



GEORGIA

# Undue Punishment

Abuses against Prisoners in Georgia

HUMAN  
RIGHTS  
WATCH





## **Undue Punishment Abuses against Prisoners in Georgia**

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## Summary

Since its election in early 2004, the government of President Mikheil Saakashvili has stressed publicly its commitment to promote human rights, including by reforming Georgia's prisons. Nevertheless, as this report documents, human rights abuses remain widespread throughout the Georgian penitentiary system. Conditions of detention and the treatment of prisoners remain appalling, and in some facilities constitute degrading treatment. Most prisons are extremely overcrowded, filthy, and poorly ventilated. Prisoners receive inadequate nutrition and substandard (if any) medical care and often have no possibility to leave their cells to exercise. Legislative and policy changes, supposedly part of a reform agenda begun in December 2005, have curtailed prisoners' rights by reducing the number of family visits and, in some facilities, infringing on prisoners' right to confidential meetings with their lawyers.

Since new government efforts were started in December 2005 to combat crime, especially organized crime (including the power of organized crime bosses within the penitentiary system), many prisoners have been subjected to beatings and other ill-treatment, sometimes rising to the level of torture. What is more, the government's latest anti-crime efforts have led to an increase in the prison population and have apparently led to government approval of a policy of quick resort to severe physical force, including lethal force, to maintain control over the prisons. During a March 27, 2006 disturbance in Tbilisi Prison No. 5, at least seven prisoners were killed and at least 17 others suffered serious injuries as a result of the use of force by law enforcement agents, including special forces. The government has failed to conduct effective investigations into the March 27 incident and other allegations of abuse.

Recent government efforts to improve prison conditions, including by building new prisons, have failed to remedy longstanding institutional problems. The majority of Georgia's nearly 13,000 prisoners, some 63 percent of whom are held on remand awaiting trial, face severely overcrowded, poorly lit, poorly ventilated cells that lack any kind of basic hygiene. In one facility, especially filthy basement cells that were closed down after being deemed unfit by Council of Europe experts in 2001 are currently in use again, apparently due to overcrowding. Overcrowding results primarily from the routine use of pre-trial detention, even for non-violent offenders. The Georgian government fails to provide appropriate conditions for suspects who should be presumed innocent: pre-trial detainees face particularly isolating conditions, with family visits for pre-trial detainees granted only with permission from an investigator, prosecutor, or a judge; even with the required permission, family visits may be arbitrarily denied. Pre-trial detainees

are not able to correspond with relatives and have little or no access to newspapers, radio, or any other source of information. Detainees may be held in pre-trial detention from four months to over one year.

Both pre-trial detainees and convicted prisoners receive inadequate food or nutrition and often get substandard or no medical care. In these conditions they are at real risk of acquiring tuberculosis or other diseases. Most detainees also lack access to daily exercise and, in many cases, cannot leave their overcrowded cells at all for weeks or months at a time. In one facility visited by Human Rights Watch, detainees had not been allowed to exercise for over five months. Most detainees do not have regular access to showers and no access to work, education, or any other meaningful activity. Conditions of detention and the treatment experienced by detainees violate Georgia's own Law on Imprisonment, as well as international standards. There is a widespread and consistent gap between what is provided for in law and what is implemented in practice.

Ill-treatment of detainees has increased since December 2005. Some detainees reported being beaten regularly and severely or being subject to other ill-treatment and inhuman punishment. In some cases, the beatings and other inhuman treatment constituted torture. There is widespread impunity for such ill-treatment. Detainees have no access to an effective complaint mechanism and in some facilities have limited ability to communicate confidentially with their lawyers. Investigations into abuse are rare and those responsible for abuse are seldom held accountable.

This report is based on interviews with over 110 detainees during visits to six penitentiary facilities, as well as with lawyers, prison experts from domestic and international nongovernmental organizations, intergovernmental organizations, and government officials.

Upon his election to the presidency in 2004, Saakashvili promised to rectify past abuses by confronting corruption and organized crime and establishing the rule of law and respect for human rights. In December 2005 the parliament passed new legislation to combat organized crime, and the government began to take practical and legislative measures to eliminate the power of crime bosses, known in Georgia as "thieves in law," (in Georgian, *kanonieri qurdebi*; in Russian, *vory v zakone*) due to their adherence to a strict set of criminal rules, or laws. Through extortion, cooptation, and threats, the thieves in law had come to control the prisons throughout Georgia and to enjoy privileges not available to other prisoners. What is more, from their prison cells, they were able to plan and coordinate criminal activity that was carried out by associates on the outside. The government announced its commitment to undoing this corrupt system as a key

component to effective prison reform. Since December 2005 it has moved all thieves in law to Prison No. 7 in Tbilisi and claims to have stripped the thieves in law of their privileges in the prisons.

While Human Rights Watch recognizes that the government's fight against lawlessness in the prison system is legitimate and necessary, the means used in this effort have not always been justified. In the first three months of 2006, government forces undertook numerous operations to quell disturbances in several prisons, which the government characterizes as riots organized to protest its new policies to combat the authority of the thieves in law. The most serious of these incidents occurred on March 27, 2006 in Tbilisi Prison No. 5, when special forces troops entered the prison to suppress an alleged riot. Much controversy exists over what exactly happened on this day, with many conflicting versions being reported, even among government agencies.

The government maintains that the riot was carefully designed and planned by several alleged thieves in law. Other evidence suggests that the disturbance erupted more spontaneously in response to the beating of some of the crime bosses in the Republican Prison Hospital, and then spread to the nearby Tbilisi Prison No. 5. In Prison No. 5, detainees shouted, banged dishes, and set fire to linens and threw them out the windows. At least some detainees escaped from their cells. The government claims that some detainees had guns (Human Rights Watch could not confirm this and was not provided with evidence supporting the claims). When government troops entered the facility to end the disturbance, they began their operation by opening fire using both rubber bullets and regular automatic weapons, making no attempt to use nonviolent means of control. No attempts at other less extreme uses of force were made. Government troops also allegedly beat many detainees. As a result of the use of force, at least seven detainees died. The government maintains that the force used was justified, but it has failed to conduct an effective investigation to evaluate whether the force used was proportionate. Although it was impossible for Human Rights Watch to make a full analysis and evaluation of the operation and whether in general the force used during this operation complied with international legal standards, Human Rights Watch nevertheless documented several specific instances in which special forces troops appear to have engaged in excessive and illegal use of force against detainees on March 27.

Despite immediate calls for an independent investigation into the March 27 incident, the government waited until three months after the violence to open an investigation into whether special forces troops exceeded their authority. For the first two months, the Ministry of Justice pursued an internal investigation into the alleged riot plot, opened two days before the actual disturbance. There has been no separate investigation into the deaths of the seven detainees.

In addition to the March 27 incident, Human Rights Watch documented several other examples of ill-treatment of detainees. Detainees reported being severely beaten during other alleged riots or attempted riots, and after such incidents as punishment. Detainees also reported ill-treatment when they were being moved from one facility to another or upon arrival at a new facility, apparently to intimidate them. In one facility, Tbilisi strict regime Prison No. 7, where the alleged or convicted thieves in law are now held, detainees were subjected to repeated beatings as well as frequent strip searches and other degrading treatment over the course of many weeks and months in early 2006. In some instances this treatment, taken together with the abysmal conditions of detention, amounted to torture. There have been no investigations or prosecutions related to these allegations of abuse.

As a state party to the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (Convention against Torture), and the European Convention on Human Rights (ECHR), Georgia has an obligation to ensure that its criminal justice and penitentiary systems conform with international human rights standards, to ensure that detainees are treated with appropriate dignity and full respect for their human rights, and above all, to prevent all forms of torture, cruel, inhuman, or degrading treatment. This last obligation includes the duty to conduct an effective investigation into any allegations of ill-treatment. In their reports on Georgia, the European Committee for the Prevention of Torture (CPT), the Parliamentary Assembly of the Council of Europe (PACE), the United Nations special rapporteur on torture, and the United Nations Committee Against Torture (CAT) have all reported on the abuses and institutional deficiencies in the penitentiary system and have made detailed recommendations for improving the situation. However, the Georgian government has yet to comply with most of these recommendations.

For many years the Georgian government has stated its intention to reform the penitentiary system and put an end to abuse. The government opened two new penitentiary facilities in late 2005 and early 2006 with greatly improved conditions, one with the assistance of international donors. It interacts with a number of international and intergovernmental organizations to develop and implement reforms. In June 2006 the government published its “Action Plan of the Implementation of the Strategy on Criminal Justice Reforms in Georgia,” and plans to implement important new legislation, including a new Penitentiary Code, new Criminal Code, and a new Criminal Procedure Code. Yet, at the same time, it has passed amendments to the existing versions of these laws that run counter to human rights standards and exacerbate the poor conditions for prisoners. For example, the number and length of family visits for convicted prisoners have been curtailed. This regressive measure was undertaken without justification, and

results in a government failure to ensure regular family contact and promote rehabilitation, as required under international law.

While recognizing that some reforms take time to implement, Human Rights Watch recommends several immediate steps that would help rectify a number of abuses. The Georgian government should refrain from initiating legislative or policy changes that undermine prisoners' rights. In an effort to end immediately the abuse of detainees by law enforcement agents, the government should investigate all allegations of abuse, and announce, at the highest levels of government, a policy of zero tolerance for abuse perpetrated by law enforcement agents. In this regard, the Georgian government should, as a matter of urgency, allow for the establishment of an independent commission of inquiry into the events of March 27. Human Rights Watch also calls on the Ministry of Justice and the Penitentiary Department to guarantee immediately detainees' rights to confidential meetings with their lawyers, to regular meetings with their family members, and to exercise at least one hour per day, without exception. The General Prosecutor's Office should utilize, to the greatest extent possible, alternatives to pre-trial detention to reduce the number of defendants remanded to pre-trial detention.

The European Union (EU) should utilize the European Neighborhood Policy (ENP) Action Plan to require specific progress from Georgia in the field of penitentiary and criminal justice reform. The EU should also utilize its Guidelines to EU Policy towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Torture Guidelines) to ensure that Georgia's legislation and practice are consistent with European human rights standards. The EU and the United States should encourage Georgia's criminal justice and penitentiary system reforms and emphasize the importance of effective investigations into the actions of law enforcement agents, reminding the Georgian authorities that the lack of such investigations undermines public confidence that the government is committed to the rule of law.

## Background

### ***The Georgian Prison System***

The Georgian prison system was transferred officially from the Ministry of the Interior to the Ministry of Justice in January 2000, in accordance with the requirements of the Council of Europe.<sup>1</sup> According to the Ministry of Justice, the official capacity of the prison system is 9,026 detainees.<sup>2</sup> As of June 2006, the population of Georgia's prisons stood at 12,992 detainees, however. Nearly 63 percent of those detained are remand prisoners awaiting trial.<sup>3</sup> The prison population has grown rapidly in recent years, rising 51 percent in the last year, and increasing 85.6 percent in the last two years.<sup>4</sup>

The prison system consists of 16 operational facilities, including a Republican Prison Hospital and a tuberculosis hospital for inmates in Ksani. There is one facility for convicted women prisoners in Tbilisi. There is an educational institution for juvenile convicts under the age of 18 in Avchala, near Tbilisi. According to the Law on Imprisonment, women, children, first-time convicts, prisoners facing life sentences, and former staff of the special state guard are to be detained in separate facilities. Convicts living with HIV/AIDS and other infectious diseases are detained separately in the prison system's medical department.<sup>5</sup>

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<sup>1</sup> Georgia acceded to the Council of Europe on April 27, 1999. In its Opinion No. 209 (1999) on Georgia's application for membership, the Parliamentary Assembly of the Council of Europe required Georgia to "adopt the law concerning the transfer of responsibility for the prison system from the Ministry of the Interior to the Ministry of Justice within three months after its accession and to ensure the effective implementation of this law within six months after it has been adopted." "Georgia's application for membership of the Council of Europe," Opinion No. 209 (1999), <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta99/eopi209.htm> (accessed June 27, 2006).

<sup>2</sup> The Ministry of Justice reports that the occupancy level is based on an official capacity of 373,209 square meters, but does not provide information as to the basis for that measurement. Penitentiary Department of the Ministry of Justice statistics, on file with Human Rights Watch.

<sup>3</sup> Penitentiary Department of the Ministry of Justice statistics, August 3, 2006, on file with Human Rights Watch.

<sup>4</sup> According to Ministry of Justice statistics provided to the International Centre for Prison Studies, in June 2005 there were 8,600 detainees, of whom 50.6 percent were remand prisoners. International Centre for Prison Studies, "World Prison Brief for Georgia," [http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/continental\\_asia\\_records.php?code=122](http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/continental_asia_records.php?code=122) (accessed June 27, 2006). According to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), during its visit in May 2004 the total prison population stood at approximately 7,000, approximately 40 percent of whom were remand prisoners. CPT, "Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 November 2003 and from 7 to 14 May 2004," para. 55, [http://www.cpt.coe.int/documents/geo/2005-12-inf-eng.htmno.\\_Toc78860819](http://www.cpt.coe.int/documents/geo/2005-12-inf-eng.htmno._Toc78860819) (accessed May 6, 2006).

<sup>5</sup> Law of Georgia on Imprisonment, as amended June 1, 2006, art. 22, paras. 1-2. International standards denounce the practice of separating HIV-positive detainees from others. For example, "The CPT wishes to

According to the Law on Imprisonment, convicted prisoners serve their sentence under one of three types of regime: general regime, strict regime, and prison regime. Penitentiary institutions may operate with one or several regimes. Under amendments that came into force on June 1, 2006, the head of the penitentiary system determines under which regime a prisoner will serve his or her sentence; previously, a judge determined not only the length of sentence, but also under which regime it should be served.<sup>6</sup> Although the Law on Imprisonment sets out the conditions and entitlements of each regime, Human Rights Watch's research indicates a serious gap between these legal provisions and the practice in prisons, as described below. According to law, first-time prisoners serving sentences for less serious crimes or where culpability was based on negligence or recklessness, as well as female prisoners, serve their sentences under the general or common regime. This regime should mean that prisoners live in common accommodation, such as barracks or a dormitory, unless otherwise determined by the internal procedure; have the right to walk freely within the facility, according to internal procedures; and are allowed two visits from family or friends per month.<sup>7</sup>

First-time prisoners convicted of grave crimes, recidivists, and dangerous recidivists are subject to the strict regime. According to law, under the strict regime prisoners should also live in common accommodation, unless otherwise determined by internal procedure; have the right to walk freely within the facility, according to internal procedures; and receive one personal visit per month, except for recidivists, who are allowed only one such visit every two months.<sup>8</sup>

The prison regime is the strictest regime and is reserved for prisoners serving life sentences, particularly serious recidivists, and prisoners who committed crimes while in detention.<sup>9</sup> The prison regime is further divided into a general and strict prison regime.

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stress in particular that there is no medical justification for the segregation of prisoners solely on the grounds that they are HIV-positive." CPT, "The CPT Standards, Substantive Sections of the CPT's General Reports," CPT/Inf/E (2002) 1-Rev. 2004, <http://www.cpt.coe.int/en/documents/eng-standards-prn.pdf> (accessed May 5, 2006), p. 26, para. 31.

<sup>6</sup> Law of Georgia on Imprisonment, as amended June 1, 2006, art. 19, para. 1.

<sup>7</sup> Ibid., art. 73, paras. 1-3. As described below, the number of family visits for prisoners serving under each type of regime was curtailed severely by the June 1, 2006 amendments to the Law on Imprisonment. See below, "Lack of Access to Family Visits and Correspondence."

<sup>8</sup> Ibid., art. 74, paras. 1-4.

<sup>9</sup> Ibid., art. 75, para. 1. Prisoners serving life sentences face special rules: they are held in a closed individual cell where permanent visual monitoring is possible; are allowed only four visits per year; are forbidden to have contact with prisoners not serving life sentences; and may be subject to discipline including reprimand, prohibition of sending and receiving mail, and placement in solitary confinement for three to twenty days. Law of Georgia on Imprisonment, as amended June 1, 2006, art. 77.

Under the general prison regime, prisoners convicted for the first time, or those transferred from a strict prison regime, live in cells with no more than four convicts. By law cells are subject to visual surveillance.<sup>10</sup> Inmates have the right to a two-hour daily walk and are allowed no more than three visits per year.<sup>11</sup> The most serious offenders, including recidivists or those who committed crimes in detention, serve sentences under the strict prison regime. One or two prisoners share a cell, which is also subject to visual surveillance. Prisoners serving sentences under this regime may only perform work that does not require them to exit the cell. They are entitled to a one-hour daily walk and are allowed only two visits annually, under the supervision of the prison administration.<sup>12</sup>

By law, detainees in pre-trial detention should be held in separate facilities. In practice, this is not always the case. Pre-trial detainees and sentenced prisoners are sometimes held together in the same facility, or even in the same cell.<sup>13</sup> The law provides that pre-trial detainees should be held in closed cells and, according to amendments effective June 1, 2006, should be given uniforms. The law does not specify the types and amount of exercise to which pre-trial detainees are entitled.<sup>14</sup>

Local and international nongovernmental organizations and international organizations have long expressed concern over prison conditions in Georgia and have noted the government's failure to address these concerns. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which visited Georgia in May 2001 and again in November 2003 and May 2004, for example, stated in its first report, "... the vast majority of inmates at Prison No 5 were subject to a combination of negative factors—overcrowding, appalling material conditions and levels of hygiene, major deficiencies of health care, practically non-existent activity programmes—the cumulative effect of which could easily be described as inhuman and degrading treatment."<sup>15</sup> In its 2004 report, the committee noted,

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<sup>10</sup> In principle 24-hour surveillance of a detainee's cell is an invasion of privacy, a right which, the European Court of Human Rights has found, a prisoner retains, even if subject to some restriction. (See, for example, *Silver and Others v. United Kingdom*, judgment of March 25, 1983, Series A no. 61; and *P.G. and J.H. v. United Kingdom*, no. 44787/9, judgment of September 25, 2001). Such surveillance, when conducted on an on-going basis or for extended periods, and in the absence of specific, well founded concerns for security or protecting a prisoner from self harm, is not only an unjustified violation of privacy but may constitute degrading treatment. Human Rights Watch documented the mental anguish and distress of several prisoners who were subject to 24-hour video surveillance in their cells. Human Rights Watch interviews with detainees (names and details withheld).

<sup>11</sup> Law of Georgia on Imprisonment, as amended June 1, 2006, art. 78, para. 1, and art. 79, paras. 1-4.

<sup>12</sup> *Ibid.*, art. 78, para. 1, and art. 80, paras. 1-4.

<sup>13</sup> *Ibid.*, art. 85.

<sup>14</sup> *Ibid.*, arts. 86 and 92.

<sup>15</sup> CPT, "Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 18 May 2001,"

“Unfortunately, the facts found during the second periodic visit indicate that many of the recommendations made after the visit in 2001 have not been implemented, and that in some respects the situation has even deteriorated.”<sup>16</sup> The United Nations special rapporteur on torture, Manfred Nowak, following his visit to Georgia in February 2005 also noted the poor conditions of detention and made several recommendations to improve the situation.<sup>17</sup>

### **Organized Crime in Georgia**

There is little academic research on organized crime in Georgia. The most comprehensive study available was published by the Georgia Office of the Transnational Crime and Corruption Center (TCCC) in 2004.<sup>18</sup> TCCC scholars trace the emergence of organized crime in Georgia to the 16<sup>th</sup> century. Organized crime was an influential phenomenon throughout the Russian empire, of which modern Georgia was a part, and a large number of organized crime figures had become concentrated in Georgia by the early Soviet period.<sup>19</sup> After several years of open confrontation between different criminal groups located throughout the Soviet Union, one category of criminals, the “thieves in law” (in Georgian, *kanonieri qurdebi*; in Russian, *vory v zakone*), emerged at the top of the criminal hierarchy, most likely in the early 1930s.<sup>20</sup> They were characterized by their ideological opposition to the Soviet political regime and their adherence to a strict set of unwritten laws.<sup>21</sup> After a decline in their numbers and influence under Stalin,

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(Strasbourg, July 25, 2002), <http://www.cpt.coe.int/documents/geo/2002-14-inf-eng.htm> (accessed May 6, 2006).

<sup>16</sup> CPT, “Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 November 2003 and from 7 to 14 May 2004.”

<sup>17</sup> “Civil and Political Rights, Including: The Questions of Torture and Detention, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Georgia.” United Nations Economic and Social Council, E/CN.4/2006/6/Add.3, September 23, 2005, Commission on Human Rights, 62<sup>nd</sup> Session, <http://daccessdds.un.org/doc/UNDOC/GEN/G05/160/45/PDF/G0516045.pdf?OpenElement> (accessed May 5, 2006).

<sup>18</sup> G. Glonti and G. Lobjanidze, “Professional Crime in Georgia: Thieves in the Law,” (in Russian), Georgia Office of the American University’s Transnational Crime and Corruption Center, Tbilisi, 2004, <http://www.tracc.cdn.ge/publications/index.html> (accessed May 2, 2006). The Georgia Office of the Transnational Crime and Corruption Center is a non-profit research organization associated with the Transnational Crime and Corruption Center of the American University in Washington, DC, which is devoted to teaching, research, training, and formulating policy advice in transnational crime, corruption, and terrorism.

<sup>19</sup> *Ibid.*, pp. 13-20.

<sup>20</sup> *Ibid.*, pp. 22-24.

<sup>21</sup> According to one scholarly study, the fundamental laws are: 1. Commitment to and support for the idea of the thieves in law; 2. The absence of contact with law enforcement organs; 3. Honesty in relations with other thieves in law or criminal authorities; 4. The obligation to bring new members, especially young members, into the sphere of the thieves; 5. Prohibition on engaging in political activities; 6. Control over the order in penitentiary facilities and establishing there the law of the thieves; 7. Mandatory knowledge of card playing. *Ibid.*, pp. 61-62.

they again expanded their authority in the post-Stalin thaw period and into the 1970s and 1980s,<sup>22</sup> particularly in Georgia.<sup>23</sup> The thieves in law emerged as a powerful force by taking advantage of the chaotic political and economic situation during the collapse of the Soviet Union. They further consolidated their social and economic authority during the initial years of independence, during the presidency of Zviad Gamsakhurdia.<sup>24</sup> One academic report stated that by 2003 there were some 364 thieves in law in Georgia.<sup>25</sup> They are associated with various crimes, including human, drug, and weapons trafficking; kidnapping; goods smuggling; racketeering; and black market activities.<sup>26</sup>

### ***Organized Crime in the Georgian Penitentiary System***

For over a century, organized crime has dominated the prison systems of, successively, the Russian empire, the Soviet Union, and independent Georgia. In the early part of the twentieth century, organized crime figures came to control the Russian imperial prison system and used it as a “criminal academy” for indoctrinating others and recruiting additional members. Prison life functioned according to a strict hierarchy and the laws and rules of the criminal world.<sup>27</sup> This system continued to function during the Soviet era, and, as the thieves in law consolidated their authority, they also emerged at the top of the Soviet prison system, the GULAG. Soviet government attempts to combat the authority of the thieves in law in the 1940s and 1950s resulted in both the execution of a large number of thieves in law, as well as an increasing concentration of the thieves in law in the prisons.

Through threats, coercion, and cooptation, the thieves in law held tremendous influence over other prisoners and the prison authorities. According to the ombudsman of Georgia, one of the major problems facing the Penitentiary Department in 2004 and 2005 was that the thieves in law exerted “full control over the processes inside the prisons and, more importantly, control from within the prisons on the processes outside.”<sup>28</sup> The thieves in law allegedly enjoyed countless privileges in the prisons,

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<sup>22</sup> Valerii Abramkin and Valentina Chesnokova, “The Law of the Prison,” Moscow Center for Prison Reform, <http://www.prison.org/nravy/zakon/next.htm> (accessed June 26, 2006).

<sup>23</sup> Glonti and Lobjanidze, “Professional Crime in Georgia,” p. 30.

<sup>24</sup> *Ibid.*, p. 41.

<sup>25</sup> *Ibid.*, p. 117.

<sup>26</sup> “Problems Associated with Organized Crime in Georgia,” Transnational Crime and Corruption Center, <http://www.tracc.cdn.ge/publications/publication2.html> (accessed May 2, 2006).

<sup>27</sup> Glonti and Lobjanidze, “Professional Crime in Georgia,” p. 14.

<sup>28</sup> The other two central problems identified by the ombudsman are “total corruption” and “absolutely uncontrolled, boundless, distribution of illegal drugs, on the part of both the administration and criminal elements.” Sozar Subari, public defender (ombudsman) of Georgia, “Ongoing Problems and Results of Monitoring in the Penitentiary Department,” Speech to the Parliamentary Committee on Human Rights, May 19, 2006.

including better rooms, furniture, food, cell phones, as well as alcohol and narcotics, free movement in the prisons and between prisons, access to prostitutes, and were even seen in public together with government authorities.<sup>29</sup> The thieves in law also extorted payments from prisoners,<sup>30</sup> and were able to commit murders and other crimes in the prisons as punishment for those who disobeyed their rules.<sup>31</sup> The thieves in law maintained this order in the prisons with considerable assistance from their associates located outside the prisons.<sup>32</sup>

### **Government Efforts to Combat Organized Crime**

Beginning with the Soviet authorities in the 1980s, the Georgian government has made numerous efforts to undo the influence and power of the thieves in law. In 1995 the government of Eduard Shevardnadze initiated a campaign against the thieves in law that continued throughout his presidency. Many were arrested and many others felt compelled to leave Georgia, fleeing mostly to Russia. As minister of justice from October 2000 to September 2001, Mikheil Saakashvili played a key role in this campaign.<sup>33</sup> Upon his election to the presidency in 2004, Saakashvili declared the fight against corruption and organized crime to be one of his priorities.<sup>34</sup> However, Georgia has not acceded to most of the major international documents regarding corruption and organized crime, having ratified only the Council of Europe Civil Law Convention on Corruption, in May 2003, under Shevardnadze.<sup>35</sup>

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<sup>29</sup> Human Rights Watch interview with Sozar Subari, public defender (ombudsman) of Georgia, Tbilisi, May 10, 2006.

<sup>30</sup> According to scholars, this practice is determined by the laws of the thieves in law that required them to increase their collective wealth by collecting contributions (money, cigarettes, food) from inmates and others as well as by the informal prison law that required prisoners to contribute to a general fund. Glonti and Lobjanidze, "Professional Crime in Georgia," pp. 62-63 and 75; and Sozar Subari, public defender (ombudsman) of Georgia, "Ongoing Problems and Results of Monitoring in the Penitentiary Department."

<sup>31</sup> The authorities would often be complicit in such events. In one famous case, an inmate in Prison No. 9, Zurab Tsintsibadze was found dead in his cell, which authorities claimed was a result of suicide by hanging. However, evidence suggests that Tsintsibadze was killed by the thieves in law because of his inability to pay the required sum. Sozar Subari, public defender (ombudsman) of Georgia, "Ongoing Problems and Results of Monitoring in the Penitentiary Department." Also Glonti and Lobjanidze, "Professional Crime in Georgia," p 63.

<sup>32</sup> Glonti and Lobjanidze, "Professional Crime in Georgia," p. 12.

<sup>33</sup> See Dmitri Bit-Suleimanov, "Georgia's Anti-Corruption Campaign Enters Crucial Phase," *EurasiaNet*, April 11, 2001, <http://www.eurasianet.org/departments/insight/articles/eav041101.shtml> (accessed June 26, 2006).

<sup>34</sup> See "Speech Delivered by Mikheil Saakashvili at Johns Hopkins University," February 4, 2004, <http://www.president.gov.ge/?l=E&m=0&sm=3&id=171> (accessed June 30, 2006); and "Speech Delivered by President Mikheil Saakashvili at the Parade Dedicated to the Independence Day of Georgia," May 26, 2004, <http://www.president.gov.ge/?l=E&m=0&sm=3&id=151> (accessed June 30, 2006). Also, in June 2004, Saakashvili agreed with the countries of the G8 to undertake specific actions to combat corruption in the framework of the "Compact to Promote Transparency and Combat Corruption: A New Partnership between the G8 and Georgia," <http://www.mofa.go.jp/policy/economy/summit/2004/compact-4.pdf> (accessed June 27, 2006).

<sup>35</sup> Georgia has not signed or ratified the 2003 United Nations Convention against Corruption; see [http://www.unodc.org/unodc/en/crime\\_signatures\\_corruption.html](http://www.unodc.org/unodc/en/crime_signatures_corruption.html). Georgia signed the United Nations Convention against Organized Crime in December 2000, but has yet to ratify it; see

In December 2005, the Georgian parliament passed new legislation addressing organized crime, and the government began to take practical and legislative measures to eliminate the power of the thieves in law, including in the prisons. In a speech delivered after signing the organized crime bill into law, President Saakashvili stated, “We will put an end, once and for all, to the crime bosses’ free ride in prisons.”<sup>36</sup> Saakashvili also appointed a new minister of justice, Gia Kavtaradze, and named a new head of the penitentiary system, Bacho Akhalaia, who was formerly a deputy ombudsman, to implement the new policies. Since this time, apparently all of the existing senior prison officials have been fired and replaced primarily with former Ministry of Interior employees.<sup>37</sup> Beginning in December 2005, the authorities moved all of the suspected thieves in law to Prison No. 7 in Tbilisi, the capital, allegedly in order to control them and reduce their power. The thieves in law have allegedly been stripped of all of their privileges.

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[http://www.unodc.org/unodc/crime\\_cicp\\_convention.html](http://www.unodc.org/unodc/crime_cicp_convention.html). Georgia also signed in 1999, but did not ratify, the Council of Europe Criminal Law Convention on Corruption; see <http://conventions.coe.int/Treaty/EN/Treaties/Html/173.htm>. In May 2003, Georgia ratified the Council of Europe Civil Law Convention on Corruption, see <http://conventions.coe.int/Treaty/en/Treaties/Html/174.htm>.

<sup>36</sup> “Georgian Leader Signs Organized Crime Bill into Law,” text of Rustavi-2 TV report, Tbilisi, Imedi TV, (in Georgian), December 29, 2005.

<sup>37</sup> Human Rights Watch interview with Mary Murphy, Penal Reform International, Tbilisi, May 19, 2006.

## Methodology

This report is based on a two-week field visit by Human Rights Watch researchers to Georgia in May 2006 and extensive additional research. The Ministry of Justice provided Human Rights Watch with access to a number of penitentiary facilities. Human Rights Watch researchers visited a total of six facilities: remand Prison No. 5 and Prison No. 7 in Tbilisi; the Republican Prison Hospital in Tbilisi; the new remand Prison No. 6 and Prison No. 1 in Rustavi, a town approximately 20 kilometers south of Tbilisi;<sup>38</sup> and the new combined remand/regular Prison No. 2 in the western Georgian city of Kutaisi. Human Rights Watch did not visit the prison for women or the prison for juveniles, although Human Rights Watch researchers did interview women and children being held as remand prisoners in some of the facilities visited.

Despite repeated requests, the Ministry of Justice refused to provide Human Rights Watch researchers with written confirmation in Georgian that they had permission to visit the prisons, which could have been presented to prison officials upon attempting to enter a facility. As a result, there were delays of up to an hour in entering many facilities. In order to gain access to each facility, Human Rights Watch researchers found it necessary to call one or more officials from the Ministry of Justice or the Penitentiary Department, who would then instruct the prison officials to admit the researchers. In at least three instances, prison officials claimed that there were inspections or shift changes underway at the moment that Human Rights Watch researchers arrived at a facility, which resulted in delays. It was not clear to Human Rights Watch whether these statements were made in order to deliberately stall for time or whether there were indeed inspections or shift changes underway. Human Rights Watch visited Prison No. 2 and remand Prison No. 6 in Rustavi together with a representative from the Organization for Security and Cooperation in Europe (OSCE) Mission to Georgia, who conducts regular prison monitoring.

