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HUMAN RIGHTS AND DEMOCRATIZATION IN THE REPUBLIC OF GEORGIA

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Human Rights and Democratization in...

HEARING BEFORE THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

MARCH 28, 1995

Printed for the use of the
Commission on Security and Cooperation in Europe
[CSCE 104-1-3]



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HUMAN RIGHTS AND DEMOCRATIZATION IN THE REPUBLIC OF GEORGIA

TUESDAY, MARCH 28, 1995

COMMISSION ON SECURITY AND COOPERATION IN EUROPE,

Washington, DC.

The Commission met, pursuant to notice, at 2:10 p.m., in room 106, Dirksen Senate Office Building, Washington, DC., Hon. Christopher Smith, Chairman, presiding.

COMMISSIONERS PRESENT

Hon. Christopher Smith, Chairman; Hon. Alfonse D'Amato, Co-chairman; and Hon. Frank R. Wolf, Commissioner.

Witnesses: Hon. Tedo Japaridze, Dr. Eduard Gudava, Ms. Erika Dailey, and Dr. Stephen F. Jones.

OPENING STATEMENT OF CHAIRMAN SMITH

Chairman SMITH. I want to thank all of you for coming to this hearing, which to my knowledge is the first hearing in the history of the U.S. Congress focused exclusively on Georgia. This is the latest in a series of Helsinki Commission hearings that examine the state of democratization and human rights in individual countries and regions of the former Soviet Union.

In the late 1980's, Georgians began to organize politically to undo communism and to gain independence. They lived through a very exciting period, although a key element in the chronicle of the liberation movement was tragic, the April 1989 killings of peaceful protesters in Tbilisi by Soviet forces.

Since then, however, Georgia has endured very difficult times. It has been one of the most strife-torn New Independent States, a victim of internal political and ethnic divisiveness, and external provocation and aggression.

Georgia was the first former Soviet Republic whose elected president, Zviad Gamsakhurdia, was ousted in an armed uprising. The shock waves from that political earthquake have continued to rock the country ever since.

In March 1992, Eduard Shevardnadze, who had been Georgia's Communist Party leader before becoming Soviet Foreign Minister, returned to his deeply troubled homeland. Though his role in ending the cold war and removing Soviet troops from Eastern Europe is well known and appreciated in the West, Georgian supporters of the ousted president saw Shevardnadze's return as a betrayal.

A period of intense civil conflict ensued, with Georgia society polarized, and open military confrontations took place. At the same time, Abkhazia and South Ossetia launched movements that sought to alter their relationship with Tbilisi, threatening the territorial integrity of Georgia. Russian forces were involved in these efforts by the Abkhazians and Ossetians, and Moscow's pressure on Tbilisi has been constant throughout this period.

Obviously these are not the best circumstances for democracy to flourish, but since his return, Mr. Shevardnadze has called for the establishment of a rule of law state in Georgia, where observance of human rights is a priority, and institutions have been put in place to ensure the implementation of human rights commitments.

The purpose of this hearing is to see how well he has done to date, by examining the general state of democratization and human rights in Georgia. The direct impetus for this hearing, however, were reports about violations of due process in the recently concluded trial of 19 individuals for various crimes, including an alleged assassination attempt.

Given the confrontational background of Georgian politics and society, this trial has taken on an unavoidable political coloring. In examining this case, therefore, I want to make clear that the Helsinki Commission is in no way supporting terrorism, and takes no position on the guilt or innocence of the accused. Our purpose simply is to ask whether the trial of these defendants has taken place according to international legal norms.

At the same time, I hope this hearing will also examine other key problems besetting Georgia: to what extent this trial reflects the general level of democratization and human rights, how to address the problems of rampant organized crime in Georgia, Russia's goals in Georgia, and Moscow's methods for achieving them.

Finally, I would like to say that we have some very fine witnesses, and I would like to begin by saying that we are very pleased to have Ambassador Japaridze, the Ambassador of the Republic of Georgia to the United States, who will present his perspective on these issues. The Ambassador has long served in Georgia's Foreign Ministry, where he has been Vice Chairman of the Council for UNESCO Affairs, head of the Political Department, Deputy Foreign Minister, and First Deputy Foreign Minister. In 1992, he was named National Security Advisor to the Head of State, Eduard Shevardnadze.

I just want to let you know, ladies and gentlemen, that I have been in touch on behalf of the Commission with Eduard Shevardnadze about the case that I mentioned earlier and about the general situation of human rights in Georgia. Just yesterday the Helsinki Commission received a letter from him in which he mentioned, among other things, that over 350 former policemen in Georgia are now in prison for various crimes, including human rights abuses.

I was sorry to learn that Georgian policemen have been engaging in these activities, but it is a welcome sign that the authorities are taking at least some measures to address the problem.

Mr. Shevardnadze also said that the case of the recently sentenced 19 defendants would be carefully reviewed, and that Georgia would welcome the involvement of Western human rights orga-

nizations in that process. This, too, is a very welcome announcement.

At this point I would like to, before inviting the Ambassador to address the Commission, ask my good friend and Co-chairman of the Commission, Mr. D'Amato, if he would like to make any opening comments.

OPENING STATEMENT OF CO-CHAIRMAN D'AMATO

Co-chairman D'AMATO. Thank you, Mr. Chairman.

In the interest of time I am going to ask that my full statement be included in the record as if read in its entirety.

I have a vote coming up any minute in another conflicting hearing, but I want to assure the participants and the Ambassador, in particular, that that does not diminish my interest in this very serious and vexing problem.

I am going to take just a few seconds to indicate that we recognize the desperate situation in Georgia, a condition that some have described as, I quote, "a stable crisis." We restate, I believe, the Commission view, that Georgia must make a serious attempt to meet its international obligations, especially those concerning human rights.

Building a law-based society out of the ruins of the old Soviet structure will help ensure respect for human rights, and it will serve as a foundation for economic revival, political stability, and general progress for Georgia.

So I certainly hope that we can at least move in that direction. I recognize that that may be an oversimplification, and I commend the Chairman for holding this hearing at this important time.

Chairman SMITH. Thank you very much, Mr. Chairman, and without objection your full statement will be made a part of the record.

Co-chairman D'AMATO. I thank the chair.

Chairman SMITH. I would like to invite to the witness table the distinguished Ambassador from Georgia, Ambassador Japaridze.

Mr. Ambassador.

TESTIMONY OF HON. TEDO JAPARIDZE, AMBASSADOR OF THE REPUBLIC OF GEORGIA

Ambassador JAPARIDZE. Thank you, Mr. Chairman, distinguished members—

Chairman SMITH. Could you bring the mike a little bit closer, please? Thank you.

Ambassador JAPARIDZE. Thank you, Mr. Chairman, distinguished members of the Commission.

Mr. Chairman, I am pleased to have this opportunity to speak to your Commission on behalf of my country, the Republic of Georgia.

I have been asked to address the issue of human rights abuses in Georgia, and I intend to do so presently. Allow me to reflect for a moment on the irony of Georgia's position with respect to this Commission.

Only a few years ago no Georgian could have dreamed that he or she would have an opportunity to address any institution of the U.S. Congress. At that time, we had no right to present our nation

abroad or even a right to any kind of independent statehood. Georgia, like many of what you call the new states, was part of an empire whose very purpose was to usurp our identity, deny our aspirations as an historic people and distinct culture, and prevent our freedom. To every Georgian America was the place where abuse of these kinds could never take place.

We watched with special pride and wonderment as the Congress and the American people championed the emergence of free countries from the beast of colonialism. I believe it was President Reagan who characterized the United States as a shining city on a hill. For those of us locked in colonial bondage, President Reagan's words rang with clarity.

It is no exaggeration to say that Georgians have always felt a special kinship with Americans, not the least because of our admiration for your support of human rights as an elemental building block in a civil society. We applauded when you set and enforced strict human rights standards in the conduct of foreign policy. How could we do otherwise? We know first hand what it is to be on the receiving end of an empire that places no value on human rights or the individual.

It is, therefore, ironic that one of my first official acts as the Georgian ambassador to Washington is to explain and defend our record in a single human rights event that is neither representative of our society as a whole, nor a fair description of the distance we have traveled in our efforts to build not just an acceptable human rights record, but, given the circumstances under which we live, a rather good one.

Moreover, the circumstances surrounding the alleged abuse are themselves far from clear, and there is substantial evidence to suggest that the reports of human rights abuse, particularly the British Helsinki Commission report, suffer from serious exaggerations and errors.

I mean no disrespect or sarcasm when I observe that the Georgian people, who are trying to develop a modern civilized state in the midst of economic devastation, civil strife and political instability, will wonder why Georgia's visible relationship with America should begin on this note and at this time. Without diminishing the importance of human rights, many will wonder about how priorities are set.

Cases like this one tend to distract attention from the significant gains Georgia has made in establishing a viable democracy and extending human rights guarantees throughout Georgian society in the face of unimaginable odds. Our country is still plagued by internal disorder, a huge refugee problem, industrial breakdown, economic stagnation, and political instability. We have not overcome the legacy of 70 years of communist rule which has left deep psychological scars on our vibrant nation, and which is at the root of many of the human rights violations that occur.

A society like Georgia that only recently threw off a system that minimized the right of individuals relative to the state cannot leap automatically to a full embrace of human rights, regardless of the best intentions to do so.

At the same time, I must mention that the biggest problem we face currently is terrorism, not terrorism of the kind that blows air-

planes from the sky, although this is certainly possible. I mean the terror inflicted on the entire population of Georgia by those who are interested in de-stabilizing our politics and undermining our economy, and which resulted in emigration of up to 20 percent of Georgians from their homeland.

During the last 5 years, we suffered one civil war, two wars to defend our territorial integrity. The last two resulted in the documented ethnic cleansing of Georgians.

Mr. Chairman, I would like to remind one more time this Commission of more than 200,000 Georgian refugees in their own country who are victims of ethnic cleansing, massive abuse of human rights. The most recent abuses were noted on March 11th–14th, 1994, by the United States.

We asked countless times for the assistance of U.N. peacekeeping forces to calm the hostilities. We asked for peacekeeping help from the Western states. We asked for human rights groups to monitor the atrocities. Ultimately we accepted the Russian peacekeeping forces in the region.

I would be bending the truth if I claimed that the introduction of Russian peacekeeping forces was a popular step. Meanwhile the population of Georgia witnessed first hand the paralysis of peacekeeping and human rights organizations to offer them the most basic protection or mediation.

Every family in the country has been touched in some way by this terror. Not surprisingly, many of them have developed a healthy skepticism about the West's willingness or ability to defend their human rights in the face of flagrant abuse.

Against these formidable odds, Mr. Shevardnadze has led an aggressive effort to create the conditions that will make human rights less dependent to the altering adverse social, political, and economic factors that are at the root of many of man's baser instincts. Our goal is threefold.

First, we seek to reform society, which means to overcome our communist past. This will require changes in psychology of our population. Such changes cannot be imposed solely from within or exclusively from outside. They are the human outgrowth of changes elsewhere, particularly in the extension of economic opportunity and the normalization of our political life.

Second, we seek to build a modern state that possesses the kind of democratic institutions that are responsive to society and which can support a free and honest political process. Our efforts are mainly placed in three basic areas: (a) ensure the viability of multi-party parliament; (b) create an active civic society; and (c) establish an independent judiciary system.

We welcome any assistance from various international organizations and NGO's, including fact finding missions and international observers from the United Nations, OSCE, Amnesty International, International Alert, et cetera.

Third, the most important, we seek to reform the economy. It is self-evident that economic growth and recovery is the foundation upon which almost everything else must be built. We have sought and continue to seek Western, particularly American, aid to help us put this cornerstone in place.

