and only released after paying what the Abkhazians regard as fines but which the returnees regarded as bribes. In two incidents in January this year, for example, around 70 ethnic Georgians were detained for short periods during what were described as passport checks. Around 40 Georgian residents from the villages of Tagiloni in Gali district and Shamgona in Zugdidi district were said to have been detained on 6 and 7 January by Gali police, who stopped the buses on which they were travelling in order to check passengers' identity papers. The detainees were taken to Gali police station, and reportedly held for illegally crossing the border along the Inguri river and for violations of the passport regime. On 26 January a further 70 Georgians in two buses and a car were stopped in the village of Tagiloni. The women and children were permitted to leave but around 30 men were taken to Gali, where it is said that Abkhazian officials were demanding payments of US\$200 each for their release. All those detained were released by 29 January, reportedly after payments had been made.

Amnesty International delegates raised these issues with Abkhazian authorities during the May visit, expressing concern at reports that legitimate security checks could be exceeded to the point of being regarded as arbitrary detention, harassment and a source of extortion. Aslambey Kchach, the Interior Minister, told delegates that fines of up to 100 Russian roubles could be imposed for illegally crossing the border (the Inguri river crossing is the only officially recognized one in the Gali sector) or for not possessing official Abkhazian registration papers. While acknowledging that there may be individual cases of extortion, which would be punished if revealed, he said that he was not aware of any such abuses being committed in a systematic fashion.

Amnesty International is urging the authorities to ensure that:

, no one is detained outside of legitimate administrative and criminal procedures; that those placed under arrest are charged with a recognizably criminal offence or released; and that no one is held as a hostage.

### *Activities of Georgian guerilla groups*

There is little hard information on the scale and composition of Georgian guerrilla groups (described as “partisans” by supporters on the Georgian side, and “terrorists” by the Abkhazians) operating in Abkhazia. Two of the most prominent armed groups are known as the White Legion and the Forest Brothers, and their members are said to be drawn mostly from the internally displaced Georgian community frustrated at the lack of progress in ensuring their safe return to homes they occupied before the war. Activities have ranged from attacks by individuals to organized sabotage of power supplies, with observers suggesting that there has been an increased sophistication in coordination and weaponry over the past year. The October 1997 Secretary General’s report to the UN Security Council, for example, recorded that armed groups operating from south of the Inguri river (ie from the Georgian side of the border) had begun to infiltrate small groups deep into Abkhazian territory, and appeared to have acquired weapons equipped with night vision capability.<sup>40</sup> Targeting of Abkhazian and CIS peacekeeping forces, through mine laying and ambushes among other things, certainly increased in frequency prior to the May hostilities, and added to the atmosphere of tension and apprehension in the Gali district.

The Abkhazian side has claimed frequently and bitterly that guerilla forces operating in Abkhazia have the support of the Georgian government, which does not act with sufficient rigour to clamp down on the activity of those who launch their attacks from Georgian controlled territory. Russian officials from the CIS peacekeeping forces, also a target of guerilla activity, have made similar claims. For example, after five soldiers from the CIS peacekeeping force were killed by a mine on 12 July this year, the Russian Foreign Ministry issued a statement two days later condemning the killings as an act of terrorism by Georgian guerillas and said that “any attempts to present the White Legion or the Forest Brothers as organizations that have nothing to do with the Georgian special services are an attempt to ignore reality”.<sup>41</sup>

The Georgian Interior and Security Ministries issued a statement on 16 July rejecting the accusations,<sup>42</sup> and the Georgian government has persistently denied having any links with

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<sup>40</sup> UN ref. S/1997/827, 28 October 1997, paragraphs 22 and 23.

<sup>41</sup> See RFE/RL Newsline Vol. 2, No. 134, 15 July 1998.

