

# Report for UPR

## Problems on Prevention of Torture in Georgia

The Psycho – Rehabilitation Centre for Victims of Torture, Violence and Pronounced Stress Impact “EMPATHY” (RCT/EMPATHY, Georgia); (NGO, Non – Profit Organization).

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### International Obligations of Georgia

Georgia is the post soviet Country that restored independence in 1991.

Georgia acceded to the UN Convention against Torture ...on 22 September 1994 but, unfortunately, the relevant changes have not fully been made in the national legislation, bearing heavily on the efforts to fight torture.

In 1999 Georgia became the member state of the Council of Europe and accepted all relevant documents and Conventions, among them European Convention on Human Rights and Fundamental Freedoms – Article 3: Prohibition of Torture (Rome, 4 November 1950); European Convention on Prevention of Torture and Inhumane, Degrading Treatment or Punishment (Turine, 18.10.1961);

In year 2005 Georgia ratified the Optional Protocol to the UN Convention Against Torture that enter into force in June 22, 2006.

### National Obligations

In December 2005 the special articles 144 ‘, 144 “, and 144”” were incorporated regarding torture and inhuman treatment, with definition of torture in the Criminal Code of Georgia;

The prohibition of torture is included in the Article 17 (Chapter 2) of the Constitution of Georgia;

In year 2008 the new Anti – Torture Plan of Actions of Georgia was elaborated and ordered. Adopted by the Presidential Order N30; On June 12, 2008;

This plan of actions includes the implementation of the Istanbul Protocol too, by the using it's as the manual for training of professionals, as well as in the forensic medical evaluation, but unfortunately relevant changes in the relevant legal or medical legislation is not done yet.

Since December 2009 the NPM is formed in the Framework of the Public Defender's Office and the Optional Protocol is Implemented in Georgia

## **Country Profile:**

The whole population living in Georgia is amount 4, 5 million.

Georgia is low income Country with developing economy and reforms of democratization. However, the war conflicts and political tension situation between Russian Federation and Georgia since 1992 – 1993 creates horrible problems for independency and democratization of Georgia.

As it is already known, in 7-8 August 2008 Russian military invasion was implemented towards to Georgia.

## **Profile of Target Groups (according to our information)**

*Main target groups include, but not limited:*

- (1) Detainees and former detainees;
- (2) IDPs from military conflict regions (Abkhazia and South Ossetia);
- (3) Refugees from Chechnya;
- (4) Asylum seekers from Chechnya or other countries (Sri Lanka, Uzbekistan etc);

## **Health Policy Directly toward to Victims of Torture and Members of their Families**

Based on draft of reform on health care, presented by the Georgian Government, it is clear that any financial or insurance policy for such kind of activities from state side are not expected in nearest future.

## **Services**

Services offered toward to the victims of torture or war crime are provided just only by the private sector – non state actors;

Several psychological aid NGOs – Centres and organizations, programmes are operating in Georgia.

Direct Rehabilitation Centres for Victims of torture and members of their families are two Centres supported by the Donor organizations

**Developments in the Country:** War 2008 follows – up developments: Specially should be noted that after August 2008 Russian – Georgian war the number of new torture victims – victims of ethnic discrimination, ethnic cleansing, war crimes – victims of violations of International Humanitarian Law were increased in Georgia. Consequently, number of new victims applied to the Centre “EMPATHY” from the Para military regions, military region in Abkhazia and from the so called “Buffer” zones were increased in year 2009. **Positive Developments in the Country:** It should be specially noted that in the end of 2009 the implementation of OP CAT was conducted in Georgia. The special relevant change in the Law Regarding Public Defender of Georgia was made and consequently the NPM with independent experts’ participation was established.

## Problems and Recommendations:

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According to the regulations on forensic medical and forensic psychiatry evaluation it is clear that in Georgia in cases of torture or ill –treatment just body evaluation expertise is conducted.

As it was mentioned above the complex forensic evaluation is not conducted toward to victims of torture or ill – treatment not by the State Forensic Expertise Centre nor by the Alternative Expertise Centre. Also should be mentioned that the necessity of forensic medical or mental/psychological evaluation in year 2005 was extracted from the Criminal Procedural Code of Georgia that created possibilities for hiding the facts of torture or ill – treatment and creates difficulties for prompt and effective investigation of cases of torture that is the current violation of state obligations on UN Convention Against Torture ... articles 12 – 13, also violation of standards of European Convention on Human Rights Article 13.

### **1. Legal and Practical Problems for investigation of Cases of Torture in Georgia:**

First of all it should be mentioned that the definition of “torture” in Georgian Criminal Code is not relevant to the definition given in the UN Convention against Torture .... Article 1.

Also as it was mentioned above the main violation of this Convention in Georgia is violation of obligations on prompt and effective, impartial investigation of cases of torture.

Also was mentioned and it is clear from presented legal regulations that the necessity of forensic medical and mental/psychological evaluation don’t exist in the legislation.

The Istanbul Protocol Principles is not reflected in the Criminal Procedural Code as well as in the relevant MoH regulations on forensic expertise.