I am not saying that without U.S. aid we will return to barbarism, but let us be frank and honest. American generosity is an important key to our recovery. Without it, creating the conditions that make human rights a central priority in our society will become infinitely more difficult.

Since our liberation from communist tyranny, we have made enormous, though certainly not complete, progress toward building a state that incorporates a respect for human rights and democracy at its very core. While Georgians wish we could be compared favorably to the stricter human rights standards that guide a number of Western nations, we know we are not yet ready for that comparison.

I do not mean to imply that we should not be held accountable to the higher standard. Of course, we should, but our zeal for perfection should not obscure the significant progress that has already taken place in Georgia. When compared to where we were just two or three years ago, Georgia's human rights record is vastly improved. This improvement by itself should be seen as firm evidence of our commitment to achieve much more and as an implicit promise that we shall, indeed, do so.

What does our progress look like? Here are some examples.

First, nongovernmental human rights groups report significantly fewer abuses by Georgian security services during 1994. We have moved aggressively to curb the potential for human rights abuses in this area. For example, as Chairman Smith admitted, currently we detain under arrest more than 350 former policemen who are charged with a variety of crimes, including human rights abuses.

In addition, we have formally requested via the American Embassy in Tbilisi specialized help from the United States to train our police and other security forces in basic human rights policies and practices, as well as we expect assistance from the IPMT, International Police and Military Training, in this area.

Second, freedom of the press in 1994 was almost universal in Georgia, with active and important opposition media.

Third, multi-party elections that are free and fair are the norm throughout Georgia, and there are many, many other evidences.

I do not ask you to take my word for any of these achievements. These are the conclusions of the U.S. State Department in its most recent reports on human rights in Georgia. The reports also noted correctly that we have a long way to go.

Indeed, we do, but Georgians are extremely proud of these accomplishments, which I am sure you understand could not have happened without a great deal of pain and sacrifice and social disruption. These are not the accomplishments of a nation whose traditions and spirit are indifferent to human rights.

While these accomplishments set our course in the right direction, and even outdistance those of many states facing fewer obstacles and less perverse recent histories, they do not make us a perfect society. Far from it, individual passions still run high on many issues, and individuals in Georgia acting on their passions can and do violate human rights and the norms of common decency. Georgia is not unique in this regard.

At the same time, I can never agree that the heinous acts of a few individuals or group of individuals can be ascribed collectively to the Georgian people.

The State Department reports made another important and relevant observation. The Georgian government does not prevent non-governmental organizations from investigating human rights violations. Quite the contrary, in fact, we have systematically removed impediments so that those who wish to investigate our human rights practices may do so.

The State Committee for the Protection of Human Rights, which Mr. Shevardnadze created in 1992, is no rubber stamp government department, as even our human rights detractors know. It is an active and energetic critic.

We have welcomed many human rights groups to Georgia. We intend to invite experts from the Victims of Torture, and we shall continue to do so.

At the same time, it is not the case that outside human rights groups are ipso facto correct in their analysis of what they believe to be human rights violations simply because they are outside groups. For example, we do not accept the British Helsinki Commission's conclusions on the case at hand. The evidence they collected of abuse is one sided and tendentious. They, and not only they, did not even speak to the official organs they accuse of abusing the criminals. I have in mind the concrete investigators, concrete prosecutor, concrete prison employee or attendant.

Georgians rightly ask: how is it possible that these groups accept the word of criminals and terrorists over that of our officials? They dismiss out of hand the observation of American Embassy political secretary that the trial was fair and the behavior of the defendants was reprehensible. They have not considered other explanations for the apparent abuse, which are logical, supportable, and documented.

Their reports leave the impression that we are hiding something or, worse, that we are lying. Yet they fail to explain why we would throw open the doors to them and others to conduct their investigations if our intention is to deceive. Where is the logic?

Mr. Chairman, our government has undertaken to strengthen these areas of basic human rights not because we fear the scrutiny of committees and commissions, but because it is due and proper responsibility of Mr. Shevardnadze's government. We wish to be open and honest about our efforts.

I doubt that I am the first Ambassador to note the irony of this position, that our openness and willingness to be scrutinized by outsiders has resulted in the criticism that brings me before this Commission, but I can assure you that this is a risk we are prepared to accept.

With respect to this case of the convicted terrorists, Mr. Shevardnadze, as you, Mr. Chairman, admitted, has made it clear that due process will be followed and the defendants' rights and that international standards will be applied. The Appeals Commission must review the sentences, and if appropriate, Mr. Shevardnadze as Head of State will become involved after that review.

He has indicated his willingness to listen to all sides, including relevant human rights organizations who will have the right to examine all documentation, and he particularly requested yesterday OSCE to monitor the appeals process.

I would be remiss if I failed to note how difficult Mr. Shevardnadze's position is in this regard. No one disputes the defendants' guilt, and Mr. Shevardnadze is under great pressure from many Georgians for not doing enough to control terrorism and crime. Being tough on crime has a much different meaning in our context than in the United States of America, you can well imagine. It is, indeed, a delicate balancing act to be tough on crime, on one hand, while attempting to observe human rights when the methods of training required for these areas have not been yet fully implemented.

How carefully Mr. Shevardnadze walks this fine line will have a strong influence on Georgian public opinion on human rights issues, and it will set the tone for our ongoing efforts to improve human rights observance in Georgia.

Mr. Chairman, Georgians are no different from anyone else in our dislike of criticism, but we are very different from many states in our willingness to encourage healthy and honest criticism of our own national growth. We shall continue to ask the U.S. Government for assistance in supporting our efforts to make human rights protection an integral part of our civic culture, and we shall continue to seek the advice of this Commission.

Thank you for your time and for your attention.

Chairman SMITH. Mr. Ambassador, thank you very, very much for your testimony, and we do welcome the overture by Eduard Shevardnadze to welcome the OSCE to monitor the appeals process. I think that is a very positive step, and I would hope that you would be able to stay on while the other panelists make their presentations, at which time I and other members who I think will be joining us by then will pose some questions to our distinguished witnesses.

We do have three other witnesses to appear today, and I want to ask them to come to the witness table as I introduce them.

Erika Dailey is a researcher for Human Rights Watch/Helsinki, and was the Director of their Moscow office for the past year. She completed her tour of duty last week.

Ms. Dailey has written many reports on human rights, democratization, and nationality conflicts in the former Soviet Union. She is the author of three reports documenting abuses and violations of due process in the trial that I had mentioned earlier.

Welcome, Ms. Dailey.

Dr. Eduard Gudava, President of the U.S.-Georgia Foundation, was a dissident in Georgia during the Soviet period and left the USSR in 1987. I well remember his testimony before the Helsinki Commission at that time when he appeared before us.

He has been closely affiliated with a leading opposition force in Georgia, the National Democratic Party. The U.S.-Georgia Foundation, which he heads, promotes the transformation of Georgia into a democratic, free market society.

And finally, Dr. Stephen Jones, Associate Professor of Russian and Eurasian Studies, Mount Holyoke College, is a specialist on

Georgia, where he spent 5 months doing research in 1994. He is the author of over 35 articles on past and current politics in Georgia and the Transcaucasus.

I welcome all of our witnesses and would ask, Erika, if you would begin, and then Dr. Gudava and Dr. Jones, if you would.

Thank you.

TESTIMONY OF MS. ERIKA DAILEY, RESEARCHER, HUMAN RIGHTS WATCH/HELSINKI

Ms. DAILEY. Thank you very much, Mr. Chairman.

On behalf of Human Rights Watch, which is an independent, nonpartisan, human rights organization, I would like to thank you very much for the opportunity to address you today. We welcome the work of the Helsinki Commission. It has conducted extremely consistent and careful attention to the Georgian human rights situation.

From a human rights perspective, the Republic of Georgia holds a special place in the constellation of former Soviet republics. On the one hand, it practices and condones serious abuses, including state sponsored torture, and presides over a justice system that is often corrupt and fails to protect basic human rights and due process. On the other hand, much progress has been made, mostly notably in the area of free speech. Georgia does not interfere with foreign monitoring, and indeed, in many ways cooperates with it. It protects enough free speech to allow violations to come to light and be discussed in a positive way, and the government and society as a whole generally respond positively to external pressure for change. It is also a country with which the United States enjoys good and active relations. Therefore, the United States can and should use its authority to push for change in abusive practices.

Human Rights Watch has conducted investigations on a broad spectrum of violations in Georgia several times a year since 1991, documenting violations of international law under both former President Zviad Gamsakhurdia and current Head of State Eduard Shevardnadze.

In my capacity as a researcher, I personally have been there four times since June 1994 alone and was in Abkhazia just 2 weeks ago.

Our representatives meet regularly with government officials and representatives of international organizations, take testimony from refugees, the wounded, combatants, and prisoners, and attend trials in which there are reported due process violations. We have issued reports on laws of war violations in South Ossetia and Abkhazia, and numerous reports and letters of concern about abuse of civil and political rights, and maintain an open dialog with the Georgian government.

Human rights abuse in Georgia spans the full scope of rights. Police arrest arbitrarily and harass individuals, sometimes because of their opposition to the current administration, and disrupt peaceful public demonstrations. Prison conditions are appalling, with prison doctors often presiding over the beatings and torture of inmates. The law enforcement bodies, judiciary and penal branches of government, are often corrupt and abusive. Today, however, I would like to focus on some of the most pressing violations, specifically the laws of war violations in Abkhazia, denial of the right to due

process, and torture, by which we understand cruel and inhuman treatment.

Thanks to the ongoing U.N.-sponsored peace process in Abkhazia, the guns have largely fallen silent there between the Abkhazian rebels and Georgian government forces in the 16-month conflict spanning 1992 to 1994. This development has curbed perhaps the single greatest source of human rights in Georgia in recent years.

However, based on recent field work, Human Rights Watch believes there remains a great risk that human rights violations will persist on a large scale in Abkhazia. Individuals who have committed atrocities during the war on both sides have not been punished, and courts on the Georgian and Abkhazian sides are not equipped to arrest and try fairly their own combatants or those of the enemy.

Until those criminals are apprehended, there is little chance for reintegration of the warring sides in Abkhazia. A political deadlock and the unwillingness of the Abkhazian authorities to facilitate the safe return of displaced persons have left homeless some 200,000 individuals, overwhelmingly ethnic Georgians, denying them their right to return home.

Moreover, since Russia's attack on Chechnya in December 1994, Moscow has imposed strict controls on its border with Abkhazia. Ostensibly the controls were instituted to prevent arms and combatants from flowing into Chechnya and escalating the violence there. However, in effect, it has blocked food and medicine from reaching the civilian population in Abkhazia, exacerbating the humanitarian crisis. Russia has also failed to identify and punish members of its armed forces who provided arms to combatants during the war in Abkhazia, which were used against the civilian population causing widespread atrocities. If the mandates for the U.N. military observers and Russian peacekeepers are not renewed in May, as they are scheduled to be, the fragile peace in Abkhazia is seriously jeopardized.

The brutality and lawlessness that characterized military behavior on both sides of the conflict in Abkhazia is an extension of the brutality practiced by Georgian law enforcement throughout the republic and, indeed, in many parts of the former Soviet Union. We have interviewed scores of individuals in Georgia who have been brutally beaten and in some cases burned with cigarettes, hot iron rods, and scalding water in order to extract confessions. Among these victims were old men and a blind woman.

By the accounting of the Georgian government's own Committee on Human Rights and Interethnic Relations, 50 detainees died in 1993 in a single facility in the capital due to mistreatment and neglect. Indeed, Human Rights Watch has found that brutality is so common during arrest and interrogation that many victims we spoke to did not even see it as torture, merely as routine.