<sup>42</sup> Kavkasia-Press, 16 July 1998. The Georgian ministries claimed that the mines (including one which killed six civilians, two of them women, who were travelling on a cart in the village of Sida

or support, financial or otherwise, to the armed groups. To Amnesty International's knowledge, however, no criminal proceedings have been initiated against any suspects although some have a high profile locally, or in the press. In the western town of Zugdidi, for example, close to the Inguri river border, men said to be local commanders of the White Legion reportedly move openly around the town and surrounding areas, with the tacit approval of the local authorities. Members of armed groups are said to have given press interviews during the May fighting in Gali,<sup>43</sup> and the leader of the White Legion, Zurab Samushiya, is regularly quoted by domestic and international media. He was, for example, interviewed and photographed by the British daily The Guardian in June while he was recuperating in Tbilisi from a leg wound sustained in the fighting<sup>44</sup>. In that interview Zurab Samushiya claimed that the White Legion had "executed" 47 members of the CIS peacekeeping forces.

There have also been claims that the Georgian security ministry has been involved in training members of armed groups, including in sophisticated sabotage techniques. In November 1996, for example, UNOMIG observers discovered a paramilitary group of some 50 men, "many of whom were internally displaced persons with connections to known insurgent groups", in a camp in the restricted weapons zone on the Georgian side of the Inguri river.<sup>45</sup> UNOMIG was initially refused access to investigate, but was eventually allowed to visit the unit after making protests. The Georgian security service informed UNOMIG that the unit "had been formed to control amnestied criminal elements who had committed crimes in Abkhazia" and who were at that time living in the Zugdidi area. They had been given the choice of either joining the unit or being expelled.

Some individual Georgians in authority have also been linked with the guerilla forces. The White Legion, for example, is said to have links with Tamaz Nadareishvili, the chairman of the Abkhazian parliament in exile composed of the ethnic Georgian deputies from the Abkhazian parliament elected in 1991.<sup>46</sup> Two members of the Georgian national parliament were also

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on 15 May 1998) were laid by Abkhazians seeking to destabilize the situation.

<sup>43</sup> Army and Society in Georgia, v. 6, #5, 25 June 1998.

<sup>44</sup> The Guardian, 13 June 1998. Samushiya has also given interviews to the Georgian press: see for example the PNA report of 24 July 1998.

<sup>45</sup> UN ref. S/1997/47, 20 January 1997.

<sup>46</sup> In an article about the May hostilities, "Guerillas keep on fighting", Georgian journalist Besik Kurtanidze claims that as a result of Tamaz Nadareishvili's assertion that the Abkhazians would not be able to withstand a Georgian offensive, the guerillas were promised arms and stand-by troops by Georgian authorities and therefore came out of hiding and operated more openly. Kurtanidze also claims that the White Legion's fighting capacity had been weakened among other things by a conflict between its leaders and Tamaz Nadareishvili, which resulted in it receiving few arms and ammunition (Army and Society in Georgia, v. 6, # 5, 24 June 1998).

involved in an incident that was among those raising tensions in early May this year, when they entered Abkhazia accompanied by guerilla forces. Bezhan Gunava and Herman Patsatsia crossed the Inguri into Abkhazia on 9 May under the protection of the Forest Brothers, raised the Georgian flag over the village of Pichori - declaring it liberated - and distributed aid to the villagers.<sup>47</sup> The visit of such official figures together with the guerillas, and its openness, was viewed as a provocation by the Abkhazian side - and as another indication of the Georgian government's unwillingness to take resolute measures against terrorist activities.

Naturally there are difficulties in identifying members of semi-clandestine, illegal armed formations, and many measures being taken may, for security reasons, remain secret. Amnesty International has raised with Georgian officials the question of alleged links between the government and armed formations. Beyond a simple denial of any connections, however, the organization has received no indication of substantive measures being taken to investigate the alleged complicity of some of those in authority in Georgia in the arming and operation of these groups, nor of concrete steps being taken to apprehend known individuals who have claimed involvement. Amnesty International is continuing to urge the relevant Georgian authorities to take all appropriate steps to ensure that anyone within Georgian jurisdiction responsible for human rights abuses in Abkhazia is apprehended and brought to justice.

