

THE REPUBLIC OF GEORGIA’S FIGHT AGAINST TORTURE: A MODEL FOR EMERGING DEMOCRACIES

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I. INTRODUCTION: THE PROBLEM OF PERCEPTION

On May 10, 2005, President George W. Bush became the first U.S. President to visit the Republic of Georgia, a small country nestled between the Black Sea and the Caspian Sea and formerly part of the Soviet Union, which earned its independence in 1991. As President Bush stood in the middle of Freedom Square beside the proud Georgian President Mikheil Saakashvili, who came to power after the peaceful Rose Revolution on November 22, 2003, he announced that the American people “stand with the courageous people of Georgia,” declaring that an independent Georgia is “a beacon of liberty for this region and the world.”¹ President Bush would learn only later, after he was safely aboard Air Force One, that at about the moment he spoke those words, approximately two and a half minutes into his speech, someone in the crowd threw a live Armenian-made RGD-5 grenade in his direction, landing just thirty meters from the podium.² Fortunately for the tens of thousands of people who packed

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1. President George W. Bush, President Addresses and Thanks Citizens in Tbilisi, Georgia (May 10, 2005) (transcript available at <http://www.state.gov/p/eur/rls/rln/45891.htm> (last visited Mar. 17, 2007)).

2. *Grenade Suspect in Custody, as Investigation ‘Moves towards an End’*, UNITED GEORGIA, July 24, 2005, available at <http://www.civil.ge/eng/article.php?id=10421> (last visited Aug. 27, 2005) [hereinafter *Custody*].

Freedom Square that clear day, including this author, the grenade failed to detonate, but resulted in an intensive search for the person responsible.³

On July 18, 2005, the Ministry of Interior of Georgia, the primary law enforcement agency in the country, released photographs of what purported to be the suspect in the grenade incident.⁴ The Ministry announced a reward of 150,000 Lari (approximately \$82,000 U.S. dollars) for information leading to the apprehension of the suspect.⁵ Three days later, the Ministry announced that the suspect, Vladimir Arutunian, had been arrested after a short chase and shootout,⁶ during which he was allegedly injured and taken to a local hospital. Later that same day, the Ministry released video footage it said showed the inside of Arutunian's apartment, containing several hand grenades, uniforms, night vision goggles, and gasmasks.⁷ Two hours later, the Ministry released more video footage, this time of Arutunian in the hospital, heavily medicated and hooked up to several medical devices. When asked by a Ministry spokesman, "[d]id you toss a hand-grenade," Arutunian answered, "[y]es." "When asked why he did it," he started answering, "because Bush . . . [,]" but the footage ended before the entire answer was completed.⁸

In response to criticism that the video footage released was too vague, the Ministry released additional footage two days later wherein Arutunian, still in the hospital attached to numerous medical devices, stated that "I was trying to toss a grenade to a place between the bulletproof glasses from where the shrapnel from a grenade could reach Bush."⁹ On the same day, Arutunian was sentenced to a three-month period of pre-trial detention, and the Ministry of Interior released for the first time a picture purporting to be the suspect standing on Freedom Square on May 10, 2005, holding the handkerchief that was found with the grenade.¹⁰ Despite being held in

3. According to some reports, the grenade actually bounced off a small child before striking the pavement. It possibly did not detonate because it was wrapped in a handkerchief before being tossed. *FBI Official: 'Live Grenade' Posed Threat to Presidents*, UNITED GEORGIA, May 18, 2005, available at <http://www.civil.ge/eng/article.php?id=9908> (last visited Aug. 27, 2005).

4. *Police Search for Bush Grenade Suspect, Increase Bounty*, UNITED GEORGIA, July 18, 2005, available at <http://www.civil.ge/eng/article.php?id=10376> (last visited Aug. 27, 2005).

5. *Id.*

6. *'Alleged Suspect' in Bush Grenade Incident Arrested*, UNITED GEORGIA, July 21, 2005, available at <http://www.civil.ge/eng/article.php?id=10397> (last visited Aug. 27, 2005).

7. *MIA Issues Footage of Bush Grenade Suspect's Apartment*, UNITED GEORGIA, July 21, 2005, available at <http://www.civil.ge/eng/article.php?id=10401> (last visited Aug. 27, 2005).

8. *Suspect Admits Throwing Grenade*, UNITED GEORGIA, July 21, 2005, available at <http://www.civil.ge/eng/article.php?id=10404> (last visited Aug. 27, 2005).

9. *MIA Issues Interview with Grenade Suspect*, UNITED GEORGIA, July 23, 2005, available at <http://www.civil.ge/eng/article.php?id=10416> (last visited Aug. 27, 2005).

10. Custody, *supra* note 2.

excess of the lawful period for pre-trial detention,¹¹ Arutunian's trial finally began on November 21, 2005, facing charges of terrorism and murder.¹² On January 11, 2006, Arutunian was found guilty of both charges by the court, and was sentenced to life in prison.¹³

The televised images of an injured suspect confessing to an extremely serious crime created a problem of perception. It is probably true that the Ministry of Interior arrested the person who tossed the grenade in the direction of President Bush and others who were standing nearby. Confidence in the investigation is shaken, however, in light of the method and subject matter of information the Georgian government chose to release to the public during the post-arrest events, particularly for a young democratic government that is working hard to join international structures such as the European Union and NATO. Putting aside the obvious hurdles to a free and fair trial that video footage of the suspect's apartment and apparent confession created, questions of human rights violations and torture allegations naturally arise when edited video is released of an arrested suspect in obvious physical distress, and functioning at some level of sedation, who confesses to an extremely serious crime.