To maintain the human face on victims of abuse in Georgia, Human Rights Watch has focused particular attention on a single criminal case recently prosecuted in the Georgian capital, Criminal Case No. 7493810, which you mentioned earlier, as did the Ambassador. I would like to read the testimony given to me by one of the suspects in that case who was arrested in 1992. The other 18 co-

defendants in the case have complained of similar physical and psychological abuse at the hands of police and other prisoners at the behest of the prison officials.

I am citing now:

The same night I was arrested, the security forces started beating and torturing me. They didn't say what they wanted from me. They hit me with their fists, with clubs, kicked me, held me upside down, beat the soles of my feet, my head. It lasted all night. You hang there. People come in and out. I lost consciousness several times, but they would burn me or throw water on me to wake me up. I was covered in blood. I kept going in and out of consciousness.

The next day I was all blue from head to toe. My left leg and arm were broken, and I had cuts all over. They tried too hard. I couldn't stay conscious. The doctor said, "If you don't take him to the hospital he'll die." They took me to the hospital. I couldn't move. I could only sit or lie flat.

The interrogations continued, different people doing the interrogations. They would dictate my testimony. They began pouring boiling water on the right side of my neck and my back. They made me put on a shirt when they took me to the official. They made me wear a heavy jacket, which you can imagine on burned skin. . . .

I said, "Tell me what you want and I'll sign." I had said this before. First they said I should write that I was involved in the terrorist act against Jaba Ioseliani. They brought in electric shock cords. I was already dreaming of dying. I wanted them to apply the shock cords. It is easy to say now, but then I was hoping that they would kill me, but the chief officer said I was already ready to sign. I was held in solitary confinement for a month after that so that no one would see the results of the torture.

As in many cases in Georgia, such illegally obtained testimony is then submitted as evidence in court, although the fact of abuse by law enforcement agents is not. Indeed, as international protest against the prosecution of Case No. 7493810 grew in 1994, the judge expelled 12 of the 19 defendants from the courtroom for the final several months of the trial. The man whose testimony I just read was expelled for allegedly smirking. That was the quotation from the legal document under which he was expelled from the courtroom. All but one of those expelled potentially faced capital punishment, and most were unrepresented by a lawyer.

All were convicted to prison sentences. Two are in legal limbo. Two await execution today.

This type of unbridled abuse has closely touched on U.S. interests as well. The man convicted of the 1993 murder of CIA Agent Fred Woodruff claims to have been tortured into confessing. These serious charges are not known to have been investigated, and Anzor Sharmaidze is currently serving a lengthy prison sentence in Georgia.

Our organization takes no position on the guilt or innocence of any of these individuals. Human Rights Watch draws attention to these cases for two reasons. First, because such appalling treatment demands redress. Second, we see Criminal Case No. 7493810 as a microcosm of abuse which is pervasive in Georgia. We hope that by focusing a spotlight of international attention on a specific case we cannot only help avert a gross miscarriage of justice, but in the long term break the pattern of abuse. We seek to set a precedent of government candor and responsibility for the actions of its law enforcement and judicial bodies and for establishing proper legal protections in the future.

We welcome the opportunity to speak before you today, in particular, because we are concerned that the U.S. Government is not

known to have raised concern about Georgia's dismal human rights record recently, except for the letter that you recently mentioned.

The United States has provided critically needed humanitarian aid and administers extremely valuable educational programs in Georgia. The immediate intercession of the embassy has prevented abuse. In the past a single phone call from the Human Rights Officer has stopped prisoners from being beaten in detention.

However, the U.S. Government appears to have limited its protests almost exclusively to the work of its embassy and to the pages of its annual Country Reports on Human Rights Practices. The government's own findings are not known to have translated into the U.S. bilateral agenda. That must change.

We call on the U.S. Government to speak out publicly and vigorously against the broad spectrum of abuse practiced or tolerated by the Georgian government and to send a clear message that perpetuation of these practices will harm full cooperative relations with the United States. We also call on the U.S. Government to urge the Russian Government to lift the blockade of foodstuffs and medicines it has imposed along the Abkhazian border. We urge the Clinton administration to support the expanded work of the American Embassy, U.S. Aid Programs, and the OSCE in upholding and teaching about the rule of law, and to help furnish an OSCE mission with a human rights mandate in Abkhazia, and to help finance the U.N. peacekeeping and CIS de-mining program in Abkhazia. We respectfully request that President Clinton take advantage of Mr. Shevardnadze's scheduled visit later this year to communicate these concerns and to make respect for human rights the centerpiece for all future bilateral relations with the Republic of Georgia.

Thank you.

Chairman SMITH. Ms. Dailey, I want to thank you for your very fine testimony, and in a few moments I will pose some questions to you, but at this point I would like to ask Dr. Gudava if he would make some comments.

Dr. GUDAVA. Thank you, Mr. Chairman.

Chairman SMITH. And just let me note that your full statement, if you care to summarize, will be made a part of the record, but proceed as you wish.

Dr. GUDAVA. I am going to make just a partial statement, and I hope the full statement will be put in the record.

Chairman SMITH. Without objection, it will be.

TESTIMONY OF DR. EDUARD GUDAVA, PRESIDENT, U.S.- GEORGIA FOUNDATION

Dr. GUDAVA. Thank you.

Thank you for inviting me here. Unfortunately Georgia is plunged in darkness by all meanings of the word. Water, gas, and electricity are frequently unavailable, even in the capital Tbilisi. The economy is in shambles. Industry is functioning at less than a fifth of its capacity, and inflation is doubling each month. The standard of living has dropped far beyond poverty.

As for human rights, it is no wonder that in the background of such a disastrous general situation in Georgia, the abuses of internationally recognized human rights continues routinely.

I am familiar with all reports on that subject, both governmental and nongovernment. I entirely agree with these assessments. The only point that I believe really needs to be made here is that most of human rights abuses in Georgia were inherited from the past. They are nothing new. Generally speaking, the entire Georgian judiciary system consisting of the old Soviet appointees is corrupt. It often receives its orders from powerful personalities, both from within and from outside the government.

Also, there is nothing new in torture being used in criminal investigations or injustice found in penitentiaries. These are remnants of the old Soviet system. Anyone who was lucky enough to enjoy a relationship with the Soviet penitentiary system, and I was, can testify to the fact that prison officials use certain inmates to oppress other target prisoners.

Soviet investigators did not bother to waste their resources conducting costly investigations or trials, such as we do here, for example, O.J. Simpson. The Soviet judicial system tended to speed up the judicial process by simply forcing the criminal suspect to confess, regardless of the suspect's guilt.

These practices have been inherited by many of the USSR successor states, including Georgia.

However, there is something that is absolutely new and absolutely dangerous and menacing in many of the newly independent states, especially in Georgia: the explosion of killings, organized crime, and political assassinations in Georgia is coupled with another new phenomenon: the utter impotence of the authorities in dealing with these matters. These are the urgent human rights issues in Georgia and are of paramount importance.

I would like to switch the attention from the just mentioned 19 sentenced people in the recent trial which took place in Tbilisi to the same number, 19, political assassinations which we currently have in Georgia, investigations of which have gone nowhere.

It is true there have been contract killings in many other regions of the former USSR. The well-publicized recent assassination of Russian TV Network Director Vlad Listyev drew worldwide attention to the problem. Yet I would like to stress the evidence difference between such murders in Georgia and other regions.

In Georgia, political assassinations are committed in broad daylight. Killers do not bother to cover their faces or hurry up during and after their crimes. The criminals openly demonstrate their fearlessness of the law.

The flourishing of such a terrible criminal environment has been harmful for political and social life. As a result, efforts to transform Georgia into a democratic and civilized nation based on respect for the rule of law have been stymied.

Along with the corruption that plagues the current administration, Georgia, as well as many new republics and Russia, is sinking into an abyss of contract killings, drug trafficking, money laundering, and bank fraud.

Organized crime discredits the market system and undermines democratic institutions. The government must drastically reorganize their law enforcement and legal systems. It should involve the creation of entirely new criminal investigation agencies, the arrests and prosecutions of suspected prominent criminals, the rewriting of

the criminal code to better define organized crime, and the recruiting and training of a new judiciary.

These are just a few first steps that should be taken.

Governments must apply economic policies that foster the free market, not mafia development. The West should cooperate with local law enforcement authorities as much as possible to share computerized data on criminal activity to identify trustworthy and reliable law enforcement personnel in Georgia, to provide help in writing criminal codes, and to create witness relocation programs, et cetera.

The topics of expanding crime in the former Soviet Bloc countries and appropriate Western reactions are in-depth topics, the details of which are beyond the bounds of the discussion today.

Nevertheless, this troublesome rise in crime should be the focus today because without dealing with this fundamental obstacle to the normalization and decriminalization of Georgia and other countries in the region, it is impossible to speak meaningfully about human rights and democratization.

Talking about democratization, what the United States could and should do, severe problems are on both ends of this process, both for the aid supplying country and recipient, Georgia. On the one hand, Georgia has met all of the qualifications to be excluded from U.S. assistance programs, such as Food for Progress, Public Law 480, and others because it does not meet the requirements for such assistance.

However, the United States-Georgia Foundation which I represent here does not recommend severing aid right now and considers it necessary to continue U.S. governmental assistance to the Republic of Georgia for a number of reasons.

If U.S. aid is eliminated entirely, it would worsen matters for the population because Georgia entirely depends on humanitarian grain shipments from abroad. Chaos and crime would intensify, resulting in advancement of organized crime structures.

Terminating U.S. aid to Georgia would leave her alone with the Russian modern expansionism that is worsening the situation in Caucasus. A slide into an irreversible and complete criminal anarchy that would endanger the stability of not only Georgia and the Transcaucasus region, but eventually this would affect the Western world through the expansion of organized crime. Hence, a cut in aid would actually be detrimental to U.S. national interests.

The United States-Georgia Foundation's democratic friends inside Georgia tell us that aid is still an important symbol of U.S. commitment to them in their standoff against the Russian drive to reestablish an empire. Aid visibly demonstrates the Western support to the cause of democracy in Georgia, and we at USGF strongly believe that the United States aid to the Republic of Georgia should be intensified despite the current disastrous situation indicates that the country is not currently moving substantially forward on its path toward democratization.

Stating that U.S. aid to the Republic of Georgia is greatly needed does not mean, however, that the current programs utilizing this aid denote the right solution. I would like to note that the effectiveness of the assistance to a foreign country in general, especially channeled through such a rigid, sophisticated, bureaucratic appara-

tus as the Agency for International Development, is highly questionable.

The countries which have been heavily subsidized by AID remain very poor because aid and technical assistance to them did not encourage the full scale transition to a free market. Instead, heavy dependence on foreign aid slowed down the development of the economic freedom infrastructures, and promoted statist economic policies.

Georgia does not need to be listed on AID's eternal list of subsidized countries. What Georgia desperately needs is the United States' tangible help setting up democratic institutions, the rule of law, and free market infrastructures. Precisely for this purpose, our foundation was created here in Washington, D.C., at the request of Georgia's political leaders and free market reformers.

Unfortunately, this type of potentially invaluable aid has not been provided to the republic yet. In spite of the fact that we prepared a number of pilot projects in many spheres of the democratization process, it has been impossible so far to move things from the ground because of the current bureaucratic incapability of the U.S. foreign aid complex.

Based on my first-hand experience in dealing with the system, we thoroughly support the current initiative of the leaders of the 104th Congress to modernize the U.S. foreign aid complex in order to make it more effective.

The success of supplying Georgia with United States aid rests on the following primary principles.

The first, control of the distribution of aid should decrease the possibility of this aid somehow serving to enrich the criminal elements in Georgia.