### *Imprisonment of conscientious objectors*

Among other areas of concern in Abkhazia not linked directly to the situation in Gali district are the imprisonment of conscientious objectors and the death penalty.

Military service is compulsory in Abkhazia, and there is no civilian alternative to those whose conscience, religion or other beliefs preclude them from serving in the armed forces. Officials speaking to Amnesty International delegates who visited Sukhumi in May 1998 argued that the uncertain security situation made it extremely unlikely that any moves towards an alternative civilian service would be made in the near future. In the meantime those who find military service in conflict with their beliefs face imprisonment for seeking the internationally-recognized right to exercise freedom of conscience. At least six young men were imprisoned on these grounds earlier this year, and at least one remains imprisoned at the time of writing.

### *International law and conscientious objection*

The right to conscientious objection is a basic component of the right to freedom of thought, conscience and religion, as articulated in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Convention for the

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<sup>47</sup> See for example [Resonance](#), #34, 18-24 May 1998, which also carried pictures. Georgian news agency PNA on 12 May 1998 also quoted Herman Patsatsia as saying that the Georgian guerilla movement should be provided with state funding for weapons, and that he intended to spend his time between parliamentary sessions with the guerillas.

Protection of Human Rights and Fundamental Freedoms. It has been recognized as such in resolutions and recommendations adopted by the United Nations Commission on Human Rights, the United Nations Human Rights Committee, the Council of Europe and the European Parliament.<sup>48</sup>

These bodies have all urged governments to guarantee that individuals objecting to compulsory military service because of their conscientiously held beliefs are given the opportunity to perform an alternative service. They have stated explicitly in a number of resolutions that this alternative service should be of a genuinely civilian character and of a length which cannot be considered as punitive. They have also recommended that individuals be permitted to register as conscientious objectors at any point in time before their conscription, after call-up papers have been issued, or during military service. Likewise, the United Nations Commission on Human Rights, the Council of Europe and the European Parliament have emphasized that information about how to seek recognition as a conscientious objector should be readily available to all those facing conscription into the armed forces - as well as to those already conscripted.

In October 1997, the importance which the Council of Europe attaches to the recognition of the right to conscientious objection and the provision of a genuinely civilian alternative service in each of its member states was reflected in the decision of the Council's Steering Committee for Human Rights to convene a Group of Specialists to assist member states with the drafting and implementation of appropriate legislation in this area and to raise public awareness of the issue.

Likewise, in November 1997, both the Council of Europe and the European Union reminded participating states in the Organization for Security and Co-operation in Europe (OSCE) at the OSCE's Human Dimension Implementation Meeting in Warsaw that recognition of the right to conscientious objection to military service is an important part of the Organization's commitment to upholding freedom of thought, conscience and religion for all people living in the OSCE region.

Amnesty International considers a conscientious objector to be any person liable to conscription for military service who refuses to perform armed service for reasons of conscience or profound conviction. Their profound conviction may arise from religious, ethical, moral, humanitarian, philosophical, political or similar motives. But regardless of their objection, the right of such individuals to refuse to carry weapons or to participate in wars or armed conflicts must be guaranteed. This right also extends to those individuals who have already been conscripted into military service, as well as to soldiers serving in professional armies who have developed a conscientious objection after joining the armed forces. Wherever such a person is detained or imprisoned solely because they have been refused their right to register an objection

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<sup>48</sup> For further information on the issue of conscientious objection in general see *Out of the margins: The right to conscientious objection to military service in Europe*, AI Index: EUR 01/02/97, April 1997.

or to perform a genuinely alternative service, Amnesty International will adopt that person as a prisoner of conscience.

Amnesty International does not question the right of governments to conscript individuals into the armed forces, nor does it agree or disagree with the motives of individual conscientious objectors. In keeping with the international standards mentioned above, however, Amnesty International insists that all those liable to conscription are given the opportunity to perform an alternative to armed service on the grounds of their conscience or profound conviction. On this basis, Amnesty International campaigns for the development of law and procedure which make adequate provision for conscientious objectors, and for the release of all those imprisoned solely on those grounds.