Human Rights Watch researchers conducted 110 separate interviews with detainees and former detainees. Detainees who spoke with Human Rights Watch did so of their free will and, to the greatest extent possible, in private, outside of the presence of other prisoners or prison guards. Some detainees declined to talk with Human Rights Watch. In all facilities visited, with the exception of the Republican Prison Hospital, prison

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<sup>38</sup> In 2004 the Georgian government appealed to the European Commission to render support under the Rapid Reaction mechanism to complete construction of Rustavi Prison No. 6 and train the future staff of the prison. The project was implemented together with the United Nations Development Program (UNDP).

authorities actively interfered with Human Rights Watch researchers' efforts to interview detainees privately. This occurred despite repeated requests by Human Rights Watch researchers to prison authorities to permit interviews to be conducted in private. In one facility, a prison official openly threatened one detainee who wanted to speak to Human Rights Watch researchers. The names of detainees and, in some instances, the date and location of interviews have been withheld in order to protect the identity of detainees who spoke with Human Rights Watch. Human Rights Watch is particularly concerned about the security of detainees, as in the past, the government has actively sought to identify individuals who gave interviews to Human Rights Watch and other organizations despite the fact that the interviewees specifically requested to remain anonymous.

Human Rights Watch researchers also interviewed prison officials, representatives of nongovernmental organizations and international organizations, as well as the ombudsman, and officials from the Ministry of Justice, the General Prosecutor's Office, and the Penitentiary Department of the Ministry of Justice.

## Georgia's International Obligations

Georgia is a member of the Council of Europe and a party to its core regional human rights treaties as well as core international human rights treaties. These include the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),<sup>39</sup> the European Convention on the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (ECPT),<sup>40</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>41</sup> the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture),<sup>42</sup> and the UN Convention on the Rights of the Child (CRC).<sup>43</sup> These treaties provide for the protection of basic civil and political rights and also specific guarantees relating to treatment and conditions in custody for those, including juveniles, deprived of their liberty. They are also supplemented by instruments specific to treatment of those in detention, discussed below.

In relation to the protection of human rights of prisoners and other detained persons, it is important to note that prisoners continue to enjoy all the fundamental rights and freedoms guaranteed under human rights law, except the right to liberty.<sup>44</sup> A prisoner does not forfeit his or her rights merely because of his or her status as a person detained following conviction. As the Council of Europe's European Prison Rules make clear, imprisonment is a punishment in itself. The conditions of imprisonment and the prison regimes shall not, therefore, aggravate the suffering inherent in this, except as incidental to justifiable segregation or the maintenance of discipline.<sup>45</sup> Any restrictions on

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<sup>39</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, *entered into force* Sept. 3, 1953, *as amended by* Protocols Nos. 3, 5, 8, and 11 *which entered into force* on September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998 *respectively*, ratified by Georgia on May 20, 1999.

<sup>40</sup> European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, E.T.S. 126, *entered into force* February 1, 1989, ratified by Georgia on June 20, 2000.

<sup>41</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 999 U.N.T.S. 171 (*entered into force* March 23, 1976), ratified by Georgia on August 3, 1994.

<sup>42</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by G.A. Res. 39/46 (*entered into force* June 26, 1987), ratified by Georgia on October 26, 1994.

<sup>43</sup> Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, UN Doc. A/44/49 (1989), *entered into force* September 2, 1990, ratified by Georgia on June 2, 1994.

<sup>44</sup> See, for example, *Hirst v. United Kingdom* (no. 2), no. 74025/01, judgment of October 6, 2005.

<sup>45</sup> European Prison Rules (Recommendation No. R (87)3 Council of Europe), rule 64. See also, United Nations Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977, paras. 57-58.

prisoners' rights that are a consequence of their imprisonment must be justified, for example, on well founded considerations related to security.

The most fundamental of protections for prisoners is the absolute prohibition on torture. As well as being a well established norm of international law by which Georgia is bound, the prohibition is also reflected in the Georgian constitution, and in several of the human rights treaties to which Georgia is a party.<sup>46</sup> The ICCPR and the Convention against Torture both prohibit torture and cruel, inhuman, or degrading treatment or punishment, without exception or derogation. Article 10 of the ICCPR, in addition, mandates that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”<sup>47</sup> Article 3 of the European Convention on Human Rights (ECHR) also prohibits torture, in absolute terms.<sup>48</sup> The European Court of Human Rights has held that detaining persons in sub-standard conditions of detention as well as ill-treatment of prisoners will violate the prohibition on inhuman or degrading treatment.<sup>49</sup>

As mentioned above, numerous international instruments provide further guidance on the protection and respect for the human rights of persons deprived of liberty. The most comprehensive such guidelines are the United Nations Standard Minimum Rules for the Treatment of Prisoners (known as the Standard Minimum Rules). Other instruments relevant to an evaluation of prison conditions include the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Basic Principles for the Treatment of Prisoners, and, with regard to juvenile prisoners, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.<sup>50</sup>

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<sup>46</sup> Constitution of Georgia, adopted August 24, 1995, art. 17 (2), “Torture, inhuman, cruel treatment or punishment or treatment and punishment infringing upon honor and dignity shall be impermissible.”

<sup>47</sup> ICCPR, art. 10.

<sup>48</sup> “No one shall be subjected to torture or to inhuman or degrading treatment or punishment,” European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), art. 3.

<sup>49</sup> See, for example, *Kalashnikov v. Russia*, no. 47095/99, judgment of July 15, 2002, para. 14, “...the applicant alleged that he had been kept in a cell measuring 17 square meters (“m<sup>2</sup>”) where there were 8 bunk beds. However, it nearly always held 24 inmates; only rarely did the number fall to 18. As there were three men to every bunk, the inmates slept taking turns”; and para. 92, “The applicant referred in particular to the overcrowding and insanitary [sic] conditions in his cell, as well as the length of the period during which he was detained in such conditions, which had an adverse effect on his physical health and caused humiliation and suffering.” See also, *inter alia*, *Peers v. Greece*, no. 28524/95, judgment of April 19, 2001; *Dougoz v. Greece*, no. 40907/98, judgment of March 6, 2001; *Melnik v. Ukraine*, no. 72286/01, judgment of March 28, 2006; *Nevemerzhtsky v. Ukraine*, no. 54825/00, judgment of April 5, 2005; *Khokhlich v. Ukraine*, no. 41707/98, judgment of April 29, 2003; and *Mathew v. the Netherlands*, no. 24919/03, judgment of 29 September 2005.

<sup>50</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. Res. 43/173, annex, 43 UN GAOR Supp. (No. 49), UN Doc. A/43/49 (1988), Basic Principles for the Treatment of Prisoners, G.A. Res. 45/111, annex, 45 UN GAOR Supp. (No. 49A), UN Doc. A/45/49 (1990). United Nations

The Council of Europe formulated the European Prison Rules to establish the basic requirements for prison conditions and treatment of prisoners in its member states.<sup>51</sup> The CPT has also established norms regarding conditions of detention and the treatment of prisoners, as described in its annual reports.<sup>52</sup>

### **The Georgian Government's Response to Abuses in the Penitentiary System**

The Georgian government has admitted for many years that conditions in the penitentiary system fall below international standards and that there are many structural inadequacies.<sup>53</sup> Most recently, as part of its Action Plan of the Implementation of the Strategy on Criminal Justice Reforms in Georgia, issued on June 12, 2006, the government has outlined numerous reforms to be undertaken in the Penitentiary Department in the next two years, including decentralization, management training, computerization, public monitoring, building of new facilities, improvement of food for prisoners, training for penitentiary system employees, employment and education programs for prisoners, and legislative reforms, including a new Penitentiary Code.<sup>54</sup> The budget will be supported both by the state and international donors, although at the date of the plan's publication, not all of the budget needs had been met.<sup>55</sup> The government established a working group consisting of government officials and a few representatives

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Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), G.A. Res. 40/33, annex, 40 UN GAOR Supp. (No. 53), UN Doc. A/40/53 (1985).

<sup>51</sup> Council of Europe Committee of Ministers, Recommendation (2006) 2 of the Committee of Ministers to member states on the European Prison Rules (adopted by the Committee of Ministers on January 11, 2006 at the 952nd meeting of the Ministers' Deputies).

<sup>52</sup> See especially, CPT, "The CPT Standards, Substantive Sections of the CPT's General Reports"; CPT, "11<sup>th</sup> General Report on the CPT's Activities covering the period of 1 January - 31 December 31, 2000," CPT/Inf (2001) 16; and CPT, "2<sup>nd</sup> General Report on the CPT's Activities covering the period of 1 January to 31 December 1991," CPT/Inf (92) 3.

<sup>53</sup> The Council of Europe, the European Commission, and numerous international donors have been actively supporting these reforms through various funding mechanisms, training programs, technical assistance projects, etc.

<sup>54</sup> In November 2005 the government established a training center for penitentiary and probation staff under the Ministry of Justice. The Swedish International Development Cooperation Agency (SIDA) has planned €800,000 (U.S.\$1,030,000) to support the center. All new employees must pass a fundamental training course within six months of being hired; employees hired before June 2006 have until January 2008 to pass the training course. Trainings have been provided so far for the staff of Kutaisi Prison No. 2, Rustavi Prison No. 6, Batumi Prison, Zugdidi Prison, and the Penitentiary Department staff working with women and juveniles, with financial support from the OSCE, the Norwegian Rule of Law Mission to Georgia (NORLAG), and others. Human Rights Watch interviews with Givi Mikanadze, deputy minister of justice, Tbilisi, May 18, 2006 and Mary Murphy, Penal Reform International, Tbilisi, May 19, 2006. Prior to this, no state institution was involved in training of prison staff; international and local nongovernmental organizations, including the OSCE, provided some trainings. Human Rights Watch interview with George Tugushi, OSCE, May 17, 2006. "There is arguably no better guarantee against the ill-treatment of a person deprived of his liberty than a properly trained police or prison officer." CPT, "2<sup>nd</sup> General Report on the CPT's Activities covering the period of 1 January to 31 December 1991."

<sup>55</sup> "Action Plan of the Implementation of the Strategy on Criminal Justice Reforms in Georgia," June 12, 2006, on file with Human Rights Watch.

from nongovernmental organizations (NGOs) that will draft the new Penitentiary Code.<sup>56</sup> Many of the NGO participants were dissatisfied with the procedure for drafting the amendments, and with the amendments themselves, and are working separately to produce alternative amendments.<sup>57</sup>

The Georgian government repeatedly emphasizes that the construction of new facilities will be the main solution to the longstanding problems.<sup>58</sup> International experts, however, do not consider the building of new facilities by itself to be an effective remedy to resolve overcrowding.<sup>59</sup> Deputy Minister of Justice Givi Mikanadze described to Human Rights Watch the government's commitment to building new prisons, including a new facility with a capacity of 3,000 detainees in Guldani, in the suburbs of Tbilisi, to replace Prisons No. 5, No. 1, and the Republican Prison Hospital. The Action Plan of the Implementation of the Strategy on Criminal Justice Reforms in Georgia also demonstrates the government's commitment to new facilities, and envisions the construction of new prisons in Batumi, Zugdidi, Khakheti, as well as two open-type facilities, one in western and one in eastern Georgia, and the renovation of six current facilities, all by 2008. The cost of these projects is 78 million lari (U.S.\$36 million), more than 50 percent of the total budget for reforms in the Penitentiary Department for 2006-2008.<sup>60</sup> While Human Rights Watch recognizes that new facilities will help improve the material conditions for detainees and may help alleviate some overcrowding, we have documented numerous ongoing rights violations in both new and old prisons that can

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<sup>56</sup> The process for drafting and adopting a new Penitentiary Code scheduled to be submitted to parliament in November 2006 was parallel to the adoption of amendments to the Law on Imprisonment that went into effect on June 1, 2006, many of which are cited in this report.

<sup>57</sup> For example, the transitional amendments to the Law on Imprisonment introduced on June 1, 2006, which significantly reduced the number and length of family visits for prisoners were not discussed with the NGO participants. See below, "Lack of Access to Family Visits and Correspondence."

<sup>58</sup> For example, in 2001, in response to the Parliamentary Assembly of the Council of Europe's Monitoring Committee's report on Georgia in September 2001, Georgian authorities stated that they "regretted the overcrowding in pre-trial detention centres and said that US\$ 2 million would be enough to complete a building for pre-trial detention which would solve this problem." PACE, "Honouring of obligations and commitments by Georgia," Doc. 9191, September 13, 2001, para. 108, <http://assembly.coe.int/main.asp?link=http://assembly.coe.int/Documents/WorkingDocs/doc01/EDOC9191.htm> (accessed June 5, 2006).

<sup>59</sup> "To address the problem of overcrowding, some countries have taken the route of increasing the number of prison places. For its part, the CPT is far from convinced that providing additional accommodation will alone offer a lasting solution. Indeed, a number of European States have embarked on extensive programs of prison building, only to find their prison populations rising in tandem with the increased capacity acquired by their prison estates. By contrast, the existence of policies to limit or modulate the number of persons being sent to prison has in certain States made an important contribution to maintaining the prison population at a manageable level." CPT, "The CPT Standards, Substantive Sections of the CPT's General Reports," p. 21, para. 14.

<sup>60</sup> "Action Plan of the Implementation of the Strategy on Criminal Justice Reforms in Georgia," June 12, 2006.

be remedied immediately or in the medium term, and without great financial expenditure.

## Conditions in Prisons and the Treatment of Prisoners

### ***Overcrowding in Penitentiary Facilities***

Overcrowding remains the most serious problem in most Georgian penitentiary facilities, particularly in pre-trial facilities, and itself may lead to serious human rights violations.<sup>61</sup> Overcrowding has been documented for many years by local NGOs, the Council of Europe, the CPT, and the United Nations Committee Against Torture.<sup>62</sup> In 2001 the PACE monitoring committee noted, “We were shocked by the dramatic overcrowding in the pre-trial detention centres, mainly in the section of adult men. It is hard to describe without emotion the circumstances under which human beings are kept. We described the situation to Georgian officials... and explained that in the European Union it is not permitted to keep even pigs under such conditions.”<sup>63</sup> During its May 2006 review of Georgia, the CAT also noted the problem of overcrowding and recommended that Georgia should further reduce the period of pre-trial detention, expedite filling the vacancies in the court system and use alternative measures in cases where the accused does not pose a threat to society.<sup>64</sup>

The space allocated for prison cells in Georgia—both in law and in practice—is significantly less than that required by regional human rights standards. According to the CPT, the space allotted in cells intended for single occupancy should be “on the order of 7 square metres, 2 metres or more between walls, 2.5 metres between floor and

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<sup>61</sup> The CPT notes that overcrowding adversely affects all aspects of prison life: “All of the services and activities within a prison will be adversely affected if it is required to [hold] more prisoners than it was designated to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.” CPT, “The CPT Standards, Substantive Sections of the CPT’s General Reports,” p. 17, para. 46.

<sup>62</sup> CPT, “Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 18 May 2001,” and CPT, “Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 November 2003 and from 7 to 14 May 2004.”

<sup>63</sup> PACE, “Honouring of obligations and commitments by Georgia,” para. 105.

<sup>64</sup> “The Committee is concerned about the poor conditions of detention in many penitentiary facilities, particularly in the regions, as well as about the overcrowding that exists in many temporary detention centres, in particular pre-trial detention centres.” CAT, “Consideration of Reports Submitted by States parties under Article 19 of the Convention, Conclusions and recommendations of the Committee against Torture, Republic of Georgia,” CAT/C/GEO/CO/3, May 10, 2006, para. 18, <http://www.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.GEO.CO.3.pdf> (accessed June 22, 2006).

ceiling.”<sup>65</sup> In its 2001 recommendations to the Georgian government, the CPT lowered this standard suggesting, “A standard of 4 m<sup>2</sup> per prisoner should be aimed at.”<sup>66</sup> Georgia’s Law on Imprisonment requires that the living space for each convict in the cells of the Penitentiary Department must be not less than two square meters.<sup>67</sup> Detainees should each be provided with a separate bed.<sup>68</sup>

### ***Government explanations for overcrowding***

The Georgian government has taken no effective measures to address overcrowding in the penitentiary system. On the contrary, the prison population has increased by over 85 percent in the last two years, as noted above. Of the two new facilities built, one replaced an existing remand prison, although added some additional capacity.<sup>69</sup> Furthermore, the Action Plan of Implementation of the Strategy on Criminal Justice Reforms in Georgia envisions food provision for 13,000 prisoners for the period 2007-2009, yet this figure was already effectively met in August 2006, when the official prison population stood at 12,992.<sup>70</sup> Senior government officials maintain that overcrowding is only temporary and caused principally by severe delays in the court system related to judiciary reforms.<sup>71</sup> The government also claims that amendments to the Criminal Procedure Code decreasing the amount of time for suspects to be held in pre-trial detention will help alleviate overcrowding in the near future.<sup>72</sup> However, it remains unclear whether these new deadlines for review of cases can be met, given the continuing changes in the judiciary and the shortage of judges.<sup>73</sup>

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<sup>65</sup> CPT, “2<sup>nd</sup> General Report on the CPT’s Activities covering the period of 1 January to 31 December 1991,” para. 43.

<sup>66</sup> CPT, “Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 18 May 2001.”

<sup>67</sup> In the facility for women and the medical facility living space must not be less than three square meters and in the children’s institution, not less than 3.5 square meters. Law of Georgia on Imprisonment, as amended June 1, 2006, art. 33, para. 2.

<sup>68</sup> Standard Minimum Rules for the Treatment of Prisoners, art. 19.

<sup>69</sup> The new Kutaisi Prison No. 2 replaced the old remand prison in Kutaisi and also contains a facility for convicted prisoners.

<sup>70</sup> “Action Plan of the Implementation of the Strategy on Criminal Justice Reforms in Georgia,” June 12, 2006. Statistics provided by the Penitentiary Department of the Ministry of Justice, August 3, 2006.

<sup>71</sup> Human Rights Watch interview with Givi Mikanadze, deputy minister of justice, Tbilisi, May 18, 2006. According to the General Prosecutor’s Office, “The limited number of judges is a problem. There’s a backlog in investigations and in the judiciary. Each judge has 250 cases waiting judgment.” Human Rights Watch interview with Tamar Tomashvili, Human Rights Department, General Prosecutor’s Office, Tbilisi, May 23, 2006.

<sup>72</sup> Amendments to the current Criminal Procedure Code that have entered into force since January 1, 2006 decrease the length of pre-trial detention from nine months to four months, and the maximum term of detention during trial proceedings has been cut from 30 months to 12 months.

<sup>73</sup> “Currently, over 40 percent of the vacancies for judges have not been filled. Out of the estimated need of 400 judges, only 270 are presently employed. The lack of judges is partly due to the fact that 65 judges have recently resigned or were dismissed on grounds of criminal charges, including bribery; [faced] disciplinary

Furthermore, deliberate policy choices regarding pre-trial detention, sentencing, probation, and parole all contribute greatly to the rapidly growing prison population. The government policy of zero tolerance for crime has led to greater numbers of arrests of suspects, and the judiciary resorts frequently to pre-trial detention of suspects, irrespective of the gravity of the offense. Limited use of both probation as an alternative to sentencing and early release on parole also contributes to overcrowding. The General Prosecutor's Office reported that between September 2005 and March 2006, in 52 to 59 percent of cases, persons facing trial were remanded in custody.<sup>74</sup> Amendments to the Criminal Procedure Code in December 2005 eliminated some alternatives to pre-trial detention, leaving bail and release on personal recognizance as the only alternatives to detention, which as a matter of practice are rarely granted by courts.<sup>75</sup> In a February 2006 speech to newly-appointed judges, President Saakashvili also strongly discouraged the use of probation, even for those convicted of petty crime. He stated, "People should be sent to prison for every petty crime.... [P]robation sentence will be abolished and all culprits will go straight to prison, except when it is necessary for the investigation to get information from the person which will help open big and serious cases..."<sup>76</sup> Lawyers confirmed that probation is virtually never awarded.<sup>77</sup>

These developments directly contradict information provided by the Georgian government to the UN special rapporteur on torture following his visit in 2004, in which the government states that "preference shall always be given to measures of constraint

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measures; or [chose] retirement. Furthermore, the dismissal of five judges from the Supreme Court ... has raised concern about the proceedings and the principle of the independence of judiciary." Council of Europe, "Compliance with Commitments and Obligations: The Situation in Georgia." Regular Report Prepared by the Directorate General of Political Affairs (May 2006), SG/INF (2006), July 9, 2006, para. 19.

<sup>74</sup> General Prosecutor's Office, "Application of Different Measures of Constraint by the Georgian Courts, September 2005-March 2006," as provided to Human Rights Watch on May 23, 2006.

<sup>75</sup> According to the Criminal Procedure Code of Georgia art. 152, as amended December 16, 2005, alternative measures to pre-trial detention are: release on bail, personal guarantee, supervision of a convicted minor, and supervision of military servant's conduct by the military superior. Previously, additional alternatives to detention included release on the personal guarantee of another individual and house arrest. The Office of the Ombudsman reported receiving many complaints from defendants that the prosecutor's office often refuses to admit property as bail, in contradiction of art. 168, para. 1 of the Criminal Code of Georgia which defines bail as "cash, movable or immovable property" and para. 2 which states that the defendant or any person acting on his or her behalf may post bail as movable or immovable property worth the full amount of the bail. "Ombudsman of Georgia Recommends Prosecutors to Comply with All Requirements of Law When Using Bail as a Preventive Measure," Ombudsman of Georgia press release.

<sup>76</sup> "Address by President Saakashvili at the Judges' Oath Taking Ceremony," February 23, 2006, <http://www.president.gov.ge/?l=E&m=0&sm=3&id=1495> (accessed March 6, 2006).

<sup>77</sup> Human Rights Watch telephone interview with Gela Nikolaishvili, August 9, 2006.

not related to the deprivation of liberty.<sup>778</sup> The special rapporteur on torture had noted that official government attitudes suggest that “no distinction [is made] between pretrial detention and imprisonment following conviction,” which is contrary to the presumption of innocence and the exceptional rule of deprivation of liberty.<sup>79</sup> The regular use of pre-trial detention also contradicts article 9(3) of the ICCPR which states, “It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial.”<sup>80</sup> The UN Human Rights Committee has ruled that detention before trial should be used only to the extent it is lawful, reasonable, and necessary. Necessity is defined narrowly: “to prevent flight, interference with evidence or the recurrence of crime” or “where the person concerned constitutes a clear and serious threat to society which cannot be contained in any other manner.”<sup>81</sup> Each case of detention must be individually assessed for the necessity of detaining the accused.

Evidence from within the prisons suggests that in practice individual cases do not benefit from assessment as to whether detention is necessary or not. Individuals within the Penitentiary Department recognize the problem and do not agree with the current policy. One official from Tbilisi Prison No. 5 expressed his opinion that government detention policies result in overcrowding and that the only solution is to change these policies. He told Human Rights Watch, “I do believe that we need to change the detention measures. There is not always a need to detain people. If this does not change, then the prisons will always be overcrowded. There are lots of other options for detention. For example, for economic crimes: someone steals a box of cigarettes. He doesn’t need to be put in prison. We have people detained here for stealing four bottles of vodka. This doesn’t make any sense. We need to examine the severity of the crime in order to determine which measures are appropriate. There are dangerous criminals, not dangerous, those who would cooperate with law enforcement, etc. We need to change the attitude towards crimes. We need to simplify the system.”<sup>82</sup>

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<sup>78</sup> “Civil and Political Rights, Including: The Questions of Torture and Detention, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Georgia,” footnote 9.

<sup>79</sup> *Ibid.*, para. 51.

<sup>80</sup> ICCPR, art. 9. See also General Comment No. 8 of the Human Rights Committee on the International Covenant on Civil and Political Rights, art. 9 (Sixth Sess. 1982), UN Doc. A/40/40, “[p]re-trial detention should be an exception and as short as possible.”

<sup>81</sup> *Hugo van Alphen v. the Netherlands* (No. 305/1988) (July 23, 1990), Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), vol. II., annex IX, sect. M., para. 5.8.

<sup>82</sup> Human Rights Watch interview with Stepan Ozashvili, deputy director, Tbilisi Prison No. 5, May 16, 2006. Penal Reform International (PRI) has similarly stated, “Unless legislative, policy and public information approaches are soon adopted to check Georgia’s sharply rising rate of imprisonment (250 per 100,000 population) new building will not keep pace and prisoners will remain in inhuman conditions for several years to come.” Penal Reform International, “Report for the UN Committee Against Torture,” May 1, 2006.

### ***Conditions of overcrowding***

Tbilisi remand Prison No. 5 deserves particular attention owing to its severe overcrowding. For many years, overcrowding has been most acute in this facility, and the problem has only intensified over time. Following its visit in 2004, the CPT noted, "...the overcrowding in the main pre-trial establishment in the country, Prison No. 5 in Tbilisi, had reached alarming levels," rising by 22 percent in just five months.<sup>83</sup> During Human Rights Watch's visit in May 2006, the Tbilisi Prison No. 5 was holding 3,559 prisoners, a 60 percent increase since the CPT's 2004 visit. The director of the prison told Human Rights Watch that the facility is designed to accommodate 1,800 prisoners and was thus operating at nearly twice the normal capacity. He also told Human Rights Watch that the facility receives 20-50 new detainees per week.<sup>84</sup> Inspection of the prison's daily intake registry for April and May 2006, however, revealed an average of 18 new detainees admitted per *day*.

As a result of overcrowding, nearly every cell in Prison No. 5 visited by Human Rights Watch held at least twice as many detainees as there were beds, and the space allotment per detainee fell well below any recognized norms. Overcrowded cells consistently allowed for one square meter or less of living space per prisoner. For example, one cell visited by Human Rights Watch had 28 beds and held 73 detainees. Another cell with 24 beds held 53 people. A cell with 25 beds held 75 people. The Council of Europe's Parliamentary Assembly Monitoring Committee and the CPT found similar conditions in 2001.<sup>85</sup> In the absence of sufficient beds, detainees reported sleeping in turns, for four to five hours at a time, and often during the day.<sup>86</sup> In at least one cell, Human Rights Watch found a detainee sleeping on the floor. One prisoner detained in Prison No. 5 for several weeks in 2006 described his cell as "a wild place. There were 54 people in a room with 16 beds... Some of the guys in the cell had their own beds. The rest of us had to sleep in four rounds, during the day and night. Sometimes three people slept together in a bed."<sup>87</sup> Another detainee reported, "I was on the fourth floor. There were 71 people in that cell and only 24 beds. Sleeping was a real problem. Sometimes I might

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<sup>83</sup> CPT, "Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 November 2003 and from 7 to 14 May 2004," para. 65.

<sup>84</sup> Human Rights Watch interview with Giorgi Polodashvili, director, Tbilisi Prison No. 5, May 16, 2006.

<sup>85</sup> "In all the cells we visited in the pre-trial detention centre for adult men, there were more detainees than beds." PACE, "Honouring of obligations and commitments by Georgia," para. 105.

<sup>86</sup> PRI also found juveniles being forced to sleep in shifts in at least two prisons (the new pre-trial facility for juveniles in Tbilisi and the pre-trial facility in Batumi). Penal Reform International, "Report for the UN Committee Against Torture."

<sup>87</sup> Human Rights Watch interview with former detainee of Tbilisi Prison No. 5 (name withheld), Tbilisi, May 14, 2006.

not sleep for three days.<sup>788</sup> Another inmate reported, “It is terrible. We can only sleep four, five, or six hours at a time.”<sup>789</sup> Overcrowding also takes a serious psychological toll on detainees; one inmate told Human Rights Watch, “It is so crowded here, I could go crazy.”<sup>790</sup>

Another facility visited by Human Rights Watch, Rustavi Prison No. 1, was also overcrowded. According to the prison’s deputy director, the facility has a capacity of 1,000 prisoners and in May 2006 there were some 1,361 detainees. This prison operates both strict and general regimes for prisoners, depending on their sentences. Most of the detainees are convicted prisoners; some have appealed their court decisions. This facility is located next to an abandoned industrial complex, where in previous years prisoners worked. During the day, prisoners are able to walk in a large courtyard. The prisoners live in barracks that do not contain individual cells or rooms. Curtains and large pieces of material are hung up to partition the space at random intervals, creating “rooms” off of a narrow corridor. In these conditions, it was impossible for Human Rights Watch to determine how many detainees lived in what space allotments. The overall atmosphere was crowded and chaotic, with four, seven, or ten detainees sharing a partitioned space.

The OSCE reports that there are also severe overcrowding problems in prisons in Batumi and Zugdidi in western Georgia. The Batumi facility has a capacity of 250, but currently holds some 565 detainees. In Zugdidi, there are 407 detainees in a prison with a capacity of 305.<sup>91</sup> At the time of Human Rights Watch’s visit, the new prisons, Rustavi Prison No. 6 and Kutaisi Prison No. 2, were not overcrowded. Rustavi Prison No. 6 was operating at close to its capacity of 728 inmates, however, with 707 inmates. Kutaisi Prison No. 2, with a capacity of 1,500, but holding 1,423, was similarly operating just under capacity.<sup>92</sup> At the time of Human Rights Watch’s visit, Tbilisi Prison No. 7 was not technically overcrowded, although some of the cells held more detainees than is acceptable under Georgian law and international standards, while other cells, including renovated cells on the top floor designed for up to eight detainees, held two detainees. The authorities claim that this is because certain types of prisoners (thieves in law and

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<sup>88</sup> Human Rights Watch interview with former detainee of Tbilisi Prison No. 5 (name withheld), Tbilisi, May 15, 2006.

<sup>89</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 5, May 16, 2006.

<sup>90</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 5, May 16, 2006.

<sup>91</sup> At one point, the Batumi prison held 607 detainees. Human Rights Watch interview with George Tugushi, OSCE, Tbilisi, May 12, 2006. In January 2006 the ombudsman reported that the Batumi prison had a capacity of 250 prisoners, but held 410 beds for 568 prisoners. “Representative of Ombudsman Monitor Situation in Jails All Over Georgia,” Ombudsman of Georgia press release, January 5, 2006.

<sup>92</sup> Human Rights Watch interview with Gocha Magrelishvili, director, Kutaisi Prison No. 2, May 20, 2006.

former police, for example) cannot be held together for security reasons.<sup>93</sup> By August 2006 the population in Prison No. 7 had increased to nearly full capacity.<sup>94</sup>

### ***Physical Conditions of Penitentiary Facilities***

Overcrowding often leads to or exacerbates other problems, including unsanitary living conditions, poor health and hygiene among prisoners, and a lack of privacy. In several facilities, the age of the buildings combined with the lack of maintenance also result in appalling conditions. Under the Council of Europe's European Prison Rules, "The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation."<sup>95</sup> Georgian law states that the living space for convicts must conform to technical and hygienic norms, "must provide maintenance of a convict's health, [and] must have a window to provide natural illumination and ventilation."<sup>96</sup> Most of the facilities visited by Human Rights Watch, with the exception of the two new prisons, did not meet these standards.

### ***Conditions in Tbilisi Prison No. 5***

Tbilisi Prison No. 5 dates to 1912. The building had been originally built and was used as a factory in the 19<sup>th</sup> century. The facility accepts remand prisoners from the five provinces of eastern Georgia, including Tbilisi. In many parts of Tbilisi Prison No. 5, the walls and floors are crumbling and in a state of disrepair. Electrical wires are exposed in the cells and corridors. The regular detention cells are filled with as many two-tier metal bunk beds as the rooms will hold. There were no tables or chairs in the rooms at the time of Human Rights Watch's visit. Detainees must sit on beds or on the floor when they are not sleeping. The toilets are partitioned from the rest of the cell by only a short wall or sometimes with a piece of fabric or shower curtain that the inmates have put up themselves. This design allows for very little privacy for those using the sanitary facilities. Because of the overcrowding, beds are often placed very close to the toilets. The toilets are decaying and filthy. In several cells Human Rights Watch found piles of garbage near the door. Human Rights Watch considers the conditions in which detainees are housed in this facility violate the prohibition on inhuman or degrading treatment.<sup>97</sup>

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<sup>93</sup> Human Rights Watch interview with Georgi Gignalidze, deputy director, Tbilisi Prison No. 7, May 19, 2006.