Second, the U.S. legislature should support innovative ways to improve the program design, efficiency, and delivery of aid to the Republic of Georgia.

Third, the best personnel, expertise, and technical resources available in both the United States and Georgia must be involved in the assistance process in order to make such aid effective and insure against worsening the Georgian situation.

Fourth, active U.S. intervention to assist Georgia in the transition to a free market economy and a healthy democratic state based on internationally recognized respect for the rule of law and human rights can be undertaken only with the consent and willingness of the powers that exercise control over Georgia.

Fifth, the Russian factor must be considered in all attempts of active engagement with Georgia. The Russian Federation must be aware and at least minimally supportive of Western assistance in Georgia in order to ensure stability and friendliness in the region, while protecting the practical feasibility of aid projects.

Sixth, it is naive to expect that Western aid will heal Georgian wounds overnight. However, so long as the United States remains engaged, there is a chance that Georgia will eventually join the community of civilized nations. If the United States and the West isolate themselves from Georgia, that possibility disappears.

To achieve American foreign policy goals, United States aid to the Republic of Georgia must be delivered quickly and efficiently.

This cannot be accomplished if the old approach and reliance on AID experts remain.

In conclusion, I would like to list the steps to be made by the U.S. in order to achieve the needed results in providing aid to the Republic of Georgia.

First, continue conditioned assistance. A strong statement should be made in order to make clear for the Georgian people that such assistance is given not as a gesture of supporting the developments in Georgia, which have been quite bad, but this aid serves vital U.S. national security goals. Strong caution should be expressed. The Georgian government must understand that political support for the supply of aid cannot be maintained in the United States if the Georgian government continues its scornful attitude toward human rights and the rule of law.

Second, strict control of any assistance distribution. In order to stretch the value of U.S. taxpayer dollars and be sure that they are used for promoting and strengthening young democratic and free market structures, a control mechanism must be available. Otherwise the United States aid will disappear like water in the sand.

Moreover, if this aid ends up going to corrupt institutions, the final result is quite opposite. It strengthens the criminal structures. Therefore, control as to how the U.S. aid is distributed and used is crucial for the advancement of positive changes. The U.S. Embassy must have unlimited access to restrain any transactions involving U.S. aid funds.

Third, increase the volume of U.S.-Georgian nongovernmental program. We believe that private U.S. NGO programs are the most effective for supplying aid to Georgia. Since Georgia is a compact country, the scale of its aid programs does not require a huge administrative force and very successfully might be managed excluding big bureaucracies, such as AID, USIA, and others.

According to existing U.S. code, these types of programs must be conducted through a special bank account that must be under the total control of the U.S. Embassy. NGO delivered aid could be very valuable in Georgia since substantial amounts of aid funds could be saved in low overhead, administrative costs. Small private organizations are more dynamic and creative. Their financial activity in the recipient country is under the control of the U.S. Embassy. The funds to broaden assistance programs through private NGO's might be obtained from the shrinking of the government-to-government type of aid.

Fourth, provide support to independent NGO's in Georgia, specialized human rights monitoring groups, and independent media in Georgia. It is axiomatic that the best antidote for all kinds of shadowy activities is the existence of free and independent mass media. Therefore, it is of paramount importance to strengthen existing private media entities and to encourage the creation of new ones.

Fifth, intensify the U.S. foreign broadcast services. It is hard to understand that such a well developed and sufficient mechanism of civic education, such as Voice of America and Radio Liberty, which has been so effective during the communist era, now when there is a great need to transfer Western knowledge and expertise to the

states of the former Soviet Union are losing its identity and becoming less effective.

We consider the Radio Liberty and Voice of America must utilize the Western expertise on the subjects and intensify their broadcasts to deliver to Georgian listeners the quality educational programs on human rights, the rule of law, and free markets.

And the last one, the United States should pursue innovative ways to improve the program design, efficiency, and delivery of aid to Georgia. In order to be effective, the aid must take advantage of the best experts, personnel, and technical resources available in both the United States and Georgia.

Thank you.

Chairman SMITH. Thank you very much, Dr. Gudava.

And last, but not least, it is my privilege to welcome Dr. Jones to testify before our Commission, and again, proceed however you would like, Doctor, if you would like to summarize or if you would like to go with your entire statement.

TESTIMONY OF DR. STEPHEN JONES, ASSOCIATE PROFESSOR OF RUSSIAN AND EURASIAN STUDIES, MOUNT HOLYOKE COLLEGE

Dr. JONES. I will give a shortened version of the testimony.

Chairman SMITH. Without objection, your full statement will be a part of the record.

Dr. JONES. Right. Thank you.

Thank you, Mr. Chairman and members of the Commission for inviting me here and giving me the chance to talk to you about Georgia.

When Mr. Ochs invited me to be a witness at this hearing, he asked me to give a broad context to the current situation in Georgia, and that's what I'll be doing.

When Eduard Shevardnadze came to power in Georgia in March 1992, of the multiple and interrelated tasks that he faced, the most pressing were an end to the wars in South Ossetia and West Georgia, accommodation with Georgia's ethnic minorities, reestablishment of civilian control over the paramilitaries, and the restoration of some normality in economic life.

Shevardnadze's period in office has brought mixed results in all of these areas, and many of these problems remain unresolved. He has been dogged by powerful paramilitaries unwilling to cede their power, Russian military intervention in Abkhazia and to a lesser extent in South Ossetia, devastation of the economic and political infrastructures, and a population severely handicapped by its Soviet mentality.

Despite these obstacles, Shevardnadze's realism and his willingness to compromise brought the conflict in South Ossetia to an end within 3 months of his arrival. Within 7 months in October 1992, he had established a newly elected parliament and a temporary power structure with himself popularly elected as both Chairman of parliament and Head of State.

The appeasement of former President Gamsakhurdia's followers and the National minorities proved less easy. A civil war with ex-President Gamsakhurdia's supporters bested in the West Georgian region of Mingrellia lasted until the fall of 1993, and a more violent

war with Abkhazian separatists which broke out in August 1992 and ended in Georgia's defeat in September 1993 with the loss of the Abkhazian autonomous republic and between five to 10,000 lives.

All of these things undermined Shevardnadze's attempt to rebuild Georgian institutions and "civilianize" the Georgia paramilitaries. The permanent military crisis increased the power of the paramilitaries particularly in the absence of a regular army, worsened the crime rate as armed soldiers returned home to joblessness, and undermined the legal power structures set up by the temporary law on power in November 1992.

The parliament, due to a bad electoral law designed to prevent a repeat of the single party monopoly under Gamsakhurdia, produced 26 parties. The inexperience of the new politicians, the limited power given to the speaker and parliamentary authorities to control the conduct of debates, the newness of procedure, and a traditional Georgian skepticism toward authority were not unsurmountable barriers to an effective legislature.

But fluctuations in the fortunes of war and mistakes in its conduct, and condemnation of Shevardnadze's policy of "capitulation" to the Russians who eventually forced Georgia back into the CIS, led to a hysterical legislature and highly charged partisanship which prevented compromise, sabotaged the parliament's legislative program, and undermined public confidence in parliamentary politics.

Bitter distrust between the parliamentary opposition and Shevardnadze grew as the latter, ignoring parliament's sensibilities but needing to take action, gained and used emergency powers to tackle Georgia's military, financial, and political crises. The weak and disorganized parliament has undermined a central pillar of the new constitutional structure in Georgia and has done great damage to the long-term health of Georgian democracy.

The war not only undermined Georgian democracy, but also undermined the Georgian economy. All resources were devoted to the war effort. Economic reform was indefinitely postponed, and following Georgia's defeat in Abkhazia, the state was burdened with almost a quarter of a million refugees.

Shevardnadze cannot be blamed alone for the 1994 levels of industrial and agricultural output and labor productivity which have fallen to below the level of the 1960's. He inherited many of these problems and was forced to fight a war without adequate resources.

But until September 1994, when under pressure from the World Bank and the IMF the first steps were taken to implement real economic reform, there has been no effective privatization of large scale industry, total confusion in land redistribution, continued massive price and employment subsidies, an absence of revenue collection, and an uncontrolled budget deficit.

This led to a massive decline in living standards and unprecedented levels of poverty as the salaries paid by the government in official coupons became totally worthless.

The Shevardnadze administration has made some progress in reducing crime, and since the appointment of Vardik'o Nadibaidze as Defense Minister in April 1994, he has begun to restore a regular military subject to civilian control. He has ended Georgia's inter-

national isolation and brought relations with the strategic neighbors of Russia, Armenia and the North Caucasus onto a more even keel.

Although his commitment to peaceful resolution of conflicts with the Abkhazians and the Ossetians backed by the Russians has brought only limited success, both Abkhazia and Ossetia remain outside Georgian control, and despite a signed agreement with the Abkhazian separatists in May 1994 for the return of refugees, very few have been permitted by the Abkhazians to return 10 months later.

In order to bring peace to Georgia, Shevardnadze has effectively sacrificed a great deal of Georgian sovereignty. Russia exercises the greatest influence in Abkhazia and South Ossetia, and in return for its arbitration of the separatist conflicts it had militarily supported, it has been granted four military bases, joint use of all Georgia's ports and airfields, and supervision of Georgia's borders.

Shevardnadze's administration, despite the war in Abkhazia, has improved relations with Georgia's national minorities. He has preserved basic civil liberties, despite pressures from a state under siege to introduce more authoritarian measures. His record in the field compares favorably with President Ter Petrosian of Armenia, who recently banned the largest official opposition party and closed down 12 newspapers and news agencies in Armenia. Shevardnadze also has an incomparably better record than Gaidar Aliev in neighboring Azerbaijan.

Regarding human rights, the charges against Shevardnadze's government are very serious indeed. Anybody who has read the British Helsinki Human Rights Group report on the torture of prisoners in Georgia must be greatly alarmed, but although it pains me to say this, I do agree with the Ambassador after reading the report that there were serious inaccuracies in this report, underlined in my view by a certain one-sidedness.

I will only say the following without any attempt to downgrade the abuses highlighted by the Helsinki Watch Commission.

First, in the political chaos of Georgia, the disregard of rules and responsibility continue to affect all institutions from the parliament and ministries to the police and the judiciary.

Second, the wiring of the old Soviet state is still in place, by which I mean a corrupt judiciary and police force. Everyone is aware of that, including Eduard Shevardnadze, and there is as yet very little opportunity to replace them with new and untainted personnel.

This requires time and more attention to the problem than Western countries have been willing to give so far.

Third, Georgia shares with other former Soviet republics absent legacies, such as the rule of law, accountable bureaucracies, and relationship of trust with the government.

Fourth, traditional Georgian political culture emphasizes patron-client relationships rather than institutional ones. Loyalty, even when it's misguided, and the use of gifts and bribes to secure influence have all contributed to Shevardnadze's inability to institutionalize Georgian democracy or to make it more than surface deep.

As head of state, Shevardnadze has a large apparatus which parallels the government, but despite full use of his prerogatives to

issue decrees and states of emergency, his power to change old habits is limited. He can punish, which he should do more energetically than he is doing currently, but I don't think it is useful to spotlight Shevardnadze's role when discussing the abuse of prisoners, just as I would not single out the Clinton administration for racism in the Los Angeles police force.

The problem of human rights abuse in Georgia cannot be solved by fiat. Rather, it is a reflection of a brutal legacy, the current state of society, and the absence of effective institutional control from above and civic control from below.

But it must be said that the concentration of power in Shevardnadze's hands, his seeming indifference to the self-destruction of the Georgian parliament, and the retention of conservative "apparatchiks" in policymaking positions is undermining popular faith in the institutions of democracy and the market.