### *Conscientious objectors in Abkhazia*

All the young men known by Amnesty International to have been imprisoned in Abkhazia for refusing military service have been Jehovah's Witnesses, whose beliefs forbid them taking up arms for a secular power or swearing a military oath of allegiance.

Jehovah's Witnesses report that their religious beliefs - especially their refusal to serve in the army - have frequently led them into conflict with the authorities, who responded by banning their activity in a decree issued by President Vladislav Ardzinba on 10 October 1995.<sup>49</sup> In material compiled on their situation in Abkhazia from early 1992 to May 1998, the Jehovah's Witnesses allege numerous violations of their rights, including the break-up of their meetings and attempts to preach; house searches and confiscation of literature without a warrant; and short-term detention accompanied by verbal threats and physical assaults. For example on 29 March this year Arsen Topchyan, who had arrived from Russia to visit his parents in the village of Alakhadzy, was reportedly detained by State Security officers and severely and repeatedly beaten while held in a cell in the city of Gagra. No charges were said to have been brought against him during the three days he was in detention, and his parents reportedly obtained his release after paying the large sum of money demanded.

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<sup>49</sup> The decree is said to read: "In accordance with Articles 18, 30 and 33 of the Constitution of the Republic of Abkhazia, and in connection with the unlawful activities of the Jehovah's Witness sect, which is conducting propaganda aimed at undermining state security, inflaming religious discord, deformation of the personality and which is having a negative effect on the upbringing of the younger generation, I decree that a) the activity of the Jehovah's Witness sect on the territory of Abkhazia be banned; b) the prosecutor general of the Republic of Abkhazia, Anri Jergenia, and the chairman of the Security Service of the Republic of Abkhazia, Astamur Tarba, take the necessary measures to implement this decree, and, if necessary, bring the appropriate criminal charges against persons engaged in the propaganda of Jehovist ideas."

Although criminal cases are said to have been opened against at least four women Jehovah's Witnesses for allegedly harmful religious activities,<sup>50</sup> to Amnesty International's knowledge the only members of the sect to have been imprisoned so far have faced charges related to their refusal to perform military service. In March 1996 for example it was reported that three men had been sentenced to 30 months' imprisonment for refusing conscription. A further round of arrests was reported in April 1998, when five men were arrested. The available details on them are as follows:

- 1) Chan Agrba, from the village of Mgudzera, born on 17 November 1969 and arrested on 15 April 1998.
- 2) Garik Argun, born in 1955, and arrested in April 1998.
- 3) Guram Eseva, born on 5 July 1962 and arrested in April 1998.
- 4) Vitaly Kacharava, from the village of Agindzra, born on 2 June 1954, married with four children, and arrested on 1 April 1998.
- 5) Maksim Harazia, from Gudauta, born on 6 August 1973 and arrested on 15 April 1998.

All the men were said to be held in Dranda prison. They were released in June (Maksim Harazia on 4 June, the others on 18 June), but the charges against them were not dropped and the investigations are said to be continuing. From their ages it would appear that all but Maksim Harazia were sentenced for refusing some sort of reserve service, rather than the two-year military service compulsory for all males between the ages of 18 and 27.

The one man said still to be imprisoned is named as Adgura Ashuba, born in 1977 and from Sukhumi. It appears that he had deserted from the Abkhazian armed forces some time ago and then, having become a Jehovah's Witness, refused to return and complete his service. He was arrested in March this year, and on 4 May he was sentenced to five years' imprisonment for desertion under Article 265 of the Criminal Code.

#### *Amnesty International's recommendations on conscientious objection*

Amnesty International is urging the Abkhazian authorities to:

- , release immediately and unconditionally all those imprisoned for their refusal on conscientious grounds to perform military service, and refrain from imprisoning anyone else as a conscientious objector;

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<sup>50</sup> Criminal proceedings are said to have been initiated against Ineza Bazba, Snezhanna Kudrayshova, Larisa Gogokhia and Lika Gogokhia under Article 233 of the Criminal Code of the Georgian Soviet Socialist Republic (the one still in use in Abkhazia) for "infringing the person and rights of citizens under the appearance of performing religious ceremonies".