<sup>94</sup> Human Rights Watch telephone phone interview with Gela Nikolaishvili, August 9, 2006.

<sup>95</sup> Council of Europe Committee of Ministers, Recommendation (2006) 2 of the Committee of Ministers to member states on the European Prison Rules, para. 18.1. Similar standards are set out in the Standard Minimum Rules for the Treatment of Prisoners, arts. 10, 11, and 12.

<sup>96</sup> Law of Georgia on Imprisonment, as amended June 1, 2006, art. 33, paras. 1 and 3.

<sup>97</sup> See above at footnote 49.

All of the cells in Tbilisi Prison No. 5 visited by Human Rights Watch smelled strongly of human sweat, human excrement, and cigarette smoke. Detainees spend consecutive days and weeks in these cells without being allowed outside (see below, “Lack of Access to Exercise”). The cells were also unreasonably hot, due to the overcrowding and lack of ventilation. Many prisoners were reduced to wearing very little clothing in an effort to stay cool.<sup>98</sup> Although the rooms had large windows, there was extremely poor ventilation as a result of thick shutters placed on the windows.<sup>99</sup> The CPT identifies “natural light and fresh air [to be] basic elements of life which every prisoner is entitled to enjoy.”<sup>100</sup> Despite repeated recommendations by the CPT to do away with these shutters, at the time of Human Rights Watch’s visit, the government had yet to do so.<sup>101</sup> Human Rights Watch later received information that in August 2006, during a severe heat wave in Georgia, the government had initiated the process of removing the shutters.<sup>102</sup>

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<sup>98</sup> Although the outside temperature was warm during Human Rights Watch’s visit in mid-May, it was by no means the hottest time of the year in Georgia. In July and August 2006, when outdoor temperatures reached 104 degrees Fahrenheit (40 degrees Celsius), temperatures inside some cells reached 113 degrees Fahrenheit (45 degrees Celsius). During this period at least nine detainees died, but Deputy Minister of Justice Givi Mikanadze denied that these deaths were related to the conditions of detention. “Human Rights Activists: Georgian Prisoners Die from Heat,” *Gazeta.ru*, August 10, 2006, <http://www.gazeta.ru/cgi-bin/newsarc.cgi?lenta=lenta&day=10&month=08&year=2006> (accessed August 14, 2006). The Ministry of Justice took some measures to protect detainees’ health during the heat including by placing fans in cells of some prisons and making water available 24 hours a day. Ekaterina Basilaia, “Death Toll Rises in Georgian Prisons,” *The Messenger* vol. 151 (1171), August 11, 2006, [http://www.messenger.com.ge/issues/1171\\_august\\_11\\_2006/n\\_1171\\_1.htm](http://www.messenger.com.ge/issues/1171_august_11_2006/n_1171_1.htm) (accessed August 14, 2006).

<sup>99</sup> In 2001 the Parliamentary Assembly Monitoring Committee described the cells as “primitive and uncomfortable and without ventilation.” PACE, “Honouring of obligations and commitments by Georgia,” para. 105. During its 2001 and 2004 visits, the CPT described similar conditions in Tbilisi Prison No. 5. CPT, “Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 18 May 2001,” and CPT, “Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 November 2003 and from 7 to 14 May 2004.”

<sup>100</sup> CPT, “The CPT Standards, Substantive Sections of the CPT’s General Reports,” p. 25, para. 30.

<sup>101</sup> See CPT, “Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 18 May 2001,” p. 25, para. 87. In its 2004 report, the Committee noted, “The delegation was informed that plans to remove the shutters (as recommended by the CPT in the report on the visit in 2001) had not been implemented due to a lack of funds.” CPT, “Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 November 2003 and from 7 to 14 May 2004,” para. 68.

<sup>102</sup> Human Rights Watch email correspondence with George Tugushi, OSCE, August 18, 2006.

### *Conditions in Tbilisi Prison No. 7*

Human Rights Watch found similar conditions in Tbilisi Prison No. 7, a pre-trial facility located in the Ministry of Interior building. According to the deputy head of the prison, the facility has been functional since 2004 and can accommodate 120 detainees. At the time of Human Rights Watch's visit, there were 100 detainees, including 30 alleged organized crime bosses. The deputy director told Human Rights Watch, "All of the mafia bosses from Georgia are here."<sup>103</sup> All of the prisoners in this facility are suspects, although some had been previously sentenced and at the time of Human Rights Watch's visit were under investigation for additional charges.

Tbilisi Prison No. 7 consists of three floors of cells, with the first floor being basement cells. Cells vary in size, with capacities ranging from one to 10 people. Human Rights Watch saw several cells on the basement floor that were crowded, hot, filthy, and lacking in any natural light or ventilation. The cells contained only small windows that were covered in layers of heavy screens. After intervention by the ombudsman, the administration installed brighter artificial lights in the room, but they failed to fully address the problem of poor lighting.<sup>104</sup> At the time of our visit, the cells on this floor were still so dark that when the guards opened the doors, the detainees squinted vigorously as they attempted to adjust their eyes to the bright lights of the corridor. Detainees complained about the light: one person told Human Rights Watch, "The light is a bit better now, but it's still bad."<sup>105</sup> Human Rights Watch believes that to detain persons in the conditions that exist in many of these cells constitutes degrading treatment.<sup>106</sup>

Cells on the third floor of Tbilisi Prison No. 7 had been recently renovated. They had large windows with proper light and ventilation and contained beds as well as a table and benches. As noted above, some of these cells were underutilized, however.

### *Conditions in new prisons*

Human Rights Watch found the cells in the newly built prisons, Rustavi Prison No. 6 and Kutaisi Prison No. 2, to be generally clean, with plenty of natural light provided by large windows. The cells were not overcrowded and usually housed six to eight people.

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<sup>103</sup> Human Rights Watch interview with Georgi Gignalidze, deputy director, Tbilisi Prison No. 7, May 19, 2006.

<sup>104</sup> Human Rights Watch interview with Sozar Subari, public defender (ombudsman) of Georgia, Tbilisi, May 10, 2006. See also, "Representatives of the Ombudsman of Georgia Visited Tbilisi Jail no. 7," Ombudsman of Georgia press release, March 2, 2006, and "Regarding Housing Conditions Existing in the Jail no. 7," Ombudsman of Georgia press release, April 8, 2006.

<sup>105</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 7, May 19, 2006.

<sup>106</sup> See above at footnote 49.

Each room contained bunk beds and a table and benches. Toilets are completely enclosed in small cubicles near the cell door. Ventilation remained a problem even in these cells, however, and rooms were hot and frequently smelled strongly of human sweat and cigarettes.

### ***Conditions in quarantine and punishment cells***

Human Rights Watch found the most appalling conditions to be in the basement “quarantine” cells in Tbilisi Prison No. 5, where detainees are allegedly kept for up to three days upon arrival before being transferred to a regular cell. Human Rights Watch later learned that at least one detainee had been kept in a quarantine cell for eight months (see below, “Mental Health and Psychiatric Care”). The cells visited by Human Rights Watch had no natural light or ventilation, owing to their location in the basement, and only one tiny window covered with screens. Artificial light was provided by a bright light over the door. There was no running water in the sinks. There was standing water on the floor in one cell. The bed frames consisted of bare iron planks, and there were no mattresses and only a few tattered blankets. When a Human Rights Watch researcher asked the deputy prison director, the official responsible for prisoners’ rights in the facility, why people did not have mattresses or blankets, he said that he did not know. He immediately consulted with one of the guards outside of the quarantine cells who stated, “They only stay a few days, and so they burn things or just make them all wet. So we don’t give them blankets or mattresses anymore. They always destroy them.”<sup>107</sup>

One former detainee of Tbilisi Prison No. 5, who was held in the quarantine cell for 24 hours, struggled to describe to Human Rights Watch the conditions in which he lived. “No, I can’t talk about it, really. The conditions in this cell were indescribable. This is a very old room. The sewage from the second floor runs down into this room. There is a swamp of this stuff on the floor of this cell. [When I was there] there were 18 people kept in this cell with 16 beds. Everyone was sickly and unwashed. I really feared getting tuberculosis or some other disease. I really can’t believe that I didn’t get sick.”<sup>108</sup>

In Human Rights Watch’s opinion, the detention of persons in these conditions constitutes degrading treatment.<sup>109</sup> The CPT and others have made repeated requests to abolish immediately the use of these cells, noting, in 2001, that “living space per person could be as little as 1.7 m<sup>2</sup>. Further, the cells were generally dark, badly ventilated,

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<sup>107</sup> As stated to Human Rights Watch by Stepan Ozashvili, deputy director, Tbilisi Prison No. 5, May 16, 2006.

<sup>108</sup> Human Rights Watch interview with former detainee of Tbilisi Prison No. 5 (name withheld), Tbilisi, May 14, 2006.

<sup>109</sup> See above at footnote 49.

filthy—sometimes with mounds of assorted rubbish—and damp. Their general level of dilapidation begged description.” Following the CPT’s 2001 visit, the Georgian authorities reportedly ceased the use of the basement cells in Prison No. 5, including the “quarantine” rooms. However, by the time of the CPT’s May 2004 visit, the cells were in use again, apparently as a result of overcrowding.<sup>110</sup>

Punishment cells in the facilities visited by Human Rights Watch also frequently fell below international standards. In Rustavi Prison No. 1, punishment cells were small, with only a tiny window that provided no ventilation and absolutely no natural light. Prisoners were provided bunks made of bare slats for sleeping and had no mattresses. Many beds were not useable due to missing slats. In one cell there were 10 detainees sharing seven useable beds. Some of the rooms had functioning toilets, partitioned by a short wall. In rooms without functioning toilets, prisoners were required to knock on the cell door and request to be taken to a toilet located in an unused cell apparently used as a common toilet facility. Prisoners in the Rustavi Prison No. 1 punishment cells refused to talk to Human Rights Watch.

In the two new prisons visited by Human Rights Watch, punishment cells are limited to solitary confinement cells. In Rustavi Prison No. 6, prisoners serving punishment are held in very small cells with a toilet, sink, and with a wooden bed with no mattress or linens. In Kutaisi Prison No. 2, Human Rights Watch saw two punishment cells with similar conditions. In the Kutaisi facility, prison authorities told Human Rights Watch that ten days is the maximum time detainees are kept in punishment. One detainee told Human Rights Watch that he had been in solitary confinement for eight days as punishment for swearing at the guards. Another also reported being punished for swearing at the guards and was being held for a total of five days in the punishment cell. With respect to punishment, the CPT notes that it “pays particular attention to prisoners held, for whatever reason... under conditions akin to solitary confinement. The principle of proportionality requires that a balance be struck between the requirements of the case and the application of a solitary confinement-type regime, which is a step that can have very harmful consequences for the person concerned.... [A]ll forms of solitary confinement should be as short as possible.”<sup>111</sup> The Standard Minimum Rules prohibit punishment by close confinement.<sup>112</sup>

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<sup>110</sup> CPT, “Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 November 2003 and from 7 to 14 May 2004,” para. 67.

<sup>111</sup> CPT, “The CPT Standards, Substantive Sections of the CPT’s General Reports,” p. 20, para. 56.

<sup>112</sup> Standard Minimum Rules for the Treatment of Prisoners, art. 32.

## **Hygiene**

Practices relating to detainee hygiene varied widely in the penitentiary system. Most detainees reported being able to shower only once or twice a month, except in Rustavi Prison No. 1 and the Republican Prison Hospital where detainees are allowed to shower at any time. The Standard Minimum Rules require that prisoners “be provided with water and with such toilet articles as are necessary for health and cleanliness” and that “[i]n order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.”<sup>113</sup>

The deputy director of Tbilisi Prison No. 5 claimed that detainees “wash once per week.”<sup>114</sup> However, detainees stated that they do not shower once per week because “[t]here are too many people.”<sup>115</sup> One detainee in Kutaisi Prison No. 2 stated, “We get a shower once or twice a month. Sometimes we just wash in the cold water that comes out of our sink.”<sup>116</sup> In some cells in Tbilisi Prison No. 5 detainees had acquired hoses and hardware to create makeshift showers over the toilets. One detainee demonstrated to Human Rights Watch, “We wash here in our own toilet with this hose connected to the sink faucet. We made our own shower, but we only get water every so often here.”<sup>117</sup>

Several detainees in Prison No. 7 stated that they are able to shower only once every three weeks.<sup>118</sup> According to one lawyer, “When people were first brought to Tbilisi Prison No. 7, they weren’t allowed to wash for two months. People must share one bar of soap in the shower and razors are used by many people.”<sup>119</sup> Another lawyer told Human Rights Watch that in Prison No. 7, for three months detainees were not allowed to shave or receive a haircut, but then one day all detainees had their heads and faces completely shaved.<sup>120</sup> The Office of the Ombudsman confirmed that the administration did not provide personal hygiene items (soap, toilet paper, razors, tooth brushes, toothpaste, etc.) to detainees and did not allow relatives to deliver these items.<sup>121</sup> In response to the ombudsman’s written complaints about hygiene, lack of family visits,

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<sup>113</sup> Standard Minimum Rules for the Treatment of Prisoners, arts. 15-16.

<sup>114</sup> Human Rights Watch interview with Stepan Ozashvili, deputy director, Tbilisi Prison No. 5, May 16, 2006.

<sup>115</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 5, May 16, 2006.

<sup>116</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 5, May 16, 2006.

<sup>117</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 5, May 16, 2006.

<sup>118</sup> In August 2006, one lawyer told Human Rights Watch that detainees were now receiving showers twice per month. Human Rights Watch telephone interview with Gela Nikolaishvili, August 9, 2006.

<sup>119</sup> Human Rights Watch interview with Lali Aptsiauri, Tbilisi, May 23, 2006.

<sup>120</sup> Human Rights Watch interview with Gela Nikolaishvili, Tbilisi, May 23, 2006.

<sup>121</sup> “Regarding Housing Conditions existing in Jail #7,” Ombudsman of Georgia press release, April 10, 2006.

lack of access to exercise, and other violations of prisoners' rights, the deputy head of the Penitentiary Department replied, "The housing conditions in Jail #7 come into compliance with minimal living standards defined by Georgian legislation and international norms."<sup>122</sup>

Detainees stated that their family members had provided bedding and that often the overcrowding required them to share it with others.<sup>123</sup> The bedding was often filthy and washed infrequently.<sup>124</sup> A prisoner in Tbilisi Prison No. 7 stated, "They haven't changed the sheets in three months."<sup>125</sup> International standards require that the government provide detainees with separate and "sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness."<sup>126</sup>

### **Food and Nutrition**

Prisoners in all facilities visited by Human Rights Watch complained about the quality and quantity of food. In several facilities Human Rights Watch saw the food being prepared for prisoners or being served to them. Detainees generally received three meals a day, but the food often lacked caloric substance and nutrition. In each case, the food consisted of watery soup with some vegetables and some meat in it. The Standard Minimum Rules state that "Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served."<sup>127</sup> The CPT notes, "[T]he provision of certain basic necessities of life must always be guaranteed in institutions where the State has persons under its care and/or custody. These include adequate food..."<sup>128</sup>

In Tbilisi Prison No. 5, Human Rights Watch found the kitchen building to be decaying. Water was overflowing some of the food preparation containers resulting in standing water on the floor. The cooks told Human Rights Watch that that day detainees would receive soup with tomato, onion, carrot, potato, noodles, and some chicken meat. According to the cooks, the detainees also get macaroni and canned meat, peas, and

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<sup>122</sup> Ibid.

<sup>123</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 7, May 19, 2006; and Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 5, May 16, 2006.

<sup>124</sup> One detainee stated, "Our sheets haven't been changed for two months." Human Rights Watch interview with detainee (name withheld), Kutaisi Prison No. 2, May 20, 2006.

<sup>125</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 7, May 19, 2006.

<sup>126</sup> Standard Minimum Rules for the Treatment of Prisoners, art. 19.

<sup>127</sup> Standard Minimum Rules for the Treatment of Prisoners, art. 20, para. 1.

<sup>128</sup> CPT, "The CPT Standards, Substantive Sections of the CPT's General Reports," p. 53, para. 33.

buckwheat kasha. The deputy director of Rustavi Prison No. 1 told Human Rights Watch that people eat mostly soup, tea, bread, and potatoes.<sup>129</sup>

Prisoners confirmed that they received a watery gruel (kasha) or watery soup for most meals. Several detainees in Tbilisi Prison No. 7 complained to Human Rights Watch about the food. One detainee said, “The food is spoiled. I don’t eat it. I only eat bread.”<sup>130</sup> Another detainee in Prison No. 7 stated that he had developed stomach problems from the poor food after being moved to the facility. One detainee in Rustavi Prison No. 6 told Human Rights Watch, “The food is very bad here. We get some kind of mysterious meat sometimes.”<sup>131</sup> Detainees in Kutaisi Prison No. 2 also spoke about the inadequate food supply. One person stated, “For lunch we get soup with maybe a small amount of meat. The food is not enough. We get kasha at night, not meat. Sometimes we get sugar—a little cube of it. They [the prison officials] say that if we get sugar, we will make moonshine out of it.”<sup>132</sup> Several other detainees as well as prison officials told Human Rights Watch that sugar is restricted for this reason.<sup>133</sup>

Children interviewed by Human Rights Watch generally received more nutritious food, including meat on a more regular basis, although the food was nevertheless of a poor quality overall. Two children detained in Tbilisi Prison No. 7 stated, “The food is not good. There is kasha, borsch, meat sometimes, sometimes soy protein.”<sup>134</sup> Human Rights Watch saw bowls full of uneaten food in the boys’ cell that they said they could not eat. Children held in pre-trial detention in Kutaisi Prison No. 2 stated that they received a meat or fish cutlet every evening. However, the boys had been given more nutritious food only after they protested. When asked about numerous cuts on the boys’ arms, one boy told Human Rights Watch, “We had a real problem with the food, and so we cut ourselves. It was the only way. The food made us sick, but now it’s better, since

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<sup>129</sup> Human Rights Watch interview with Tomas Meladze, deputy director for regime, Rustavi Prison No. 6, May 17, 2006.

<sup>130</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 7, May 19, 2006. The food served in the prison is made in the nearby Tbilisi Prison No. 5 and then transported to Prison No. 7.

<sup>131</sup> Human Rights Watch interview with detainee (name withheld), Rustavi Prison No. 6, May 17, 2006.

<sup>132</sup> Human Rights Watch interview with detainee (name withheld), Kutaisi Prison No. 2, May 20, 2006.

<sup>133</sup> Human Rights Watch interview with Stepan Ozashvili, deputy director, Tbilisi Prison No. 5, May 16, 2006; Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 5, May 16, 2006; Human Rights Watch interview with detainee (name withheld), Kutaisi Prison No. 2, May 20, 2006; Human Rights Watch interview with detainee (name withheld), women’s section, Kutaisi Prison No. 2, May 20, 2006.

<sup>134</sup> Human Rights Watch interview with detainee, age 16, (name withheld), Tbilisi Prison No. 7, May 19, 2006; Human Rights Watch interview with detainee, age 17, (name withheld), Tbilisi Prison No. 7, May 19, 2006.

we cut ourselves.”<sup>135</sup> Nevertheless, one boy reported, “The food is not very good. Sometimes we really can’t eat it and so we feel hungry.”<sup>136</sup>

In the Republican Prison Hospital detainees also complained about food. One person stated, “I don’t eat what they have here. There are only three foods here: watery kasha, borsch, and kasha again in the evening. Maybe there is a potato in the borsch.”<sup>137</sup> Another detainee stated, “No one eats the food here. It is so bad. My relatives bring packages and leave it at the entrance.”<sup>138</sup> When asked about the food supply for patients, the hospital’s head doctor told Human Rights Watch, “We don’t tabulate the actual number of calories. We use a table that tells us how much protein, etc. each food gives a person. Everyone gets the same food. They get bread, potatoes, macaroni, fish and meat, but not every day. But they do get protein every day.”<sup>139</sup>

To supplement the meager prison diets, detainees have relied heavily on food delivered in packages by their relatives, but in some facilities receipt of packages has been severely restricted in recent months, with prisoners receiving no packages or a limited number of items. Under Georgian law, pre-trial detainees are allowed to receive parcels and packages with food inside.<sup>140</sup> In practice, the policy on packages varied from prison to prison and was not consistently applied even within one prison. Officials at Tbilisi Prison No. 5 reported that there is no limit on the packages that detainees can receive. “Relatives come every day. They bring food, such as fruit, vegetables, and prepared foods. They cannot bring food that will spoil.”<sup>141</sup> Detainees in Tbilisi Prison No. 5 and the Republican Prison Hospital did not report having problems receiving packages.<sup>142</sup>

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<sup>135</sup> Human Rights Watch interview with detainee, age 16, (name withheld), Kutaisi Prison No. 2, May 20, 2006.

<sup>136</sup> Human Rights Watch interview with detainee, age 15, (name withheld), Kutaisi Prison No. 2, May 20, 2006.

<sup>137</sup> Human Rights Watch interview with detainee (name withheld), Republican Prison Hospital, May 15, 2006.

<sup>138</sup> Human Rights Watch interview with detainee (name withheld), Republican Prison Hospital, May 15, 2006.

<sup>139</sup> Human Rights Watch interview with David Ossetian, chief doctor, Republican Prison Hospital, May 15, 2006.

<sup>140</sup> Under the new amendments, detainees may “acquire additional food with their own money within the limits defined by the Minister of Justice, through wire transfer.” It is unclear how this right may be realized in practice. Detainees may also “receive food with parcels and packages under the control of the administration, except for cases defined by the head of the department of the penitentiary.” This change risks arbitrary limitation on detainees’ ability to receive supplemental food in packages. Law of Georgia on Imprisonment, as amended June 1, 2006, art. 92, para. 1 (a, a<sup>1</sup>).

<sup>141</sup> Human Rights Watch interview with Stepan Ozashvili, deputy director, Tbilisi Prison No. 5, May 16, 2006.

<sup>142</sup> One former Prison No. 5 detainee told Human Rights Watch, “On the first day I didn’t eat. After that I always ate my own food. I didn’t have trouble receiving packages.” Human Rights Watch interview with former detainee of Tbilisi Prison No. 5 (name withheld), Tbilisi, May 14, 2006. At the Republican Prison Hospital, patients regularly received large packages that their relatives would deliver and leave for them at the entrance to the hospital. Detainees relied on food provided in these packages as the main substance of their diets. Human Rights Watch witnessed delivery of these packages during its visit to this facility. Officials at Rustavi Prison No. 1 also stated that they accept parcels with food supplied by relatives. Detainees confirmed this.

In other facilities, however, there are many restrictions on the receipt of packages and the contents of packages. In Tbilisi Prison No. 7, Kutaisi Prison No. 2, and Rustavi Prison No. 6 prisoners can now only receive limited items in packages from their relatives; some prisoners were not allowed to receive any packages at all. The restrictions on specific items appeared arbitrary; officials claimed that they sought to limit foods that might spoil, but then denied relatives' attempts to deliver non-perishable pre-packaged or processed food. According to the director of Prison No. 7, detainees can receive packages with juice, fruit, and cigarettes,<sup>143</sup> but detainees reported that they did not always receive the packages delivered by relatives. One woman described her experience with trying to deliver parcels to her husband detained in Prison No. 7. "My husband was in [Tbilisi] Prison No. 5 previously. I could send food to him there regularly. Here they only take juice and fruit, newspapers and cigarettes. But they only take 30 kilograms per month total. He has lost a lot of weight. He is now very weak. I can't send him vitamins, honey, cookies, or tea, even though these things don't spoil. And sometimes the prison authorities allow packages, and sometimes they don't."<sup>144</sup>

Detainees in Kutaisi and Rustavi consistently stated that they can only receive cigarettes, juice, and fruit from their relatives, and that this is a recently enacted policy. According to one detainee, "There isn't much food allowed in anymore. We must eat the prison food now. This all changed a month ago. In the past, we were allowed to have more foods."<sup>145</sup> One prison expert explained the new policy on parcels: "Officials in the new Kutaisi and Rustavi prisons barred parcels because they planned to have a shop, based on a European model, where detainees could buy food, cigarettes, and other items. But there are no shops in these facilities yet. So they are allowing some parcels, but salt, coffee, tea are banned. Prisoners see this as a punishment."<sup>146</sup>

### ***Medical Care for Detainees***

Human Rights Watch found medical care for detainees to be wholly inadequate in all facilities. Detainees widely complained of health problems and lack of care, and the Republican Prison Hospital failed to meet basic standards for treatment. The CPT states, "A prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary

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<sup>143</sup> Human Rights Watch interview with Georgi Gignalidze, deputy director, Tbilisi Prison No. 7, May 19, 2006.

<sup>144</sup> Human Rights Watch interview with wife of detainee (name withheld), Tbilisi, May 19, 2006.

<sup>145</sup> Human Rights Watch interview with detainee (name withheld), Kutaisi Prison No. 2, May 20, 2006. Similarly, a detainee in Rustavi Prison No. 6 stated, "We can get fruit from our families, but not vegetables. Not chocolate or candy." Human Rights Watch interview with detainee (name withheld), Rustavi Prison No. 6, May 17, 2006.

<sup>146</sup> Human Rights Watch interview with Mary Murphy, Penal Reform International, Tbilisi, May 19, 2006.

special facility, in conditions comparable to those enjoyed by patients in the outside community.”<sup>147</sup> The Standard Minimum Rules place similar requirements on states to provide adequate medical care.<sup>148</sup> The European Court of Human Rights has found that a failure to provide adequate medical treatment to a detainee in prison may contribute to conditions amounting to degrading treatment, resulting in a violation of article 3 of the European Convention on Human Rights.<sup>149</sup>

### ***Republican Prison Hospital***

Human Rights Watch visited the Republican Prison Hospital in Tbilisi on May 15, 2006. The hospital, which serves the whole prison system, takes detainees who have medical cases too serious to be treated in the medical wards of the individual penitentiary facilities. However, the facility was not built to function as a hospital nor has it been renovated to meet the technical standards of a hospital. The building possesses only basic facilities for surgery and does not meet any of the standards for hygiene or sanitation that are required in Georgian hospitals. According to an expert at the Rehabilitation Centre for Victims of Torture “Empathy,” a nongovernmental organization that provides rehabilitation for torture victims and undertakes programs within the prisons, “[t]he conditions in the prison hospital are very bad. There are no standards, no licenses, and no hygienic certificates that are required of all Georgian hospitals. In this sense, the medical system for prisoners operates completely illegally.”<sup>150</sup>

The head doctor of the Republican Prison Hospital, David Ossetian, also admitted, “This building is not a hospital but we use it as a hospital.... Previously, it was a prison. We don’t have normal hospital departments or divisions.”<sup>151</sup> He further stated, “We don’t have enough equipment and medicine here.”<sup>152</sup> According to a report on the Republican Prison Hospital for 2005 prepared by Dr. Ossetian, the hospital gets approximately 0.30 lari (\$0.14) per day per patient for medicines.<sup>153</sup> Prisoners often receive medicines from their relatives, although the administration has also placed

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<sup>147</sup> CPT, “The CPT Standards, Substantive Sections of the CPT’s General Reports,” p. 31, para. 38.

<sup>148</sup> “Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.” Standard Minimum Rules for the Treatment of Prisoners, art. 22, para. 2.

<sup>149</sup> See *Melnik v. Ukraine*, no. 72286/01, judgment of March 28, 2006.

<sup>150</sup> Human Rights Watch interview with George Berulava, deputy director, Rehabilitation Center for Victims of Torture “Empathy,” May 12, 2006.

<sup>151</sup> Human Rights Watch interview with David Ossetian, chief doctor, Republican Prison Hospital, May 15, 2006.

<sup>152</sup> *Ibid.*

<sup>153</sup> Report on the Republican Prison Hospital 2005, as provided to Human Rights Watch by David Ossetian, May 15, 2006.

restrictions on this practice. One patient suffering from multiple long-term illnesses reported, “Only with bribes can you get medicine.”<sup>154</sup>

The prison hospital and regular penitentiary facility medical wards technically have the possibility to transfer patients who are in need of more sophisticated care to the city hospital. Dr. Ossetian also told Human Rights Watch, “Most people, when we can’t treat them here, we are able to move them to the city hospital. But not all of them.”<sup>155</sup>

However, the deputy head of the Penitentiary Department told Human Rights Watch that in some cases, due to the Penitentiary Department’s unpaid bills, city hospitals no longer accept referrals from prisons or the prison hospital. Prisoners are often expected to pay for treatment in city hospitals.<sup>156</sup>

The Ministry of Justice has plans to transfer responsibility for medical care within the penitentiary system to the Ministry of Labor, Health, and Social Affairs in September 2006. Dr. Ossetian felt that this might not be the solution to the system’s problems, as the Ministry of Labor, Health, and Social Affairs does not have the necessary budget allocations for 2006 to absorb the prison health system. He recommended transferring the prison health system to the Ministry of Labor, Health, and Social Affairs at the start of 2007, when new budgets will be in place.<sup>157</sup> The public healthcare system in Georgia also struggles to deliver quality care due to antiquated facilities and lack of resources.

At the time of Human Rights Watch’s visit, the Republican Prison Hospital, with a capacity of 300, held 284 patients.<sup>158</sup> Many of the problems persisting in the regular penitentiary facilities also exist in the prison hospital. On a tour of the hospital, Human Rights Watch found many large rooms shared by up to 12 people. The majority of rooms contained only metal beds placed close together. Some of the rooms had televisions. The rooms were hot, unclean, and smelled of human sweat and cigarette smoke, but had reasonable light and windows that provided some ventilation. Patients received bedding, food, and other basic necessities including medicines from family

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<sup>154</sup> Human Rights Watch interview with detainee (name withheld), Republican Prison Hospital, May 15, 2006.

<sup>155</sup> Human Rights Watch interview with David Ossetian, chief doctor, Republican Prison Hospital, May 15, 2006.

<sup>156</sup> Human Rights Watch interview with Irene Tsintsadze, deputy director, Penitentiary Department, May 22, 2006.

<sup>157</sup> Human Rights Watch interview with David Ossetian, chief doctor, Republican Prison Hospital, May 15, 2006.

<sup>158</sup> Human Rights Watch interview with Mizer Gvichiani, deputy director, Republican Prison Hospital, May 15, 2006. The actual capacity of the facility remains unclear. According to the ombudsman of Georgia, on December 28, 2005 he was told that the hospital was designed to accommodate 250 prisoners, and was holding 290 people at that time. “Ombudsman of Georgia Visited Tbilisi Jail # 5,” Ombudsman of Georgia press release, December 30, 2005. In 2001 the CPT reported, “The hospital has an official capacity of 320 beds.” CPT, “Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 18 May 2001.”

members who delivered parcels. The receipt of packages appeared unrestricted. In several rooms, Human Rights Watch saw bedding that was unwashed and had bloodstains. Common toilet facilities, which are located in the hallways, were damp and smelled strongly of human excrement. Human Rights Watch was surprised to see that some detainees lived in starkly better conditions than others. In one room visited by Human Rights Watch, two patients enjoyed armchairs, a sofa, a double bed, and a flat screen television. The patients confirmed that these items had been brought to them by relatives and allowed by the hospital administration.