Shevardnadze managed to save the Georgian ship of state when it was perilously close to sinking, but he has given it little direction since, partly because of the permanent political and military crisis in the country. In attempting to reassert political authority and end the feudalization of Georgian politics characterized by the rise of unaccountable economic and political barons who run their spheres through informal networks, mutual favors, and obligations, Shevardnadze faces a dilemma.

Should he continue to keep power in his own hands, promote trusted but conservative friends, ignore the ineffective legislature, and stall major economic change which can only temporarily at least worsen the population's economic well-being? This is a course designed to muddle through.

Or should he take a risk and remove economic subsidies, reform the welfare system, replace experienced "apparatchiks" with inexperienced reformers, push harder for a reconstructed and perhaps more challenging parliament, and remove corrupt leadership figures like Jaba Ioseliani who out of government may de-stabilize Georgian society at a time of intensified economic pain?

The second course in the short term is more politically unstable and certainly more painful, but unless Shevardnadze's administration is encouraged to take it with substantial economic support from the West, Georgians may find themselves led by a politician who lacks the scruples and the experience of Eduard Shevardnadze.

Western Europe and the United States can help Shevardnadze's government accomplish the second course. This is not a time to reduce aid, nor after the experience in Chechnya which was partly a result of the West's passivity and indifference to similar Russian behavior in Abkhazia is it a time to further isolate Georgia.

All human rights abuses must be condemned. The most egregious, of course, are happening today in the Russian controlled area of Abkhazia, but engagement, education, and economic carrots are the way to deal with it, not economic penalties, which will only further de-stabilize Georgia and make further human rights violations more rather than less likely.

Thank you.

Chairman SMITH. Thank you very much, Dr. Jones.

I would like to acknowledge that Congressman Wolf, Commissioner Wolf, is with us today, and he has been a longstanding member of this Commission, very concerned about human rights everywhere in the world, especially in the newly independent states, and himself was briefly in Tbilisi last September.

Before beginning some of the questioning, I noticed as each of you was speaking that some were nodding in agreement or disagreement. If there might be some comments, Mr. Ambassador, you might want to make in response to some of the comments made by our witnesses, not to turn this into a free-for-all, but I think it would be helpful to hear some of the interplay between our panelists, and then I intend on posing some questions.

Mr. Ambassador.

Ambassador JAPARIDZE. Thank you, Mr. Chairman.

First of all, I would like to thank you very much, you personally and the Commission members, for this opportunity to participate in these extremely interesting, positive hearings concerning my country, the Republic of Georgia, and I would like to thank very much the participants, the panel, and participants of this discussion for their constructive criticism, their ideas, their suggestions.

Though with some of them I cannot agree and some of them, as panel participants have just admitted, some of these arguments are just one-sided. I would like to come back to Mr. Jones' phrase about Georgians' traditional skepticism toward government and toward law. Maybe it is true, but at the same time we should take into account where Georgia used to be just a couple of years ago.

We may put it another way, you know. Unfortunately, Georgians traditionally had antipathy toward Soviet law, and it should take a certain amount of time before Georgians, I speak about Georgian society, Georgian citizens, understand that they should be obedient to law, and it is not already Soviet, but it takes time. I agree with Mr. Jones' remarks in general.

Speaking about Ms. Dailey's remarks, there is no doubt we cannot agree with what is going on in Georgia speaking about the law enforcement officers, but this at the same time, you know, is the concrete case. It is not the microcosm of what is going on in Georgia in general.

I would like also to say Ms. Dailey, how you look at Georgia—the bottle is half empty or the bottle is half full. For me it is half full, and it's a process. It's a very positive process, though I also am very open to your criticism and will take your remarks in general into consideration. At the same time I want to mention the terrible story you have just told. You did not mention the name of this poor man or lady. I have different arguments and as an ambassador I should not accept your arguments. I received a letter from the First Deputy Prosecutor of Georgia who says the opposite—maybe he is wrong. I don't know, and maybe you are wrong, but I would have appreciated your argument about this torture incident or this story about this man or lady if after visiting the prison you would have gone to the place where these 350 policemen are detained now and you would have asked the question to one of them who might have participated in torturing these people because I'm sure that these policemen, you know, if you had asked this question, might have told you another story.

But at this time, Mr. Chairman, I would like to thank all of the panelists and first of all Ms. Dailey, who was especially critical, for this constructive criticism, and we'll take all of this information back home and inform my government.

Thank you.

Chairman SMITH. Ms. Dailey, did you want to respond?

Ms. DAILEY. Yes. We certainly welcome the Ambassador's statements and look forward to future dialogue on these issues, which I know are of mutual interest and importance.

Concerning the issues of torture, I respectfully disagree. We have followed the issues of police brutality for several years now, and as I said, we believe that these are not isolated instances. This is common practice.

As Mr. Gudava mentioned, this has certainly been going on since the Soviet period. What we're looking forward to in Georgia is, through the assistance of the international community and the cooperation of the Georgian authorities, to recognize this as the problem that it is, which is widespread, and to curb it immediately.

As you know, under international law there is never any justification for torture under any circumstances. There have been statements by the authorities that, for example, as part of the fight against terrorism many things happened. Certainly our respected guests will appreciate that there is no justification and that certainly the fight against terrorism is not furthered by the practice of torture.

These are issues that we have engaged in dialogue with the Georgian authorities about and look forward to cooperating on.

Ambassador JAPARIDZE. Just a short remark, Mr. Chairman.

I thank Ms. Dailey for her counter-remark. At the same time, I would like one more time to admit that I would like Georgia to be, as well as I understand you want, to be a shining city, but we are not a shining city. We were formally independent; we were formally sovereign; we are members of different international organizations, but the most important thing is that we are in a transitional period, and we are within this process, which is a long, painful, and as I told Ms. Dailey and other participants and the members of this Commission, that we are open to any kind of constructive criticism and will be ready to accept it. Just in the morning I get a call from Mr. Shevardnadze, and he asked me to deliver his gratitude and his appreciation for this Commission's efforts.

He told me, you know, that he expects, you know, this constructive criticism and is ready to answer any question and work with any human rights organization or the delegation from your or other Commission.

Chairman SMITH. Let me say that that kind of transparency and openness is certainly appreciated.

You know, the U.S. State Department Country Reports on Human Rights Practices notes that police routinely beat, and I am quoting here, routinely beat and otherwise mistreated detainees during pre-trial detention. I was wondering of the 350 policemen who are incarcerated for, quote, various crimes how many, if any, are there because of brutality inflicted upon detainees or prisoners.

Ambassador JAPARIDZE. Sure, sure.

Chairman SMITH. And are these recent cases, the 350, because that is all we have.

Ambassador JAPARIDZE. I have been informed by Mr. Shevardnadze and Mr. Kavsadze, whom Ms. Dailey maybe knows—he is the Chairman of this Committee on Ethnic Minorities and Human Rights, and this is an absolutely correct figure, and I hope that representatives of human rights organizations, as well as other international organizations will visit these people and investigate why they are in this, why they are detained.

Chairman SMITH. It would be helpful for the Commission if we got that information, and also as this dialog gets deeper, the kind of training. I mean we have in this country and every country has problems with police who misuse the privilege that they have been given, entrusted, if you will, by the people, and there is always due process and rights afforded the accused that help to guard against that kind of abuse. The more Georgia matriculates to a rule of law and those rights are put firmly in place, that the accused have certain rights that cannot be abridged by an errant police officer, the less often these kinds of abuses will happen.

If anybody would like to comment on that, because I think that is part of the key issue, that accused people have access to competent attorneys to defend them, that they are not taken off to some detention area where God knows what happens to them.

Ambassador JAPARIDZE. Mr. Chairman, you should excuse me because I am taking time of the panel participants.

Chairman SMITH. That is why we are here.

Ambassador JAPARIDZE. Yes, that is why I am here, and when you mention policemen and police people, just to be more exact, one incident or one let's call it a story came into my mind. When we speak about the standards and the goals the Georgian police and Georgia itself, you know, should pursue. Just a couple of days ago I walked to the embassy office. We have no embassy residences, small two rooms in a building, which is nearby the White House. I was walking nearby the White House and there was a demonstration of janitors, and they blocked the streets, you know, near the White House, and the police appeared.

As far as I was preparing myself for these hearings, it was interesting for me—it was a very open lesson for a Georgian Ambassador—to watch, how they interact with each other. I should tell you they arrested these demonstrators, but putting this in general terms, though there was some pushings and other things, but I can qualify these pushings as friendly hugging.

I understand it is an ideal thing to have this kind of police in Georgia, but another idea came to mind. We will never have this kind of police until the society is not the same. So what is Georgian police? It is a reflection of Georgian society, of the conditions in which the Georgian society is now.

The panelist mentioned two civil wars, town war, economic stagnation.

Thank you.

Chairman SMITH. Mr. Ambassador, for the record, because we have gotten conflicting reports, just so it is very clear and unambiguous, what is the official view of the Georgian Government? Was any of the 19 defendants in this case, who have been accused of

terrorism, subjected to torture or physical mistreatment? What is the official government position on that?

Ambassador JAPARIDZE. I myself have not been involved in this case, and I can use just official information. I received, as I told you, a couple of days ago. This information admits that during the process of investigation, this paper says that there was no torture used. That's the information I received, you know, from official structures.

Chairman SMITH. Again, that's—

Ambassador JAPARIDZE. But, you know, what Mr. Shevardnadze told is that he will take under his control this case and get information, additional information, wherever torture has been used during investigation or not.

Chairman SMITH. This is where the problem with credibility comes in because, again, Mr. Shevardnadze himself confirmed the use of torture at a press conference in October 1992, and the delegation to the CSCE meeting in Budapest in October 1994 also acknowledged that one of the defendants was tortured. I would hope we could get a clear-cut clarification from the government on that so we can make it a part of the record.

Ambassador JAPARIDZE. Yes. I will inform my government, and as soon as I get the more detailed information, I will transmit this information to your Commission.

Chairman SMITH. Mr. Wolf.

Mr. WOLF. Mr. Ambassador, just one question, and I appreciate your coming and the entire panel.

Will there be a retrial? Will the 19 have an opportunity for—

Ambassador JAPARIDZE. Sure, sure. I concluded my statement before you came, and I just mentioned that retrial might take place.

Mr. WOLF. It will take place?

Ambassador JAPARIDZE. Reconsideration might take place, these people can appeal to the parliamentary commission, and the case might come to Shevardnadze's attention. So there are certain phases.

Mr. WOLF. So there is an opportunity that there will be a retrial?

Ambassador JAPARIDZE. Oh, yes.

Mr. WOLF. What should the Commission do then? Should Mr. Smith and the members of the Commission do a letter to our Ambassador in Tbilisi asking that he go in to see Mr. Shevardnadze urging that there be a retrial? What would be—

Ambassador JAPARIDZE. Mr. Smith already delivered the letter to Mr. Shevardnadze, and Shevardnadze just transmitted his response, and you can read the letter, which explains the process concerning the case of these sentenced people.

Mr. WOLF. Our embassy has been working with your government.

Ambassador JAPARIDZE. I hope.

Mr. WOLF. Yes. It depends sometimes, but I just wanted to know before leaving. That was why I came, because of the 19. Is there a commitment, and maybe I am missing some and I apologize for coming in late? When will the retrial take place?

Ambassador JAPARIDZE. As I understand there is a certain legal procedure after sentencing these people. There is a legal base for

this reconsideration or retrial. So in a certain period of time, you know, this retrial, reconsideration process will start.

Mr. WOLF. Yes. The letter that Mr. Smith got back does not say yes or no. It says, "Should the appeals process reach the point where it is appropriate where I believe the state to become involved, I will pay strict attention to not only the documentation of the case thus far, but to those concerns voiced by the human rights organizations. I will endeavor to ensure that the myriad considerations of this case be addressed in as fair and transparent a way as possible."