- , introduce without delay legislative provisions to ensure that a civilian alternative of non-punitive length is available to all those whose religious, ethical, moral, humanitarian, philosophical, political or other conscientiously-held beliefs preclude them from performing military service;
- È establish independent and impartial decision-making procedures for applying a civilian alternative to military service;
- , ensure, after the introduction of a civilian alternative service, that all relevant persons affected by military service, including those already serving in the army, have information available to them about the right to conscientious objection and how to apply for an alternative service.

### ***The death penalty***

Abkhazia retains the death penalty, imposing it in accordance with the criminal code inherited from when Georgia was a Soviet republic. Sentences can be appealed to a higher court (appeals by those sentenced by the Abkhazian Supreme Court as the court of first instance are heard by the court's presidium, and the trial judge does not participate), and the president has the power to issue a pardon.

In May the Amnesty International delegation was informed that there were 12 people on death row at that time, including a woman convicted of murdering her family and held in Dranda prison. Two other death sentences had been commuted by way of pardon. No executions are said to have been carried out since 1993, as the result of an unofficial moratorium.

One further pardon was issued recently, to a Georgian sentenced to death for war crimes. Lt.-Col. Ruzgen Gogokhiya (born in 1953 and from the Salindzhitsky district of Georgia) had been detained in Abkhazia in May 1994, in connection with alleged acts of sabotage and terrorism, including the murder of civilians, in Gali district during the war which broke out in 1992.<sup>51</sup> The case was heard, and the sentence passed, by a military tribunal on 5 December 1995. He was said to have been released on 18 July 1998.

### ***The death penalty as a violation of human rights***

Amnesty International opposes the death penalty in all cases throughout the world, and without reservation, on the grounds that it is a violation of the universally guaranteed right to life and constitutes the ultimate cruel, inhuman and degrading punishment. No matter what reason a government gives for killing prisoners and what method of execution is used, the death penalty

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<sup>51</sup> For further details see *Georgia: Summary of Amnesty International's concerns*, AI Index: EUR 56/04/96, October 1996.

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cannot be divorced from the issue of human rights. Article 3 of the Universal Declaration of Human Rights proclaims that "Everyone has the right to life". Article 5 categorically states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Amnesty International believes that the death penalty violates these rights.

Many governments share this view, and have recognized that the death penalty cannot be reconciled with respect for human rights. The United Nations has declared itself in favour of abolition. The Council of Europe has included a moratorium on executions and moves towards complete abolition among its provisions of entry for states of the former Soviet Union. Over 100 countries in the world today have abolished the death penalty in law or practice, including three countries of the former Soviet Union (Moldova, Georgia and Azerbaijan).

One of the most common justifications among states that retain this punishment is that, terrible as it is, the death penalty is necessary as a deterrent against crime. Countless men and women throughout the world have been executed on the assumption that their deaths will deter others from crime, especially the crime of murder. Yet study after study in diverse countries has failed to find convincing evidence that the death penalty has any unique capacity to deter others from committing particular crimes. It is wrong to assume that all those who commit such a serious crime as murder do so after rationally calculating the consequences. Murders are often committed in moments of passion, when extreme emotion overcomes reason. They are also committed under the influence of alcohol or drugs, or in moments of panic when the perpetrator is caught in the act of committing another crime, such as stealing. Some murderers are highly unstable and mentally ill. In none of these cases can fear of the death penalty be expected to act as a deterrent.

There is another serious flaw in the deterrence argument. People who plan serious crimes in a calculated manner may decide to proceed, despite the risk, in the belief that they will not be caught. Criminologists have long argued that the way to deter such people is not to increase the severity of the punishment but to increase the likelihood of detection and conviction. Indeed the death penalty may even have the reverse effect to that intended. Someone who knows that they risk death for the crime they are committing may be more likely to kill witnesses or others who could identify or incriminate them.