### *Prison medical wards*

Each prison facility visited by Human Rights Watch contains a separate medical ward and has medical personnel on staff. A Ministry of Justice medical commission consisting of six doctors visits the facilities once or twice per week. A member of this commission told Human Rights Watch, “We receive complaints from prisoners or from the investigator or family member. We also will do checks in the rooms.”<sup>159</sup> Because of overcrowding in certain prison facilities, medical wards could not meet many prisoners’ need for medical care. In addition, the conditions in the rooms themselves were substandard. The medical ward of Tbilisi Prison No. 5, like the prison itself, was overcrowded, housing 88 patients in a facility with a capacity of 72. In one room there were nine patients sharing eight beds. One nurse at another facility told Human Rights Watch, “We have 17 inmates in a medical center. There are no more places. It is a bit overcrowded. A lot of inmates who need permanent supervision of a doctor and should be put in the infirmary, can’t be because we don’t have space for them.”<sup>160</sup>

Conditions of the rooms in the medical wards varied greatly. In one room in the medical ward of Tbilisi Prison No. 5, Human Rights Watch found four beds in a properly lighted, clean, well ventilated room. A bigger room in the same facility had eight beds, was dirty and smelled strongly of human sweat and cigarette smoke. Human Rights Watch found similar disparity in the quality of the patients’ rooms in Rustavi Prison No. 1. Only in the new prisons, Kutaisi Prison No. 2 and Rustavi Prison No. 6, were patients’ rooms consistently clean, well lighted, well ventilated, and not overcrowded.

Prison facilities also severely lacked resources, including medicines, to properly care for patients. According to one medical employee, “The supply of drugs is very poor. We get 100 lari (\$45.50) worth of supplies per month. We have very little equipment; only first

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<sup>159</sup> Human Rights Watch interview with Ministry of Justice medical commission representatives, Tbilisi Prison No. 5, May 16, 2006.

<sup>160</sup> Human Rights Watch interview with penitentiary system nurse (name and details withheld).

aid, emergency equipment.”<sup>161</sup> One detainee told Human Rights Watch that he had been in the Republican Prison Hospital for nearly a year, but was transferred to a regular prison medical ward for reasons unknown to him and that he was now unable to get the care he needed for problems related to a head trauma he had suffered many years previously. He said, “In the prison hospital I had better treatment... I got an MRI scan there. There is no equipment here. My relatives bring me medicines because there aren’t medicines here.”<sup>162</sup> One HIV-positive detainee in Kutaisi Prison No. 2 stated, “I don’t get medicine. The others get medicine [from their relatives], but my family can’t afford to bring me medicine.”<sup>163</sup> The head doctor in this facility downplayed the situation, saying, “Families can bring medicines. We will write a prescription and then the families fill the prescription and bring us the medicines. They only need to bring the kinds of medicines that we don’t have here. In general, we have enough medicines here. We can treat people as necessary.”<sup>164</sup>

Human Rights Watch also encountered numerous detainees in cells who complained of or clearly suffered from a lack of medical treatment. In Tbilisi Prison No. 7, Human Rights Watch spoke with one detainee who had his arm in a sling. When asked about this detainee, the prison’s chief doctor told Human Rights Watch, “He states that he fell off his bed, from the top bunk. I believe him of course. What else am I going to do? I just believe whatever the inmates tell me. How do I know otherwise?” With respect to the injured man’s treatment, the doctor stated, “We asked for an x-ray one week ago. The [Ministry of Justice medical] commission came and also ordered an x-ray. He will maybe get it next week.”<sup>165</sup> Some detainees stated that guards refused to assist in calling in medical care. “One guy has had an awful toothache, for three days we’ve been asking for a doctor to come. One guard says, ‘Sure, I’ll take care of it.’ [But he doesn’t]. We ask at the next shift, and they say ‘Sure I’ll take care of it.’ They always say yes. When you ask the first guy what came of his promise, he says, ‘I forgot, but shut up or you’ll have problems.’”<sup>166</sup> Another prisoner told Human Rights Watch that he believed he has gangrene on both of his feet, but that the medical service had not given him any treatment.<sup>167</sup> An official from Tbilisi Prison No. 5 admitted, “We have too many prisoners; we can’t check all of them. Some write complaints. They may not be checked properly by the doctors.”<sup>168</sup> Detainees confirmed that this was the case.<sup>169</sup>

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<sup>161</sup> Ibid.

<sup>162</sup> Human Rights Watch interview with detainee (name withheld), Rustavi Prison No. 6, May 17, 2006.

<sup>163</sup> Human Rights Watch interview with detainee (name withheld), Kutaisi Prison No. 2, May 20, 2006.

<sup>164</sup> Human Rights Watch interview with chief doctor, Kutaisi Prison No. 2, May 20, 2006.

<sup>165</sup> Human Rights Watch interview with chief doctor, Tbilisi Prison No. 7, May 19, 2006.

<sup>166</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 7, May 19, 2006.

<sup>167</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 5, May 16, 2006.

<sup>168</sup> Human Rights Watch interview with Stepan Ozashvili, deputy director, Tbilisi Prison No. 5, May 16, 2006.

Several detainees in Tbilisi Prison No. 5 told Human Rights Watch that they feared fellow inmates who had heavy coughs had tuberculosis but were not being treated, despite repeated requests for assistance to the guards and medical personnel. The prison has a section for tuberculosis patients as part of a program run jointly by the International Committee of the Red Cross (ICRC), the Ministry of Justice, and the Ministry of Labor, Health, and Social Affairs.<sup>170</sup> The ICRC and the Georgian government have been engaged in tuberculosis prevention and treatment programs since 1998. They have implemented screening programs in 14 of the 16 penitentiary facilities, as well as the World Health Organization (WHO)-recommended directly observed treatment, short course (DOTS). Currently 250 prisoners are in the DOTS program.<sup>171</sup> Thus far, more than 3,000 prisoners in Georgia with tuberculosis have been treated, and the percentage of detainees suffering from tuberculosis has fallen from 6.5 percent in 1998 to 3.85 percent in 2005.<sup>172</sup>

Tuberculosis nevertheless remains a serious problem in the Georgian prison system. The spread of multi-drug resistant forms of tuberculosis remains a real threat, particularly in prisons, where lack of proper hygiene, lack of adequate medical facilities, insufficient medical staff, and, in particular, overcrowding, leave detainees more vulnerable to becoming infected with this highly contagious disease. Tuberculosis isolation facilities also become overcrowded and overburdened as the prison population increases; as a result, existing facilities may not be sufficient to isolate all tuberculosis patients from the general prison population. The growth of a tuberculosis epidemic in the prison system also places society at a real risk of an epidemic, as the disease can be readily transmitted from detainees to prison employees and to family members and others once detainees are released. Some experts also believe that there is a serious risk of an increase in coinciding HIV and tuberculosis epidemics in the region.<sup>173</sup>

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<sup>169</sup> One detainee in Prison No. 5 stated, "The doctors don't come [to check us]. They give us some kind of medicine, but it's not what's needed." Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 5, May 16, 2006.

<sup>170</sup> The prison for tuberculosis patients in Ksani is for sentenced detainees only. Only seven prisons that hold pre-trial detainees have separate facilities for tuberculosis patients.

<sup>171</sup> "DOTS Monitoring Starts in Prisons," Prime News Agency, Tbilisi, May 1, 2006; and Human Rights Watch email correspondence with the Ministry of Justice regarding tuberculosis control in the penitentiary system, August 14, 2006.

<sup>172</sup> International Committee of the Red Cross, "Tuberculosis: A forgotten Killer," ICRC Website, March 23, 2006, <http://www.icrc.org/web/eng/siteeng0.nsf/iwpList292/F8A65ECD736571E7C125713A003A0649> (accessed July 19, 2006); and Human Rights Watch email correspondence with the Ministry of Justice regarding tuberculosis control in the penitentiary system, August 14, 2006.

<sup>173</sup> Drobniwski, F.A., et al., "The 'Bear Trap': The Colliding Epidemics of Tuberculosis and HIV in Russia," *International Journal of STD and AIDS*, 15 (10), October 2004, pp. 641-646.

### ***Mental health and psychiatric care***

The situation for psychiatric patients within the penitentiary system is grave. The Standard Minimum Rules require that “the medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner’s rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.”<sup>174</sup> The CPT also pays particular attention to this category of individuals.<sup>175</sup> As in other parts of the Republican Prison Hospital, conditions of detention for psychiatric patients were substandard and many detainees in need of care both in the hospital and in the regular prison facilities were clearly not able to receive it.

Rooms in the psychiatric department of the Republican Prison Hospital were in varying conditions of cleanliness and upkeep, but most were crowded, filthy, and smelling strongly of human sweat and cigarette smoke. Several of the rooms held large numbers of patients together; in at least one instance as many as 15 people lived together in one large room. There were people sleeping in beds in the hallway. The prison authorities told Human Rights Watch that these people had themselves requested to be put there because of their psychological problems. Penal Reform International (PRI) has observed that prisoners described by staff as suffering from mental health problems are sometimes located in punishment cells. During a recent visit to Batumi prison, PRI observed three prisoners described as having mental health problems in a cell (not a punishment cell) with no light or air except that which reached them through the grille in the door.<sup>176</sup>

Prison authorities in various facilities acknowledged that there were detainees in their prisons with suspected or confirmed mental illnesses, but said these individuals were not transferred out of the regular prison facilities or treated within the medical wards of the facilities. Many also dismissed their conditions as not warranting special care. The deputy director of Rustavi Prison No. 1 described one inmate who had taken his bed outside into the courtyard: “Sometimes mental patients take beds out of the rooms. They are mostly normal but have strange habits.”<sup>177</sup> Irena Tsintsadze, deputy head of the Ministry of Justice’s Penitentiary Department, described one case involving a detainee who was in his eighth month in the quarantine section of Tbilisi Prison No. 5. The man was in need of a psychiatric evaluation, but doctors refused to treat him because he has lice:

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<sup>174</sup> Standard Minimum Rules for the Treatment of Prisoners, art. 62; see also arts. 82-83.

<sup>175</sup> See CPT, “The CPT Standards, Substantive Sections of the CPT’s General Reports,” pp. 51-52, paras. 25-58.

<sup>176</sup> Penal Reform International, “Report for the UN Committee Against Torture.”

<sup>177</sup> Human Rights Watch interview with Giorgi Gogava, deputy director, Rustavi Prison No. 1, May 17, 2006.

[There is one prisoner who has] been in Prison No. 5 for eight months, in a quarantine cell. [We] decided he should have a psychiatric exam, but how can anyone understand him? He has a Georgian surname, [but he doesn't speak Georgian].... This person should be in a psychiatric hospital. We asked the penitentiary system for the medical assessment department to determine whether he is insane, but they said that it was impossible to do so. He has lice. They say that to treat his lice, they must treat the entire prison. So, the psychiatric unit won't take him because he has lice.... [T]here are eight inmates in [his] cell. He doesn't want to leave his room. But he's not aggressive. Maybe he's gotten used to it.<sup>178</sup>

One lawyer described the case of one of her clients. She told Human Rights Watch, “[My client] is a very sick person. He had a psychological diagnosis a few years ago stating that he cannot answer before the law. We have asked for him to be moved to the Republican Prison Hospital—this is the absolute minimum. But they don't let us do this.” She explained that he faces criminal charges simply because he calls himself a thief in law, despite the fact that there is no other evidence. Under the new law on organized crime enacted in December 2005, admitting to being a thief in law alone is sufficient grounds for criminal prosecution.<sup>179</sup>

### **Access to Exercise**

Georgian law also provides convicted prisoners with the right to exercise one hour per day.<sup>180</sup> Although some prisoners reported being able to exercise daily for up to an hour, this right was not guaranteed consistently across facilities or even within individual prisons. In almost all cases, exercise facilities are small, high-walled areas topped with wire that lack sufficient space for prisoners to exercise physically. Again, detainees in Tbilisi Prison No. 7 faced the harshest restrictions and, at the time of Human Rights Watch's visit, had not been outside to exercise since December 2005. One detainee stated, “We don't get any walks. I haven't had any exercise in five months.”<sup>181</sup> Another stated, “I've been here since January ... I've had no exercise yet.”<sup>182</sup> Children detained in

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<sup>178</sup> Human Rights Watch interview with Irene Tsintsadze, deputy director, Penitentiary Department, May 22, 2006.

<sup>179</sup> Human Rights Watch interview with Eka Beselia, Tbilisi, May 16, 2006. According to the new law on organized crime, a person who states that he is a thief in law may be criminally charged.

<sup>180</sup> “[A] convict who, due to regime or other circumstances cannot be regularly brought out for a walk must be granted the right to be [in] open air for not less than one hour every day.” Law of Georgia on Imprisonment, as amended June 1, 2006, art. 43.

<sup>181</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 7, May 19, 2006.

<sup>182</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 7, May 19, 2006.

Prison No. 7 also told Human Rights Watch, “We don’t go outside.”<sup>183</sup> The deputy director denied that there was an absolute lack of exercise, but stated, “We only have small gardens for walking. According to the rules, people should get one to two hours per day for exercise, but now it is less.”<sup>184</sup> In August 2006 one lawyer told Human Rights Watch that detainees in Tbilisi Prison No. 7 had begun to receive exercise for 30 minutes each day.<sup>185</sup>

In Tbilisi Prison No. 5, detainees also complained of the lack of exercise. One former detainee stated, “While I was in Prison No. 5 we had a walk once per month for 30 or 40 minutes.”<sup>186</sup> One detainee told Human Rights Watch, “We get to go outside only once every three months or so.”<sup>187</sup> The deputy director of the prison admitted that the prisoners did not get the exercise to which they were entitled under law, saying, “For exercise, people should get one hour per day, but there are so many people and we don’t always manage to get everyone out.”<sup>188</sup>

Some prisoners in Kutaisi Prison No. 2 told Human Rights Watch that their access to exercise was inconsistent. “We haven’t been outside in a week. Sometimes they take us every day; sometimes they don’t. I don’t know why they don’t take us out,” said one prisoner.<sup>189</sup> Another confirmed, “We haven’t been out for exercise for a week. They say it’s because of some sort of lock-down/quarantine.”<sup>190</sup> Women and children held in this facility did not report having problems with their access to exercise.

In Rustavi Prison No. 6, one prisoner reported some restrictions on the right to exercise, saying that he was allowed “only 30 minutes of walking” per day.<sup>191</sup> The prison’s deputy director told Human Rights Watch, “There are 12 exercise yards. Everyone gets to exercise for one hour. If they don’t smoke they get 20 minutes more.”<sup>192</sup>

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<sup>183</sup> Human Rights Watch interview with detainee, age 16, (name withheld), Tbilisi Prison No. 7, May 19, 2006.

<sup>184</sup> Human Rights Watch interview with Giorgi Gignaldze, deputy director, Tbilisi Prison No. 7, May 19, 2006.

<sup>185</sup> Human Rights Watch phone interview with Gela Nikolaishvili, August 9, 2006.

<sup>186</sup> Human Rights Watch interview with former detainee of Tbilisi Prison No. 5 (name withheld), Tbilisi, May 14, 2006.

<sup>187</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 5, May 16, 2006.

<sup>188</sup> Human Rights Watch interview with Stepan Ozashvili, deputy director, Tbilisi Prison No. 5, May 16, 2006.

<sup>189</sup> Human Rights Watch interview with detainee (name withheld), Kutaisi Prison No. 2, May 20, 2006.

<sup>190</sup> Human Rights Watch interview with detainee (name withheld), Kutaisi Prison No. 2, May 20, 2006.

<sup>191</sup> Human Rights Watch interview with detainee (name withheld), Rustavi Prison No. 6, May 17, 2006.

<sup>192</sup> Human Rights Watch interview with Irakle Gelashvili, deputy director for social affairs, Rustavi Prison No. 6, May 17, 2006.

The limits on exercise described above violate the Standard Minimum Rules, which require that “every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.”<sup>193</sup> The CPT affirmed this requirement as a basic safeguard and emphasized that “all prisoners without exception (including those undergoing cellular confinement as a punishment) should be offered the possibility to take outdoor exercise daily.”<sup>194</sup> The CPT has repeatedly documented the Georgian government’s lack of compliance with this requirement.<sup>195</sup>

### ***Lack of Access to Family Visits and Correspondence***

Prisoners in all facilities visited by Human Rights Watch complained of lack of contact with their relatives. New amendments to the imprisonment law curtailed the standard number of visits and length of visits for convicted prisoners, and the government has added a provision allowing this right to be further limited “based on security interests within the penitentiary institution.”<sup>196</sup> A member of the parliamentary legal committee, which sponsored the amendments, justified the amendments in a press interview saying, “The Penitentiary Department has decided that [these restrictions on family visits] are a necessary first step of the reform in the system.”<sup>197</sup>

The legislative changes reduced convicts’ visits with family members to one hour at a time.<sup>198</sup> The number of visits is determined by the severity of the regime being served. Convicted prisoners serving under the general regime are allowed two visits per month, whereas previously they were allowed five short-term visits monthly and five long-term meetings annually.<sup>199</sup> Convicted prisoners serving under the strict regime are now allowed only one visit per month, and recidivists have the right to only one visit every two months. Previously, these prisoners were allowed four short-term visits monthly and

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<sup>193</sup> Standard Minimum Rules for the Treatment of Prisoners, art. 21, para. 1.

<sup>194</sup> CPT, “The CPT Standards, Substantive Sections of the CPT’s General Reports,” p. 18, para. 48.

<sup>195</sup> CPT, “Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 November 2003 and from 7 to 14 May 2004”; and CPT, “Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 18 May 2001.”

<sup>196</sup> Law of Georgia on Imprisonment, as amended June 1, 2006, art. 48, para. 1.

<sup>197</sup> Interview with Nika Gvaramia, member of parliament, as reported in “Are riots being prepared in the prisons? What kind of law has been stealthily passed by the Parliament of Georgia?” *Alia*, no. 68/1900, June 15-16, 2006, p. 4.

<sup>198</sup> *Ibid.*

<sup>199</sup> Short-term visits lasted for up to three hours. Long-term visits were granted for one to three days in a specially separated dwelling place in the institution of execution of punishments without the presence of the administration. Law of Georgia on Imprisonment, as amended June 1, 2006, art. 73, paras. 1-3.

three long-term visits annually.<sup>200</sup> Convicts serving under the general prison regime are allowed only three visits per year and those under the strict prison regime are allowed only two visits per year under the surveillance of the administration.<sup>201</sup> Pre-trial detainees are allowed no more than two visits per month. Permission for a visit must be granted by an investigator, prosecutor, or a judge.<sup>202</sup>

These new limitations on family visits are overly restrictive and counter to international standards that provide for regular contact with friends and family members. The European Committee for the Prevention of Torture states, “It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world...”<sup>203</sup> In its 2004 report on Georgia, the CPT recommended that the Georgian authorities “increase the official visiting entitlement of sentenced male prisoners so as to ensure that all prisoners can receive at least one short-term or one long-term visit per month.”<sup>204</sup> With respect to pre-trial detainees, the CPT called on the government “to ensure that remand prisoners are entitled to receive visits as a matter of principle,” without authorization from a prosecutor, investigator or judge; any limitations on visits for pre-trial detainees should “be specifically substantiated by the needs of the

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<sup>200</sup> Ibid., art. 74, para. 4.

<sup>201</sup> Ibid., art. 78, para. 1; and art. 79, para 4.

<sup>202</sup> Ibid., art. 89.

<sup>203</sup> Any limitations on family contact should be based exclusively on security concerns of an appreciable nature or resource considerations. CPT, “The CPT Standards, Substantive Sections of the CPT’s General Reports,” p. 18, para. 51. Similarly, the Standard Minimum Rules require that prisoners shall be allowed, under necessary supervision, to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits. Standard Minimum Rules for the Treatment of Prisoners, art. 37. Pre-trial detainees should receive essentially the same treatment, “subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.” Standard Minimum Rules for the Treatment of Prisoners, art. 92.

<sup>204</sup> CPT, “Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 November 2003 and from 7 to 14 May 2004,” para. 135. In addition, in a 1994 report to the Hungarian government, the CPT found that prisoners were entitled to only one visit of one hour per month and deemed this “hardly sufficient to enable a detainee to maintain good relations with his family and friends.” CPT, “Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 14 November 1994,” para. 128. The CPT later recommended that Hungary should aim to offer each remand prisoner at least one visit every week. CPT, “Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 March to 8 April 2005,” para. 37.

investigation, require the approval of a body unconnected with the case at hand and be applied for a specified period of time.”<sup>205</sup>

Even before these amendments came into force, detainees told Human Rights Watch that they had not been allowed visits in several months. The lack of contact resulted in desperation for many detainees and their families. One detainee in Tbilisi Prison No. 7 stated in May that the last time he had seen his family was in January.<sup>206</sup> Another stated, “I haven’t seen family in five months. I don’t have any news of them!”<sup>207</sup> According to one woman, whose husband is detained in Prison No. 7, “I don’t have meetings with my husband. I haven’t seen my husband [for 5 months], since December. I got permission for a meeting from the court, but when I came they wouldn’t let me in.”<sup>208</sup> Another woman reported, “Only through lots of insider contacts I was finally able to get a 30-minute meeting [with my husband].”<sup>209</sup> Lawyers confirmed that there are severe restrictions on family visits for their clients located in Tbilisi Prison No. 7. One lawyer told Human Rights Watch, “The wife of one of my clients got permission and came to have a meeting with her husband, but the Prison No. 7 administration did not let her in.”<sup>210</sup>

The deputy director of the prison told Human Rights Watch that family meetings do take place, and explained, “We are building meeting rooms now, but people are still able to meet now. People bring permission from the judge and we let them in.”<sup>211</sup> Some detainees in the Republican Prison Hospital also complained of not receiving visits from their relatives, although others did receive family visits. According to one patient, “I don’t have meetings with my family members. We have made a motion for family visits. My relatives come and they just leave packages of food for me at the entrance.”<sup>212</sup>

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<sup>205</sup> CPT, “Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 November 2003 and from 7 to 14 May 2004,” para. 134.

<sup>206</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 7, May 19, 2006.

<sup>207</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 7, May 19, 2006.

<sup>208</sup> Human Rights Watch interview with relative of detainee in Tbilisi Prison No. 7 (name withheld), Tbilisi, May 19, 2006. Family members appealed to the ombudsman of Georgia regarding the lack of visits and, in particular, the failure of the prison administration to allow families to visit their relatives who had been recently transferred to Prison No. 7. See, “Department of the Execution of Punishment Violated General Administrative Code of Georgia,” Ombudsman of Georgia press release.

<sup>209</sup> Human Rights Watch interview with relative of detainee in Tbilisi Prison No. 7 (name withheld), Tbilisi, May 19, 2006.

<sup>210</sup> Human Rights Watch interview with Eka Beselia, Tbilisi, May 16, 2006.

<sup>211</sup> Human Rights Watch interview with Georgi Signalidze, deputy director, Tbilisi Prison No. 7, May 19, 2006.

<sup>212</sup> Human Rights Watch interview with detainee (name withheld), Republican Prison Hospital, May 15, 2006.

In other facilities, detainees were able to receive family visits as guaranteed under the law, although prisoners who had been moved to facilities far from their families complained that distance made it impossible for them to meet with their loved ones. According to one prisoner recently moved from far western Georgia to the new Kutaisi Prison No. 2, “I have no meetings with my family because they don’t have the money to come here.”<sup>213</sup> A convicted prisoner protested the situation by going on a hunger strike. He told Human Rights Watch, “I am on a hunger strike because I am not able to meet with my family. I was moved here and now live very far from them. They can’t afford to come and visit. I have been on a hunger strike for three days, without food and two days also without water.”<sup>214</sup> The CPT emphasizes that there should be flexibility when detainees’ families live far away. Detainees should be allowed to accumulate visiting time and/or be offered more possibilities for telephone calls.<sup>215</sup>

In the two new prisons and in Prison No. 7, the Penitentiary Department has installed small cubicles separated by glass where detainees can meet with their families. The cubicles should have telephones by which detainees and their visitors can speak. However, at the time of Human Rights Watch’s visit, the telephones had not yet been installed, but meetings nevertheless took place in these rooms. As a result, detainees and their visitors were forced to shout through the glass in order to hear one another. One detainee found this situation quite humiliating. “There is a meeting place, but now they put in glass barriers. It’s terrible. You have to yell loudly through the glass such that everyone in the whole prison can hear you.”<sup>216</sup>

Georgian law provides convicted prisoners with the right to regular correspondence and use of telephones, but most prisons restricted prisoners’ correspondence with their relatives.<sup>217</sup> Moreover, Georgian law places unnecessary, blanket restrictions on communication with relatives or friends for pre-trial detainees, allowing them correspondence and telephone conversations only with permission of the investigator, prosecutor, or court, and at his or her own expense.<sup>218</sup> The Standard Minimum Rules require, “An untried prisoner... shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to

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<sup>213</sup> Human Rights Watch interview with detainee (name withheld), Kutaisi Prison No. 2, May 20, 2006.

<sup>214</sup> Human Rights Watch interview with detainee (name withheld), Kutaisi Prison No. 2, May 20, 2006.

<sup>215</sup> CPT, “The CPT Standards, Substantive Sections of the CPT’s General Reports,” p. 18, para. 51.

<sup>216</sup> Human Rights Watch interview with detainee (name withheld), Rustavi Prison No. 6, May 17, 2006.

<sup>217</sup> Prisoners have the right to “send and receive correspondence in unlimited quantity, to use a telephone of common use according to the established rule and under control of the institution of execution of punishments, if the institution has such technical possibility.” Law of Georgia on Imprisonment, as amended June 1, 2006, art. 50, para. 1.

<sup>218</sup> Law of Georgia on Imprisonment, as amended June 1, 2006, art. 92, para. 1(c).

restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.”<sup>219</sup>

Numerous detainees in pre-trial detention described the isolation they felt in not being allowed to correspond with or call their relatives. One detainee in Rustavi Prison No. 6 stated, “We are not allowed to call anywhere. We have no contact with the outside world.”<sup>220</sup> A detainee in Tbilisi Prison No. 7 stated, “I can’t send letters to my family. We have no pens or paper. There is no chance to write.”<sup>221</sup> In Kutaisi Prison No. 2, a woman pre-trial detainee told Human Rights Watch, “Recently, a girl from the social department came and told us that there is a new rule: we can no longer receive letters from our family, no messages.”<sup>222</sup> The deputy director of Kutaisi Prison No. 2 said that people do have the right to communicate with their families: “In order for people to make a phone call, they can write a letter to the administration and then they can make a phone call. When people are moved here they each get one phone call.”<sup>223</sup> However, Human Rights Watch observed that detainees were not provided with writing implements and paper for this purpose. The deputy director of Rustavi Prison No. 1 admitted, “There is no telephone working here for prisoners to use.”<sup>224</sup>

### **Access to Lawyers**

In all penitentiary facilities except Tbilisi Prison No. 7, detainees and lawyers reported being able to have regular meetings. Georgian law states that convicted prisoners have the right to “unlimited meetings” with counsel.<sup>225</sup> International standards also require that detainees have the right to confidential meetings with their clients.<sup>226</sup> However, in Tbilisi Prison No. 7, several lawyers described to Human Rights Watch the increasingly restrictive policies they have faced when trying to access their clients since the fight against organized crime intensified in December 2005. According to one lawyer with several clients detained in Tbilisi Prison No. 7, “After December 25, 2005, there was an information blockade. For approximately two weeks, no lawyers were allowed to enter the prison. Only when [Chair of the Parliamentary Committee on Human Rights] Elena Tevtoradze and [Ombudsman] Sozar Subari started to complain did they slowly let

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<sup>219</sup> Standard Minimum Rules for the Treatment of Prisoners, art. 92.

<sup>220</sup> Human Rights Watch interview with detainee (name withheld), Rustavi Prison No. 6, May 17, 2006.

<sup>221</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 7, May 19, 2006.

<sup>222</sup> Human Rights Watch interview with detainee (name withheld), Kutaisi Prison No. 2, May 20, 2006.

<sup>223</sup> Human Rights Watch interview with Shmagi Panzevadze, deputy director, Kutaisi Prison No. 2, May 20, 2006.

<sup>224</sup> Human Rights Watch interview with Giorgi Gogava, deputy director, Rustavi Prison No. 1, May 17, 2006.

<sup>225</sup> Law of Georgia on Imprisonment, as amended June 1, 2006, art. 26, para. 1(a, c).

<sup>226</sup> Standard Minimum Rules, art. 93.

lawyers in again. There were similar restrictions for a few days in February and again in March. I believe this was done to isolate and scare the detainees.”<sup>227</sup> Another reported, “I went to Prison No. 7 on December 25 and asked for permission to talk to my clients. And in writing I asked for a medical expert to come with me. They didn’t allow doctors in. No lawyers or doctors for 14 days. There were problems for lawyers again in April for three days around [April] 25 to 26, and around March 27 for one week.”<sup>228</sup> According to lawyers, “there is no response when we ask why [we are denied access]. The guards simply say ‘we have instructions.’”<sup>229</sup> One lawyer told Human Rights Watch, “I complain to the prosecutor and investigator and the response is always that there was ‘a planned inspection or checking.’”<sup>230</sup>

Beyond these periodic obstructions at Tbilisi Prison No. 7, lawyers also reported having difficulty obtaining normal access on a regular basis. Policies introduced in Prison No. 7 in January 2006 allow lawyers to enter for only a few hours at a time during the day. Furthermore, since the facility only has two meeting rooms for lawyers and their clients, and only one lawyer can enter at a time, very few lawyers can enter on any given day. One lawyer described the situation: “From 6 a.m. the administration takes requests for lawyers to enter and they make a list. Only at the end of the day are you admitted. Only two rooms for meetings, and we’re admitted only one at a time.”<sup>231</sup> Another lawyer confirmed, “Relatives come at 6 a.m. to be the first in line only to be let in on the third day at 4:45 p.m.”<sup>232</sup> He further explained, “When they were meant to open at 11 a.m. or 12 p.m., they’d only open at 1 p.m. or 2 p.m., take a break from 2 p.m. to 3 p.m. that actually lasted until 3:30 p.m. or 4 p.m., so by the end of the day, only three or four lawyers would have been able to meet their clients. So it was a de facto denial of access.”<sup>233</sup> The deputy director of Prison No. 7 denied that there are any particular restrictions, telling Human Rights Watch, “There are no restrictions. Lawyers are allowed in on any weekday, on weekends if needed.”<sup>234</sup>

Both of the rooms currently designated for lawyer-client meetings in Prison No. 7 have video cameras. An official from the U.S. Embassy in Tbilisi told Human Rights Watch

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<sup>227</sup> Human Rights Watch interview with Eka Beselia, Tbilisi, May 16, 2006. The Office of the Ombudsman also reported that lawyers had appealed to his office regarding problems of access to their clients. “Rights to Defense Restricted in Tbilisi Jail #7,” Ombudsman of Georgia press release, April 27, 2006.

<sup>228</sup> Human Rights Watch interview with Lali Aptsiauri, Tbilisi, May 17, 2006.

<sup>229</sup> Ibid.

<sup>230</sup> Ibid.

<sup>231</sup> Human Rights Watch interview with Eka Beselia, Tbilisi, May 16, 2006.

<sup>232</sup> Human Rights Watch interview with Gela Nikolaishvili, Tbilisi, May 23, 2006.

<sup>233</sup> Ibid.

<sup>234</sup> Human Rights Watch interview with Georgi Gignalidze, deputy director, Tbilisi Prison No. 7, May 19, 2006.

that the embassy had helped to install these cameras as an anti-torture measure to monitor interrogations of detainees by police and investigators. They were not intended to be used to monitor lawyer-client meetings. Lawyers believe that these cameras violate lawyer-client confidentiality. According to one lawyer, “There are cameras in the rooms; everything is seen and heard.”<sup>235</sup> Another lawyer told Human Rights Watch that he was convinced that the cameras do have audio recording, based on a revealing incident during one of his meetings with a client, when guards intervened as soon as his exchange with his client began to involve making a detailed sketch on paper—something the guards could not monitor by listening.<sup>236</sup> The deputy director of the Prison No. 7 denied that there were any violations of confidentiality, stating, “For safety we have cameras, so nothing is transferred. The cameras don’t have audio.”<sup>237</sup> In July 2006 the Penitentiary Department denied a request by the ombudsman to dismantle the cameras.<sup>238</sup>

Lawyers reported other restrictions and violations of confidentiality. “I couldn’t even pass on the case materials to my clients... And a member of the special forces stands in the room and sees and hears everything. They check everything that we write down. You can’t convince them to leave you alone. Nothing is confidential,” one lawyer told Human Rights Watch.<sup>239</sup> Another lawyer stated, “When the lawyers enter, all papers are checked. Lawyers undergo a body search. Even shoes are searched. This continues to today.”<sup>240</sup> The Standard Minimum Rules require that “For the purposes of his defence, an untried prisoner shall be allowed to ... receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.”<sup>241</sup>

## **Access to Information**

Access to information is widely restricted in the prison system, but again, not consistently. According to Georgian law, “A convict must be provided with the

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<sup>235</sup> Human Rights Watch interview with Eka Beselia, Tbilisi, May 16, 2006.