I would urge you, and maybe Mr. Smith and I will do another letter again asking that there be a retrial, and if we could get notification, what we will do is we will cable our embassy, ask them to formally go in and ask officially for a retrial, and if you could get back to Mr. Smith and he could let me know when that will take place.

I know you have a difficult situation there. I was there in September for a brief period of time. We were picked up at the Armenian border and drove through there, and I know you have got a pretty rough situation there, but I think if you really want to move into a more democratic way, the best thing you can obviously do is to have a retrial of the 19 people, have it fair. We would then ask that a representative of our embassy attend the trials, and then at that time I think perhaps there could be some reconciliation, and then I think it would be very, very positive.

Ambassador JAPARIDZE. Congressman, we will inform my government.

Mr. WOLF. No, you go ahead.

Ambassador JAPARIDZE. It is in a legal code of Georgia. After sentencing, these people should appeal, you know, to the court of appeals, and then after the decision of the court of appeals, the reconsideration process starts. Mr. Shevardnadze just met yesterday OSCE representative in Georgia, and he asked this organization to monitor the appeals process.

So this process will be open, and if your embassy will participate, we will appreciate and welcome it.

Mr. WOLF. Yes, we will do a letter to the Ambassador asking, one, that we get a firm date; two, that they participate.

Ambassador JAPARIDZE. And, Congressman Wolf, I can mention for the record, you know, the lady who works in the U.S. Embassy in Georgia, who is already involved in this process, Mrs. Jessica LeCroy, and you can appeal directly to her or to the Ambassador. We will appreciate it. That is what I can tell you.

Mr. WOLF. How is the relationship between our embassy and your government? Does the American ambassador have a good relationship with Shevardnadze?

Ambassador JAPARIDZE. As far as I used to work as Shevardnadze's National Security Advisor, I personally had very open, very constructive, very frequent communications with Ambassador Kent Brown, who has frequent communications with Shevardnadze, who is also open to your Embassy. Any time the U.S. Ambassador wants to come to Mr. Shevardnadze, just to ask a question, to inform back—he is welcome.

Mr. WOLF. Would it also help if former Secretary Baker made a request to Mr. Shevardnadze on this issue?

Ambassador JAPARIDZE. Please.

Mr. WOLF. Thank you very much.

I thank the panel.

Chairman SMITH. Thank you, Commissioner.

Again, before we go on to another question, the question of whether or not this appeal actually occurs is of great interest, especially in your own testimony, Mr. Ambassador, when you said no one disputes the defendants' guilt.

As I said in my opening statements, we are not saying pro or con. We do not know if they are guilty or not, but the means of extracting confessions would not hold up in any court that I know of, and if, indeed, torture was employed against at least one and perhaps several of these individuals, that taints any outcome, calling for a mistrial and hopefully a retrial under open and fair circumstances.

Dr. Jones, would you like to comment on some of this?

Dr. JONES. I would just like to add that I agree with the Ambassador that Georgia is going through a tremendous transition at the moment, and that most of the judiciary is Soviet trained judiciary. Most of the police force is an ex-Soviet police force. In both of these institutions there is corruption, and in the police force a tradition of brutality.

I don't expect that to change any time soon, and that must be taken into account when we discuss these questions of police brutality in Georgia.

Chairman SMITH. In addition to humanitarian aid, then, would it be wise if some of the international aid was focused on human rights training?

Dr. JONES. Absolutely. I think that it really has not been significant so far.

Chairman SMITH. On the issue of humanitarian aid, if I could, Dr. Gudava, you made a very strong appeal for that aid not to dissipate. You say if it was stopped, things could worsen for the population. It could lead to anarchy and other very, very bad outcomes, and yet you provided several suggestions as to how that aid might be better focused and delivered.

I wonder if our other witnesses, especially my comment on whether or not U.S. aid sent today is being diverted to bandits and gangsters and thieves, whether or not it is getting to its intended population and what we might do to better funnel that aid to its intended recipients.

Ms. Dailey.

Ms. DAILEY. I can only agree heartily that humanitarian aid is desperately needed, and we would certainly welcome all efforts on the part of the U.S. Government and the international community generally to further those efforts. It is desperately needed.

Chairman SMITH. Mr. Ambassador.

Ambassador JAPARIDZE. Mr. Chairman, I also support what Dr. Gudava said and Ms. Dailey commented about, U.S. aid to Georgia, as well as to other republics, because this is one of the central political issues for Georgia, and for your information, we work very closely and constructively with the State Department, especially

with Ambassador Simons' office, and what we can recommend is the U.S. Congress to redirect U.S. aid from the humanitarian to technical and investment oriented. We talked about this when we met, if you remember.

Chairman SMITH. Let me just ask a couple of additional questions.

Ms. Dailey, as you probably know, the State Department Country Reports on Human Rights Practices suggests that there are no political prisoners in Georgia. Do you agree with that?

Ms. DAILEY. It is a very difficult question, and the one thing that I would point out in terms of the U.S.' position on this is that in the 1993 Country Report, it was stated that there were more than 100 political prisoners in Georgia. In this year's report, however, it states that there are none without any explanation. For example, if there had been an amnesty which had released them, that would explain it. So I would actually appreciate a clarification on the part of those who prepare these reports about why that is, where these 100-plus people have gone to. Clearly, it would not be because of a change in the definition, but at the same time it leaves a lingering question mark.

We have not taken a position on this issue to date. There is strong evidence to believe that there are people who have been certainly persecuted because of their political positions, but we have not been able to confirm this.

Chairman SMITH. Mr. Ambassador, please.

Ambassador JAPARIDZE. Yes, just a very brief comment, Mr. Chairman, because as Ms. Dailey just admitted, there used to be just about 100 political prisoners less than a year ago, and now the document issued by the State Department about human rights conditions in the world, including Georgia, as well as other documents, indicate that there is no Georgian political—we have no political prisoners in Georgia.

These kind of contradictions, and I agree with Ms. Dailey, just disorient not only Georgians, but as I understand also Americans. We will appreciate if we get objective information what kind of conditions we have with human rights, straightforward from the State Department, as well as from the U.S. Congress.

Thank you.

Chairman SMITH. Elections are supposed to take place in October 1995. Considering the extent of corruption at high levels and the influence of organized crime, in your view—and I would ask all of you if you would like to touch on this—can free and fair elections be held in Georgia, and what do you make of the Communist Parties that have been re-registered and united into one unified organization? Do they have a good prospect of winning in Georgia?

Would anyone like to start? Dr. Jones.

Dr. JONES. Well, my suspicion is the answer to that is no. Another question was whether there could be free and fair elections?

Chairman SMITH. Free and fair elections.

Dr. JONES. What the Georgians are working on currently is a new electoral law. I commented in my statement that one of the problems with the last election was a poorly designed electoral law which led to a fractious and incohesive parliament.

Corruption is widespread throughout Georgia, and there are certainly recorded electoral abuses, but not to the extent that the last elections were considered unfair. I think that given a good electoral law, there is no reason why there should not be free and fair elections in Georgia.

Chairman SMITH. Dr. Gudava?

Dr. GUDAVA. I think that the question here is in a definition, what do we consider a free and fair election. I don't think that future elections this year, the upcoming elections, might be less fair than the previous one, if we agree that the previous elections are free and fair.

Chairman SMITH. Nobody else would like to comment on that one.

Let me just conclude by asking what you think the Russian goals are currently, especially with the peacekeeping mandate in Abkhazia. What is the expiration date on that?

Ms. DAILEY. May.

Chairman SMITH. May. What do you think will happen post-May? What do you think the Russians will do, as well as the Georgian government?

Mr. Ambassador.

Ambassador JAPARIDZE. May I start?

Chairman SMITH. That would be fine.

Ambassador JAPARIDZE. Nobody knows. It's a very good question, but this question is also very, very complicated because nobody knows, you know, what Russia can do. There are problems, you know.

At the same time I would have appreciated it if this Commission, the Helsinki Commission, and other U.S. Congress committees and commissions would have been more active before 1994. Let's say if they had been more active in 1990 and 1992, as Mr. Jones absolutely correctly admitted, that certain forces from Russia manipulated the problems inside Georgia.

And just as a follow-up, when Ms. Dailey speaks about human rights, you know, violations, she speaks about the Republic of Georgia, and when she speaks about, you know, other issues, she uses Abkhazia and Georgia, which might confuse the distinguished panel and you, Mr. Chairman, because as I understand it, Russia and the United States, they confirm that Abkhazia is a territorial, historical part of Georgia. We mentioned the behavior of certain Russian forces of Russia from 1992, you know.

There is no doubt that they manipulated with our problems, and we have the negative result. We have more than 200,000 refugees still out of their homes, and this might be the answer to your question, what Russian peacekeepers are doing, but at the same time I'd like to admit that there is slight, you know, progress in the region.

And we will appreciate if alongside with Russian peacekeepers, and as I understand the Russian side is also ready for this, other international organizations will be more active.

But what Russia might undertake in the future I cannot tell you.

Chairman SMITH. Would anyone like to? Yes, Ms. Dailey.

Ms. DAILEY. Mr. Chairman, if I might make an important clarification, our organization takes no position on the status of

Abkhazia. We merely make those distinctions because the war took place on Abkhazian territory, and between the residents of Abkhazia and government forces in Georgia.

Our position in terms of the blockade has been that we object to any attempt to impede the transmission of foodstuffs and medicine, which is effectively what has happened. We have not heard of that problem existing in larger Georgia. We have only heard of that existing in Abkhazia proper.

If there is a correction to be made, I would appreciate that.

Ambassador JAPARIDZE. But we talked about this, Russia closed the border not with Abkhazia, but the border with Georgia?

Ms. DAILEY. Yes, that is correct. We don't make that distinction.

Ambassador JAPARIDZE. Okay.

Ms. DAILEY. It is our understanding from a recent field visit that foodstuffs and medicine are being prevented from entering Abkhazia. That is a de facto blockade.

Ambassador JAPARIDZE. But this blockade is used not to transfer and smuggle weapons.

Ms. DAILEY. Again, whatever happens across that border, our only concern is that foodstuffs and medicines reach the civilian population.

Chairman SMITH. I only have two final questions, but just let me preface the first. Some years back Mr. Wolf and I visited one of the gulags in Russia, then the Soviet Union, Perm Camp 35. As a precondition to our going, we got an explicit statement from the Procurator General that there would be no repercussions to those with whom we spoke, and we met with a number of political and religious dissidents and prisoners who were in Perm 35, and we met with them for several hours, tape recorded their comments, and videotaped them, and then brought them out and widely disseminated them.

To the best of our knowledge, people were not injured as a result of that visit. We worried about it. We sweated over that, and I was wondering, Ms. Dailey, in your contacts with people behind bars if you've gotten those assurances and, most importantly, if anyone has been adversely affected for talking to you.

Ms. DAILEY. It's a terribly important question. I'm glad that you raised it.

Our work is predicated on that guarantee. We, like the ICRC, the International Committee of the Red Cross, will not meet with prisoners unless we have obtained that guarantee ahead of time and also unless we are able to meet with detainees one on one in full confidentiality.

I have met with individuals under those circumstances, again, with those guarantees. I would like to point out, though, that in one instance my meeting with someone in the prison hospital resulted in that person being put under strict isolation by the judge in the case. He was removed punitively after our meeting the following day, in fact, removed from the prison hospital back to the prison where conditions are even worse, frankly, than in the hospital, and it took us a month of lobbying and asking for that person to be returned to have him actually returned to the hospital where he could get proper medical care.