In recent months, several international organizations—including the Council of Europe (of which Georgia is a member), the United Nations, and the U.S. State Department—have conducted assessments and issued reports regarding Georgia's commitment to combat allegations of torture against suspects in criminal cases being held in pre-trial detention facilities by law enforcement. Although there has certainly been progress since November 2003, including a newly trained police force and enactment of anti-torture legislation in June 2005, there is still much that needs to be done. The Georgian government's ability to adequately address the concerns raised in these reports, demonstrate real progress towards its stated commitment to improving detention facilities, and reducing the number of allegations of human rights violations against suspects in criminal cases will ultimately decide whether this new government of reformers, led by American-educated Mikheil Saakashvili, will succeed in integrating into the

11. On Oct. 19, 2005, Arutunian's term of pre-trial detention was extended for one month. His new attorney, Zaza Shanava, is the fourth attorney to be assigned to the case, after the previous three refused to represent him. Arutunyan's Detention Prolonged, *THE MESSENGER*, Oct. 20, 2005, available at http://www.messenger.com.ge/issues/0972_Oct_20_2005/news_0972_brief.htm (last visited Oct. 20, 2005).

12. *Bush Grenade Suspect Goes on Trial*, UNITED GEORGIA, Nov. 21, 2005, available at <http://www.civil.ge/eng/article.php?id=11182> (last visited Apr. 14, 2006).

13. See *Court Verdict on Bush Grenade Suspect Expected*, UNITED GEORGIA, Jan. 11, 2006, available at <http://www.civil.ge/eng/article.php?id=11485> (last visited Apr. 14, 2006); *U.S. Embassy Hails Sentencing of Bush Grenade Attacker*, UNITED GEORGIA, Jan. 12, 2006, available at <http://www.civil.ge/eng/article.php?id=11492> (last visited Apr. 14, 2006).

international community and meeting international standards of human rights protection. This article examines the structural and socio-political obstacles faced by an emerging democratic country in its attempt to reduce the incidence of torture, ultimately concluding that the Republic of Georgia, if it continues to implement structural and social reforms, has the potential to become a model for other developing democracies that desire to join fully the international community of nations.

II. THE INTERNATIONAL PERSPECTIVE

A. *International Agreements Against Torture*

Beyond written agreements, there has developed in the international community a universal customary agreement that torture is impermissible under most, if not all, circumstances. As one scholar has noted, customary international law develops generally through the union of two forces: 1) there must be "a general and consistent practice of states," and 2) those states must "conform to this custom out of a sense of legal obligation."¹⁴ Because the international community has repeatedly and forcefully repudiated torture, "[i]nternational legal scholars agree . . . that there is an international custom against torture."¹⁵ This rule against torture has been called "archetypal of a certain policy having to do with the relation between law and force, and the force with which law rules."¹⁶ This expression of the Rule of Law serves "to sever the link between law and brutality, between law and terror, and between law and the enterprise of breaking a person's will."¹⁷ The custom against torture, therefore, affirms "the well-understood idea that law can be forceful without compromising the dignity of those whom it constrains and punishes."¹⁸

International law has embodied this culture against torture in a number of treaties and agreements. Under Article 5 of the Universal Declaration of Human Rights (UDHR), "[n]o person shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment."¹⁹ Article 3 of the European Convention on Human Rights (ECHR) states: "[n]o one shall be

14. Joshua A. Decker, Comment, *Is the United States Bound by the Customary International Law of Torture? A Proposal for ATS Litigation in the War on Terror*, 6 CHI. J. INT'L L. 803, 816 (2006) (citing RESTATEMENT (Third) of Foreign Relations Law of the United States §102(2) (1987)).

15. *Id.* at 818–19.

16. Jeremy Waldron, *Torture and Positive Law: Jurisprudence for the White House*, 105 COLUM. L. REV. 1681, 1726 (2005).

17. *Id.* at 1727.

18. *Id.*

19. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., U.N. Doc. A/810, Art. 5 (Dec. 12, 1948).

subjected to torture or to inhuman or degrading treatment or punishment.”²⁰ Article 5 of the ECHR contains provisions related to lawful detention, and provides for a right to compensation for any violation of the Article.²¹ The ECHR also led to the establishment of the European Court of Human Rights, which is designed to adjudicate alleged violations of the convention, awarding compensation under Article 5 when appropriate.²² Since 1978, cases involving torture allegations have been heard by the Court, ranging from the review of interrogation techniques by British security forces to anti-terrorist measures taken in Turkey.²³

Beyond these agreements, however, there are two other agreements worthy of note. The first is the International Covenant on Civil and Political Rights, in which Article 7, similar to Article 5 of the UDHR, states plainly: “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”²⁴ Finally, the much more specific agreement entitled the Convention Against Torture (CAT) includes as its primary goal the prevention of torture in any territory under its jurisdiction, and is maintained to “ensure that all acts of torture are offences under its criminal law.”²⁵ The CAT is the only international agreement that contains a serious attempt to define torture in a specific and comprehensive manner.²⁶ These various international agreements and conventions, as one scholar has noted, “together with the protections that law routinely provides against serious assault and abuse, add up to an interlocking set of prohibitions on torture.”²⁷

Despite these agreements, however, torture—or at least serious mistreatment—still occurs on a wide scale in a large number of countries.²⁸ The reformation of a country’s laws and criminal procedures is merely a

20. Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms art. 3, Nov. 4, 1950, 213 U.N.T.S. 222.