Furthermore, crime figures from abolitionist countries fail to show that the abolition of the death penalty produces a rise in the crime rate. A study of research findings on the relationship between the death penalty and homicide rates, conducted for the United Nations Committee on Crime Prevention in 1988, concluded that "this research has failed to provide scientific support that executions have a greater effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis". Every society seeks protection from crime, but the argument that the death penalty is a better protection than other punishments is illusory.

Another argument is that permanently incapacitating a prisoner - by killing them - prevents that person from repeating the crime. But there is no way to be sure that the prisoner would have repeated the crime if allowed to live, nor is there any need to take the prisoner's life for the purpose of incapacitation: dangerous offenders can be kept safely from the public without

resorting to execution, as shown by the experience of many abolitionist countries. The death penalty takes the lives of offenders who might have been rehabilitated. Incarceration in prisons and other institutions which isolate offenders from society also has another great advantage over the death penalty as a means of incapacitation: the mistakes which result from fallible judicial systems can be corrected, at least partially.

When the arguments of deterrence and incapacitation are discounted, there is a more deep-seated motivation for the death penalty: that of just retribution for the particular crime committed. According to this argument, certain people deserve to be killed as a repayment for the evil done: there are crimes so offensive that killing the offender is the only just response. Basing the death penalty on retribution, however, makes impossible demands on the criminal justice system. Risks of error and unfairness exist in all such systems. No criminal justice system is, or conceivably could be, capable of deciding fairly, consistently and infallibly who should live and who should die.

In its simplest form the argument for retribution is also often no more than a desire for vengeance masked as a principle of justice. The desire for vengeance can be understood and acknowledged but the exercise of vengeance must be resisted. The history of the endeavour to establish the rule of law is a history of the progressive restriction, in public policy and legal codes, of personal vengeance.

The argument for retribution is an emotionally powerful one. It is also one which, if valid, would invalidate the basis for human rights. Central to fundamental human rights is that they are inalienable. They may not be taken away even if a person has committed the most atrocious of crimes. Human rights apply to the worst of us as well as the best of us, which is why they protect all of us.

In practice the death penalty is an arbitrary punishment. It is irrevocable and always carries the risk that the innocent may be put to death. The irrevocable punishment of death removes not only a person's right to seek legal redress for wrongful conviction, but also the state's capacity to correct its errors.

Amnesty International welcomes the *de facto* moratorium on executions, but is urging the Abkhazian authorities to:

- , commute all existing death sentences, as well as any that may be imposed before formal abolition of the death penalty;
- , prepare public opinion for abolition of the death penalty;
- , prepare and enact legislation to remove the death penalty completely from the criminal code as a possible punishment.

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## Concerns in the disputed region of South Ossetia

South Ossetia, the other area which is currently outside the *de facto* control of the Georgian authorities, lies to the north of Tbilisi, Georgia's capital, and borders the autonomous republic of North Ossetia (Alania) in the neighbouring Russian Federation.

Amnesty International has been approaching the South Ossetian authorities about issues of concern in the region under their control, and the organization's delegates discussed these further during a visit to the area's capital, Tskhinvali (known as Tskhinval to the Ossetians), in May this year. The broad areas of concern are outlined below.

### *Death in custody of Mr Bolotayev*

Among the issues discussed with the then South Ossetian Procurator General in Tskhinvali, Merab Chigoyev, was the death in custody in 1997 of Mr Bolotayev (whose first name is not known to Amnesty International), from the village of Artsev. Mr Bolotayev had been arrested on suspicion of taking part in the robbery of a family in a neighbouring village, and died in his cell in Tskhinvali investigation-isolation prison on 6 September 1997. It is alleged that his death was as a result of an earlier severe beating by Ossetian law enforcement officials at the premises of the Criminal Investigation Department.

The Procurator reported that a criminal case had been opened and that after a difficult investigation two highly placed officials of the Interior Ministry, including the head of the Criminal Investigation Department, had been arrested on charges of exceeding their authority and inflicting intentional bodily harm. At the time of the visit by Amnesty International delegates in May 1998, however, the proceedings had still not come to trial owing to differing opinions as to which court should hear the case.