Not exists in the Criminal Procedural Code of Georgia any time limitations for investigation of cases of torture, also any regulations on time limitation for conducting the forensic medical evaluation that creates horrible violations of standards of prompt and effective investigation.

### **2. Recommendations:**

1. To prevent torture in Georgia, under Articles 1, 2 and 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it is necessary to adequately modify and streamline special articles of the Criminal Code of Georgia so as to fully contain the definition of torture, particularly the following section of the definition: **“or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”**.
2. According to the Articles 12 and 13 of the mentioned Convention, concerning to the state obligations for the fast and impartial inquest of the facts of torture, i.e. to carry out an effective inquest, implying the guidelines of “Istanbul Protocol” for documentation of tortures and ill treatment and their effective inquest, seems to be of great importance. It is necessary to incorporate and implement the Istanbul protocol Guidelines and form a legislative framework to document the facts of torture.
3. It is necessary to include in the Criminal Procedural Code of Georgia special article for obligatory complex forensic medical and mental/psychological examination according to the IP Guidelines.
4. Based on mentioned international standards it is necessary to include in the Criminal Procedural Code of Georgia time limitation for conducting the Complex Forensic Medical and Mental/Psychological Evaluation, as soon as possible after the torture or ill treatment event.
5. To prevent the facts of torture and ill treatment, under Article 10 of the mentioned Convention it is necessary to incorporate torture prevention information in curricula (for the law-enforcement personnel, state or military, medical personnel, government officials or other persons dealing with imprisonment and interrogations as well as for students in educational institutions) and develop special programs. It is also necessary to include the prohibition in special instructions regarding the duties of the aforesaid persons. Consequently, it is necessary to include the principles of “Istanbul protocol” in Curricula, mainly and exclusively for lawyers and representatives of medical sphere, taking into consideration a new Article 16 of the Convention.
6. Under Article 14 of the mentioned Convention, the State is obliged to provide and assure compensation and full rehabilitation for the torture victims. For this purpose, it is necessary to set up a torture victims’ compensation and rehabilitation fund.
7. It is necessary to recognize the standards on international medical ethics and to introduce completely the Code on medical ethics on the territory of Georgia; In accordance with the Articles 11 and 16 of the said Convention it is necessary to carry out medical service reform in the places of imprisonment of Georgia covering – the council recommendations, mainly, the appeal of the committee of the Ministry to the participating countries regarding to the organizational and ethical aspects of medical care systems in prisons, the recommendations # R (98) 7; by the third general report (1992) of CPT; It should be emphasized as well that the new code project on imprisonment, which had been submitted to the Parliament of Georgia for

approval doesn't correspond to the international standards existed in medical care system of prisons in Georgia and consequently, it should not be accepted under such condition.

8. According to the Articles 55 and 56 of the Georgian Law on "Health Care", every medical establishment needs medical the license, proved and issued by the Ministry of Health Care of Georgia. At the same time monitoring of medical units should be provided as well. It should be underlined that despite of some recommendations issued by us the law on health and mental care (2006) still has not been implemented in any place of imprisonment. Due to the Law on mental care (Chapter 1, article 4, item d ), Psychiatric Department is the institution possessing an appropriate license on which the opponents, mainly, the structures of Ministries of Justice and Health Care have the following answers – due to the Georgian Law on Licensing (article 1, item 2), licensing process in not compulsory for medical units at prisons. To our opinion this is a discriminating statement contradicting the Constitution of Georgia. Existence of different standards of Health care for different categories of population is unacceptable for us. Consequently, we appeal to take some steps to eradicate such discrimination without delay.
9. On the road to torture prevention, we think it important to reform the law on Forensic Medical and Psychiatry Expertise, to elaborate special Order regarding Forensic Evaluation of Victims of Torture and Ill – Treatment according to the Istanbul Protocol with necessity of using the Istanbul Protocol Guidelines according to the Annex 4, Annex 3 of IP.
10. Under the Hamburg Declaration of the World Medical Association, it is necessary to develop instruments to ensure the protection of the rights of doctors working in "risk zones" (prisons, medical experts, etc). Especially, the Georgian Law on "Doctors Activities", Article 6 (professional independent of doctoral activities states that" .... it is forbidden if the person demands from the physician to act against the principles and ethical norms of doctors activities indicated in this Law, despite of his/her post, nationality, ethnical and social belongings and religion", though how this action should be executed is not determined by the Criminal Law of Georgia; as a result it is necessary to include special article in the Criminal Law related to putting pressure on medical personnel)
11. It is necessary to develop a special concept and strategic plan on both international and local levels in order to implement the principles of the UN Convention against Torture and principles of International Humanitarian Law across the whole territory of Georgia, including the Occupied Territories (National Anti-torture Plan, including the Occupied Territories and Strategy paper on Victims of Ethnic Cleansing and Discrimination recognized by international professional organizations).
12. ***Date of Submission: 12 of July, 2010***

***Signature: Mariam Jishkariani***

***President of the RCT/EMPATHY, Georgia***