21. *Id.* at art. 5.

22. Donald H. Wallace & Mark Kutrip, *Torture: Domestic Balancing & International Alternative and Extralegal Responses*, 42 No. 2 CRIM. LAW BULLETIN 2, 4 (2006); Council of Europe, *supra* note 20, at art. 5.

23. *Id.*

24. Waldron, *supra* note 16, at 1688 (citing International Covenant on Civil and Political Rights art. 7, Mar. 23, 1976, 999 U.N.T.S. 171.).

25. *Id.* at 1688–89 (citing Convention Against Torture art. 4, June 26, 1987, U.N. Doc.A/39/51).

26. Among other things, the CAT defines torture as the intentional infliction of “severe pain or suffering, whether physical or mental,” but exempts “pain or suffering arising only from, inherent in or incidental to lawful sanctions.” *Id.* at 1689.

27. *Id.* at 1691.

28. FRANK LEDWIDGE & LUCAS OPPENHEIM, PREVENTING TORTURE: REALITIES AND PERCEPTIONS 165, 166 (2006).

first step to the reduction or elimination of state-sponsored torture, particularly in light of the complex nature of the sources and causes for such behavior.²⁹ One article has recently argued that the prevalence of torture is directly related to an incentive to secure criminal convictions, and the absence of real consequences for those government officials who are found to have committed torture in the course of an investigation.³⁰ To actually prevent torture, however, the incentives to commit such acts must be removed, including a prohibition against using evidence in court that was acquired through torture, and swift, certain, and severe punishment for police officers who engage in such behavior.³¹

Simply raising general “awareness” is usually not sufficient to prevent torture from occurring. As one article notes:

Confronting torture as an abstract evil is a dead-end approach. . . . Rather than . . . conducting conferences based on the assumption that no investigator in attendance would dream of laying an untoward finger on a detainee, proponents of the prevention of torture would achieve considerably more by accepting that torture does happen and that it happens under specific circumstances.³²

Beyond the obvious need for a developing democracy to accede to the relevant international conventions and agreements against torture, and to conform local criminal law and procedure to international norms, it is equally important—if not essential—to transform the attitudes and practices of the law enforcement community by structuring incentives within the relevant political organizations to make torture an unacceptable option for law enforcement in all cases.

B. The Georgian Battle Against Torture

Almost immediately after Mikheil Saakashvili was elected President of Georgia in January 2004, Amnesty International became the first international organization to call upon the new government to make a firm commitment to improving the country’s human rights record. In a press release on January 28, 2004, Amnesty International called for the President to, among other things, “make Georgia a country where no one has to fear

29. *See id.* at 167 (noting that the “primary solution to the problem of torture is . . . to address reality and remove the very real incentives for torture as an aid to interrogation.”).

30. *Id.* at 168–69.

31. *Id.* at 170.

32. *Id.* at 174.

torture or ill-treatment at the hands of the police.”³³ What followed instead were multiple high-profile arrests of virtually every top official from the former government on charges ranging from embezzlement of state funds to tax evasion. This culminated in an investigation of a particular case, former State Audit Chief Sulkhan Molashvili, who was arrested on embezzlement charges and whose family and local human rights organizations alleged was tortured in jail. Following an official investigative visit by Matyas Eorsi, chair of the Parliamentary Assembly of the Council of Europe’s (PACE) monitoring group in Georgia, Eorsi warned the Georgian government that it was in danger of repeating the mistakes of the previous government with respect to human rights.³⁴ On October 25, 2004, a monitoring group from PACE again visited Molashvili in custody, but made no further comment regarding his status.³⁵ On November 29, 2004, Molashvili was sentenced to an additional term of pre-trial detention that would require him to serve the full nine-month maximum pre-trial detention period.³⁶

This new ruling extended Molashvili’s pre-trial detention to the beginning of January 2005, the point at which he was entitled under Georgian legislation to either a trial or release from custody. The month of January, however, came and went with neither a trial nor his release from custody.³⁷ The next court hearing was held August 5, 2005, at which time Molashvili had a new attorney who requested thirty days, pursuant to the Criminal Procedure Code, to review the case and file any appropriate motions, including a motion for the release of the Defendant. The court instead granted the attorney only five days to review the case, consisting of twenty-five volumes of material with 500 pages per volume.³⁸ On September 7, 2005, after an abbreviated trial, the Tbilisi City Court found Molashvili guilty of misappropriation of funds and sentenced him to nine years of imprisonment.³⁹ Although the Court of Appeals slightly reduced Molashvili’s sentence to eight years following his appeal, his attorneys

33. *Amnesty International Called on Georgia to Respect Human Rights*, UNITED GEORGIA, Jan. 28, 2005, available at <http://www.civil.ge/eng/article.php?id=6118> (last visited Aug. 27, 2005).

34. *Former State Audit Chief Reportedly Tortured in Jail*, UNITED GEORGIA, July 7, 2004, available at <http://www.civil.ge/eng/article.php?id=7284> (last visited Aug. 27, 2005).

35. *PACE Monitoring Group Visits Ex-Audit Chief in Pre-Trial Cell*, UNITED GEORGIA, Oct. 25, 2004, available at <http://www.civil.ge/eng/article.php?id=8163> (last visited Aug. 27, 2005).

36. *Ex-Audit Chief Remanded Again in Custody*, UNITED GEORGIA, Nov. 29, 2004, available at <http://www.civil.ge/eng/article.php?id=8441> (last visited Aug. 27, 2005).