This is not the first time that this has happened. In fact, I'm told by representatives of the American Embassy that the same thing had happened with them, that when they met, again, with this same individual, he was forcibly removed from the hospital against the wishes of his doctor, and again, it took them about a month of phone calling and requests to have that person returned to the hospital.

Chairman SMITH. Ms. Dailey, if you could ensure that this Commission knows the names and the specifics of each of these cases.

And, Mr. Ambassador, I would just ask that you would use your good offices to try to ensure that, again, no one has any adverse effects for simply speaking to a human rights activist or to their own counsel.

Again, one of the rules of law is that you can convey information to your defense counsel without fear of the prosecutor using bully tactics against you, that is to say, torture.

One final question, and this would be to Dr. Gudava. The Georgian opposition strongly criticizes Mr. Shevardnadze. Can you suggest that any other politician, given the fact that there's a tremendous amount of Russian pressure, widespread corruption: could somebody else do a better job in your view?

Dr. GUDAVA. Oh, Mr. Chairman, well, it's a difficult question, but in short, I think that there is not an alternative candidate to this position nowadays in Georgia. The problem with Mr. Shevardnadze is not that he is a bad politician or a bad person, but the environment in which he started, after his return in Georgia, is such that the qualities which made him famous worldwide are useless in the criminal environment of today's Georgia. So he has come up with the matters and problems with which I doubt he ever dealt before. I am talking about organized crime. I am talking about political assassinations. I am talking about explosion of all of these criminal activities and taking over almost the entire sphere of life in the Republic of Georgia, as well as many other places of the former Soviet Union.

Therefore, the answer is that I think that Shevardnadze's presence in Georgia was and is a very positive one, but because of the reasons which are beyond his maybe ability, the situation is worsening. So I don't see any other candidate who could do a better job than Shevardnadze, taking into account the circumstances which are in Georgia today.

Chairman SMITH. Dr. Jones, did you want to comment?

Dr. JONES. Generally I would agree with Mr. Gudava about that, but I do think there are alternatives to Eduard Shevardnadze. There must be alternatives to Eduard Shevardnadze because he cannot go on forever.

I think one of his problems is that because of the complete collapse of power in Georgia, many of the things that he wants to get done are not done. He has really limited control over many of the things that are happening in Georgia, particularly in the regions.

One of the criticisms that could be leveled at Mr. Shevardnadze is that he is that he is too cautious, and displays a lack of energy in tackling particular some major economic problems in Georgia, although this last fall that has been remedied to a certain extent. There are also serious problems in his personnel policy. He ap-

points people that he trusts, that he knows, and that he feels can cope better with the situation in Georgia rather than looking for reformers. But it is the latter where his emphasis should go. He should be encouraged at this stage to change his government and employ as many reformers as possible and take a much more energetic line in terms of the economic transformation of Georgia.

Chairman SMITH. I thank you, and I want to thank our very distinguished panel for your testimony. I think it will be very helpful to the Commission, and we will endeavor to make this information that you've imparted to us available to every member of both the House and Senate, especially as we proceed to marking up the foreign aid bill which is just around the corner.

One of the other hats that I wear is as Chairman of the International Operations and Human Rights Committee. We'll be marking up our legislation some time right after the recess, and then we go to the full foreign assistance bill immediately after that.

So this information will be very, very useful, and I can assure you we will make it available to members who will be in strategic decisionmaking positions in the very, very near future.

So I thank you for your testimony. It is most enlightening, and without further ado, this hearing is adjourned.

[Whereupon, at 3:55 p.m., the hearing was concluded.]

APPENDIX

Co-Chairman Alfonse D'Amato
Opening Statement
CSCE Hearing on the Situation in Georgia

Mr. Chairman:

Thank you for calling this hearing on the situation in Georgia. This small nation's progress from Soviet province to independence and democracy has been shattered by civil war, thinly veiled external intervention, and organized criminal activities. The Commission hopes, by reviewing developments in Georgia, to advance the cause of human rights and democracy in Georgia.

I want to take this opportunity to welcome the Chairman, my fellow Commissioners, our distinguished witnesses, the public, and the media to the first Commission hearing of the 104th Congress to take place on the Senate side of the Capitol. I look forward to having more hearings on this side as the schedule permits.

I want to note for the friends of the Commission that I will soon be joined by the other Senate Commissioners. I expect formal appointment of the rest of the Senate Commissioners reasonably soon.

I want to thank His Excellency Tedo Japaridze, the Ambassador of Georgia, and our other distinguished witnesses for appearing before the Commission today. I look forward to hearing their views as we work together to achieve a future of democracy, free enterprise, peace, and respect for human rights for all Georgians.

Anyone who is familiar with conditions in Georgia today realizes the serious problems facing the government. The country has been dismembered, with Abkhazia having seceded, South Ossetia effectively under Russian control, and Adjara and other ethnically Armenian or Azeri areas along the southern border under the rule of local strongmen. Armed paramilitary formations led by persons with reportedly strong underworld ties remain strong forces within Georgia, while the state itself is virtually bankrupt, has not replaced corrupt former Soviet officials or structures, and is hamstrung by competing political factions. Its economy has collapsed, with a worthless currency and the majority of the population living in poverty.

In the face of this desperate situation -- a condition some have described as a "stable crisis" -- we restate our expectations that Georgia make a serious attempt to meet its international obligations, especially those concerning human rights. Building a law-based society out of the ruins of the old Soviet structure will not only help ensure respect for human rights, but it will serve as a sound foundation for economic revival, political stability, and general progress for Georgia.

I regret that I will not be able to stay for the entire hearing today. I have a conflicting obligation in the Banking Committee, another hearing that I must attend. But I want to assure the Ambassador that my early departure reflects no lack of interest on my part in Georgia's situation and progress.

Thank you, Mr. Chairman.

STATEMENT OF REP. STENY H. HOYER
COMMISSION ON SECURITY AND COOPERATION IN EUROPE
HEARING ON GEORGIA
MARCH 28, 1995

THANK YOU, MR. CHAIRMAN, AND I COMMEND YOU ON HOLDING THIS HEARING. AS YOU KNOW, SENATOR DeCONCINI AND I LED A HELSINKI COMMISSION DELEGATION TO GEORGIA IN SEPTEMBER 1991. ZVIAD GAMSAKHURDIA WAS STILL PRESIDENT THEN, AND WE MET WITH HIM. WE ALSO MET WITH REPRESENTATIVES OF THE OPPOSITION, WHO FREELY EXPLAINED THEIR GRIEVANCES AND POSITIONS. I AND THE OTHER MEMBERS OF THAT CONGRESSIONAL DELEGATION WILL NEVER FORGET THAT TRIP. IT TOOK PLACE AT A MOMENT OF EXTREME TENSION IN TBILISI, IN AN ATMOSPHERE THAT COULD BE CALLED HIGHLY UNUSUAL, EVEN ELECTRIC. EVER SINCE, I HAVE RETAINED AN AVID INTEREST IN GEORGIA, AND TRY TO KEEP UP WITH DEVELOPMENTS THERE.

IT IS THEREFORE ESPECIALLY SAD FOR ME TO CONTEMPLATE WHAT HAS HAPPENED TO THAT BEAUTIFUL COUNTRY. THE ECONOMY HAS BEEN DESTROYED, ELECTRICITY IS RATIONED, THE COUNTRY IS OFTEN IN DARKNESS, AND LIVING STANDARDS FOR THE POPULATION HAVE FALLEN DRASTICALLY. MANY LIVE IN FEAR, WITH LAWLESSNESS A CHRONIC AND EXTREMELY ALARMING PROBLEM. MOREOVER, THE COUNTRY HAS BEEN DE FACTO DISMEMBERED, AND GEORGIA HAS ESSENTIALLY BEEN FORCED INTO THE ARMS OF RUSSIA.

RUSSIAN FORCES, IT SHOULD BE NOTED, HELPED A GREAT DEAL TO DESTABILIZE AND WEAKEN GEORGIA. MOSCOW'S BEHAVIOR IN GEORGIA SHOULD BE AN OBJECT LESSON TO US WHEN CONSIDERING RUSSIA'S POSSIBLE ROLE AS A PEACEKEEPER IN CONFLICTS ON THE TERRITORY OF THE FORMER SOVIET UNION.

SOME PEOPLE ARGUE THAT RUSSIA WAS ESPECIALLY VINDICTIVE TOWARDS GEORGIA BECAUSE THE RUSSIAN ARMY RESENTS EDUARD SHEVARDNADZE'S ROLE IN REMOVING SOVIET TROOPS FROM EASTERN EUROPE. WHETHER OR NOT THIS IS TRUE, EDUARD SHEVARDNADZE'S CAREER AND REPUTATION ARE RELEVANT FOR OTHER REASONS. THERE IS A KEY DIFFERENCE BETWEEN EDUARD SHEVARDNADZE AND OTHER FORMER COMMUNIST PARTY LEADERS WHO NOW ARE HEADS OF STATE. UNLIKE, FOR EXAMPLE, CENTRAL ASIAN LEADERS, WHO HAVE MADE NO BONES ABOUT SUBORDINATING HUMAN RIGHTS TO NATIONAL INTERESTS, EDUARD SHEVARDNADZE HAS ASSOCIATED HIMSELF WITH DEMOCRATIZATION, AND STAKED HIS REPUTATION AND LEGACY, ON THAT ASSOCIATION. FOR THAT REASON, WE EXPECT MORE OF HIM. I LOOK FORWARD TO HEARING OUR WITNESSES DISCUSS THE STATE OF DEMOCRATIZATION AND HUMAN RIGHTS IN GEORGIA TODAY.

PREPARED STATEMENT OF DR. EDUARD GUDAVA
PRESIDENT, THE U.S.-GEORGIA FOUNDATION

**HUMAN RIGHTS AND DEMOCRATIZATION
IN THE REPUBLIC OF GEORGIA**

US Aid To Georgia. What To Do.

Thank you Mr. Chairman, Members of the commission, the staff. Thank you for inviting me here. As I stand before you today, I cannot help recalling my first appearance before you in 1987. When the Soviet Union still existed, my English was even worse than it is right now, and I found it difficult to insert some humor into my public remarks about Georgia: difficult, but possible. One would imagine that today, four years since Georgia declared independence from the Soviet Union, and after the collapse of the evil empire, it would be easier than before to begin my remarks with some kind of joke about the Caucasus. Unfortunately, recent developments in my fatherland are anything but funny.

Perhaps none of the republics of the former Soviet Union has had a more difficult and wrenching passage to freedom than Georgia. As you all perfectly now, after the former president Zviad Gamsakhurdia was ousted in January of 1992 and replaced by temporary State Council headed by Eduard Shevardnadze, democratic elections were held the same year and a legitimate government was formed.

The presence of Eduard Shevardnadze has been a positive one. He has joined a coalition of pro democratic forces, and has pledged to help build real western oriented democratic institutions. Despite Shevardnadze's history as a communist boss, these democratic political forces were willing to give him the benefit of the doubt.

"It is better to have a repudiated communist like Shevardnadze, than the former dissident Gamsakhurdia, who became a dictator" That was probably the mood of Georgian people. In any event, people sincerely believed that Shevardnadze would lead Georgia from political turmoil and economical disaster. They believed that he would:

- Secure Georgian territorial integrity
- Achieve national reconciliation among all factions
- Create a sound program of political and economic reforms
- Guarantee Western support in implementing a transitional program.

In one word, Georgia embraced Shevardnadze as a panacea for all its misfortunes. The West also welcomed Shevardnadze's return, confident that he would catalyze the stabilization of the region.