<sup>236</sup> The lawyer described the meeting with one of his clients in January 2006. “So long as we were both speaking, no one bothered us. But when I started to sketch a map related to the alleged crime, a guard burst into the room and demanded to know what I was writing.” Human Rights Watch interview with Gela Nikolaishvili, Tbilisi, February 24, 2006.

<sup>237</sup> Human Rights Watch interview with Georgi Gignalidze, deputy director, Tbilisi Prison No. 7, May 19, 2006.

<sup>238</sup> “Press Conference at the Office of the Public Defender,” Ombudsman of Georgia press release, July 18, 2006.

<sup>239</sup> Human Rights Watch interview with Eka Beselia, Tbilisi, May 16, 2006.

<sup>240</sup> Human Rights Watch interview with Lali Aptsiauri, Tbilisi, May 17, 2006.

<sup>241</sup> Standard Minimum Rules for the Treatment of Prisoners, art. 93.

opportunity to familiarize [him or herself] with press and means of mass information” and the penitentiary department should provide access to radio and television.<sup>242</sup> Pre-trial detainees are allowed access to the press, magazines, radio, and television at the discretion of the prison administration.<sup>243</sup> However, Human Rights Watch saw televisions in only a handful of cells in each of the facilities visited, and in one common room in the “open regime” portion of Kutaisi Prison No. 2. Detainees in Tbilisi remand Prison No. 5 stated that they had televisions prior to the March 27 riot, but these were either shot by special forces during the riot or removed after the riot as punishment. Human Rights Watch saw no radios anywhere. In some instances detainees had magazines or newspapers in their cells, but these had been provided only by family members. In some cases, officials refused to allow prisoners to receive newspapers and magazines from relatives; the reasons for these restrictions are unclear. A detainee in Kutaisi Prison No. 2 described the lack of contact with the outside world: “We have no radio or television. We have nothing to do. I think I could go crazy here. It’s so boring. Our families bring us newspapers.”<sup>244</sup> Several other detainees in this facility made similar statements, and complained that the limit on information is recently enacted.<sup>245</sup>

According to the deputy director of the Penitentiary Department, Irene Tsintsadze, “We are trying to provide them with more [televisions]. As far as I know, we will provide them. Televisions aren’t restricted. It all depends on the means of prisoners themselves to provide them. We can provide some but not all. In [Tbilisi] Prison No. 5., there are lots [of televisions]. I was there a few days ago.... Maybe some televisions were taken [after the March 27 disturbance], but there are lots of televisions still in there. I saw them on the third and fourth floors and in the quarantine.”<sup>246</sup> When Human Rights Watch told her that less than one week previously we had visited the prison and had not seen televisions in the rooms, she acknowledged the possibility that they were brought out just for her visit.<sup>247</sup>

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<sup>242</sup> Law of Georgia on Imprisonment, as amended June 1, 2006, art. 51, paras. 1 and 2.

<sup>243</sup> *Ibid.*, art. 92, para. 1(d).

<sup>244</sup> Human Rights Watch interview with detainee (name withheld), Kutaisi Prison No. 2, May 20, 2006. Officials from the Kutaisi Prison No. 2 told us that the prison has a library and convicted prisoners may borrow books for one week at a time. Human Rights Watch interview with Shmagi Panzevadze, deputy director, Kutaisi Prison No. 2, May 20, 2006.

<sup>245</sup> Human Rights Watch interviews with detainees (names withheld), Kutaisi Prison No. 2, May 20, 2006.

<sup>246</sup> Human Rights Watch interview with Irene Tsintsadze, deputy director, Penitentiary Department, May 22, 2006.

<sup>247</sup> *Ibid.*

### ***Lack of Purposeful Activities***

Detainees in all facilities visited by Human Rights Watch complained of a lack of any kind of activity whatsoever. Detainees simply sit in cells 24 hours per day, often without even the opportunity for one hour of exercise, as described above. Although prison regulations allow for prisoners to have access to various table games, such as chess, during the early months of 2006, prisoners were not allowed to have playing cards, any other games, or other activities. None of the detainees in any of the facilities visited by Human Rights Watch had any possibility to work or study. This takes a serious psychological toll on detainees. One detainee in Kutaisi Prison No. 2 stated, “It’s so boring here, you go crazy.”<sup>248</sup> Another stated, “Just sitting here 24 hours a day wrecks your nervous system.”<sup>249</sup> Rustavi Prison No. 6, which is currently serving as a pre-trial facility, has a gymnasium equipped with a basketball hoop on one end and seating and a screen for film viewing. However, according to the deputy director of the facility, “Only the sentenced prisoners [who work in the prison] watch movies here. This prison was originally designed for convicts, who could have used these facilities. Remand prisoners can’t use these facilities.”<sup>250</sup>

Children interviewed by Human Rights Watch consistently reported that they had not had any education since being detained, despite the fact that they were already serving sentences or their pre-trial detentions had lasted for many months, perhaps even more than a year.<sup>251</sup> One boy told Human Rights Watch, “We don’t have any lessons. I would like to have lessons. It’s so boring here, we don’t do anything. Sometimes the guards bring some old books and we read them. Our relatives sometimes bring us newspapers.”<sup>252</sup> Another stated, “We don’t have any lessons. I was last in school one year ago. I also didn’t have lessons in the prison for children. If you are under investigation you don’t get lessons. Only the sentenced get lessons.”<sup>253</sup> His cell-mate stated that, in the absence of other opportunities, they had initiated some educational activities themselves: “We asked the administration to give us a book. They gave us one

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<sup>248</sup> Human Rights Watch interview with detainee (name withheld), Kutaisi Prison No. 2, May 20, 2006.

<sup>249</sup> Human Rights Watch interview with detainee (name withheld), Kutaisi Prison No. 2, May 20, 2006.

<sup>250</sup> Human Rights Watch interview with Irakle Gelashvili, deputy director for social affairs, Rustavi Prison No. 6, May 17, 2006.

<sup>251</sup> In one cell, two children reported that they had served one year and eight months and two years and two months of their sentences. Three children held as remand prisoners stated that they had been in custody for four months, eight months, and one year, respectively. Human Rights Watch interview with detainees (names withheld), Kutaisi Prison No. 2, May 20, 2006.

<sup>252</sup> Human Rights Watch interview with detainee, age 16, (name withheld), Kutaisi Prison No. 2, May 20, 2006.

<sup>253</sup> Human Rights Watch interview with detainee, age 17, (name withheld), Tbilisi Prison No. 7, May 19, 2006.

book in Georgian and one book in Russian. But we don't know Russian. So, we decided to study Russian ourselves."<sup>254</sup>

Penitentiary Department authorities told Human Rights Watch that education would not be provided for juveniles held in pre-trial detention. The deputy director of Kutaisi Prison No. 2 stated, "[Juvenile detainees] are only here for a short time so we can't organize any education for them. A prisoner under investigation can only meet with a lawyer or family, so there is no possibility for a teacher to come in."<sup>255</sup> A senior Penitentiary Department official admitted, "It's terrible that juveniles spend six months or a year in pre-trial detention, but that can't be changed immediately. No teachers are willing to work in prisons; salaries are too low."<sup>256</sup> The failure to provide education to children is a violation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, which requires states to provide "adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage."<sup>257</sup>

The overall lack of purposeful activities in Georgian prisons for convicted prisoners and pre-trial detainees violates requirements set out by the Standard Minimum Rules and the CPT.<sup>258</sup> The CPT states, "A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners. This holds true for all establishments, whether for sentenced prisoners or those awaiting trial... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells.... The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in a purposeful activity of a varied nature. Of course, regimes in establishments for sentenced prisoners should be even more favorable."<sup>259</sup>

Georgian law states that the prison administration "is obliged to create conditions aiming to provide general and professional education to convicts" and that convicted

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<sup>254</sup> Human Rights Watch interview with detainee, age 16, (name withheld), Tbilisi Prison No. 7, May 19, 2006.

<sup>255</sup> Human Rights Watch interview with Shmagi Panzevadze, deputy director, Kutaisi Prison No. 2, May 20, 2006.

<sup>256</sup> Human Rights Watch interview with Irene Tsintsadze, deputy director, Penitentiary Department, May 22, 2006.

<sup>257</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice, art. 26.6.

<sup>258</sup> The Standard Minimum Rules state that for sentenced prisoners, "Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day. So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release." Standard Minimum Rules for the Treatment of Prisoners, art. 71, paras. 3 and 4.

<sup>259</sup> CPT, "The CPT Standards, Substantive Sections of the CPT's General Reports," p. 17, para. 47.

prisoners are expected to work and be paid for their work.<sup>260</sup> Georgian authorities claim that the introduction of work programs in the penitentiary facilities is a priority. However, the deputy minister of justice provided only three examples of these new projects: “Beauty salon training in the women’s colony, a greenhouse in Geguti [in the Tskaltubo Strict Regime Prison No. 8], and a shoe factory in the new Kutaisi prison.”<sup>261</sup> One NGO, Empathy, supports craft projects in the women’s facility. There are no plans to address the lack of activities for pre-trial detainees. According to PRI, in its report to the UN Committee Against Torture on May 1, 2006, “a proposal by international NGOs to include pre-trial prisoners in a small grants programme aimed at promoting purposeful activity was turned down by the Ministry of Justice.”<sup>262</sup>

### **Complaint Mechanisms**

International standards require that detainees have access to a confidential complaint procedure whereby they may appeal to the administration, judicial authority, or other body confidentially.<sup>263</sup> Under Georgian law, detainees have the right to make complaints against the prison administration, prison personnel, other state agencies, or to the prison public monitoring commissions described below. However, at the time of Human Rights Watch’s visit, the prison director reviewed all detainees’ correspondence to state agencies. According to the head of the social department of the Penitentiary Department, “Detainees can write a letter and this goes to the clerical department in the prison. The director or vice director reads every letter and sends an accompanying cover

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<sup>260</sup> Law of Georgia on Imprisonment, as amended June 1, 2006, arts. 44 and 53-56.

<sup>261</sup> Human Rights Watch interview with Givi Mikanadze, deputy minister of justice, Tbilisi, May 18, 2005. See also “Program for Prisoners’ Employment Starts,” Prime News, May 8, 2006. The CPT notes that “Women deprived of their liberty should enjoy access to meaningful activities (work, training, education, sport etc.)... CPT delegations all too often encounter women inmates being offered activities which have been deemed “appropriate” for them (such as sewing or handicrafts) whilst male prisoners are offered training of a far more vocational nature. In the view of the CPT, such a discriminatory approach can only serve to reinforce outmoded stereotypes of the social role of women. Moreover, depending upon the circumstances, denying women equal access to regime activities could be qualified as degrading treatment.” CPT, “The CPT Standards, Substantive Sections of the CPT’s General Reports,” p. 70, para. 25.

<sup>262</sup> Penal Reform International, “Report for the UN Committee Against Torture.”

<sup>263</sup> The Standard Minimum Rules state, “Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.” Standard Minimum Rules for the Treatment of Prisoners, art. 36, para. 3. The CPT has noted the lack of a confidential complaints procedure in Georgia and recommended that measures be taken to ensure complaints are transmitted confidentially (for example: providing envelopes; installing locked complaint boxes accessible to prisoners, to be opened only by specially designated persons). CPT, “Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 November 2003 and from 7 to 14 May 2004.” The European Court of Human Rights has found that control of certain types of detainees’ correspondence constituted a violation of the right to correspondence, as guaranteed under article 8. See *Silver and Others v. United Kingdom*, judgment of March 25, 1983, Series A no. 61. See also footnote 269 regarding the importance of visits to prisons by an independent body with the authority to hear and act on complaints.

letter... The clerical department then sends it to its addressee. The answer comes to the director and then the prisoner.”<sup>264</sup>

According to one prison official, problems with the complaints procedure was not a crucial issue, since, “There are not complaints about the prison administration; there are only complaints about the investigation or the prosecutor’s office.”<sup>265</sup> Detainees stated that they never submitted complaints, since they were not allowed pen and paper to write letters and doubted it would be an effective mechanism. PRI found that prison officials did not make available the means necessary for prisoners to make complaints to the public monitoring commissions. For example, upon visiting Kutaisi Prison No. 2 in April 2006, PRI found no paper or pens available to detainees, no locked receptacles for confidential complaints, and no information available to prisoners about the existence of this complaint mechanism.<sup>266</sup>

In May 2006 Deputy Minister of Justice Givi Mikanadze told Human Rights Watch that changes to the law remedied the lack of confidentiality in the complaints procedure. But the new rules, articulated in Order of the Minister of Justice No. 620 are contradictory: according to paragraph 8 of the order, the administration is no longer allowed to examine correspondence sent by prisoners to a court, the Penitentiary Department, the ombudsman, an attorney or prosecutor, nor may the administration prevent the correspondence from being sent. However, paragraph 16 requires that any prisoner complaint sent to “state bodies, public associations and official authorities” be accompanied by a cover letter from the administration, which briefly describes the administration’s position towards the issue.<sup>267</sup>

### **Monitoring of Prisons**

Georgia has several prison monitoring mechanisms.<sup>268</sup> Under law, the president, parliament, and ombudsman, and their designees have the right to enter any penitentiary

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<sup>264</sup> Human Rights Watch interview with Anton Kebakliani, head of social affairs, Penitentiary Department, Tbilisi, May 18, 2006.

<sup>265</sup> Human Rights Watch interview with Stepan Ozashvili, deputy director, Tbilisi Prison No. 5, May 16, 2006.

<sup>266</sup> Penal Reform International, “Report for the UN Committee Against Torture.”

<sup>267</sup> Order of the Minister of Justice No. 620 of July 26, 2006, “Appealing the Illegal Actions Committed by the Penal Institution Administration, Personnel, Penitentiary Department or Other State Institutes by the Convicted and Prisoners and the Approval of the Instructions on Hearing Claims.”

<sup>268</sup> With respect to these existing mechanisms for monitoring places of detention, the UN special rapporteur on torture noted in his 2005 report on Georgia that, “While these mechanisms may contribute to a degree of prevention of torture and ill-treatment, as they currently function they demonstrate a number of shortcomings, primarily widely differing mandates; lack of overall coordination among them; lack of a regular and systematic programme of visits, including regular follow-up; lack of investigatory powers; lack of adequate resources; and lack of independence.” “Civil and Political Rights, Including: The Questions of Torture and Detention, Report of

facility without special permission.<sup>269</sup> Representatives of the Office of the Ombudsman, including regionally based monitors, conduct periodic monitoring of places of detention. The ombudsman reported that some of his representatives had encountered interference by prison authorities in accessing penitentiary facilities.<sup>270</sup>

In August 2004 President Saakashvili established a Presidential Monitoring Board consisting of 21 members, primarily selected from nongovernmental organizations. As presidential designees, these members technically have unrestricted access to detention facilities.<sup>271</sup> Several individuals interviewed by Human Rights Watch noted that while individual representatives of the board currently undertake monitoring activities in the prisons, the board does not take any collective actions within its mandate, such as producing reports or recommendations to the authorities.<sup>272</sup> At least two members of the board had encountered difficulty when trying to enter penitentiary facilities in January and March 2006.<sup>273</sup>

The Law on Imprisonment states that each facility within the penitentiary system should also have a monitoring commission.<sup>274</sup> Commissions established in 2000 ceased to function in 2004, after Saakashvili was elected president, but the Ministry of Justice recently reestablished them.<sup>275</sup> On the basis of regular monitoring, the commissions will

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the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Georgia.” The CPT notes that regular visits to prisons by an independent body with the authority to hear and act on complaints plays an important role in bridging differences that arise between prison management and prisoners. CPT, “The CPT Standards, Substantive Sections of the CPT’s General Reports,” p. 19, para. 54.

<sup>269</sup> Law of Georgia on Imprisonment, as amended June 1, 2006, art. 52. Article 18 of the 1996 Law on the Public Defender also provides the public defender (ombudsman) with unimpeded access to all places of detention, including both penitentiary and police detention facilities.

<sup>270</sup> Human Rights Watch interview with Sozar Subari, public defender (ombudsman), Tbilisi, May 10, 2006.

<sup>271</sup> In 2005 Minister of Justice Gia Kemularia annulled this decree, stating that the monitoring board is inconsistent with the law. However, the minister of justice does not have the authority to annul a presidential decree, and this monitoring board still exists. Eight of the monitoring board’s members no longer participate because they have taken up positions in the government, which automatically disqualifies them for participation in the monitoring board, or for other reasons. According to one member of the monitoring board, only 13 members are still entitled to participate in the monitoring board and not all of them are active. Human Rights Watch interview with Ana Dolidze, chair, Georgian Young Lawyers’ Association, Tbilisi, May 19, 2006.

<sup>272</sup> Human Rights Watch interview with Tamuna Kaldani, law program coordinator, Open Georgia Foundation, Tbilisi, May 10, 2006; and Human Rights Watch interview with Mary Murphy, Penal Reform International, Tbilisi, May 19, 2006.

<sup>273</sup> Human Rights Watch interview with Teatut Tutberidze, Liberty Institute, Tbilisi, May 11, 2006 (Tutberidze specifically mentioned problems interviewing detainees in Tbilisi Prison No. 7 on March 27, 2006); and Human Rights Watch interview with Ana Dolidze, chair, Georgian Young Lawyers’ Association, Tbilisi, May 19, 2006.

<sup>274</sup> Human Rights Watch interview with Mary Murphy, Penal Reform International, Tbilisi, May 19, 2006.

<sup>275</sup> *Ibid.* In 2000 the Ministry of Justice established individual prison commissions consisting of local government officials and other prominent individuals in each city where a prison was located. According to one expert on

provide reports and recommendations to the Ministry of Justice and the head of the Penitentiary Department. All commissions were to have been established by June 2006, but as of this writing, commissions are functioning only in western Georgia, in prisons in Kutaisi, Batumi, and Zugdidi.<sup>276</sup> Ministry of Justice officials selected the candidates for these three commissions. According to the deputy minister of justice, Givi Mikanadze, in the future, composition of the boards will be determined by a public competition, yet the criteria and process for selection are not clear. Mikanadze stated that 80 percent of the representatives will come from nongovernmental organizations, and the remainder will be religious leaders and local government representatives.

Deputy Minister Mikanadze also told Human Rights Watch that a central coordinating board for these commissions will be located in the Ministry of Justice and will be responsible for the selection of candidates of individual boards as well as distributing the funds for the individual commissions' monitoring activities.<sup>277</sup> According to Mikanadze, "The new central monitoring board will be totally independent. It will be situated in the Ministry of Justice, but it will not include ministry representatives nor will it receive funding from the ministry."<sup>278</sup> As of the writing, however, there is no central board and no publicly available information about how the board will be created and operate. The existing commissions do not meet the requirements for independence of monitoring mechanisms elaborated in the United Nations' Principles relating to the Status of National Institutions (known as the Paris Principles) and the Optional Protocol to the Convention against Torture.<sup>279</sup>

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prisons in Georgia, not all of these individuals even knew about their nominations and were therefore not particularly effective.

<sup>276</sup> According to one prisons expert, these commissions faced difficulties in the initial stages accessing prisons and meeting with prisoners in private. As of May 2006, however, they were able to conduct regular monitoring and produce reports. Human Rights Watch telephone interview with Mary Murphy, Penal Reform International, August 18, 2006.

<sup>277</sup> Human Rights Watch interview with Givi Mikanadze, deputy minister of justice, Tbilisi, May 18, 2005.

<sup>278</sup> Ibid.

<sup>279</sup> Human Rights Watch telephone interview with Mary Murphy, Penal Reform International, August 18, 2006. According to the Principles relating to the Status of National Institutions (The Paris Principles), "A national institution shall be vested with competence to promote and protect human rights.... The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights.... The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government ..." Principles relating to the Status of National Institutions (The Paris Principles) adopted by G. A. Res 48/134, December 20, 1993. Under the Optional Protocol of the Convention Against Torture (OPCAT), "Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.... The States Parties shall

## **Government Use of Force in Detention Facilities**

Numerous detainees in various facilities told Human Rights Watch about violence used against them during 2006. In some cases, the government used violent force to suppress disturbances in the prisons, the most prominent of which, the March 27, 2006 disturbance in Tbilisi Prison No. 5, resulted in the deaths of at least seven inmates and injury to at least 17 others as well as injury to at least 10 government agents. The government has sought to justify the use of force as necessary to suppress these disturbances, which it characterizes as riots or attempted riots. But serious questions remain about the proportionality of the response to these disturbances, and the lawfulness of the use of force, in particular regarding the March 27 incident. Human Rights Watch documented several instances of excessive use of force during the March 27 operation. In other instances, illegal acts such as assault, including severe beatings, have been carried out as punishment apparently in an attempt to intimidate certain detainees whom the government perceives as threats, such as the thieves in law. These beatings, particularly when done for the purpose of punishment, clearly violate the prohibition against inhuman and degrading treatment, and on some occasions have either been so severe, frequent, or combined with other forms of inhuman and degrading treatment to have amounted to torture.

### ***The March 27 Disturbance in Prison No. 5***

Much controversy surrounds the exact nature of the disturbance in Tbilisi Prison No. 5. What is clear is that in the very early morning hours of March 27, government authorities arrived at the Republican Prison Hospital to transfer to Tbilisi Prison No. 7 six alleged crime bosses who, according to the government, were attempting to instigate riots in the prison system. People interviewed by Human Rights Watch and others state that these six individuals were beaten during this operation; the government denies that they were ill-treated. As the authorities removed these men from the prison hospital, other detainees began to make noise and burn sheets and other items. This disturbance quickly spread to the nearby Tbilisi Prison No. 1 and Prison No. 5, where many detainees made noise, set fire to linens, escaped from their cells, and barricaded the

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guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.... The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights [The Paris Principles]." Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, G.A. Res. A/RES/57/199, December 18, 2002, *entered into force* June 22, 2006. Georgia acceded to OPCAT on July 8, 2005.

doors of the prison. Ministry of Justice and Ministry of Interior troops conducted a special operation to end the disturbance in Prison No. 5, resulting in at least seven deaths and numerous injuries. According to the Ministry of Justice, at least ten government agents also sustained injuries. The disturbance in Tbilisi Prison No. 1 subsided without an armed intervention.

In explaining the origins of the disturbance in Tbilisi Prison No. 5, the government maintains that one inmate, Malkhaz Zedelashvili, an alleged thief in law, had plotted with others to create a disturbance in the prison system intended to stop the ongoing prison reforms, which, as noted above, were aimed at dismantling the thieves in laws' authority within the prisons.<sup>280</sup> The government claims that Zedelashvili, together with two other suspected criminal authorities, recruited three other crime figures to carry out a plan to inflict injuries on themselves and other collaborators that they would claim had been inflicted by the head of the Penitentiary Department in order to provoke disturbances in the penitentiary system.<sup>281</sup> The government says that it obtained information about this plot on March 25 and set up secret audio and video recording in the Republican Prison Hospital, where all six of the alleged plotters were being detained.<sup>282</sup>

On March 26, the head of the prison hospital informed authorities of the Penitentiary Department that the six plotters "were organizing mass disturbances" and asked that Penitentiary Department officials take necessary measures. The head of the Penitentiary Department and officers from the criminal investigation department then arrived at the prison hospital to transfer the alleged plotters to other penitentiary facilities. According to the government, "In order to prevent further complication of the situation it was decided to carry out the operation at night," at 12:45 a.m. on March 27.<sup>283</sup>

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<sup>280</sup> "General Information on Event of March 27, 2006 in Tbilisi Prison no. 1, no. 5 and Prison Hospital," document submitted by Georgia to the UN Committee Against Torture, during the committee's review of Georgia May 1-19, 2006, supplied to Human Rights Watch by Natia Siradze, assistant to Deputy Minister of Justice Givi Mikanadze, via email on May 25, 2006.

<sup>281</sup> According to the government, in addition to Zedelashvili, the other five alleged riot plotters are Platon Mamardashvili, Nikoloz Makharadze, Giorgi Avaliani, Zurab Vibliani, and Levan Tsindliani. "General Information on Event of March 27, 2006 in Tbilisi Prison no. 1, no. 5 and Prison Hospital."

<sup>282</sup> "Public Defender Unveils New Details of Tbilisi Prison Incident," *Civil Georgia*, June 6, 2006, <http://www.civil.ge/eng/print.php?id=12753> (accessed June 7, 2006). The government also claims to have telephone conversation recordings revealing that a Georgian thief in law living in Ukraine helped organize the riot and instigated prisoners to riot. He was extradited from Ukraine on May 24, 2006. "Ukraine Extradites Suspected Georgian 'crime boss,'" excerpt from report by Georgian Imedi TV, Tbilisi, May 24, 2006, English translation by BBC Monitoring, May 24, 2006.

<sup>283</sup> "General Information on Event of March 27, 2006 in Tbilisi Prison no. 1, no. 5 and Prison Hospital."

### ***Detention of the alleged riot plotters and disturbance in the Republican Prison Hospital***

The government claims that the six alleged plotters physically resisted the attempt by Penitentiary Department officials to relocate them and that during their transfer they called out to other detainees in the hospital to “start mass disturbances.”<sup>284</sup> As a result, other detainees in the prison hospital “started disobedience and mass disturbance, namely making noise, swearing, shouting, setting things on fire, breaking the windows, etc.”<sup>285</sup>

Victims and witnesses interviewed by Human Rights Watch described the actions of the law enforcement agents who entered the Republican Prison Hospital to detain the six alleged plotters riot differently from the government. Human Rights Watch reviewed evidence indicating that at least four of the six detainees may have been beaten severely as they were removed from the prison hospital and transferred to Prison No. 7. One detainee told Human Rights Watch,

On March 27... I was asleep. I was called out of my room by the hospital administration. They took me downstairs and started beating me. This began inside and then continued outside where I lost consciousness.... I was taken from the surgical wing. I don't know who beat me. It happened in the night. People were in masks. I was taken into the yard and people beat me with metal sticks and truncheons, and kicked me.<sup>286</sup>

The victim was then taken immediately to Tbilisi Prison No. 7. He suffers long-term medical repercussions as a result of the beatings. Human Rights Watch observed the severity of his condition and a doctor confirmed the urgent need for him to receive sophisticated medical treatment.

The ombudsman and a medical professional visited the three other suspected riot plotters allegedly beaten on March 27 when they were removed from the Republican Prison Hospital. The medical expert confirmed numerous injuries consistent with beatings on each detainee. One detainee stated that he was taken from his room and “beaten with [truncheons] in front the [hospital] Director’s Room.” The medical expert confirmed that the prisoner had been beaten on his abdomen, back, and head, and, as a

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<sup>284</sup> Ibid.

<sup>285</sup> Ibid.

<sup>286</sup> Human Rights Watch interview with detainee (name and details withheld).

result, suffered pain in his kidneys, dizziness, and balance problems, as well as nightmares and other psychological problems. The ombudsman and the medical expert confirmed that two of the other alleged riot plotters had injuries consistent with being beaten and suffered serious physical and psychological repercussions. The ombudsman documented the injuries to one of these detainees in photographs which he showed to Human Rights Watch.<sup>287</sup>

Several witnesses interviewed by Human Rights Watch provided further corroboration that several detainees from the prison hospital were beaten in the early morning hours of March 27. One detainee explained:

On March 27, it started on the second floor. The special forces troops came into the surgery wing of the hospital... and took three guys right before our eyes. They beat them on our floor and then took them to the courtyard. They didn't hide it. They beat them with gun butts and truncheons. People started to cry out. These were three people from separate rooms. One of them has epilepsy. They took them out of the hospital... There were 40, 50, or 60 members of the special forces. There was first one group, then a second. They were in masks and black uniforms.<sup>288</sup>

Another witness stated, "I saw the special forces troops enter the surgery department. First 20 [people] and then another 20."<sup>289</sup> A third said, "It was 1 a.m. and I was sleeping. I heard an inhuman cry that woke me up. I take sleeping medicines, but even so, I woke up. I heard two cries. I saw people in masks in the courtyard. They were beating two people. They cried out. Then they brought a third person out... I have never heard such cries in my life."<sup>290</sup>

Witnesses who were in the prison hospital at the time stated that hospital detainees started to make noise and protest in reaction to the treatment they saw being inflicted on their fellow detainees. "People started screaming from the hospital windows... They

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<sup>287</sup> The prison authorities also randomly cut the hair of one detainee, Mamardashvili, apparently to humiliate him. "Report on Medical Monitoring Conducted in Prison no. 7 of Penitentiary System of the Ministry of Justice of Georgia, Conducted on April 7, 2006"; "Ombudsman of Georgia visited Tbilisi Jail no. 7," Ombudsman of Georgia press release, March 28, 2006; "Information Regarding the Events of March 27," June 6, 2006, as distributed by the Ombudsman of Georgia Press Center; and Human Rights Watch interview with Sozar Subari, public defender (ombudsman) of Georgia, Tbilisi, May 10, 2006.

<sup>288</sup> Human Rights Watch interview with detainee (name withheld), Republican Prison Hospital, May 15, 2006.

<sup>289</sup> Human Rights Watch interview with detainee (name withheld), Republican Prison Hospital, May 15, 2006.

<sup>290</sup> Human Rights Watch interview with detainee (name withheld), Republican Prison Hospital, May 15, 2006.

were making a lot of noise. People feared also being beaten. One of the people they were beating has epilepsy. People were shouting “Don’t beat him! He has epilepsy!” one detainee told Human Rights Watch.<sup>291</sup> According to another detainee, “People started to cry out. . . . Some of the prisoners burned sheets and pillows and put them out the window.”<sup>292</sup>

### *The disturbance travels to Prisons No. 5 and No. 1*

Witnesses stated that once the disturbance started in the prison hospital, detainees in Prison No. 5 and Prison No. 1, located 50 meters away, also began to react. According to one detainee in the prison hospital, “Prison No. 5 looks out onto our hospital. They can see everything. They started to bang dishes and to make noise. They were yelling out, crying out. They wanted to bring attention there.”<sup>293</sup> “From Prison No. 5, inmates started yelling, ‘What’s happening?’ and started making noise, and they became louder than people here. It’s only 50 meters away, and at night when it’s quiet, sound travels really well,” another detainee told Human Rights Watch.<sup>294</sup>

In Prison No. 5 and Prison No. 1, detainees made noise by shouting and banging dishes and other implements. They also began to set fire to sheets and other objects and throw them out of the windows. Upon seeing the disturbance in the prison hospital spread to Prisons No. 5 and No. 1, the director of Tbilisi Prison No. 5, Giorgi Polodashvili, told Human Rights Watch that he took the decision to remove all personnel from the building for their own safety and to close the building.<sup>295</sup> Ultimately, in Prison No. 1, the authorities were able to put an end to the disturbance without conducting a special operation or using force. However, what happened in Prison No. 5 after the prison staff left the building remains unclear, and even government authorities provide conflicting information.

The authorities reported that detainees on the third, fourth, and fifth floors of Prison No. 5 broke out of their cells or exited their cells. The director of Prison No. 5 stated, “The doors were broken by the prisoners. Absolutely all of them were broken. The doors are so old. That’s why they broke. They used the beds in the rooms. All it takes is 10 people to use the bed and ram it against the door.”<sup>296</sup> One detainee who had been on

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<sup>291</sup> Human Rights Watch interview with detainee (name withheld), Republican Prison Hospital, May 15, 2006.

<sup>292</sup> Human Rights Watch interview with detainee (name withheld), Republican Prison Hospital, May 15, 2006.

<sup>293</sup> Human Rights Watch interview with detainee (name withheld), Republican Prison Hospital, May 15, 2006.