With regard to general prison conditions, both the Procurator General and Kosta Kochiyev, advisor to South Ossetian President Lyudvig Chibirov, acknowledged that conditions were very poor and did not conform to their own, let alone international, standards. Financial constraints made the provision of adequate food, medical treatment and sanitary conditions a great problem. South Ossetia also currently has no facilities for accommodating prisoners apart from in the Tskhinvali investigation-isolation prison, although by law most convicted prisoners should be transferred to premises with a less restrictive regime (no such premises had been located on the territory prior to its conflict with the central Georgia government).

Nine proposals on improving the legal system and conditions of detention were said to be before parliament in May, and the South Ossetian authorities were also reported to have decided to build their own ordinary-regime corrective labour colony for convicted prisoners. Recognition that conditions in the area's only prison were substandard was also said to be behind a presidential decree of 4 May 1998, which reduced by one quarter the sentences of all those imprisoned for over one year (one of those who benefitted was Alan Chochiyev, a former leading political figure in the area, who was detained in Vladikavkaz, North Ossetia, on 11 September 1995. He was subsequently transferred to South Ossetia, where he was sentenced

to five years' imprisonment on 19 June 1996 on charges of embezzlement. His supporters claimed the charges had been fabricated by political opponents, and alleged other procedural irregularities such as a wrongly dated arrest warrant, lack of access to a defence lawyer at one point, and that the court refused to call relevant witnesses and experts. Alan Chochiyev was released early on 16 June 1998).

Amnesty International is calling on the South Ossetian authorities to:

, ensure that all allegations of ill-treatment in detention, including that of Mr Bolotayev, are subject to comprehensive and impartial investigation, with the results made public and any perpetrators identified brought to justice within the norms of international law.

### ***No civilian alternative to compulsory military service***

Military service is compulsory in South Ossetia, and there is no civilian alternative for those who may have conscientious or other objections. Conscription is only applied to ethnic Ossetians, on the territory controlled by South Ossetia. Speaking to Amnesty International delegates in May, presidential advisor Kosta Kochiyev claimed that there were no cases of young men refusing to serve, and that the uncertain situation over the area's political status militated against the introduction of a civilian alternative service (presumably because it is perceived as weakening potential defensive capacity).

Amnesty International has pointed out that the right to conscientious objection is a basic component of the right to freedom of thought, conscience and religion, as articulated in international standards (and detailed above in the section on Abkhazia). The organization is urging the South Ossetian authorities to introduce a fully civilian alternative of non-punitive length, with a fair procedure in law for applying it, in recommendations similar to those made to officials in Abkhazia and outlined above.

### ***The death penalty***

South Ossetia is currently using the Criminal Code of the neighbouring Russian Federation, which retains the death penalty for five offences (Article 105 pt. 2 - aggravated murder, Article 227 - attempt on the life of a state or public official, Article 295 - attempt on the life of a person involved in the judicial or preliminary investigation process, Article 317 - attempt on the life of a law enforcement official, and Article 357 - genocide). The president of South Ossetia has the power to commute sentences, including death sentences.

Officials have told Amnesty International, however, that there have been no death sentences passed or executions carried out in the years that South Ossetia has not been under Georgian control. An unofficial moratorium is said to be in place, with an understanding that courts will not pass death sentences. This is said in part to be because of the poor state of prison conditions outlined earlier: there are no special facilities for keeping condemned prisoners,

and the conditions are felt in general to be too harsh for those whose death sentences may be commuted to lengthy periods of imprisonment.

There is also said to be discussion in official circles about the possibility of abolishing the death penalty completely, with the ground being prepared to bring before parliament the relevant proposals on amending the criminal code.

Amnesty International has welcomed the moratorium on death sentences and executions, but is urging the South Ossetian authorities to take further steps to abolish the death penalty completely and *de jure*, thereby joining the worldwide trend towards abolition.