37. See Megi Gogishvili, *Sulkhan Molashvili Still Illegal Prisoner*, HUMAN RIGHTS INFORMATION AND DOCUMENTATION CENTER, Aug. 5, 2005, <http://www.humanrights.ge/eng/stat130.shtml> (last visited Aug. 27, 2005).

38. *Id.*

39. *Ex-Audit Chief Jailed for 9 Years*, UNITED GEORGIA, Sept. 7, 2005, available at <http://www.civil.ge/eng/article.php?id=10700> (last visited Oct. 19, 2005).

announced their intention to initiate a case in the European Court of Human Rights.⁴⁰

The allegations of torture combined with Molashvili's extended pre-trial detention without cause is a violation of Georgian law, and likely a violation of the European Convention on Human Rights, Articles 3 and 5, which Georgia has signed and ratified.⁴¹ If the Court concludes that there was a violation of Article 3, it could award monetary compensation for Molashvili against the Georgian government under Article 5. In light of the basic facts concerning the unlawful length of pre-trial detention, Molashvili might have an excellent case against the government of Georgia in the European Court of Human Rights in Strasbourg, France, if the claim is indeed filed and heard.

Pressure on the Georgian government to address the continuing allegations of torture in pre-trial detention facilities increased in July 2004 when the International Federation for Human Rights and the Human Rights Information and Documentation Center released to the public an open letter to Javier Solana, Secretary General of the Council of the European Union, detailing the Georgian government's failure to address the problem.⁴² The letter detailed several cases of individuals who had allegedly been beaten and tortured by police and other law enforcement—none of which were high-profile cases covered by the media—dating from December 2003, just after the Rose Revolution, to the end of May 2004, including more than one suspect who had died in custody under suspicious circumstances.⁴³ For example, on January 28, 2004, Shalva Orvelashvili, arrested for theft, was severely tortured for five days at a Tbilisi police station, whereupon he was

40. *Court Slightly Reduces Sentence for Ex-Audit Chief*, UNITED GEORGIA, Mar. 6, 2006, available at <http://www.civil.ge/eng/article.php?id=11993> (last visited Apr. 19, 2006).

41. Council of Europe, *supra* note 20, arts. 3 and 5.

42. *Open Letter to Javier Solana, Secretary-General of the Council of the EU and High Representative for the Common Foreign and Security Policy, on the Occasion of the EU/CFSP mission 'State of Law' in Georgia*, UNITED GEORGIA, July 17, 2004, available at <http://www.civil.ge/eng/article.php?id=7440> (last visited Aug. 27, 2005) [hereinafter Solana].

43. *Id.* In the morning of December 20, 2003, the day after his arrest, Giorgi Inasaridze was found hanging in the cell of the pre-trial detention center where he was being held. Despite signs of abuse, no criminal charges were brought. Khvicha Kvirikashvili was interrogated on May 22 and 23, 2004, regarding a burglary, but died 25 minutes after being taken home in a taxi by police officers, his body showing signs of abuse and torture, a fact later confirmed by an investigation by the Prosecutor General. See also BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPARTMENT OF STATE, GEORGIA: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—2004 (2005), available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41682.htm>. Finally, Arsen Khutsishvili died May 31, 2004, in custody in Tbilisi, Georgia. Although the official report indicated he died of a heart attack, his family suspects that he was tortured to death due to a wound in his stomach area, apparently inflicted by scissiors.

threatened not to reveal the origin of his bodily injuries.⁴⁴ On April 14, 2004, Iakob Martiashvili, was arrested in a Georgian village for illegal possession of weapons and taken to the forest by law enforcement, where he was tortured and threatened with rape.⁴⁵ This and further abuse at the police station was justified by law enforcement as acceptable given the fact that Martiashvili was also a suspect in a recent murder in the village.⁴⁶ Finally, on April 22, 2004, Gia Lobzhanidze and Valeri Kurtanidze were tortured extensively to extract confessions to a robbery by the use, among other things, of electric wires and an electric stick.⁴⁷

The letter flatly stated that the “increasing number of torture, inhuman and humiliating treatments, as well as arbitrary detentions also remains matters of deep concern for the FIDH and the HRIDC” and alleged that the police employ “various methods of torture—blows with rubber sticks or with [the] back of [a] chair, locking in the safe and beating from outside, hanging the victim [by] the hands, use of electricity, etc.—in order to extort confessions and get evidence, sometimes completely false.”⁴⁸ The letter concluded by urging the European Union to exert political and diplomatic pressure on the Georgian government to respect its international agreements and human rights in the country.⁴⁹ The Georgian government, however, was silent in response.

The silence was broken in October 2004, not quite a year after the Rose Revolution, when the Liberty Institute, a Georgian non-governmental organization (NGO) that monitors cases involving civil rights and began the Kmara (“enough” in Georgian) student protest movement that ultimately led to the Rose Revolution, released a report containing data that showed that the number of reported incidents of torture of criminal suspects and detainees had *increased* since the Rose Revolution.⁵⁰ Almost immediately, Zurab Adeishvili, the Prosecutor General, who himself was a former member of the Liberty Institute prior to being chosen by President Saakashvili for a high-level government appointment, announced that his

44. Solana, *supra* note 42.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* Based on this author’s experience in the field, it is not at all uncommon to encounter ordinary Georgians who either know a friend or a relative who has been subject to such treatment (usually beatings, but occasionally worse) during the investigation of low-level criminal activity that would not ordinarily come to the attention of the media.