<sup>294</sup> Human Rights Watch interview with detainee (name withheld), Republican Prison Hospital, May 15, 2006.

<sup>295</sup> Human Rights Watch interview with Giorgi Polodashvili, director, Tbilisi Prison No. 5, May 16, 2006.

<sup>296</sup> Ibid.

the fourth floor of Prison No. 5 on March 27 told Human Rights Watch that, indeed, they had managed to break down their cell door.<sup>297</sup> Other detainees confirmed this.<sup>298</sup>

From the available evidence, it is not clear that detainees broke their doors down en masse. Some detainees said they managed to exit their cells and then opened the doors of other cells.<sup>299</sup> Still other detainees reported that their doors had not been broken or opened and that they did not leave their cells.<sup>300</sup> The Ministry of Justice reports that “prisoners destroyed all cell doors, and most [of the] inmates were outside the cells. Some prisoners went on the roof and set the prison building on fire.”<sup>301</sup> Kakha Morgoshia, head of the Penitentiary Department special task force, also told Human Rights Watch, “The inmates were burning clothes, blankets, and throwing these out the windows. Some of them had climbed onto the roof. They threw things out and off of the roof. No one could come too close to the building.”<sup>302</sup> However, when Human Rights Watch asked Prison Director Polodashvili about the inmates on the roof he said, “What? There was no one on the roof.”<sup>303</sup>

Polodashvili told Human Rights Watch that at about 2 a.m., he called the head of the Penitentiary Department, who came to the facility, and that 15 minutes later special forces troops arrived and surrounded the prison buildings as a show of strength.<sup>304</sup> The ombudsman, Sozar Subari, who was also present during the operation, stated that there were approximately 150-300 special forces troops.<sup>305</sup> According to witnesses, two armored personnel carriers or some other type of large military vehicle were also brought into the courtyard.

Soon after the disturbance began, several detainees called Elene Tevdoradze, chairperson of the Parliamentary Committee on Human Rights and Civil Integration,

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<sup>297</sup> Human Rights Watch interview with detainee (name withheld), Rustavi Prison No. 6, May 17, 2006.

<sup>298</sup> Human Rights Watch interview with detainee (name withheld), Rustavi Prison No. 6, May 17, 2006.

<sup>299</sup> Human Rights Watch interview with detainee (name withheld), Rustavi Prison No. 6, May 17, 2006.

<sup>300</sup> Human Rights Watch interview with detainee (name withheld), Rustavi Prison No. 6, May 17, 2006, and Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 5, May 16, 2006.

<sup>301</sup> “General Information on Event of March 27, 2006 in Tbilisi Prison no. 1, no. 5 and Prison Hospital.”

<sup>302</sup> Human Rights Watch interview with Kakha Morgoshia, head of the Penitentiary Department special task force, May 16, 2006.

<sup>303</sup> Human Rights Watch interview with Giorgi Polodashvili, director, Tbilisi Prison No. 5, May 16, 2006.

<sup>304</sup> Ibid.

<sup>305</sup> Human Rights Watch interview with Sozar Subari, public defender (ombudsman) of Georgia, Tbilisi, May 10, 2006.

and she immediately went to the prison.<sup>306</sup> Tevdoradze told Human Rights Watch, “Inmates told me, ‘We’ve taken over the prison, we’re afraid they will start shooting, please come help immediately.’ I had the impression that they wanted me to negotiate with them.” She stated that, upon arrival at the prison, “I asked the minister of the interior to allow me inside [the prison] with the ombudsman to convince the prisoners to return to their cells. As soon as they opened the door [to the prison], the minister of the interior changed his mind. I was told it was too dangerous to go in, what if the prisoners took me hostage—they wouldn’t be able to help me. So instead they brought me a megaphone, and I addressed [the prisoners].” Tevdoradze stated that she was not afraid to enter the prison and believes that direct contact with the detainees might have diffused the situation: “I still think if I’d gone in, they wouldn’t have taken me hostage.”<sup>307</sup>

### *The special operation to quell the disturbance*

Tevdoradze, Subari, and other officials spoke to the inmates from the prison courtyard using a loudspeaker and asked them to calm down. The government claims that for an hour it issued warnings that “if the orders were not followed [that] force [would be used]” and only then took a decision that members of the Penitentiary Department and special forces should enter the building. However, according to Sozar Subari, “Some of the detainees had called me on my mobile phone. They wanted some kind of negotiations, although they didn’t have any particular demands. But they wanted negotiations.... The troops gave no warning as they entered. They made no attempts to negotiate. There was just one announcement over the radio [about the operation],”<sup>308</sup> which the detainees claim not to have heard given the loud noise they were making themselves.<sup>309</sup>

Many discrepancies exist about the initiation of the special operation itself. Polodashvili, who led the first entry into the prison, stated that he, two colleagues from the Penitentiary Department, and a group of special forces were unable to enter through the main door of the prison because it had been barricaded from the inside. Using a side

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<sup>306</sup> Although not technically allowed by Penitentiary Department regulations, many prisoners possessed mobile phones, especially prior to the reforms begun in December 2005.

<sup>307</sup> Human Rights Watch interview with Elene Tevdoradze, chairperson, Parliamentary Committee on Human Rights and Civil Integration, Tbilisi, May 22, 2006.

<sup>308</sup> Human Rights Watch interview with Sozar Subari, public defender (ombudsman) of Georgia, Tbilisi, May 10, 2006.

<sup>309</sup> “I didn’t hear any warning. Everything was too noisy. We couldn’t hear anything.” Human Rights Watch interview with detainee injured in Tbilisi Prison No. 5 on March 27 (name and details withheld). “The building was literally shaking from the noise.” Human Rights Watch interview with detainee injured in Tbilisi Prison No. 5 on March 27 (name and details withheld).

entrance, they made it to the fourth floor where they started to break down a barricaded door. He claims they heard yelling and gunfire. Polodashvili described the events that followed to Human Rights Watch,

The two department employees were shot. As soon as they were shot I took them out of the corridor to a safe place. The special forces troops started to shoot with rubber bullets into the windows and ceiling to scare the prisoners. Then the special forces troops entered the fourth floor. It was dark. The prisoners had broken the lights. We heard other gunfire and the special forces troops started to shoot [with automatic weapons]. This was happening on the fourth floor, but some distance from us.<sup>310</sup>

According to the Ministry of Justice, however, the events unfolded differently. While, as noted above, the head of Prison No. 5 states that he and his colleagues were shot at and his two colleagues were wounded as they entered the fourth floor, the ministry claims that the authorities initiated the shooting by firing rubber bullets. Only at that moment did the prisoners initiate fire in the direction of the Penitentiary Department employees. In its report to the UN Committee Against Torture, the Ministry states:

Having cleaned the blocked entrance of the building, the Director of the Prison No. 5 with several Special Task Force officers entered the building and once again called on the prisoners to calm down, this resulted [in] the counter-reaction of the inmates and they began moving towards the administrators; therefore the special task force used the guns with rubber bullets; the prisoners responded with firearms shooting that resulted in injuries [to two Penitentiary Department employees]. After [the] wounding [of] the staff members of the Penitentiary Department, the decision to open the counter fire was made immediately.<sup>311</sup>

The government now claims that six firearms were found in the prison, together with dozens of knives.<sup>312</sup> However, conflicting information persists about the exact number

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<sup>310</sup> Human Rights Watch interview with Giorgi Polodashvili, director, Tbilisi Prison No. 5, May 16, 2006.

<sup>311</sup> As written in the original translation provided to Human Rights Watch, with parenthetical additions to provide clarity. "General Information on Event of March 27, 2006 in Tbilisi Prison no. 1, no. 5 and Prison Hospital." Those allegedly injured were Head of the Penitentiary Department Special Task Force Kakha Morgoshia and Head of the Penitentiary Department Special Security Service Mamuka Shabanadze.

<sup>312</sup> Ibid.

of firearms. In a press conference immediately following the incident, the minister of justice reported to the media that five weapons had been discovered.<sup>313</sup> The ombudsman told Human Rights Watch that when he entered the prison immediately after the special forces concluded the operation, he saw two guns allegedly fired by prisoners during the riot.<sup>314</sup> Human Rights Watch could not confirm whether prisoners had firearms and, if they did, how many, and how they were able to obtain them and keep them in the prison.<sup>315</sup> When Human Rights Watch asked how the weapons allegedly used by prisoners entered the prison in the first place, Prison Director Polodashvili replied, “I don’t know. Not on my watch.”<sup>316</sup>

### *Use of force during the special operation*

The government does not provide any detail as to what happened after the special forces entered the prison, stating only that “after the abovementioned, the situation went under control, the prisoners entered their cells and stopped resistance.”<sup>317</sup> Both the government and detainees state that no non-violent means or alternative methods of riot control, such as teargas or water cannons, were utilized; the only means used was gunfire with rubber bullets and live ammunition, resulting in the death of seven detainees and injury to at least 17 detainees. The Standard Minimum Rules require that the authorities should not “use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary...”<sup>318</sup>

With respect to the use of armed force, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials require governments to provide equipment that allows for a differentiated use of force and firearms, with a view to “increasingly restraining the application of means capable of causing death or injury to

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<sup>313</sup> “Escaping Danger at the Expense of Victims,” *24 Hours*, March 28, 2006 (in Georgian), on file with Human Rights Watch.

<sup>314</sup> Human Rights Watch interview with Sozar Subari, public defender (ombudsman) of Georgia, Tbilisi, May 10, 2006.

<sup>315</sup> Human Rights Watch interviewed one of the Penitentiary Department employees allegedly shot by detainees. Human Rights Watch could not determine whether the small wound on his arm, which he claimed was a result of the shooting, was actually caused by gunfire. Human Rights Watch interview with Kakha Morgoshia, head of the Penitentiary Department special task force, Tbilisi, May 16, 2006.

<sup>316</sup> Human Rights Watch interview with Giorgi Polodashvili, director, Tbilisi Prison No. 5, May 16, 2006.

<sup>317</sup> As written in the original translation provided to Human Rights Watch. “General Information on Event of March 27, 2006 in Tbilisi Prison no. 1, no. 5 and Prison Hospital.”

<sup>318</sup> Standard Minimum Rules for the Treatment of Prisoners, art. 54. Similarly, the CPT notes, “Prison staff will on occasion have to use force to control violent prisoners... these are clearly high risk situations insofar as the possible ill-treatment of prisoners is concerned, and as such call for specific safeguards.” CPT, “The CPT Standards, Substantive Sections of the CPT’s General Reports,” p. 19, para. 53.

persons,” as well as self-defense equipment, “in order to decrease the need to use weapons of any kind.”<sup>319</sup> The Basic Principles on the Use of Force further state, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”<sup>320</sup> The European Court of Human Rights has repeatedly set out the standards that authorities must respect when resorting to the use of force. The protection of the right to life requires that any use of force must be no more than “absolutely necessary” even when it is used for a legitimate purpose: it must be strictly proportionate to the achievement of the permitted aims.<sup>321</sup>

Human Rights Watch interviewed numerous detainees who described the use of automatic weapon fire by special forces once they entered the prison. Human Rights Watch interviewed seven detainees who had sustained gunshot wounds from automatic weapons. Representatives of the Office of the Ombudsman also documented gunshot wounds on detainees who had been in Prison No. 5 at the time of the disturbance. These experts also found wounds consistent with being hit by rubber bullets on the hips, buttocks, head, chest, ankle, and feet of 11 different individuals.<sup>322</sup> Human Rights Watch interviewed two people who had been injured by rubber bullets. One detainee told Human Rights Watch, “I was hit twice with plastic bullets on my right thigh.”<sup>323</sup>

Some detainees also reported that authorities had been shooting at the main prison building from the roofs of other buildings and that bullets entered through the windows.

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<sup>319</sup> The Basic Principles also require, “Governments and law enforcement agencies [to] develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.” Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 to September 7, 1990.

<sup>320</sup> *Ibid.*

<sup>321</sup> See, for example, *Akkum and Others v. Turkey*, no. 21894/93, judgment of March 24, 2005; *Nachova and others v. Bulgaria*, nos. 43577/98 and 43579/98, judgment February 26, 2004; *McShane v. United Kingdom*, no. 43290/98, judgment of May 28, 2002; *Gulec v. Turkey*, judgment of July 27, 1998, Reports 1998-IV; *Andonicou and Constantinou v. Cyprus*, judgment of October 9, 1997, Reports 1997-VI.

<sup>322</sup> Levan Labauri, MD, “Letter to Sozar Subari, Ombudsman of Georgia, Reporting on the Monitoring of Rustavi Prison no. 6 on April 6, 2006 to Investigate the State of Health and Possible Injuries of Prisoners and Adequacy of Treatment Provided to Them and Inspection of the Nutrition Unit and Establishment of its Agreement with Applicable Medical Standards.”

<sup>323</sup> Human Rights Watch interview with detainee (name withheld), Rustavi Prison No. 6, May 17, 2006.

At some point in the operation, bullets were fired into their cells from outside the building. As a result, some prisoners felt compelled to leave their rooms for safety reasons. Others reported being injured from this fire. One detainee in a cell on the fourth floor reported, “I was in my room and wounded in my side. They were shooting from the roof [of the administration building] opposite ours and a ricochet bullet hit me.”<sup>324</sup> A detainee on the fifth floor stated, “There was shooting in the yard. We were afraid and went out of the cell and stood in the corridor. Our door had been opened from the outside. They opened it by breaking the lock. We were watching on our television what was happening to us. There was shooting from the outside. There was shooting from the roofs at our building. We then went into our room and waited. In the cell next to us we heard shooting. There were people shot. There was one person injured and another one killed.”<sup>325</sup> Another detainee, who sustained two bullet wounds and then lost consciousness stated, “We have big windows in those cells. I think bullets may have come through the windows. I had stood up from my bed. I don’t know who shot me. Everyone was terrified.”<sup>326</sup> During its visit to Prison No. 5, Human Rights Watch saw holes in the window shutters of numerous cells that appeared consistent with bullet holes. However, a forensic examination is necessary to determine the exact nature of the holes.

Various witnesses confirmed that the authorities fired bullets in the courtyard of the prison during the operation, even in the direction of the prison hospital or the street where dozens of journalists, relatives, human rights activists, and others had gathered. Witnesses reported seeing “lighted bullets,” apparently tracer bullets, which burn brightly during their flight, enabling the shooter to follow the bullets’ trajectories.<sup>327</sup>

### *The issue of excessive use of force*

As described above, there are discrepancies in various accounts of the special operation to end the disturbance in Tbilisi Prison No. 5, even among different government agencies. Although it is clear that detainees put up an undetermined degree of resistance

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<sup>324</sup> Human Rights Watch interview with detainee (name withheld), Rustavi Prison No. 6, May 17, 2006.

<sup>325</sup> Another detainee told Human Rights Watch “Then the gunfire started. It came from outside and inside. Bullets came in to the room through the window. But no one in our room was shot from the outside. We heard noise in the next room and I heard someone say ‘I was shot!’” Human Rights Watch interview with detainee (name withheld), Rustavi Prison No. 6, May 17, 2006.

<sup>326</sup> Human Rights Watch interview with detainee injured in Prison No. 5 on March 27 (name and details withheld).

<sup>327</sup> Human Rights Watch interview with Nana Kakabadze, director, Former Political Prisoners for Human Rights, Tbilisi, May 10, 2006; Human Rights Watch interview with Ana Dolidze, chair, Georgian Young Lawyers’ Association, Tbilisi, May 19, 2006; Human Rights Watch interview with Elene Tevdoradze, chairperson, Parliamentary Committee on Human Rights and Civil Integration, Tbilisi, May 22, 2006; Human Rights Watch interview with detainee (name withheld), Republican Prison Hospital, May 15, 2006.

to the law enforcement agents attempting to regain control of the prison and that special forces troops used lethal force and other violent means to suppress this resistance, the exact nature and proportionality of the force used remains unclear. In these circumstances, it is difficult to conclude whether the shooting described above was excessive, and a thorough investigation by an independent body is the only means to reaching specific conclusions. However, Human Rights Watch was able to document specific individual incidents of excessive and illegal force. These involved at least two cases of shooting of detainees during the operation and several cases of beating of detainees after the operation.

Human Rights Watch was able to document two cases in which special forces troops appear to have shot detainees, who were not posing an immediate threat or danger to the guards, without issuing any warning or using other means to subdue the detainees. According to one injured detainee, who sustained five bullet wounds:

I was afraid of the gunfire. There was panic in our room.... I was afraid of being killed. We all were. Some people were saying to us, "Take it easy, don't worry, they won't kill us." The door of our cell was closed. A guy with an automatic weapon and a mask came into the room. He started to swear at us. He was alone standing in the doorway, but there were others behind him. He said to us, "So you want a color television you motherfuckers?" And then he started to shoot. I was close to him and right in front of him and so I took the first bullets. This all happened really fast. He came in, said these words to us, and then started to shoot. He gave no warning that he would shoot. I lost consciousness. The thing is, we had a television in our room, and a few days before this happened, they wanted to take it away. We said no.<sup>328</sup>

Special forces apparently shot another prisoner because he could not comply fast enough with their order to lie down on the floor. The prisoner, who sustained multiple gunshot wounds, told Human Rights Watch,

The special forces came to our corridor. I heard them shooting in the corridor. The special forces were saying, "Lie down!" at the same moment as they shot. In my room the people who were standing lay down. But for me—some of us were on the top bunk. We couldn't

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<sup>328</sup> Human Rights Watch interview with detainee injured in Tbilisi Prison No. 5 on March 27 (name and details withheld).

climb down to lie down because the room was all full of people lying down. One special forces member came into our room and said, “Lay down motherfucker!” I came down from my bunk and saw a place near the bed towards the corner. As I moved there, the special forces guy shot me. When prisoners heard the gunfire, prisoners from other cells came into our cell. I was really afraid. I was just watching the door waiting to see what would happen.<sup>329</sup>

Another detainee told Human Rights Watch that after being shot in the leg by a member of the special forces, he fell to the ground. “Then the special forces guy came over and fired two more bullets into my buttocks, right into my back pockets.”<sup>330</sup>

As part of the operation, apparently once the special forces troops had gained control of the prison, many members of the special forces beat detainees, apparently to punish or subdue them. One detainee told Human Rights Watch that immediately after the operation, “They beat us with truncheons. They also kicked us.... [They beat us] like dogs.”<sup>331</sup> According to another detainee, after the operation had begun, “We just sat in our room and didn’t move. If people were in their rooms they weren’t beaten. But if they had gotten out and had gone to another room they were beaten. I heard how people were beaten. They would scream out in pain.”<sup>332</sup> A detainee from the fourth floor stated that after the operation, “[The special forces] came and took us into the hall one at a time and beat us practically to death. I lay in bed for a week unable to move.”<sup>333</sup> Another told Human Rights Watch, “We were taken from our cells and beaten to teach us a lesson.”<sup>334</sup> One stated that he was even beaten while being transferred out of Prison No. 5: “I was beaten on the head with an automatic weapon, once in the room, once in the van coming here [to Rustavi Prison No. 6].”<sup>335</sup> Based on interviews with detainees in various penitentiary facilities following the operation, medical experts from the Rehabilitation Center for Victims of Torture “Empathy” estimated that more than 100

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<sup>329</sup> Human Rights Watch interview with detainee injured in Tbilisi Prison No. 5 on March 27 (name and details withheld).

<sup>330</sup> Human Rights Watch interview with detainee injured in Tbilisi Prison No. 5 on March 27 (name and details withheld).

<sup>331</sup> Human Rights Watch interview with detainee (name and details withheld).

<sup>332</sup> Human Rights Watch interview with detainee (name withheld), Rustavi Prison No. 6, May 17, 2006.

<sup>333</sup> Human Rights Watch interview with detainee (name withheld), Rustavi Prison No. 6, May 17, 2006.

<sup>334</sup> Human Rights Watch interview with detainee (name withheld), Rustavi Prison No. 6, May 17, 2006.

<sup>335</sup> Human Rights Watch interview with detainee (name withheld), Rustavi Prison No. 6, May 17, 2006.

detainees in Prison No. 5 were beaten during the course of the operation or immediately afterward.<sup>336</sup>

Although it was not possible for Human Rights Watch to rule out the possibility that one or more of the injured detainees interviewed may have been involved to some degree in resistance against the law enforcement agents, the types of force used in the incidents described above and the punishment beatings are clearly serious violations of Georgia's human rights obligations and are illegal under international law. As indicated above, under international standards to which Georgia is bound, resort to physical force which has not been made strictly necessary by a detainees' individual conduct is in principle an infringement of the prohibition on ill-treatment.<sup>337</sup> Georgia is required to investigate each incident so that the perpetrators can be identified, prosecuted, and punished. The victims must be compensated for the violations.

### ***Government explanation for the use of force***

The government claims that it undertook the special operation in reaction to "an eminent [sic] threat of escape of approximately 3,500 inmates," which, "according to operative information," would have caused mass escapes in "all other penitentiary establishments"<sup>338</sup> and "massive destabilization" in the country.<sup>339</sup> In a speech given the same day as the riot, President Saakashvili said he believed "4,000 dangerous, desperate criminals could have escaped into the streets last night and this would have meant hundreds of stolen cars, hundreds of raped people, hundreds of robbed houses, hundreds of murder cases and many other disasters and disorders."<sup>340</sup> However, the government also confirms that the inmates had constructed multiple barricades in the prison, including of the main doors and the doors on each floor to make it difficult for prison authorities and others to enter the building.<sup>341</sup> It remains unclear how the prisoners intended to escape, having barricaded themselves inside the prison. No

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<sup>336</sup> Human Rights Watch interview with Mariam Jishkariani, executive director, Rehabilitation Center for Victims of Torture "Empathy," May 12, 2006.

<sup>337</sup> See for example, European Court of Human Rights judgments *Tekin v. Turkey*, judgment of June 9 1998, Reports 1998-IV; and *Assenov and others v. Bulgaria*, judgment of October 28, 1998, Reports 1998-VIII.

<sup>338</sup> "General Information on Event of March 27, 2006 in Tbilisi Prison no. 1, no. 5 and Prison Hospital."

<sup>339</sup> Nino Burjanadze, parliamentary speaker, as quoted in, "Destabilization Plot Feared Behind Prison Riot," *Civil Georgia*, Tbilisi, March 27, 2006, <http://www.civil.ge/eng/article.php?id=12186> (accessed June 7, 2006).

<sup>340</sup> "Saakashvili Speaks about Prison Riot, Hails Police," *Civil Georgia*, March 27, 2006, <http://www.civil.ge/eng/article.php?id=12191> (accessed June 7, 2006).

<sup>341</sup> "General Information on Event of March 27, 2006 in Tbilisi Prison no. 1, no. 5 and Prison Hospital"; and Human Rights Watch interview with Giorgi Polodashvili, director, Tbilisi Prison No. 5, May 16, 2006. Although these sources provide slightly contradictory accounts, it is clear that there were substantial barricades within the prison.

detainees were shot in the yard of the prison or in the course of making an attempt to flee the prison.

Other information made public by the ombudsman in June 2006, concerning an alternative plot centered on some of the same thieves in law but involving official complicity, calls into question the government's version of events.<sup>342</sup> The ombudsman also stated that transcripts of the alleged plotters' conversations do not contain any mention of a planned riot,<sup>343</sup> and he casts further doubt on the government's version of the alleged prison riot plot by noting that because one of the alleged plotters, Platon Mamardashvili, is regarded as an influential thief in law and was isolated from other prisoners, he could not have met with other prisoners, especially other alleged crime bosses, without the direct consent of prison officials.<sup>344</sup>

### *Treatment of the wounded*

The medical care provided to the wounded following the operation was wholly inadequate.<sup>345</sup>

The detainees who were taken from the Republican Prison Hospital and transferred to Tbilisi Prison No. 7, as described above, reported that they did not receive immediate medical attention for the injuries sustained from the beatings and faced difficulties

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<sup>342</sup> On June 6, 2006, the Office of the Ombudsman released information from Platon Mamardashvili, a thief in law and one of the alleged plotters of the prison riot, stating that he had cooperated with prison officials to organize an incident designed to restore the credibility of the head of the Penitentiary Department, Bacho Akhalaia, who had been accused publicly of ill-treating detainees in recent months. Mamardashvili stated that he had renounced his standing as a thief in law and cooperated with the authorities in exchange for early release from prison. According to Mamardashvili, the plan required that he and several other crime bosses would deliberately injure themselves and each other and then blame the injuries on the head of the Penitentiary Department. The government would record these conversations. After an investigation that would reveal the audio recordings of the crime bosses planning this incident, the government would be able to show that the thieves in law had been organizing a campaign to discredit the head of the Penitentiary Department and, as a result, to prove that the accusations of ill-treatment against Akhalaia were not credible. Mamardashvili claims that he went to the ombudsman with the information about this plan after the plan fell through and the March 27 events unfolded. After March 27 Mamardashvili faced additional charges of planning the disturbances in the prison. "To the Ombudsman of Georgia Sozar Subari, Explanatory Transcript of Medical Facility Detainee Platon Mamardashvili (Regarding the Incidents of 27 March)," June 5, 2006, as distributed by the Ombudsman of Georgia Press Center; and "Information Regarding the Events of March 27."

<sup>343</sup> "Public Defender Unveils New Details of Tbilisi Prison Incident," and "Liberty Institute Criticizes Ombudsman Again," *Civil Georgia*, June 7, 2006, <http://www.civil.ge/eng/article.php?id=12760> (accessed June 7, 2006); "To the Ombudsman of Georgia Sozar Subari, Explanatory Transcript of Medical Facility Detainee Platon Mamardashvili (Regarding the Incidents of 27 March)"; and "Information Regarding the Events of March 27."

<sup>344</sup> "Public Defender Unveils New Details of Tbilisi Prison Incident."

<sup>345</sup> A prisoner against whom any means of force have been used should have the right to be immediately examined, and, if necessary, treated by a medical doctor. CPT, "The CPT Standards, Substantive Sections of the CPT's General Reports," p. 19, para. 53.

receiving adequate care. Kakha Kvistiani, a lawyer for Giorgi Avaliani, one of those transferred, stated to the media that his client was refused medical treatment for his injuries on March 27.<sup>346</sup> A doctor was allowed to see the detainees on March 28 only after an intervention by the ombudsman.

On April 7 representatives of the Office of the Ombudsman also found that, despite continuing physical and psychological complications associated with the March 27 beatings, the detainees had not received forensic medical examinations, were denied regular contact with doctors, and received no substantive medical treatment. One man reported being afraid to request a visit by the doctor out of fear of additional verbal and physical abuse by the prison authorities. The detainees were not allowed to go outdoors and could not maintain proper hygiene—they could not shave and had limited possibility to wash. There were no medical records related to the detainees in the prison.<sup>347</sup>

Those wounded during the special operation in Tbilisi Prison No. 5 also reported receiving inadequate care. Although numerous ambulances had arrived at the prison, not all inmates were treated immediately by skilled medical personnel, and at the time of Human Rights Watch's visit, many detainees who were in need of surgery still had not received it.

One detainee who received multiple gunshot wounds during the special operation was in critical condition and was driven to the city hospital, only to be turned around and then driven to the Republican Prison Hospital, and then later taken back to the city hospital. He told Human Rights Watch,

I regained consciousness and I was on the ground in the yard in front of the prison. I was lying in a puddle. It was raining and I remember thinking, "Oh, the water feels good." They put me into a vehicle with other injured people and two dead people. It wasn't an ambulance, but a vehicle for transporting prisoners. They drove us to the city hospital, but when we got there they didn't take us out. Somebody called and then they turned around and drove us [to the Republican Prison Hospital]. It

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<sup>346</sup> Liz Fuller, "Tbilisi Prison Unrest," RFE/RL, March 29, 2006 <http://www.rferl.org/featuresarticle/2006/03/9c5f4d3d-ab4a-4aed-95f2-1eea60a24919.html> (accessed June 13, 2006).

<sup>347</sup> "Report on Medical Monitoring Conducted in Prison no. 7 of Penitentiary System of the Ministry of Justice of Georgia, Conducted on April 7, 2006."

turned out I was in really critical condition and so they took me back to the city hospital where I got medicine and had an operation.<sup>348</sup>

Another detainee with multiple gunshot wounds, who traveled in the same vehicle as the above detainee and was still in need of surgery at the time of Human Rights Watch's visit, described his medical treatment:

Several of the prisoners took me in blankets and put me on the ground [outside]. I don't know how many people or how long I lay on the ground. But then I was put into a prisoner car. There were eight or nine people with me... There were two dead bodies in the car with us. We drove to the city hospital, but then we were brought back [to the Republican Prison Hospital]. They gave me pain medicines, and put a cast on me, but they didn't do any operation. I have a complex fracture and they need to put my leg back together. I am in pain now. I don't know about my wounds. I don't know whether they will operate on me or not.<sup>349</sup>

Another detainee from Tbilisi Prison No. 5 who had not yet had needed surgery stated, "I was shot in the lower back and I lost consciousness. They took an x-ray [at the city hospital] then I was taken to the prison hospital. I need an operation to remove the bullet, but they say I'm not yet in strong enough health. The hospital gives me some medicine, but my family must provide the more expensive ones."<sup>350</sup> In May 2006, nearly two months after the incident, at least three other detainees told Human Rights Watch that they had not had surgery to remove bullets from their bodies.<sup>351</sup> One told Human Rights Watch, "I haven't had any surgery [on the two bullets in my legs]... I can still feel the pain in my legs."<sup>352</sup>

Another victim told Human Rights Watch that he was wounded but not treated in a hospital. "I was wounded in my side. They were shooting from the roof opposite ours

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<sup>348</sup> Human Rights Watch interview with detainee injured in Tbilisi Prison No. 5 on March 27 (name and details withheld).

<sup>349</sup> Human Rights Watch interview with detainee injured in Tbilisi Prison No. 5 on March 27 (name and details withheld).

<sup>350</sup> Human Rights Watch interview with detainee injured in Tbilisi Prison No. 5 on March 27 (name and details withheld).

<sup>351</sup> Human Rights Watch interview with three detainees injured in Tbilisi Prison No. 5 on March 27 (names and details withheld).

<sup>352</sup> Human Rights Watch interview with detainee injured in Tbilisi Prison No. 5 on March 27 (name and details withheld).

and a ricochet bullet hit me. Three special forces then came into our room and didn't say anything and started to shoot. I was standing maybe three meters from the door when they came in. I immediately lay down. They then started asking, 'Who's wounded?' They took me out and took me here [to Rustavi Prison No. 6]. [The wound] was all bloody and it hurt a lot. They examined me, put on a bandage and it hurt for about one week or 10 days," he stated.<sup>353</sup> Other detainees with wounds from rubber bullets reported being sent to Rustavi Prison No. 6 and not receiving any treatment.<sup>354</sup>

An expert acting at the request of the Office of the Ombudsman also identified numerous patients in Rustavi Prison No. 6 in need of urgent medical care some weeks after having been injured in the March 27 incident. One detainee had multiple wounds some of which had apparently become infected resulting in fever. The expert determined that other detainees had single bullet wounds that required surgery and other serious treatment. One detainee with a chest injury had not received an x-ray or consultation with a specialist. The expert noted that the prison did not have a registry to record injuries of the incoming detainees and kept no medical documentation regarding sick or injured detainees.<sup>355</sup>

### ***Discrepancies in the number of killed and wounded***

The Ministry of Justice report states that during the operation two special forces members were wounded and 10 were injured. The report does not specify the types of wounds or injuries, nor does it clarify the difference between wounds and injuries. The report also states that two members of the Penitentiary Department suffered gunshot wounds at the beginning of the operation.<sup>356</sup> It is not clear whether the injuries to the Penitentiary Department employees are counted separately or in the total number for government agents wounded and injured.

The total number of inmates killed and wounded in the operation remains unclear. According to official information provided to Human Rights Watch by the Penitentiary Department, seven inmates were killed. However, initial reports indicated that there may have been more casualties than officially recorded and that in at least one case a death attributed to other causes was in fact a result of the operation. The family of Mamuka

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<sup>353</sup> Human Rights Watch interview with detainee injured in Tbilisi Prison No. 5 on March 27 (name and details withheld).

