

Human Rights Watch

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Letter to President Saakashvili

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I am writing to share with you the results of Human Rights Watch's recent meetings with government officials in Tbilisi to discuss torture prevention measures. Human Rights Watch is encouraged by your government's recent steps to stem the use of torture by law enforcement agencies and we urge you to use the momentum of these reforms to extend these efforts further.

Dear President Saakashvili,

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The aim of our meetings, which were from June 25 to June 30, was to follow up on the recommendations that we made in our April 2005 briefing paper, Georgia: Uncertain Torture Reform. Our representatives met with the Procurator General Zurab Adeishvili, Minister of Internal Affairs Vano Mrabishvili, Minister of Justice Konstantin Kemularia, the chair of the Supreme Court, Konstantin Kublashvili, the Presidential Secretary to the Parliament, Pavle Kublashvili, the Deputy Chair of the Parliamentary Legal Committee, Giga Bokeria, the Chair of the Human Rights and Civil Integration Committee, Elene Tevdoradze, and the Deputy Public Defender, Bacho Akhalaia.

I wish first to thank your government for the level of cooperation shown in our meetings. Human Rights Watch commends your government for the recent and significant amendments to the Criminal Procedure Code, including making out-of-court statements inadmissible as evidence unless confirmed in court, and the reduction of pretrial detention time limits. Other positive developments have included an increase in the numbers of police officers prosecuted for torture related crimes or other illegal treatment, and the monitoring system for police stations under the framework of the Public Defender's Office.

These are all positive steps and appear to be beginning to reduce the number of complaints of torture in Tbilisi. However, it cannot be expected that Georgia's long-standing and complex problem of torture will be eradicated quickly, and a sustained and long term approach will be necessary. It is in this context that we raised several issues, detailed below, for consideration in our meetings during our mission.

In our meetings with the Minister of Justice and the Deputy Chair of the Parliamentary Legal Committee, we were pleased to learn that the government has already decided to publish the report on the visit to Georgia in 2003 and 2004 by the European Committee for the Prevention of Torture (CPT), a key recommendation of our report, and to accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Implementing the CPT's recommendations and the provisions of the Optional Protocol to the Convention will be essential to achieving further progress and we look forward to finding out what steps the government proposes in order to carry this process forward.

In our meetings with the procurator general, the minister of internal affairs, and others, we received positive comments to our suggestions, outlined below, for reforms in the area of plea bargaining, identification of law enforcement officers, and suspension of officers under suspicion of having tortured or abused detainees.

Our April report discussed how in some cases, accused people are dissuaded from making or pursuing complaints of torture when prosecutors offer a plea bargain. We understand that it is illegal under Georgian law for a law enforcement officer to make a plea bargain conditional on not proceeding with a complaint of police abuse or to use any other incentive or threat for this purpose. However, since plea bargaining is a new phenomenon in Georgia, it would seem useful to give clear protection in the law to a victim of torture who wishes to make a plea bargain. We therefore proposed the following reform:

Our research also found that many investigations of torture or mistreatment allegations were not prosecuted because the victim of abuse

was not able to identify the police officers responsible for the abuse. In practice, this situation should not arise, since it is the duty of the detaining authorities to control and record who has access to a detainee. Further, those who have access to a detainee should be clearly identified. We therefore suggested the following measures:

In order to ensure that an abusive officer cannot continue to abuse detainees after a complaint has been made or there is other information to indicate that the officer has been involved in torture or other serious mistreatment, we suggested that the authorities institute the following practice:

According to our information, this practice has not yet been instituted. We seek your confirmation that in the following case the police officer accused of torturing Eldar Komenishvili in April 2005 was not suspended from active duty. Eldar Komenishvili was a prisoner who was being held in Prison No.1 and alleged that he was tortured when he was taken to a police station in Gurdzhani, Kakheti region, for questioning.

Further, we discussed two ideas for ensuring implementation of torture prevention reforms.

First, since the judiciary is a key institution for the protection of the rights of detainees and defendants, monitoring the way that judges deal with torture-related issues would both encourage proper implementation of torture prevention measures in the courts and provide valuable insights into where problems exist. We suggested that an independent body monitor how judges deal with complaints or other information indicating that a detainee has been tortured. Such a body would also examine how judges implement the recent legislative amendments, such as not allowing out-of-court statements to be used in evidence unless they are confirmed in court, placing the burden of proof on the prosecution to show that a defendant should be remanded in custody, and the new time limits on pre-trial and trial custody.

Second, Human Rights Watch has documented throughout the countries of the former Soviet Union that a serious impediment to full and impartial investigations of torture allegations is a resistance in the procuracy to search for evidence that will implicate police officers for abuse. The procuracy's recent statistics on the prosecution and detention of abusive police officers are a welcome first step toward overcoming the issue of impunity. Yet since the police and procuracy work closely together on crime prevention and prosecutions, we believe that an institutional approach would help to ensure an end to impunity in the long term. We therefore proposed that an independent body be set up to monitor investigations into torture allegations carried out by the procuracy; in cases of inadequate investigation, this body could have powers of intervention.

Finally, our NGO colleagues in Tbilisi consistently raised the concern with us that although it appeared that there had recently been some improvements in Tbilisi, with a reduction in the number of reports of torture in police stations, the situation in other regions of the country had not improved correspondingly. The NGOs ascribed this in large part to the lack of consistent monitoring outside of Tbilisi. We would therefore recommend that more resources be given to improve monitoring in the regions outside of Tbilisi.

We urge you to incorporate the above recommendations into a sustained government program of torture prevention. Our intention is to continue to evaluate how effective reforms are in reducing torture and promoting accountability of officials that may be involved in torture or other serious abuses against detainees, and we look forward to working with you closely on this.

We thank you for the on-going dialogue that we have with you and your government on these issues.

Yours sincerely,

Holly Cartner
Executive Director
Europe and Central Asia Division

Cc:
Zurab Adeishvili, Procurator General
Vano Mrabishvili, Minister of Internal Affairs
Konstantin Kemularia, Minister of Justice
Konstantin Kublashvili, the chair of the Supreme Court
Pavle Kublashvili, the Presidential Secretary to the Parliament
Giga Bokeria, the Deputy Chair of the Parliamentary Legal Committee
Elene Tevdoradze, the Chair of the Human Rights and Civil Integration Committee
Bacho Akhalaia, the Deputy Public Defender

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