49. Solana, *supra* note 42.

50. *Alarming Statistics Makes Law Enforcers Focus on Human Rights*, UNITED GEORGIA, Oct. 20, 2004, available at http://www.civil.ge/eng/article_ngo.php?id=8168 (last visited Aug. 27, 2005). The report stated that for the previous eleven months, there had been 558 detainees who had reported torture and/or beatings at the hands of law enforcement.

office would direct more of its attention to eliminating human rights abuses within law enforcement agencies, and that the Prosecutor's Office had brought fourteen cases against law enforcement officials for charges of torture or planting of evidence.⁵¹

This public announcement by officials of the Georgian government to do more to combat torture, however, did not satisfy the local or international NGO community. Pressure continued on the Georgian government in December 2004 when on December 10, the International Day for Human Rights, the Human Rights Information and Documentation Center, in a report entitled "One Step Forward, Two Steps Back," accused the Georgian government of allowing human rights violations to occur, including arbitrary detentions and torture.⁵² The government responded less than a week later by banning the broadcast of anti-torture advertisements on television, which had been financed by the European Union, declaring that the advertisements violated the rights of law enforcement officials and humiliated their image.⁵³

All of this activity culminated in 2005 in a series of reports critical of the Georgian government. First was a resolution passed on January 24 by the Parliamentary Assembly of the Council of Europe critical of the Georgian government's human rights record. Matyas Eorsi, leader of the Council of Europe's delegation to Georgia in 2004, stated that the criticism was a response to the fact that "the current Georgian leadership is ignoring our advice and recommendations."⁵⁴ The resolution itself, following a general criticism of the Georgian government's commitment to compliance

51. *Id.* Mr. Adeishvili's statement did not, however, include details about those fourteen cases, provide the time period within which those cases were brought, or report their ultimate dispositions.

52. *Presentation of HR Report 'One Step Forward, Two Steps Back*, UNITED GEORGIA, Dec. 11, 2004, available at http://www.civil.ge/eng/article_ngo.php?id=8565 (last visited Aug. 27, 2005). The entire report can be found at <http://www.humanrights.ge>. See *One Step Forward, Two Steps Back: Human Rights in Georgia after the 'Rose Revolution'*, HUMAN RIGHTS INFORMATION AND DOCUMENTATION CENTER, Dec. 11, 2004, available at <http://66.116.100.86/humanrights.ge/eng/files/REPORT.pdf> (last visited Aug. 27, 2005).

53. *Anti-Torture TV Advertisements Forbidden*, UNITED GEORGIA, Dec. 16, 2004, available at http://www.civil.ge/eng/article_ngo.php?id=7440 (last visited Aug. 27, 2005). After repeated inquiries by Human Rights Watch and others, the government changed its position, stating that it was simply recommending that television stations refuse to broadcast the ads, not banning them. By February 2005, local television stations had resumed the broadcast of the advertisements. *Georgia: Uncertain Torture Reform*, HUMAN RIGHTS WATCH, Apr. 12, 2005, <http://www.hrw.org/backgrounder/eca/georgia0405/> (last visited Aug. 27, 2005).

54. *PACE Endorses Critical Resolution on Georgia*, UNITED GEORGIA, Jan. 24, 2005, available at <http://www.civil.ge/eng/article.php?id=8876> (last visited Aug. 27, 2005). He further stated that if the Georgian government continued to ignore the European experience, "they will be in a huge crisis in the future."

with its obligations to the Council of Europe, recommended that the government immediately “eradicate the ‘culture of violence’ which continues in Georgian prisons and pre-trial detention centers and has included incidents of torture and ill-treatment by law enforcement officers,” and that the government “immediately eradicate all forms of torture.”⁵⁵

At the end of February 2005, the U.S. State Department released its 2004 report on human rights in Georgia. The report concluded that “[t]he Government’s human rights record remained poor; although there were improvements in some areas, serious problems remain.”⁵⁶ The report further found that “police brutality continued, and in certain areas increased. Law enforcement officers continued to torture, beat, and otherwise abuse detainees. . . . Arbitrary arrest and detention remained problems, as did lack of accountability.”⁵⁷ For example, on January 10, 2004, three Georgian suspects in the kidnapping of a prominent local banker were taken to a local cemetery and beaten severely, after which they were taken to a police station for further abuse, including electric shocks.⁵⁸ After a bail hearing, the suspects were again beaten until they signed confessions, and one of the suspects was not allowed a medical examination until two weeks after the abuse, which revealed a broken nose and broken ribs, and evidence that the suspect had been the subject of electric shocks to his head and hands and cigarette burns to his legs.⁵⁹

In addition to detailing several particular instances of abuse and torture, including law enforcement’s extortion and physical abuse of a fifteen-year-old boy, the report noted that “[d]uring the year, police increasingly brought suspects to police stations, beat or tortured them, and released them without officially registering the suspect’s presence at the

55. Council of Europe, Parliamentary Assembly of the Council of Europe, “Resolution 1415: Honouring of Obligations and Commitments by Georgia” (Jan. 24, 2005), *available at* <http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/TA05/ERES1415.htm> (last visited Aug. 27, 2005). The Council of Europe released a follow-up report in July 2005, further criticizing the Georgian government’s response to allegations of torture in detention facilities. *See* Council of Europe, Report to the Georgian Government on the Visit to Georgia Carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) from 18 to 28 November 2003 and from 7 to 14 May 2004 (June 30, 2005), *available at* <http://www.cpt.coe.int/documents/geo/2005-inf-eng.htm> (last visited Aug. 27, 2005). This report is extremely detailed, but its usefulness extends mostly to providing context through May 2004, marking the point where the collection of data came to an end.

56. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPARTMENT OF STATE, GEORGIA: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—2004 (2005), *available at* <http://www.state.gov/g/drl/rls/hrrpt/2004/41682.htm> (last visited Aug. 27, 2005).

57. *Id.*

58. *Id.*

59. *Id.*

station.”⁶⁰ The Georgian government, observing that the report contained “both many objective and subjective criticism[s],” promised to issue a response to the U.S. Department of State, but no report was ever released to the public.⁶¹

At about the same time, Manfred Nowak, the United Nations Human Rights Commissioner’s Special Rapporteur on Torture, was in Georgia conducting a fact-finding mission and assessment of the Georgian government’s response to allegations of torture in detention facilities. During a press conference on February 25, 2005, Mr. Nowak noted that cases of torture still occur at the hands of law enforcement officials, but that “authorities have pledged to eradicate such facts.”⁶² While in Georgia, Mr. Nowak met with government representatives, local and international NGOs (including this author), and visited a number of prisons and detention facilities. In his preliminary report, he noted that instances of torture generally occurred within the first seventy-two hours of detention, resulting in confessions that formed the basis for criminal prosecution, in violation of Article 15 of the U.N. Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment.⁶³ His report contained several recommendations for improvement, including signing the appropriate UN Optional Protocol against Torture and amending the Criminal Code to criminalize torture.⁶⁴

On April 12, 2005, Human Rights Watch issued a briefing paper which concluded that since the Rose Revolution, the Georgian government had failed to reduce incidents of torture of detainees held in detention centers by law enforcement.⁶⁵ The briefing paper noted, however, that since October 2004, the government had made some progress in addressing the problem

60. *Id.* The report added that such behavior by law enforcement was usually used to “extract money or confessions” and that law enforcement would often continue to hold a suspect until wounds had healed.

61. *U.S. Department of State Issues Human Rights Report*, UNITED GEORGIA, Mar. 1, 2005, available at <http://www.civil.ge/eng/article.php?id=9220> (last visited Aug. 27, 2005). See also *Interior Minister: Human Rights Record Improved*, UNITED GEORGIA, Mar. 1, 2005, available at <http://www.civil.ge/eng/article.php?id=9225> (last visited Aug. 27, 2005).

62. *UN Official for Human Rights Visited Georgia*, UNITED GEORGIA, Feb. 25, 2005, available at <http://www.civil.ge/eng/article.php?id=9188> (last visited Aug. 27, 2005).

63. United Nations, Commission on Human Rights, “Preliminary Note by the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (Mar. 16, 2005), available at <http://www.ohchr.org/english/bodies/chr/docs/61chr/E.CN.4.2005.62.Add.3.pdf> (last visited Aug. 27, 2005). Georgia acceded to the Convention Against Torture on Oct. 26, 1994.

64. *Id.*

65. *HRW: Torture Persists, Despite Government’s Effort*, UNITED GEORGIA, Apr. 13, 2005, available at <http://www.civil.ge/eng/article.php?id=9588> (last visited Aug. 27, 2005).

of torture.⁶⁶ The creation of a government-sponsored NGO monitoring group, the automatic investigation of prisoner injuries, and the increased jurisdiction of the Ministry of Justice were all positive steps taken by the government.⁶⁷ The report cautioned, however, that it was “too early to judge the efficacy of these measures,” noting that the newly created monitoring group had uncovered fifteen reported cases of torture in a ten-day period in January 2005.⁶⁸ Therefore, while the monitoring group appeared to be having some success uncovering and publicizing incidents of torture, the rate at which these incidents occurred remained at a high level.

Beyond the problem of the incidents of torture themselves is the additional lack of accountability by offending officers. The Human Rights Watch report noted that

The biggest disappointment in torture reform since the ‘Rose Revolution’ has been the government’s weak fulfillment of its promises to punish those responsible for torture. . . . [I]mpediments to accountability appeared to remain institutionalized, with law enforcement bodies systematically finding ways to avoid having to take criminal responsibility for acts of torture and ill-treatment.⁶⁹

According to statistics from the Georgia Prosecutor’s Office, of the 228 investigations into alleged police misconduct in 2004, thirty-three involved “elements of inhuman and degrading treatment,” although of those, only one officer was sentenced to prison, and that was a case where the victim was a police officer himself.⁷⁰

International organizations conducted an updated assessment in early 2006 of Georgia’s progress in eradicating torture. Amnesty International, noting the outward willingness of government officials to discuss the ongoing problem, criticized the government for failing to have a concrete action plan to fight torture that would replace the plan that expired at the end of 2005.⁷¹ A new report was issued by Amnesty International that

66. *Georgia: Uncertain Torture Reform*, HUMAN RIGHTS WATCH, Apr. 12, 2005, <http://www.hrw.org/background/eca/georgia0405/> (last visited Aug. 27, 2005). This author and ABA/CEELI staff attorney Erekle Glurjidge were interviewed during the HRW visit to Georgia, and are briefly mentioned in the report.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.* In twenty of those thirty-three cases, no charges of any kind were ever pursued. *Id.*

71. *Amnesty Notes Authorities Ready to Tackle Continuing Torture*, UNITED GEORGIA, Mar. 2, 2006, available at <http://www.civil.ge/eng/article.php?id=11692> (last visited Apr. 14, 2006).