<sup>354</sup> Human Rights Watch interviews with two detainees injured in Tbilisi Prison No. 5 on March 27 (names and details withheld).

<sup>355</sup> Levan Labauri, MD, "Letter to Sozar Subari, Ombudsman of Georgia, Reporting on the Monitoring of Rustavi Prison no. 6 on April 6, 2006." See also "Jail #6," Ombudsman of Georgia press release, April 10, 2006.

<sup>356</sup> "General Information on Event of March 27, 2006 in Tbilisi Prison no. 1, no. 5 and Prison Hospital."

Gviniashvili, an inmate from Prison No. 5, stated that upon receiving the body of their son, they found a gunshot wound to his head and wounds consistent with beating. However, the government stated that the official cause of death was liver complications and that Gviniashvili died in the Republican Prison Hospital. Gviniashvili's mother denies this, saying she visited her son in Prison No. 5, not the Republican Prison Hospital, the day before the disturbance, and he did not complain about any health problems.<sup>357</sup>

The number of wounded is in even greater dispute. The government itself provides conflicting information. In statistics provided to Human Rights Watch in May 2006, the Penitentiary Department gives the names of 17 wounded inmates. In contrast, the Ministry of Justice states in its May 2006 report to CAT, "After bilateral fire seven prisoners died and 22 inmates received injuries of different gravity."<sup>358</sup> Representatives of the Office of the Ombudsman, including one physician, visited detainees in Rustavi Prison No. 6 who had been transferred from Tbilisi Prison No. 5 following the March 27 operation. Initially, the staff of Rustavi Prison No. 6 told the ombudsman's representatives that eight of the prisoners transferred had been wounded during the March 27 operation. However, the representatives found 15 patients with wounds, including gunshot wounds, sustained during the March 27 operation. They stated, "For lack of time we could not survey all the cells, so we can assume that the number of [wounded] prisoners is even higher."<sup>359</sup>

Additionally, Human Rights Watch interviewed 14 other individuals who sustained injuries during the March 27 operation. These included seven individuals who suffered gunshot wounds and two detainees wounded by rubber bullets, as well as five detainees who were injured as a result of beatings. Taken together, the information collected by Human Rights Watch and the Office of the Ombudsman suggest that the actual number of wounded may be higher than reported by the government.

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<sup>357</sup> "TV Report Questions Official Prison Riot Death Toll," *Civil Georgia*, March 30, 2006 <http://www.civil.ge/eng/article.php?id=12222> (accessed June 7, 2006) and "Georgian Justice Ministry Denies Prison Death Cover-up," Prime-News Agency, Tbilisi, March 30, 2006 (via distribution list).

<sup>358</sup> "General Information on Event of March 27, 2006 in Tbilisi Prison no. 1, no. 5 and Prison Hospital." See also "Georgian Justice Minister Informed Foreign Diplomats about Monday Riot," Prime-News Agency, March 28, 2006. The director of the Republican Prison Hospital told Human Rights Watch that there were 22 injured patients brought to the hospital following the incident. Human Rights Watch interview with David Ossetian, chief doctor, Republican Prison Hospital, May 15, 2006.

<sup>359</sup> Levan Labauri, MD, "Letter to Sozar Subari, Ombudsman of Georgia, reporting on the monitoring of Rustavi prison no.6 on April 6, 2006." See also "Jail #6," Ombudsman of Georgia Press Release, April 10, 2006.

## *Planning the operation*

Very little information is available about what kinds of plans, required by law, were in place for addressing the kind of disturbance that erupted in Prison No. 5 and how those plans were executed.<sup>360</sup> It is also unclear whether such plans addressed the requirements for the use of force set out by the European Prison Rules<sup>361</sup> and article 2 of the European Convention on Human Rights,<sup>362</sup> as explained by the European Court of Human Rights.<sup>363</sup>

According to the Ministry of Justice, the special operation “was carried out fully in accordance with the Georgian legislation and prison rules,” but does not elaborate on the operation’s compatibility with international obligations or provide any evidence of the planning that went into the operation.<sup>364</sup> Information collected by Human Rights Watch raises questions as to the actual plan in place for the operation. Prison Director Polodashvili told Human Rights Watch, “Of course there is a rule, and we know how to deal with different situations. Plus, you just decide how to act as the events unfold.”<sup>365</sup> Deputy Director Stepan Ozashvili immediately added, “It’s like when you have to go to the toilet—you just figure out how to do it and act.”<sup>366</sup> Although it is clear that special forces of the Ministry of Justice as well as special forces from the Ministry of Internal Affairs conducted the operation, most people interviewed by Human Rights Watch could not state who was in charge of the operation. Even Prison Director Polodashvili, who himself participated in the operation, stated, “I don’t know who was in charge of

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<sup>360</sup> According to the Law of Georgia on Imprisonment, “In time of mass disorder in the institution of execution of punishments or in case of announcement of extraordinary or military situation in order to avoid attack, escape or other violations of law, the [Penitentiary] Department works out the plan of additional security measures approved by the Minister of Justice upon the agreement with the Ministry of Interior and State Department of State Border Defense.” Law of Georgia on Imprisonment, as amended June 1, 2005, art. 96.

<sup>361</sup> The European Prison Rules expect that there shall be detailed procedures about the use of force including stipulations about: a. the various types of force that may be used; b. the circumstances in which each type of force may be used; c. the members of staff who are entitled to use different types of force; d. the level of authority required before any force is used; and e. the reports that must be completed once force has been used. Council of Europe Committee of Ministers, Recommendation (2006) 2 of the Committee of Ministers to member states on the European Prison Rules, para. 65.

<sup>362</sup> Article 2 of the European Convention on Human Rights provides that “(1) Everyone’s right to life shall be protected by law. .... And (2) Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

<sup>363</sup> The European Court of Human Rights has determined that the use of force must be strictly proportionate to the relevant Article 2(2) aim and that the planning and control of a police operation must minimize the reliance on lethal force and the risk to the lives of those involved “to the greatest extent possible.” *Mc Cann v. UK*, no. 18984/91, judgment of September 27, 1995, para. 161.

<sup>364</sup> “General Information on Event of March 27, 2006 in Tbilisi Prison no. 1, no. 5 and Prison Hospital.”

<sup>365</sup> Human Rights Watch interview with Giorgi Polodashvili, director, Tbilisi Prison No. 5, May 16, 2006.

<sup>366</sup> Human Rights Watch interview with Stepan Ozashvili, deputy director, Tbilisi Prison No. 5, May 16, 2006.

the operation; I don't know who controlled the special forces. The special forces all have the same uniforms and masks. I can't say from where they come."<sup>367</sup>

With respect to planning, Elene Tevdoradze told Human Rights Watch, "The minister of the interior promised me they'd use only rubber bullets. They showed me the special weapon that fires these bullets. They said they would do everything to ensure there were no casualties. But the special forces started [the operation], and they were already shooting real ammunition.... It seems to me that it would have been possible to avoid live fire and the loss of life. I think we could have escaped deaths."<sup>368</sup>

### ***Investigation into the March 27 incident in Tbilisi Prison No. 5***

According to information provided to Human Rights Watch by the General Prosecutor's Office, on March 25, 2006, the Investigative Department of the Ministry of Justice opened an investigation into the alleged plotting of a riot in the penitentiary system and pursued this investigation following the disturbance on March 27.<sup>369</sup> After March 27 the scope of the investigation expanded to include charges of membership in a criminal society,<sup>370</sup> but did not include any articles of the Criminal Code related to the death of seven inmates or the conduct of law enforcement agents during the operation. The authorities claimed that in evaluating the March 27 events, the investigation would nevertheless examine the actions of law enforcement agents.

On April 13 charges were brought against Platon Mamardashvili for being a thief in law and for impeding or disrupting the activities of the Penitentiary Department.<sup>371</sup> Charges related to the alleged organization of a riot were brought against Malkhaz Zedelashvili,

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<sup>367</sup> Human Rights Watch interview with Giorgi Polodashvili, director, Tbilisi Prison No. 5, May 16, 2006.

<sup>368</sup> Human Rights Watch interview with Elene Tevdoradze, chairperson, Parliamentary Committee on Human Rights and Civil Integration, Tbilisi, May 22, 2006.

<sup>369</sup> The investigation was opened under art. 378 of the Criminal Code of Georgia, "Impeding the Activities of Detention or Penitentiary Institutions or Disorganization of Such Activities," in connection with art. 19 of the Criminal Code, "Attempted Crime."

<sup>370</sup> Article 223<sup>1</sup> of the Criminal Code, "Membership of a criminal society: being a thief in law."

<sup>371</sup> Article 223<sup>1</sup>, paragraph 2, of the Criminal Code of Georgia, "Being a thief in law." The crime is punishable by deprivation of liberty from five to ten years, with or without fine. Criminal Code of Georgia, art. 378, para. 1, "Non-compliance with the legal request of the employee of the detention or penitentiary institutions or otherwise impeding or disorganizing the activity of this institution shall be punishable by imprisonment of up to one year; para. 3, Attack on the administration of the detention of penitentiary institution or creation of a criminal gang for this purpose or an active participation in such gang shall be punishable by imprisonment of four to ten years; and para. 4, The action referred to in paragraph 3 of this Article, perpetrated by the person convicted of a grave or an especially grave offence- shall be punishable by prison sentence ranging from eight to fifteen years in length."

Nikoloz Makharadze, Giorgi Avaliani, Zurab Vibliani, and Levan Tsindeliani.<sup>372</sup> On May 19, on the basis of a decision by the deputy prosecutor general, the criminal case was transferred to the General Prosecutor's Office, in accordance with the law, and "with the view of [ensuring] an objective and impartial investigation."<sup>373</sup>

Four days after the March 27 incident, OSCE Chairman-in-Office Karel de Gucht called upon the Georgian authorities to open an independent investigation, noting that "a lack of clarity exists" following the March 27 incident and that "it would be appropriate to set up an independent and public enquiry to investigate the events, including allegations of a disproportionate use of force by government troops which resulted in a large number of victims."<sup>374</sup> The government refused to do so, saying that the investigation into the causes of the riot that was already underway made an independent investigation unnecessary. Yet, at that time, even members of the ruling National Movement Party were unclear as to the exact nature of the investigation, claiming that the General Prosecutor's Office had opened the investigation into the possibility that excessive force had been used, when in fact the investigation had been opened by the Ministry of Justice and only into the facts regarding the organization of the alleged riot, as described above by the General Prosecutor's Office itself.<sup>375</sup>

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<sup>372</sup> Criminal Code of Georgia, art. 378, paras. 1 and 3.

<sup>373</sup> "Information on Questions Regarding the Criminal Case Concerning the Attempt of Disorganization at Penitentiary Establishments," information provided at the request of Human Rights Watch by Tamar Tomashvili, human rights department, General Prosecutor's Office, via email, July 11, 2006. According to this document, "Sub-paragraph I of art. 56 of Criminal Procedure Code of Georgia provides for the authorization of a prosecutor to take over from the investigator on any criminal case and forward it to another, in accordance with the investigative subordination. The Prosecutor General is authorized to take any criminal case notwithstanding investigative subordination and transfer it to an investigator from the Prosecutor's Office or another investigative unit."

<sup>374</sup> "OSCE Chairman-in-Office Concerned about Violent Incidents in Georgian Prison," Organization for Security and Cooperation in Europe press release, March 31, 2006, [http://www.osce.org/cio/item\\_1\\_18578.html](http://www.osce.org/cio/item_1_18578.html) (accessed July 18, 2006). The Ministry of Foreign Affairs responded with a statement saying, "The Georgian law enforcement agencies acted in full compliance with the law and the whole process of delivering information regarding the incident was transparent." The Ministry attributed De Gucht's statement to the fact that members of the OSCE Mission to Georgia did not attend a Ministry of Justice briefing on March 28, 2006 regarding the incident. "Comment of the Department of the Press and Information of the Ministry of Foreign Affairs of Georgia on the Statement Made by OSCE Chairman-in-Office Karel De Gucht regarding the Incident in Tbilisi Prison No. 5 on March 27," [http://www.mfa.gov.ge/index.php?lang\\_id=ENG&sec\\_id=35&info\\_id=1314](http://www.mfa.gov.ge/index.php?lang_id=ENG&sec_id=35&info_id=1314) (accessed July 18, 2006).

<sup>375</sup> Nika Gvaramia, member of parliament, member of the Parliamentary Committee for Legal Issues, stated, "I do not know why an independent probe is necessary, when the General Prosecutor's Office is investigating whether excessive force was used or not during the prison riot." As reported in, "Lack of Clarity' in Prison Incident," *Civil Georgia*, April 2, 2006, <http://www.civil.ge/eng/article.php?id=12244> (accessed June 5, 2006); see also "Parliament Rejects Probe into Prison Riot," *Civil Georgia*, March 28, 2006, <http://www.civil.ge/eng/article.php?id=12196> (accessed June 7, 2006).

Publicly, the government has stated unequivocally that law enforcement agents acted lawfully. Saakashvili hailed the Justice Ministry staff and the Georgian police whom he claimed “acted extremely professionally.”<sup>376</sup> Nino Burjanadze, the speaker of parliament, was quoted as having praised the police saying they used “adequate force” to prevent a jailbreak.<sup>377</sup>

The deputy prosecutor general, when asked why an investigation into the death of seven detainees and whether the force used was absolutely necessary was not opened immediately, told Human Rights Watch that these facts would be examined under the investigation into the planning of the riot opened on March 25.<sup>378</sup> The deputy prosecutor general further stated that evidence suggesting that detainees had damaged the prison was sufficient to explain the need for the use of firearms. She stated, “The assumption from the beginning is that the use of force was justified because all evidence showed there was clear resistance. The whole prison was destroyed. It was more than clear because everything was destroyed, everything was burned. No single door was left.”<sup>379</sup>

Almost three months after the incidents in the Republican Prison Hospital and Prison No. 5 the authorities finally undertook a specific investigation into the actions of law enforcement agents. According to the General Prosecutor’s Office, on June 21, 2006, criminal case N74068237 was separated from the existing case, and the General Prosecutor’s Office initiated a preliminary investigation under article 333(1) of the Criminal Code of Georgia (exceeding authority) into whether law enforcement agents used force in accordance with the law during the operation in Prison No. 5 on March 27.<sup>380</sup>

Notwithstanding the alleged level of resistance by inmates, the Georgian authorities are obligated to promptly and effectively investigate every death and serious injury in custody. This obligation is based on the requirement to protect the right to life and the right to bodily integrity, particularly as it relates to persons in custody. For example, article 2 (the right to life) of the European Convention on Human Rights (ECHR)

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<sup>376</sup> “Saakashvili Speaks about Prison Riot, Hails Police,” *Civil Georgia*.

<sup>377</sup> “Destabilization Plot Feared Behind Prison Riot,” *Civil Georgia*.

<sup>378</sup> Human Rights Watch interview with Nona Tsotsoria, deputy prosecutor general, Tbilisi, May 23, 2006. However, the deputy minister of justice, Givi Mikanadze, told Human Rights Watch, “There is no investigation into the actions of the authorities.” Human Rights Watch interview with Givi Mikanadze, deputy minister of justice, Tbilisi, May 18, 2006.

<sup>379</sup> Human Rights Watch interview with Nona Tsotsoria, deputy prosecutor general, Tbilisi, May 23, 2006.

<sup>380</sup> Human Rights Watch email correspondence with Tamar Tomashvili, human rights department, General Prosecutor’s Office, July 11, 2006.

imposes a positive obligation on governments to ensure that the law adequately protects the right to life and imposes strict requirements in relation to the investigation of fatal incidents, especially when considered together with article 13, the right to an effective remedy. The European Court has held that the same applies in article 3 (prohibition on ill-treatment) cases, where a detainee has “an arguable claim that he has been seriously ill-treated by the police or other such agents of the State.”<sup>381</sup>

Georgia’s obligations under the ECHR also require it to carry out an effective official investigation when an individual has been killed as a result of the use of force or other fatal incident,<sup>382</sup> and, “in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility.”<sup>383</sup> As the European Court explains, article 2 secures “the accountability of agents of the State for their use of lethal force by subjecting their actions to some form of independent and public scrutiny capable of leading to a determination of whether the force used was or was not justified in a particular set of circumstances.”<sup>384</sup> Furthermore, where a death has occurred during custody, the burden of proof is on the authorities to provide a satisfactory and convincing explanation for the events leading to a detainee’s death.<sup>385</sup>

With respect to investigations into potentially unlawful killing by state agents, for the investigation to be effective the persons responsible for and carrying out the investigation must be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence.<sup>386</sup> The initial investigation undertaken by the Ministry of Justice regarding the actions of its own employees or the employees of the Ministry of Interior fails to meet this standard for independence.

Moreover, in order for an investigation to satisfy the requirements of articles 2, 3, or 13 of the ECHR, it must be capable of leading to a determination of liability for the killings

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<sup>381</sup> For European Court findings specifically related to effective investigation into alleged violations of article 3, see *Assenov and others v. Bulgaria*, no. 24760/94, judgment of October 28, 1998, para. 102; and *Sakik and others v. Turkey*, no. 31866/96, judgment of October 10, 2000, para. 62.

<sup>382</sup> *Mc Cann v. UK*, no. 18984/91, judgment of September 27, 1995, para. 161.

<sup>383</sup> *Nachova and Others v. Bulgaria*, para. 117; see also *İlhan v. Turkey*, no. 22277/93, ECHR 2000-VII; and *Anguelova v. Bulgaria*, no. 38361/97, ECHR 2002-IV.

<sup>384</sup> *Kaya v. Turkey*, no. 158/1996/777/978, judgment of February 2, 1998, para. 87.

<sup>385</sup> *Velikova v. Bulgaria*, no. 41488/98, judgment of May 18, 2000, para 70; *Salman v. Turkey*, no. 21986/93, judgment of June 27, 2000, paras. 99 and 100; *Tanli v. Turkey*, no. 26129/95, judgment of April 10, 2001, para. 141; and *Orak v. Turkey*, no. 31889/96, judgment of February 14, 2002.

<sup>386</sup> *Nachova and Others v. Bulgaria*, para. 118; see also *Güleç v. Turkey*, judgment of July 27, 1998, Reports 1998-IV; *Öğür v. Turkey*, no. 21954/93, ECHR 1999-III; *Ergi v. Turkey*, judgment of July 28, 1998, Reports 1998-IV; and *Hugh Jordan v. UK*, no. 24746/94, judgment of May 4, 2001, para. 106.

or injuries and to the identification and punishment of those responsible. The authorities investigating must have the independence, impartiality, and mandate to establish the key issues of responsibility and liability. Any deficiency, such as a predisposition to discount wrong-doing on the part of the security agents, undermines its ability to reach a determination on these issues and falls foul of the required standard. The initial investigation opened by the Ministry of Justice on March 25, which did not examine the planning of the special operation or the use of lethal force or physical force that resulted in injuries to detainees, does not meet this standard. Moreover, the assumption on the part of the General Prosecutor's Office that the use of force was legal, in and of itself undermines the effectiveness of both the initial and subsequent investigations and suggests that the investigation is incapable of being impartial and effective.<sup>387</sup>

The European Court of Human Rights also requires that an investigation be reasonably prompt, finding that "a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts."<sup>388</sup> The investigation opened by the General Prosecutor's Office regarding the use of force by law enforcement agents nearly three months after the incident and the death of seven inmates does not meet the requirement for promptness.

Finally, the court has found that an effective investigation must involve a sufficient element of public scrutiny and involve the next of kin to the greatest extent possible.<sup>389</sup> Public scrutiny of the investigation or its results is necessary to secure accountability in practice as well as in theory, maintain public confidence in the authorities' adherence to the rule of law, and prevent any appearance of collusion in or tolerance of unlawful acts.<sup>390</sup> It is unclear whether either investigation has met this requirement.

### ***Other Incidents Involving the Use of Force in the Penitentiary System***

In addition to the incident on March 27, there have been several other serious incidents involving the use of force by government authorities in the Georgian penitentiary system

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<sup>387</sup> See *Kilic v. Turkey*, judgment of March 20, 2000, Reports and Decisions 2000-III; *Finucane v. the United Kingdom*, no. 29178/95, judgment of July 1, 2003; and *Jordan v. the United Kingdom*, no. 24746/94, judgment of May 4, 2001.

<sup>388</sup> *Yaşa v. Turkey*, no. 63/1997/847/1054, judgment of September 2, 1998, paras. 102-104; *Cakıcı v. Turkey*, no. 23657/94, paras. 80, 87 and 106; and *Mahmut Kaya v. Turkey*, no. 22535/93, paras. 106-107.

<sup>389</sup> See, *inter alia*, *Hugh Jordan v. UK*, no. 24746/94, judgment of May 4, 2001, paras. 106-109.

<sup>390</sup> *Nachova and Others v. Bulgaria*, para. 119; see also *McKerr v. the United Kingdom*, no. 28883/95, ECHR 2001-III.

since December 2005. As described in detail below, these incidents have resulted in numerous injuries and in one case the death of an inmate. Some beatings occurred during the transfer of prisoners to different facilities, or immediately following their transfer, apparently as a means of demonstrating government authority over prisoners. Special forces agents also used beatings in order to suppress alleged disturbances or to punish inmates for allegedly participating in disturbances. In Tbilisi Prison No. 7, for several months in 2006, special forces members serving as guards in that facility reportedly routinely subjected detainees to beatings and strip searches. In some instances, the treatment of detainees in Prison No. 7 has risen to the level of torture. Under the Convention against Torture a state party must prevent torture as well as other acts of cruel, inhuman or degrading treatment or punishment and must undertake a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture or other act of cruel, inhuman or degrading treatment or punishment has been committed.<sup>391</sup> As indicated previously, article 3 of the ECHR, which prohibits torture, also obligates states to undertake an effective investigation into any allegations of serious ill-treatment that is capable of leading to the identification and punishment of those responsible.<sup>392</sup>

### *Use of force against detainees in Kutaisi, Batumi, and Rustavi*

A disturbance erupted on December 21, 2005 in the new Kutaisi Prison No. 2 after 100 detainees were transferred there from the old Kutaisi Prison No. 1. Prisoners burned sheets, banged on the doors and walls, and in some cells attempted to break down the doors.<sup>393</sup> Some sources allege that the inmates were protesting about the lack of water, electricity, and heat that had not yet been turned on in the new facility.<sup>394</sup> Other sources suggest that supporters of thieves in law initiated the disturbance and that other inmates acted in solidarity with them.<sup>395</sup> Special forces from the Ministry of Interior and Ministry

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<sup>391</sup> CAT, arts. 1, 12, and 16.

<sup>392</sup> The requirements for an investigation to be deemed effective are the same as under article 2 of the ECHR (see above, "Investigation into the March 27 incident in Prison No. 5"). For European Court findings specifically related to effective investigation into alleged violations of article 3, see footnote 381 above.

<sup>393</sup> Sozar Subari, public defender (ombudsman) of Georgia, "Ongoing Problems and Results of Monitoring in the Penitentiary Department," Speech to the Parliamentary Committee on Human Rights, May 19, 2006. See also, "Prison Riot Reported in Kutaisi," *Civil Georgia*, December 21, 2006, <http://www.civil.ge/eng/article.php?id=11384> (accessed March 25, 2006).

<sup>394</sup> "Inmates Die in Tbilisi Prison Riot," *Civil Georgia*, March 27, 2006. The heat and water were apparently restored after one day.

<sup>395</sup> The closure of Kutaisi Prison No. 1 and the transfer of detainees to Kutaisi Prison No. 2 and other establishments was apparently part of the plan to reduce the authority of the thieves in law by placing them in a new facility fully under control of the prison administration, and where detainees would be denied contraband and would be limited in their contact with one another. During a visit by the ombudsman to Kutaisi Prison No. 2 on December 25, 2005, some detainees allegedly reported that they were "pleased with the fact that they had been released from the influence of [the] criminal authorities." "Ombudsman of Georgia considers establishment

of Justice undertook a special operation to end the disturbance that resulted in injuries to at least 29 detainees and three law enforcement agents<sup>396</sup> and the death of one prisoner in the Kutaisi clinical hospital as a result of blunt force trauma to the head.<sup>397</sup> According to the Office of the Ombudsman, special forces troops beat all inmates in the area of the prison from where the noise emanated, irrespective of whether detainees had participated in the disturbance.<sup>398</sup>

During and after the transfer of additional prisoners to the new Kutaisi Prison No. 2 in the following days, special forces again used force against prisoners.<sup>399</sup> As a result, “a large number of detainees had indications of wounds of varying seriousness.”<sup>400</sup> Special forces from the Department of Constitutional Defense of the Ministry of Interior had been called in specifically to assist with the transfer of detainees.<sup>401</sup> According to Deputy Prison Director Shmagi Panzevadze, “Special forces moved people from other prisons to this one. This is not typical, but given the number of prisoners being moved, we had to ask for their help.”<sup>402</sup> Detainees also reported to Human Rights Watch that they were beaten during special operations that took place on January 26 and February 6, 2006, and subsequently; newly arrived detainees were particular targets of abuse. One detainee stated,

When we came in [to Kutaisi Prison No. 2 in December] it was very cold here. We didn’t want to be here. Some prisoners started to make

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of order within the penitentiary system is obligation of the government,” Ombudsman of Georgia press release, December 26, 2005.

<sup>396</sup> Ibid., and “Regional representatives of Ombudsman monitor jails,” Ombudsman of Georgia press release, January 11, 2006.

<sup>397</sup> Malkhaz Sirginava, born 1978, died on December 24, 2005. “Letter from Gocha Megrlishvili, Director, Kutaisi Strict Regime Facility and Isolator no. 2, to Irakli Berdzuli, Head of the Special Division of the Penitentiary Department,” as per Human Rights Watch’s request for information concerning deaths in custody, on file with Human Rights Watch.

<sup>398</sup> Sozar Subari, public defender (ombudsman) of Georgia, “Ongoing Problems and Results of Monitoring in the Penitentiary Department,” Speech to the Parliamentary Committee on Human Rights, May 19, 2006.

<sup>399</sup> “Regional Representatives of Ombudsman Monitor Jails,” Ombudsman of Georgia press release.

<sup>400</sup> Sozar Subari, public defender (ombudsman) of Georgia, “Ongoing Problems and Results of Monitoring in the Penitentiary Department,” Speech to the Parliamentary Committee on Human Rights, May 19, 2006. In contrast to the Ministry of Justice special forces troops, who are trained for conducting operations in prisons, the special forces from the Department of Constitutional Defense of the Ministry of Interior “are responsible for neutralizing criminals, the fight against terrorism, etc.” and not trained for operations within prisons. Sozar Subari, public defender (ombudsman) of Georgia, “Ongoing Problems and Results of Monitoring in the Penitentiary Department.”

<sup>401</sup> Sozar Subari, public defender (ombudsman) of Georgia, “Ongoing Problems and Results of Monitoring in the Penitentiary Department,” Speech to the Parliamentary Committee on Human Rights, May 19, 2006.

<sup>402</sup> Human Rights Watch interview with Shmagi Panzevadze, deputy director, Kutaisi Prison No. 2, May 20, 2006.

noise. The special forces came in and beat us. I don't know how many of them there were. They took us all out into the corridor and beat us. I was beaten with a truncheon. They hit me on the head, in the kidneys, and on the legs.... This happened regularly after that for about one and a half months or so. The special forces would beat us. For the last three months it has been more or less normal. No one from my cell has been beaten.<sup>403</sup>

Another detainee described being beaten sometime in April 2006:

They take you into the hall. Line you up in the corridor and beat you as long as you can take it. They have special clubs that give electric shocks. They don't just wear masks, some wear helmets. They come into the cell with something in writing, as if they have some information, that someone is trying to escape or something. They do it systematically, one cell at a time, all in a row, without conversation. They take you out of the cell, work you over, and return you to the cell. And then take the next guy. Without clothes. Yes, we were naked.<sup>404</sup>

Another told Human Rights Watch,

When they come for a surprise check, a raid, they come with clubs and masks at night and they make you undress. Everyone is beaten the first night they arrive. I still have a bruise from [several] months ago. When they come, they open the door and tell us to undress and take us into the hall. They ask questions and if they don't like the answer, they beat you. They ask you what you are in for. I'm in for heroin. For that, they beat me. I have a tattoo on my arm. They beat me for that, too. If you don't take off your pants, they beat you for that. It's normal, that's their style. They do it so they won't have problems from us.<sup>405</sup>

For over a week following the December incidents, lawyers were not allowed to meet with their clients in Kutaisi Prison No. 2. Prisoners could not receive packages, apparently as punishment for the disturbance.<sup>406</sup> Following the Kutaisi incidents,

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<sup>403</sup> Human Rights Watch interview with detainee (name withheld), Kutaisi Prison No. 2, May 20, 2006.

<sup>404</sup> Human Rights Watch interview with detainee (name withheld), Kutaisi Prison No. 2, May 20, 2006.

<sup>405</sup> Human Rights Watch interview with detainee (name withheld), Kutaisi Prison No. 2, May 20, 2006.

<sup>406</sup> "Ombudsman of Georgia Continues Monitoring of Jails," Ombudsman of Georgia press release, January 3, 2006; and Sozar Subari, public defender (ombudsman) of Georgia, "Ongoing Problems and Results of

thousands of detainees throughout the penitentiary system undertook a hunger strike for approximately nine days. Some reports described this action as a protest against ill-treatment and poor conditions of detention.<sup>407</sup> Some detainees reported to the Office of the Ombudsman that they were pressured to go on hunger strikes by thieves in law and their supporters.<sup>408</sup> The Ministry of Justice conducted an investigation into the planning of the riot and charged several inmates. The case is currently pending in court. However, neither the Ministry of Justice nor the General Prosecutor's Office opened a separate investigation into the use of force by law enforcement agents or into the death of Malkhaz Sirginava.<sup>409</sup>

During this period there were also violent incidents in the Batumi and Rustavi prisons. On January 24, 2006, in the Batumi prison, the authorities conducted a search of the prison and forced inmates to stand outside in very cold weather and snow for many hours, without allowing them to dress properly for the weather, and also used force and offensive remarks against the detainees. On January 29 special forces and detainees clashed in Rustavi Prison No. 2, resulting in injuries to one detainee and one member of the special forces.<sup>410</sup>

### ***Use of force against detainees in Tbilisi Prison No. 7***

The government has designated Tbilisi Prison No. 7 as the facility where it will detain alleged thieves in law, including both those who were previously detained in other facilities as well as those recently arrested. Some prisoners involved in political cases are also detained in this facility.<sup>411</sup> Detainees in Prison No. 7 reported that since December,

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Monitoring in the Penitentiary Department," Speech to the Parliamentary Committee on Human Rights, May 19, 2006.

<sup>407</sup> For example, Shorena Kotsotsashvili, "The Lives of Seven Thousand Prisoners in Danger," *Akhali Taoba*, no. 2, April 1, 2006.

<sup>408</sup> Sozar Subari, public defender (ombudsman) of Georgia, "Ongoing Problems and Results of Monitoring in the Penitentiary Department," Speech to the Parliamentary Committee on Human Rights, May 19, 2006; and "Ombudsman of Georgia Met with Relatives of Prisoners," Ombudsman of Georgia press release, January 4, 2006.

<sup>409</sup> Human Rights Watch email correspondence with Tea Jaliashvili, Information and Policy Department, Office of the Ombudsman, July 21, 2006. For information regarding the requirement under the European Convention of Human Rights to investigate any death in which lethal force is used, and the particular obligations on the government to provide an adequate explanation regarding any death in custody, see above "Investigation into the March 27 incident in Prison No. 5." See also footnote 381 regarding the requirement under article 3 for an effective investigation.

<sup>410</sup> "Inmate, Policeman injured in prison riot," *Civil Georgia*, Tbilisi, January 30, 2006, <http://www.civil.ge/eng/article.php?id=11655> (accessed February 1, 2006).