discovered victims of torture included men, women, and children, and concluded that the Georgian government “still has a long way to go to end torture and ill-treatment in the country.”⁷² The 2006 report from the U.S. Department of State detailed several instances of torture and mistreatment by police, noting the particular problems that exist in the regions outside of the capital Tbilisi.⁷³ Finally, Human Rights Watch, in its World Report 2006, noted that the Georgian government sometimes “carries out reforms hastily” and that, as a result, “human rights abuses continue unchecked in many spheres.”⁷⁴

III. MEASUREMENTS OF PROGRESS

None of the criticism from the international community is meant to suggest that the Georgian government has made no progress in the reform of its law enforcement bodies. Indeed, since the Rose Revolution, the government has taken significant positive steps to combat corruption, reduce government overstaffing, and improve the public perception of law enforcement. Gone are the days remembered as recently as April 2004 when traffic police sat in the center of Freedom Square in their decades-old Soviet-era Lada automobiles, arbitrarily waving down motorists to exact a bribe. They have been completely replaced by a professional patrol police force, trained and screened extensively, who are held to new standards of professional police conduct, complete with sharp uniforms and modern vehicles and equipment. In the last year, the government developed a special emergency response telephone number—022—the equivalent of the American 911, which can be used by any citizen living in Tbilisi to guarantee a rapid response by the patrol police or other emergency service.

The Georgian government has also taken further steps recently to respond to the recommendations of the international community by at last criminalizing torture in the Criminal Code of Georgia. These new measures were passed by Parliament and signed by President Saakashvili on June 23, 2005, entering into full force and effect fifteen days later.⁷⁵ This statute

72. *Georgia: 'Torture and Ill-Treatment Still a Concern After the 'Rose Revolution,'* AMNESTY INTERNATIONAL, Feb. 2, 2006, <http://web.amnesty.org/library/Index/ENGEUR560012006> (last visited Apr. 14, 2006).

73. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: GEORGIA (2006), available at <http://www.state.gov/g/drl/rls/hrrpt/2005/61649.htm> (last visited Apr. 14, 2006).

74. *HRW: Despite Positive Steps, Torture Continues in Georgia*, UNITED GEORGIA, Jan. 20, 2006, available at <http://www.civil.ge/eng/article.php?id=11554> (last visited Mar. 14, 2006).

75. See CRIMINAL CODE OF GEORGIA, ARTICLES 144 (June 23, 2005). For the complete text of these provisions, please see Appendix A. The translation of these provisions was completed by the Criminal Law Program of the American Bar Association's Central European and Eurasian Law Initiative in Tbilisi, Georgia.

prohibits not only torture, but the *threat* of torture or coercion by force, and carries a prison term of up to fifteen years, depending on the type of crime and the presence or absence of certain aggravating factors.⁷⁶ In August 2005, the Georgian government formally ratified the Optional Protocol on the U.N. Convention against Torture,⁷⁷ one of the most urgent recommendations by the U.N. Special Rapporteur on Torture.⁷⁸

The new legislation and ratification represent a positive step for the Georgian government in its fight against torture. The question, of course, is whether this and the other changes mentioned in this article will amount to real substantive change resulting in the actual reduction of incidents of torture, or whether they will only result in a change of perception and the nature of the dialogue, both among Georgians and with the international community, while the horrible atrocities against detainees continue in the darkness of the back rooms of detention centers where monitoring groups and television cameras rarely venture. One measure of this emerging democratic government's true commitment to the elimination of torture of detainees by law enforcement and whether Georgia can become a model for other developing nations will be whether the government continues to adopt and implement the recommendations of the international community, specifically those of the U.N. Special Rapporteur on Torture and Human Rights Watch, to include, among other things:

- 1) Requiring that detailed records be kept of every interrogation, including the potential for mandatory videotaping and/or audiotaping;
- 2) Training medical personnel to accurately document and report injuries to detainees and consider requiring them to report to a supervisor outside of law enforcement;
- 3) Notifying family members immediately of a relative's detention, and allowing them and legal representatives immediate access to the detainee;
- 4) Immediately suspending any officer who is the subject of a torture or abuse investigation;
- 5) Developing a system of public defenders who can represent indigent detainees and who could be on-call twenty-four hours a day;
- 6) Strengthening the independence of the judiciary, shortening the length of time allowable for pre-trial detention, and

76. *Id.* Such aggravating factors include, among other things, torture of a juvenile or a pregnant woman, and torture committed by multiple officers, a public official, or repeated during the same detention.

77. Office of the United Nations High Commissioner for Human Rights, *Committee against Torture*, Aug. 4, 2005, <http://www.ohchr.org/english/bodies/cat> (last visited Aug. 27, 2005).

78. U.N. Commission on Human Rights, *supra* note 35, at 5.

- imposing a legal preference for the non-violent suspect's release from custody at the first court appearance unless certain factors necessitating the suspect's continued custody can be demonstrated by the prosecutor with evidence;
- 7) Creating and funding an independent government body to promptly and thoroughly investigate all allegations of torture and abuse, accountable directly to the President's office;
 - 8) Renovating existing prisons and detention centers, and constructing adequate facilities to end the problem of overcrowding;
 - 9) Strengthening and expanding the Inspector General's Office in the Ministry of Internal Affairs to require internal investigations of officers accused of torture or abuse, developing a rigorous and enforceable code of conduct for law enforcement, and releasing to the public the final unedited reports by the Inspector General's Office in every instance of an allegation of torture or abuse;
 - 10) Establishing and perpetuating a mandatory training program in human rights for all new police recruits, and requiring all law enforcement officers to continue advanced and refresher training annually to maintain employment.⁷⁹

Most importantly, the Georgian government, in order to increase the public's level of confidence in law enforcement, must increase the level of transparency in the effort to fight torture and abuse, from the initial disclosure of reports of torture to a complete public release of investigations of all stages of the process, including prosecution. This is the only way the public can be assured that the investigations of allegations of torture are being conducted in a fair and responsible manner. To hide from the public complaints against law enforcement or to release information only when hounded by international and local NGOs is not sufficient. The Georgian public will only begin to have confidence in their law enforcement agencies when citizens can be assured that torture and abuse in detention are

79. For the full list of recommendations See *id.*; Human Rights Watch, *supra* note 38. Some of these are the author's own suggestions. On September 1, 2005, the Georgian branch of the NGO Redress, in cooperation with Article 42 of the Constitution, a local Georgian human rights NGO, released a detailed report outlining the background and context for Georgia's record on torture for the last several years. See The Redress Trust, *Georgia at the Crossroads: Time to Ensure Accountability and Justice for Torture*, Aug. 2005, <http://www.humanrights.ge/eng/files/GeorgiaAug2005.pdf> (last visited Sept. 1, 2005). This report contains a number of recommendations for reform, many of which are addressed by the other reports discussed in this article. It also contains some recommendations, such as signing the Optional Protocol for the Convention on Torture and criminalizing torture in the Criminal Code, that had already been accomplished by the time of the report's release. Nevertheless, the report expertly documents the history of torture in Georgia and provides timely legal analysis and observations.

eliminated, or at least reduced to such a degree that the rare instances of such abuse will be dealt with immediately, severely, and publicly by the government. As this process of reform continues, both in the capital Tbilisi and the outlying regions, more victims of torture and abuse will be able to report these incidents, and the better those allegations are investigated, the more quickly Georgia can expect a warm welcome into the international community and the European political structures it desires to join.

IV. CONCLUSION

The Republic of Georgia emerged from decades under the strict rule of the Soviet Union as a new democracy struggling to escape a deeply engrained history of official corruption and political injustice. The democratic government's effort to eliminate corruption and improve the economic and social lives of Georgian citizens has been pursued with the goal of strengthening ties with the international community and integrating into the growing group of countries that have significantly reduced the incidence of torture. If the Republic of Georgia, forging a new path of growth and development following the peaceful Rose Revolution of 2003, is successful at harmonizing its formal accession to the international covenants and agreements against torture and the actual interrogation and detention practices of its law enforcement organizations, this fledgling democracy will become a model for emerging democracies throughout the world who similarly desire to join the international community.

The Georgian public may never know whether Mr. Arutunian, the suspect detained in the grenade-throwing incident on May 10, 2005, was abused or tortured by law enforcement prior to the broadcast of his edited videotaped confession. But the Georgian government's sincere commitment to the fight against torture and abuse, and the concrete progress that has been achieved in the last two years, if it is pursued with the same spirit that President Saakashvili and many others struggled during the peaceful Rose Revolution, will one day in the near future lead the citizens of this emerging democracy to have confidence that there no longer exists a great divide between perception and reality in the prisons and detention centers in Georgia.

V. APPENDIX A

Article 144. Torture

1. Torture, *i.e.*, putting a person, his close relative or a person financially or otherwise dependant thereon, in such conditions or subjecting a person, his/her close relative or a person financially or otherwise dependant thereon, to such treatment that by its nature, intensity, or duration causes strong physical pain or psychological or moral suffering, where the goal is to obtain information, evidence or confession, to exercise menace or coercion and/or to punish him/her for an act supposedly committed by him or by a third party, shall be punishable by deprivation of liberty for the term of five to ten years, and a fine.

2. Same act committed:

- a) By a public servant or an equivalent thereto;
- b) By the use of official power;
- c) Repeatedly;
- d) Against two or more persons;
- e) By a group;
- f) in violation of equality of humans due to their race, color of skin, language, sex, religious affiliation or conscience, political or other beliefs, national, ethnic, social belonging, origin, place of residence, financial or social status;
- g) against a pregnant woman, a juvenile, detainee or a person whose liberty is otherwise restricted, vulnerable person and /or against a person financially or otherwise dependant upon a perpetrator;
- h) for selfish ends;
- i) in relation to taking a hostage

shall be punishable by deprivation of liberty for the term of seven to fifteen years, with deprivation of a right to hold an official position or to carry out certain activity for the period of up to five years.

Article 144. Threat of Torture

The threat to create conditions, to treat or punish a person as described in Article 144 of this code, shall be punishable by fine or deprivation of liberty for the term of up to two years.

Article 144. Inhuman or Degrading Treatment

1. Humiliation or coercion of a person, putting him/her in inhuman or degrading conditions, as the result of which he/she experiences strong physical, psychological pain or moral suffering, shall be punishable by fine, restriction of liberty for the term of up to three years, or by deprivation of liberty for the term of up to five years.

2. Same act committed:

- a) By a public servant or an equivalent thereto;
- b) By the use of official power;
- c) Repeatedly;
- d) Against two or more persons;
- e) By a group;
- f) In violation of equality of humans due to their race, color of skin, language, sex, religious affiliation or conscience, political or other beliefs, national, ethnic, social belonging, origin, place of residence, financial or social status;
- g) Against a pregnant woman, a juvenile, detainee or a person whose liberty is otherwise restricted, vulnerable person and/or against a person financially or otherwise dependant upon a perpetrator;
- h) For selfish ends;
- i) In relation to taking a hostage

shall be punishable by deprivation of liberty for the term of three to six years, with fine, and with or without deprivation of a right to hold an official position or to carry out certain activity for the period of up to five years.