<sup>411</sup> For example, Vladimir Arutunian, who was sentenced to life in prison for attempting to assassinate U.S. President George W. Bush during his visit to Georgia in May 2005 is held in a solitary cell in Prison No. 7. The policemen accused of killing Sandro Girgvliani, head of the international relations department for United Georgian Bank, in February 2006, in a highly controversial case were also held in Tbilisi Prison No. 7, pending

they have been subject to frequent beatings and other degrading treatment that usually takes place during daily cell searches. During the searches, detainees are taken out into the prison corridor, made to stand with their faces against the wall, and forced to dress and undress repeatedly allegedly in order to check for contraband. Prisoners report beatings also happening at this time. Human Rights Watch considers that, given the frequency and the severity of the beatings and the accompanying humiliation, together with the appalling conditions of detention and widespread rights restrictions in the prison described above, the treatment of detainees in Prison No. 7 has, at times, amounted to torture.

Detainees explained the process of inspections and the accompanying treatment to Human Rights Watch. “When they do inspections they [make us] have our faces against the wall and our hands against the wall. They often beat [us]. They don’t beat me every day, but they beat someone every day,” said one detainee.<sup>412</sup> Another stated, “If there is a problem with the checking, then they beat me. They make us take our clothes off, then dress again, then take our clothes off, then dress again. This can even happen five, ten times per day.”<sup>413</sup> Yet another stated, with resignation, “Me, personally, the last time I was beaten seriously, not just hit a few times, was 20 days ago. [The guards] say, ‘Take off your clothes, crouch down. Okay get up, get dressed.’ Then again, ‘Take off your clothes, crouch down,’ etc. over and over. Finally [one time] I said, ‘Okay, if you want to beat me just do it.’ They just want to humiliate us and provoke us. They beat us whenever they want to so it makes no difference if we’re talking to you. It doesn’t matter anymore.”<sup>414</sup>

Detainees reported that they had experienced particularly harsh treatment several months earlier. One stated, “For three months here they beat me every day. They beat me with truncheons. For the last two months there was no beating. They would beat all of us, two or three times per day.”<sup>415</sup> Another told Human Rights Watch, “It was worse before. The last month has been OK. Every day there were beatings. I almost died. I could also hear the beatings in the cell next to me. Every morning.”<sup>416</sup> He continued, “Two months ago they took me from this cell and beat me terribly.... They were in masks. I don’t know why. They say nothing, they just hit. There were 10 of them. They

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trial. For information on the case see, Paul Rimple, “Georgia: Murder Case Verdict Stirs Controversy,” *EurasiaNet*, July 7, 2006, <http://www.eurasianet.org/departments/civilsociety/articles/eav070706.shtml> (accessed July 18, 2006).

<sup>412</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 7, May 19, 2006.

<sup>413</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 7, May 19, 2006.

<sup>414</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 7, May 19, 2006.

<sup>415</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 7, May 19, 2006.

<sup>416</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 7, May 19, 2006.

took me upstairs to the doctor's office. By the end I was unconscious."<sup>417</sup> One lawyer told Human Rights Watch that his client faced repeated beatings and told him, "In Prison No. 7, I was beaten in the night. In my cell sometimes. In February they beat me every day for two weeks."<sup>418</sup>

Others stated that basic requests will result in repercussions from the prison staff. "If you cry out for medicine, for a lawyer, then they'll beat you for sure," one detainee told Human Rights Watch.<sup>419</sup> One lawyer similarly reported that, according to her clients' statements, "The beatings happen very frequently. Every day or every other day during certain periods. Anything can trigger it. Someone is sick and asked for a doctor, or someone asked for medicine—this would trigger beatings."<sup>420</sup> Another lawyer told Human Rights Watch that, according to one of his clients, "Prisoners ask for a doctor, for water, or for medicine. And the guards say, 'I'm your doctor, I'm your medicine,' and beat them."<sup>421</sup>

Lawyers reported seeing evidence of these beatings when meeting with their clients in Prison No. 7. "On [one of my clients] I saw a serious wound near his ear that was like a dark yellow circle. I believe it was a bruise."<sup>422</sup> Another lawyer confirmed, "I have examined my clients. I saw large bruises on one person's body."<sup>423</sup> She also reported seeing her client beaten as he was brought to meet with her. She described the incident to Human Rights Watch, saying,

They beat him in front of me in Prison No. 7. I came into the building and heard screams. This was on January 15. They were going to bring the prisoner to me. He was in the corridor. Four employees with masks beat him. The thing is, when a person is brought to a lawyer, he is searched and forced to take off all of his clothes. He is completely naked. This is humiliating. After the meeting he is forced to take off all of his clothes again. [My client] protested taking off his clothes. They punched him with their fists.<sup>424</sup>

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<sup>417</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 7, May 19, 2006.

<sup>418</sup> Human Rights Watch interview with Gela Nikolaishvili, Tbilisi, May 23, 2006.

<sup>419</sup> Human Rights Watch interview with detainee (name withheld), Tbilisi Prison No. 7, May 19, 2006.

<sup>420</sup> Human Rights Watch interview with Eka Beselia, Tbilisi, May 16, 2006.

<sup>421</sup> Human Rights Watch interview with Gela Nikolaishvili, Tbilisi, May 23, 2006.

<sup>422</sup> Human Rights Watch interview with Eka Beselia, Tbilisi, May 16, 2006.

<sup>423</sup> Human Rights Watch interview with Lali Aptsiauri, Tbilisi, May 17, 2006.

<sup>424</sup> *Ibid.*

### ***Impunity for Abuses Perpetrated by Prison Staff and Special Forces***

There are numerous obstacles to effective investigation and prosecution of perpetrators of abuse against detainees, including direct interference by prison authorities and the lack of identifying insignia among prison staff and special forces. Lawyers have tried legal remedies to assist their clients in Prison No. 7 who have been victims of ill-treatment. One told Human Rights Watch, “I filed a suit and asked for an investigation. There was some kind of check, but afterwards my clients told me that [a prison administration official] had warned them: ‘If you tell anyone then it will get worse for you.’ The suit I filed on behalf of my clients- this was not confirmed. I got an answer saying ‘We checked and there are no claims against the prison administration.’ Other prisoners demanded forensic examinations. [One forensic expert] was not allowed into the prison. Not a single lawyer could get a forensic examination when they asked for it.”<sup>425</sup> Another confirmed, “I demanded a forensic examination, but experts are not allowed in.”<sup>426</sup>

A significant barrier to proper investigation into the alleged abuses described above is special forces’ complete lack of visible insignia, making it impossible to identify perpetrators. As of December 2005, special forces troops serve as the main guards in Tbilisi Prison No. 7. As a rule, all special forces members wear masks and do not wear name tags or identifying numbers. The identity of special forces troops remains so opaque that even other government officials note their complete anonymity. The director of Prison No. 5, who participated in the special operation of March 27, told Human Rights Watch, “There were... special forces from different organs. Everyone was in masks. It’s hard to say where they were from.”<sup>427</sup> His deputy, who was also present during the operation stated, “The special forces all have the same uniforms and masks. I can’t say from where they come.”<sup>428</sup> There are no laws requiring that special forces or even regular prison guards wear identification.<sup>429</sup>

Difficulties in obtaining investigations and prosecutions into abuse in prisons are part of a broader problem of impunity for alleged crimes committed by law enforcement officers, in particular police, documented by Human Rights Watch, Amnesty International, and other organizations.<sup>430</sup> The Georgian government has often refused to

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<sup>425</sup> Human Rights Watch interview with Eka Beselia, Tbilisi, May 16, 2006.

<sup>426</sup> Human Rights Watch interview with Lali Aptsiauri, Tbilisi, May 17, 2006.

<sup>427</sup> Human Rights Watch interview with Giorgi Polodashvili, head of Tbilisi Prison No. 5, May 16, 2006.

<sup>428</sup> Human Rights Watch interview with Stepan Ozashvili, deputy director, Tbilisi Prison No. 5, May 16, 2006.

<sup>429</sup> With respect to the uniforms of prison guards, “While exercising his/her employment duties, an employee wears a uniform; The President of Georgia approves attributes of the work form of the employee.” Law of Georgia on Imprisonment, as amended June 1, 2006, art. 14, paras. 1 and 2.

<sup>430</sup> See Human Rights Watch, “Georgia: Uncertain Torture Reform,” *A Human Rights Watch Briefing Paper*, April 12, 2005, <http://hrw.org/backgrounder/eca/georgia0405/>; “Agenda for Reform: Human Rights Priorities

acknowledge these criticisms, and President Saakashvili has gone so far as to claim incorrectly that Human Rights Watch no longer considers torture or impunity to be problems in Georgia. In a speech delivered in November 2005, he stated, “A stereotype that people are tortured in Georgia persisted, but the reports made by Amnesty International and Human Rights Watch maintain that there is not a single fact of a person being tortured.”<sup>431</sup> During its review of Georgia in May 2006, the UN Committee Against Torture made several statements regarding the ongoing problem of impunity. It stated, “The Committee remains concerned that despite extensive legislative reforms, impunity and intimidation still persist in the State party, in particular in relation to the use of excessive force, including torture and other forms of ill-treatment by law enforcement officials, especially prior to and during arrest, during prison riots and in the fight against organized crime.”<sup>432</sup> The committee also noted its concern “about the relatively low number of convictions and disciplinary measures imposed on law enforcement officials in light of numerous allegations of torture and other acts of cruel and inhuman or degrading treatment, as well as the lack of public information about such cases,”<sup>433</sup> and pointed to the specific problem of the lack of identification of special forces troops.<sup>434</sup>

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after the Georgian Revolution,” *A Human Rights Watch Briefing Paper*, February 24, 2004, <http://hrw.org/english/docs/2004/02/24/georgi7650.htm>; and Amnesty International, “Torture and ill-treatment. Still a concern after the ‘Rose Revolution,’” AI index: 56/001/2005, November 23, 2005, <http://web.amnesty.org/library/index/engeur560012005>. According to information provided to Human Rights Watch by the General Prosecutor’s Office in May 2006, for 2004 and 2005, the General Prosecutor’s Office initiated 156 investigations into suspected torture or ill-treatment by law enforcement officers. Court decisions have been handed down in just 23 cases. The first prison sentences for law enforcement officers for torture-related crimes came in November 2005. Currently, 14 law enforcement officers are serving prison sentences for torture-related crimes. Three law enforcement officers charged with torture-related crimes were released following a plea bargain. Office of the Prosecutor General of Georgia, “Report with Respect to Human Rights in Georgia; Torture and Ill-treatment, Freedom of Religion and Trafficking.”

<sup>431</sup> “Remarks by President Saakashvili at the Opening of an International Forum ‘Europe’s New Wave of Liberation: Democracy and Transformation,’” November 22, 2005, <http://www.president.gov.ge/?l=E&m=0&sm=3&id=1037> (accessed March 6, 2006).

<sup>432</sup> The committee recommends, “The State party should give higher priority to efforts to promote a culture of human rights by ensuring that a policy of zero tolerance is developed and implemented at all levels of the police force hierarchy as well as for all staff in the penitentiary establishments. Such a policy should identify and address the problems, and elaborate a code of conduct for all officials, including those involved in the fight against organized crime, as well as introduce regular monitoring by an independent oversight body.” United Nations Committee Against Torture, “Consideration of Reports Submitted by States parties under Article 19 of the Convention, Conclusions and recommendations of the Committee against Torture, Republic of Georgia,” para. 9.

<sup>433</sup> The committee recommends, “The State party should strengthen its investigative capacity, including that of the Prosecutor-General’s office, in order to promptly and thoroughly examine all allegations of torture and ill-treatment and that statistics on convictions and disciplinary measures be regularly published and made available to the public.” United Nations Committee Against Torture, “Consideration of Reports Submitted by States parties under Article 19 of the Convention, Conclusions and recommendations of the Committee against Torture, Republic of Georgia,” para. 12.

<sup>434</sup> “The Committee is concerned about the high number of complaints received from inmates as well as about reports that law enforcement officers wear masks during raids and carry no identification badges which makes it

In mid-2005 the government undertook specific legislative reforms, apparently as an attempt to respond to international criticism and take measures to address torture and impunity. These included a monitoring system for police stations under the framework of the Office of the Ombudsman, the requirement that police officers wear identification, and the requirement that, before approving a plea bargain, a court must ascertain that the agreement is reached voluntarily, without violence or coercion and that torture, inhuman or degrading treatment have not been used by police or other law enforcement officials against the defendant. However, lawyers and NGOs reported that the quality of investigations remain mixed. According to Levan Ramishvili of the Liberty Institute, “In terms of investigation and punishment of law enforcement agents, sometimes people are convicted, but more often the prosecutors say that the investigation is ongoing and the investigation will remain open indefinitely.”<sup>435</sup> The lack of investigations into the deaths, injuries, and other ill-treatment and possible torture inflicted by law enforcement agents acting in the Georgian penitentiary facilities in early 2006, also suggests that the government is not fully committed to guaranteeing justice for victims and eliminating the climate of impunity.

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impossible to identify them should a complaint of torture or ill-treatment be made by an inmate. The State party should ensure that all penitentiary personnel, as well as special forces, be equipped with visible identification badges at all times to ensure the protection of inmates from acts in violation of the Convention.” United Nations Committee Against Torture, “Consideration of Reports Submitted by States parties under Article 19 of the Convention, Conclusions and recommendations of the Committee against Torture, Republic of Georgia,” para. 16.

<sup>435</sup> Human Rights Watch interview with Levan Ramishvili, executive director, Liberty Institute, Tbilisi, May 11, 2005.

## Recommendations

### ***To the Government of Georgia***

- Implement the recommendations of the United Nations Committee Against Torture detailed in its Conclusions and Recommendations of May 10, 2006.
- Implement the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment detailed in its report to the Georgian government following its visits of November 18-28, 2003, and May 7-14, 2004.
- Immediately make public the Georgian government's October 2005 reply to the CPT on its report following its visits of November 18-28, 2003, and May 7-14, 2004.
- Implement the recommendations of the United Nations special rapporteur on torture, issued in his September 2005 report, published following a country visit to Georgia in May 2005.
- Actively implement the European Prison Rules, as updated by the Council of Europe Committee of Ministers Recommendation (2006) 2 of January 11, 2006.
- The most senior figures in government, including President Saakashvili, Minister of Interior Vano Merabishvili, and Minister of Justice Gia Kavtaradze, should publicly announce a policy of zero tolerance for torture and ill-treatment by law enforcement agents.
- Allow for the formation of an independent investigation body to examine allegations of excessive force during the March 27 incident in Tbilisi Prison No. 5. The investigation must have the independence and powers to require cooperation from all agencies involved and to examine whether the operation was planned to minimize use of lethal and other excessive physical force.
- Enact legislation that requires all law enforcement agents, including members of the special forces and prison guards, to wear identification, and provide all law enforcement agents with uniforms that include appropriate identification.
- Ensure that appropriate records are kept that allow the prompt identification of personnel who are on duty in prisons and who take part in particular interrogations, investigations, or security operations.
- Ensure that the new Penitentiary Code, to be submitted to parliament in November 2006, provides pre-trial detainees with the right to regular visits with family members and close friends, in an effort to promote contact with the

outside world as required by international standards. Abolish any requirement of permission from an investigator, prosecutor, or judge for such visits.

- Ensure that the new Penitentiary Code guarantees prisoners regular family visits, including extended visits, in accordance with the guiding principle of promoting contact with the outside world; the number of family visits should be based on individualized treatment, rather than on the basis of regime. Restrictions should be only those strictly required on security grounds.
- Ensure that the new Penitentiary Code allows for pre-trial detainees to engage in work, education, and other purposeful activities.
- Ensure that the new Penitentiary Code guarantees detainees the right to submit confidential complaints and ensure that all prison administration officials are aware of this right and do not interfere with it.
- Ensure that the building of new prisons does not detract from addressing immediate needs of the prison population.
- Enact changes to the Criminal Procedure Code to provide for a range of alternatives to detention. Ensure that the General Prosecutor's Office uses pre-trial detention as the exception rather than the norm. Pre-trial detention should only be justified on clear grounds relating to security and the administration of justice.
- Enact specific legislation regarding the use of force in prisons that complies with the standards set forth in the UN Basic Principles on the Use of Force and Firearms; train all Penitentiary Department, Ministry of Justice, and Ministry of Interior law enforcement agents on the use of force in prisons.
- Give serious consideration to recommendations provided by the Council of Europe, other international experts, and domestic NGOs and experts regarding changes to the Penitentiary Code, the Criminal Code, the Criminal Procedure Code, the Law on Probation, and other relevant laws.
- Publicly support regular access for NGOs and the Office of the Ombudsman to monitor prison conditions and the treatment of prisoners.
- Ensure that adequate resources are provided to the Ministry of Labor, Health, and Social Affairs to guarantee that the transfer of responsibility for medical care from the Ministry of Justice in September 2006 does not negatively impact on detainees' access to health care.
- Support the budget of the Ministry of Justice and the Penitentiary Department to implement the specific recommendations outlined below.

### **To the General Prosecutor's Office**

- Open an investigation into the deaths of seven inmates as a result of the use of force by special forces troops in Prison No. 5 on March 27, 2006, as required by article 2 of the European Convention on Human Rights.
- Open an investigation into the death of Malkhaz Sirginava on December 24, 2005, as a result of the use of force by special forces troops in Kutaisi Prison No. 2, as required by article 2 of the European Convention on Human Rights.
- Open an investigation into allegations of ill-treatment in Kutaisi Prison No. 2 in December 2005 and subsequent months, and in Tbilisi Prison No. 7, as required by article 3 of the European Convention on Human Rights.
- Remove all non-violent offenders from pre-trial detention and ensure effective and accessible non-custodial alternatives for defendants awaiting trial; pre-trial release should only be denied based on an individual assessment of factors such as flight risk, interference with the administration of justice, or other defined threat to public order or security. All pre-trial detention must be for as short a period as possible and subject to regular review.
- Remove all children from pre-trial detention and ensure that juveniles are only subject to pre-trial detention as an absolute last resort.

### **To the Ministry of Justice**

- Clarify the requirements set forth in Minister of Justice Order No. 620 regarding complaint mechanisms for detainees, to ensure that detainees are able to send confidential complaints to state bodies and other organizations.
- Ensure effective coordination between the Penitentiary Department and the Probation Department to ensure the regular release of prisoners on parole.

### *Monitoring of the penitentiary system*

- Ensure that a national monitoring mechanism is established that meets the requirements set forth in the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).
- Ensure that monitoring commissions are established at all 16 penitentiary establishments.
- Ensure a transparent process with clear, identifiable criteria for the selection of monitors for the national monitoring mechanism, as well as for the individual monitoring commissions being established for each penitentiary facility.

- Guarantee all monitors the right to access any facility of the Penitentiary Department without warning at any time and the right to private meetings with detainees.
- Readily and consistently take into consideration the recommendations provided by the monitoring mechanisms.
- Respond, in writing, within a reasonable time period, to the reports provided by the monitoring mechanisms.

## ***To the Ministry of Justice and the Penitentiary Department***

### *Intake of detainees*

- Ensure that detainees are informed of their rights and obligations in writing and that they are allowed to keep a copy of that document.
- Establish a uniform procedure and documents for the intake of detainees to be used in all penitentiary facilities.
- Ensure that all penitentiary facilities document incoming detainees' injuries and respond appropriately to all suspected incidents of abuse.
- Ensure that all penitentiary system facilities have computers connected to a centralized computer system and establish a centralized database of detainees.
- Strictly separate pre-trial detainees and sentenced prisoners.

### *Overcrowding*

- Ensure that the number of persons confined in a facility does not exceed the official capacity.
- Undertake, together with international and local experts, a comprehensive review of the capacity of the penitentiary system, to establish capacity figures that reflect international standards for space, light, and ventilation.
- Transfer prisoners from overcrowded facilities to less crowded facilities, while keeping in mind factors such as proximity to lawyers, family, and courts.
- Provide every detainee with a bed of his or her own, without exception.

### *Access to legal counsel*

- Guarantee detainees the right to meet and correspond confidentially with their lawyers; no guard or other official should be present within hearing distance during a detainee's meeting with his or her lawyer.

### *Visits with family and close friends*

- Ensure that detainees are guaranteed the full number of visits by family members and close friends allowed by law.
- Ensure that detainees are able to communicate with their family members by providing them with paper and writing implements and refraining from interfering with the transmission of correspondence.
- Ensure that the cost of mailing prisoners' correspondence with family and friends is borne by the Penitentiary Department, at least until the time when prisoners are able to earn money through work programs.

### *Access to exercise*

- Immediately lift the ban on exercise imposed on detainees in Prison No. 7.
- Ensure that all detainees, including pre-trial detainees, are guaranteed at least one hour of exercise outdoors every day, weather permitting; such access should not be restricted, including as a form of punishment.

### *Food and nutrition*

- Guarantee that each detainee receives sufficient water and adequate nutritional and caloric intake by the prison administration.
- Until such food can be provided by the prison administration, allow detainees to receive a variety of non-perishable food items in packages.

### *Hygiene*

- Provide all detainees with basic items of hygiene, including soap, toothbrushes, toothpaste, combs, safety razors, and other items; never withhold these items as punishment.
- Allow detainees to shower at least once per week.
- Provide all detained persons, including detainees in punishment or isolation cells, with a clean mattress, bed linens, and a blanket.

### *Access to information*

- Provide detainees, including pre-trial detainees, with regular access to information through newspapers, and, when possible, through radio or television.

### *Purposeful activities*

- Make reform and social adaptation of prisoners an essential aim of detention.
- Provide detainees, including pre-trial detainees, with meaningful activities, including work or education.
- Ensure that women are guaranteed equal access to employment activities and educational opportunities and are not restricted to activities deemed “appropriate for women.”
- Immediately implement a program of education for children held in pre-trial detention.

### *Complaint mechanism*

- Ensure detainees are able to send confidential complaints to state bodies and other organizations by providing them with paper and writing implements and refraining from interfering with the transmission of correspondence.

### *In Tbilisi Prison No. 5*

- Cease immediately the use of the basement quarantine cells in Tbilisi Prison No. 5.
- Remove immediately the shutters on the windows of Tbilisi Prison No. 5 so as to ensure prisoner access to natural light and fresh air.

### *Staff*

- Undertake recruitment of new penitentiary staff to ensure adequate staffing in all facilities, including security staff, social workers, doctors, psychologists, etc.
- To this end, increase salary of penitentiary facility employees to at least that of other law enforcement officers with similar duties.
- Ensure that all existing and new staff undergo training as soon as possible, and at the very least by January 2008, as per the requirements set forth by the Ministry of Justice.
- Ensure that all training for prison guards, including initial training and professional development training, includes human rights education.

## ***To the Ministry of Labor, Health, and Social Affairs and the Penitentiary Department***

- Ensure adequate care for all detainees.
- Grant, without exception, a request by any detainee to see a doctor.
- Ensure that detainees who suffer from serious illnesses are placed in specialized medical facilities.
- Ensure that all detainees who suffer from mental illnesses receive necessary treatment.
- Convicted persons who are seriously ill, in the final stages of terminal illness, or have diseases that require consistent and high-level treatment must be adequately monitored in detention. As conditions of detention risk exposing such vulnerable persons to inhuman and degrading situations, imprisonment should be used strictly as a last resort; efforts should be made to release such persons who are currently detained and alternative sanctions should be imposed whenever possible.
- Strictly observe confidentiality of medical data.
- Conduct, without fail, systematic screening for tuberculosis of prisoners entering all facilities.
- Respond immediately to complaints from any prisoner or his or her cell-mates that a prisoner may be suffering from symptoms of active tuberculosis.
- Ensure that the internationally-recommended tuberculosis control strategy, directly observed therapy, short course (DOTS), is undertaken effectively by providing a regular supply of anti-tuberculosis drugs in sufficient quantities to all facilities and by training medical personnel in issuing DOTS.
- Provide nutrition and material conditions that are conducive to the improvement of tuberculosis patients' health.
- Speedily agree on common priorities and a timetable for a responsible transfer of responsibility for detainees' healthcare.

## ***To the European Union***

### *To the European Commission*

- Formulate specific benchmarks in the Implementation Strategy of the European Neighborhood Policy (ENP) Action Plan, with concrete timelines for implementation, to ensure that the Georgian government takes effective steps in a timely manner to address human rights abuses and institutional shortcomings in the penitentiary system.

- Ensure continuous and rigorous monitoring of the human rights commitments made by the Georgian government under the ENP Action Plan.
- Condition deepening of engagement with the government of Georgia on its achieving the specific benchmarks set out in the Implementation Strategy of the Action Plan.
- Condition deepening of engagement with the government of Georgia on its compliance with the obligations and commitments towards the Council of Europe.
- Encourage and accept input from local and international nongovernmental organizations, lawyers, and other independent specialists regarding Georgia's fulfillment of its commitments under the ENP Action Plan.
- Ensure that funding for penitentiary system monitoring and reform supports organizations and individuals qualified to perform these tasks.
- Ensure that funding for penitentiary system reform includes projects aimed at rectifying human rights abuses in the penitentiary system.
- Ensure that the Georgian government is taking all possible steps to implement the EU Torture Guidelines and monitor its progress in this regard as part of the overall monitoring undertaken in the context of Georgia's commitments under the ENP Action Plan.

*To the European Council*

- Make abuses in the Penitentiary Department and calls for specific steps to address them an integral part of bilateral dialogues with the Georgian government on human rights concerns.
- Encourage Georgia to reverse current policies that restrict prisoners' rights.
- Make short-, medium-, and long-term progress on remedying human rights abuses in the penitentiary system a condition for deepening engagement.
- Encourage the EU special representative for the South Caucasus to make abuses in the penitentiary system a focus of his work on Georgia, and request that he monitor the Georgian government's progress in addressing these abuses and report to the council his findings.
- Ensure that the Georgian government is taking all possible steps to implement the EU Torture Guidelines.

### *To the European Parliament*

- Appoint a rapporteur to monitor Georgia's progress on human rights, including Georgia's short-, medium-, and long-term progress on remedying human rights abuses in the penitentiary system and Georgia's overall fulfillment of its human rights commitments under the ENP Action Plan.
- Use the opportunity of the upcoming European Parliament report on the EU Torture Guidelines to make specific policy recommendations regarding the EU's engagement with Georgia, including that deepening engagement with Georgia should be conditioned on its short-, medium-, and long-term progress on remedying human rights abuses in the penitentiary system.
- Ensure that the European Council and the European Commission maintain an adequate focus on the penitentiary system in Georgia and use the leverage provided by the European Neighborhood Policy to press for positive change.

### **To the Council of Europe**

- The Parliamentary Assembly Monitoring Committee should make abuses in the penitentiary system a focus of its upcoming assessment of Georgia's progress in implementing its obligations and commitments stemming from its Council of Europe membership, with specific recommendations for steps to address them.
- The commissioner for human rights should make the most of his upcoming visit report on Georgia to highlight abuses in the penitentiary system as a key area of concern, and formulate specific recommendations to address them.
- Enhance and expand existing training programs aimed at supporting human rights education among Penitentiary Department employees, including existing and new employees.
- Ensure that consultation with local and international NGOs engaged in monitoring and/or reform of the penitentiary system is a key part of all trainings and other activities undertaken by the Council of Europe in this field.
- Ensure that recommendations made concerning the new Penitentiary Code take into consideration the findings and the recommendations provided in this report.
- In the process of reviewing proposed legislative changes, including changes to the Penitentiary Code, the Criminal Code, and the Criminal Procedure Code, consult with Georgian and international lawyers and NGOs.

### ***To the United Nations***

- The special rapporteur on torture should take into account this report's findings in his follow-up monitoring and reporting of the Georgian government's implementation of the recommendations detailed in his September 2005 report.
- The high commissioner for human rights should lend support to calls for reform of the penitentiary system and underscore in her communications with the Georgian authorities the importance of the government's implementing the recommendations of the special rapporteur on torture.
- Encourage the Georgian government to take into consideration information from international and domestic NGOs when drafting reports to UN treaty monitoring bodies.

### ***To the Organization for Security and Cooperation in Europe***

- Continue support for the Penitentiary Training Center and continue training programs, including both initial training for new staff and professional development for existing staff, for employees of both new and old prisons.
- Ensure that all training programs include a strong human rights component.
- Continue regular monitoring activities throughout the penitentiary system.

### ***To the United States Government***

- Make abuses in the penitentiary system and calls for specific steps to address them an integral part of bilateral dialogues with the Georgian government on human rights concerns. Make progress on remedying the ongoing abuses a condition for deepening engagement.
- Provide support to NGOs engaged in prison monitoring and other prison projects, such as the creation of work and education programs.

### ***To International Financial Institutions***

- The European Bank for Reconstruction and Development and the World Bank should highlight abuses in the penitentiary system in their country strategies for Georgia as an issue of serious concern, and encourage the authorities to take specific steps to address them.

## Acknowledgements

This report was written by Jane Buchanan, researcher in the Europe and Central Asia Division of Human Rights Watch, based on research by Jane Buchanan and Caroline McGregor, a consultant to the Europe and Central Asia Division. It was edited by Holly Cartner, executive director, and Rachel Denber, deputy director of the Europe and Central Asia Division, Aisling Reidy, Senior Legal Advisor, and Ian Gorvin of the Program Office of Human Rights Watch. Veronika Szente Goldston, advocacy director for the Europe and Central Asia division, also reviewed sections of the report. Production assistance was provided by Inara Gulpe-Laganovska, Andrea Holley, Grace Choi, and Fitzroy Hepkins. The translation of this report was prepared by Anna Gegechkori and edited by Giorgi Gogia.

A number of people provided invaluable assistance in the research and preparation of this report. Special thanks go to Archil Chochia who served as interpreter and driver to Human Rights Watch researchers in Tbilisi. Human Rights Watch also gratefully acknowledges the expertise and assistance of Giorgi Gogia of the International Crisis Group Tbilisi Office, and Iris Muth and George Tugushi of the OSCE Mission to Georgia.

Human Rights Watch thanks all of the individuals who agreed to be interviewed for this report. We are particularly grateful to all of the detainees whom we met and interviewed. Their willingness to share information and their experiences with us made this report possible.

Finally, Human Rights Watch gratefully acknowledges the Open Society Institute for their generous support of our work on the southern Caucasus.

HUMAN RIGHTS WATCH  
350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299

[www.hrw.org](http://www.hrw.org)

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## Undue Punishment

### Abuses against Prisoners in Georgia

Human rights abuses are widespread throughout the Georgian prison system. The majority of Georgia's 13,000 prisoners, nearly two-thirds of whom are awaiting trial, live in overcrowded, filthy, and poorly ventilated cells. Severe overcrowding results from the routine use of pre-trial detention, even for non-violent offenders. Prisoners receive inadequate food and substandard medical care, frequently lack access to exercise, and often cannot leave their cells for weeks or months at a time. They have no possibility to work, study, or engage in any meaningful activity. In some cases conditions of detention amount to degrading treatment in violation of international human rights law.

Beginning in December 2005, the government initiated new efforts to combat crime, including the power of organized crime bosses (known in Georgia as "thieves in law") in the prison system. Since then many prisoners have been subjected to beatings and other ill-treatment. The government has also conducted several operations to quell disturbances in some prisons, which the government characterizes as riots. The most serious of these incidents occurred on March 27, 2006, in Tbilisi Prison No. 5, which resulted in the death of at least seven detainees.

While Human Rights Watch recognizes that the Georgian government must address corruption and lawlessness in the prison system, the means used in this effort have not always been justified. At times, ill-treatment of prisoners has risen to the level of torture. There is widespread impunity for officials who ill-treat prisoners. Detainees have no access to an effective complaints procedure and at certain times and in some facilities have limited ability to speak confidentially with their lawyers, or are denied meetings altogether. Investigations into reports of abuse are rare and those responsible are seldom held accountable.

*An inmate at Tbilisi Prison No. 5 peers through a door window. Much of the prison is in need of major repairs.*

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