His three years in power, unfortunately, have yielded opposite results:

- Dismemberment of the Georgian state. Abkhazia is lost, and tensions in South Ossetia and other ethnic regions remain dangerously high.
- The attempted consolidation of different factions in the Georgia nation has been in vain. Shevardnadze's government has been unable to replace Zviad nationalism with another ideological doctrine.
- No comprehensive plan of reforms was ever created or introduced in Georgia.
- The current government is unable to stop the country from sliding into anarchy, corruption, crime, and terrorism.

Georgia is currently plunged in darkness, by all meanings of the word. Water, gas, and electricity are frequently unavailable, even in the capital, Tbilisi. The economy is in shambles, industry is functioning at less than a fifth of its capacity, and inflation is doubling each month. The standard of living has dropped far beyond poverty.

Human Rights

As for human rights, it is no wonder that in the background of such a disastrous general situation in Georgia, the abuse of internationally recognized human rights continues routinely. Among the witnesses today we have a representative of a specialized human right organization who will describe a variety of violations of human rights in Georgia. I am familiar with these reports, both governmental and non governmental. I entirely agree with these assessments. The only point that I believe really needs to be made here is that most of human rights abuses in Georgia were inherited from the past; they are nothing new.

Frankly speaking, the entire Georgian judicial system, consisted of the old Soviet appointees, is corrupt; it often receives its orders from powerful personalities both from within and from outside the government. Also, there is nothing new in torture being used in criminal investigations or in injustice found in penitentiaries; these are remnants of the old Soviet system. Anyone who was lucky enough to enjoy a relationship with the Soviet penitentiary system, and I was, can testify to the fact that prison officials use certain inmates to oppress other target prisoners. Soviet investigators did not bother to waste their resources conducting costly investigations or trials, such as we do here, for example, OJ Simpson. The Soviet judicial system tended to speed up judicial process by simply forcing the criminal suspect to confess, regardless of the suspect's guilt. These practices have been inherited by many of the USSR's successor states, including Georgia.

However, there is something that is absolutely new, and absolutely dangerous and menacing in many of the NIS's, especially in Georgia. The explosion of killings, organized crime, and political assassinations in Georgia is coupled with another new phenomenon, the utter impotence of the authorities in dealing with these matters. These are the urgent human rights issues in Georgia, and are of paramount importance.

In Georgia there are currently 19 political assassinations whose investigations have gone nowhere. It is true there have been killings in many other regions of the former USSR. The well publicized recent assassination of Russian TV Network Director Vlad Listyev drew worldwide attention to the problem. Yet, I would like to stress the evident difference between such murders in Georgia and other regions.

In Georgia political assassinations are committed in broad daylight. Killers do not bother to cover their faces or hurry up during and after their crimes. The criminals openly demonstrate their fearlessness of the law.

I would like to draw your attention to the killing last December of the chairman of the Georgian National Democratic Party, Georgi Chanturia. USGF issued a Press Release concerning this savage political assassination and I would like to ask that it be put on the record.

On December 3, 1994, Georgy Chanturia and his wife Irina Sarishvili were gunned down outside their home in Tbilisi, as they were leaving for the National Democratic Party headquarters for the final day of the party's congress, where Mr. Chanturia was to make the closing speech.

Gunmen at least five persons in two cars assassinated Georgi Chanturia. Perpetrators unloaded more than thirty rounds into his body, and Sarishvili took six bullets. Mr. Chanturia died at the scene, and one other member of the party died in the hospital. Sarishvili, however, survived, but is still carrying one bullet in her chest.

Georgi Chanturia and Irina Sarishvili were the most prominent democratic politicians in Georgia. They were veteran democratic activists, dissidents, and former political prisoners. They fought for the freedom and independence of Georgia long before perestroika began and the Soviet Union collapsed.

National Democratic Party of Georgia is the only political organization that openly declared the fight against organized crime and corruption as its main goal. The NDPG is involved in extensive international activities. The party was accepted as a full member of Christian Democratic International, and Georgy Chsanturia was appointed to be a General Secretary of this international organization.

The party had become very popular in Georgia, and Chanturia was seen a potential presidential candidate. Irina Sarishvili was the Deputy Prime Minister until resigning in protest of Shevardnadze's rapprochement with Russia and bringing Georgia into the Russian dominated Commonwealth of independent States. Shortly before the assassination, the NDPG party members discovered planted listening devices, or bugs, in their headquarters. Chanturia condemned several Georgian officials, including the Chief of Georgian Security Service, Mr. Igor Georgadze. Chanturia demanded their resignations.

The sad irony of the event is that Chanturia planned to unmask certain governmental officials during his closing speech at the party's congress. However, he was slain. Shortly after, Mr. Georgadze received promotion in rank. In addition, people in Georgia are sure that Irina Sarishvili will be finished off; they are merely guessing how and when the killing will take place.

The flourishing of such a terrible criminal environment has been harmful for political and social life. As a result, efforts to transform Georgia into a democratic and civilized nation, based on respect for the rule of law, have been stymied.

Along with the corruption that plagues the current administration, Georgia as well as many new republics and Russia, is sinking into an abyss of contract killing, drug trafficking, money laundering, and bank fraud.

Organized crime discredits the market system and undermines democratic institutions. The government must drastically reorganize their law enforcement and legal systems. It should involve the creation of entirely new criminal investigation agencies, the arrests and prosecutions of suspected prominent criminals, the rewriting of the criminal code to better define organized crime, and the recruiting and training of a new judiciary. These are just a few first steps that should be taken.

Governments must apply economic policies that foster the free market, not mafia development. The West should cooperate with local law enforcement authorities as much as possible to share computerized data on criminal activity, to identify trustworthy and reliable law enforcement personnel in Georgia, to provide help in writing criminal codes, and to create witness relocation programs, etc. The topics of expanding crime in the former Soviet Bloc countries and appropriate Western reactions are in-depth topics, the details of which are beyond the bounds of the discussion today.

Nevertheless, this troublesome rise in crime should be the focus today, because without dealing with this fundamental obstacle to the normalization and decriminalization of Georgia and other countries in the region, it is impossible to speak meaningfully about human rights and democratization.

Democratization: What The US Could and Should Do

Severe problems are on both ends of this process, both for the aid-supplying country and recipient -- Georgia.

On the one hand, Georgia has met all the qualifications to be excluded from US assistance programs such as Food for Progress, PL 480, and others because it does not meet the requirements for such assistance. The best circumstance for choosing to discontinue aid would be a determination by the 104th Congress that Republic of Georgia no longer deserves US aid or that the aid is not effectively assisting the transition to democracy or economic freedom.

In this case, the US would save \$155 million of US taxpayers' money for fiscal 1996. In addition, it may seem that the removal of the wrongly targeted, poorly distributed, and inefficiently managed US aid cannot have a negative effect by further worsening the political and economic tangle of Georgia's problems. One might also argue that the US should not deal with the mafia.

However, USGF does not recommend severing aid right now and considers it necessary to continue US Governmental assistance to the Republic of Georgia for a number of reasons:

- If US aid is eliminated entirely it would worsen matters for the population because Georgia entirely depends on humanitarian grain shipments from abroad. Chaos and crime would intensify resulting in advancement of organized crime structures.
- Terminating US aid to Georgia would leave her alone with the Russian modern expansionism, thus worsening the situation in the Caucasus. A slide into an irreversible and complete criminal anarchy that would endanger the stability of not only Georgia and the Transcaucasus region, but eventually this would affect the Western world through the expansion of organized crime. Hence, a cut in aid would actually be detrimental to US national interests.
- USGF's democratic friends inside Georgia tell us that aid is still an important symbol of US commitment to them in their standoff against the Russian drive to reestablish an empire. Aid visibly demonstrates the Western support to the cause of democracy in Georgia.

We at USGF strongly believe that US aid to the Republic of Georgia should

be intensified despite that the current disastrous situation indicates that the country is not currently moving substantially forward on its path toward the democratization.

Stating that US aid to the Republic of Georgia is greatly needed does not mean, however, that the current programs utilizing this aid denote the right solution. I would like to note that the effectiveness of the assistance to a foreign country in general, especially channeled through such a rigid sophisticated bureaucratic apparatus as the Agency for International Development, is highly questionable. The countries which have been heavily subsidized by AID remain very poor because aid and technical assistance to them did not encourage the full-scale transition to a free-market. Instead, heavy dependence on foreign aid slowed down the development of the economic freedom infrastructures and promoted statist economic policies.

Georgia does not need to be listed on AID's eternal list of subsidized countries. What Georgia desperately needs is the United States' tangible help setting up democratic institutions, the rule of law, and free-market infrastructures. Precisely for this purpose, our foundation was created here in Washington DC at the request of Georgia's political leaders and free-market reformers.

Unfortunately, this type of potentially invaluable aid has not been provided to the republic yet. In spite of the fact that we prepared a number of pilot projects in many spheres of the democratization process, it has been impossible so far to move things from the ground because of the current bureaucratic incapability of the US foreign aid complex. Based on my first hand experience in dealing with this system, we thoroughly support the current initiative of the leaders of the 104th Congress to modernize the US foreign aid complex in order to make it more effective.

The success of supplying Georgia with US aid rests on following primary principles:

- ❶ Control of the distribution of aid should decrease the possibility of this aid somehow serving to enrich the criminal elements in Georgia.
- ❷ The US legislature should support innovative ways to improve the program design, efficiency, and delivery of aid to the Republic of Georgia.
- ❸ The best personnel, expertise, and technical resources available in both the US and Georgia must be involved in the assistance process in order to make such aid effective and ensure against worsening the Georgian situation.

- ④ Active US intervention to assist Georgia in the transition to a free-market economy and a healthy democratic state, based on internationally recognized respect for the Rule of Law and Human Rights, can be undertaken ONLY with the consent and willingness of the powers that exercise control over Georgia.
- ⑤ The Russian factor must be considered in all attempts of active engagement with Georgia. The Russian Federation must be aware and at least minimally supportive of Western assistance in Georgia, in order to insure stability and friendliness in the region, while protecting the practical feasibility of aid projects.
- ⑥ It is naive to expect that Western aid will heal Georgian wounds overnight. However, so long as the US remains engaged, there is a chance that Georgia will eventually join the community of civilized nations. If the US and the West isolate themselves from Georgia, that possibility disappears.

To achieve American foreign policy goals, U.S. aid to the Republic of Georgia must be delivered quickly and efficiently. This can not be accomplished if the old approach and reliance on AID experts remain.

In conclusion, I would like to list the steps to be made by the US in order to achieve the needed results in providing aid to the Republic of Georgia:

1. Continue conditioned assistance

A strong statement should be made in order to make clear for the Georgian people that such assistance is given not as a gesture of supporting the developments in Georgia, which have been quite bad, but this aid serves vital US national security goals. Strong caution should be expressed: the Georgian government must understand that political support for the supply of aid cannot be maintained in the United States if the Georgian government continues its scornful attitude toward human rights and the rule of law.

2. Strict control of any assistance distribution

In order to stretch the value of US taxpayer dollars and be sure that they are used for promoting and strengthening young democratic and free market structures, a control mechanism must be available. Otherwise, the US aid will disappear like water in the sand. Moreover, if this aid ends up going to corrupt institutions, the final result is quite opposite – it strengthens the criminal structures. Therefore control as how the US aid is distributed and used is crucial for the advancement of positive changes. The US embassy must have unlimited access restrain any transactions involving US aid funds.

3. Increase the volume of the US -- Georgian non-governmental program

We believe that private US NGO -- Georgian NGO programs are the most effective for supplying the aid to Georgia. Since Georgia is a compact country, the scale of its aid programs does not require a huge administrative force, and very successfully might be managed excluding big bureaucracies such as AID, USIA and others. According to existing US Code these types of programs must be conducted through a special bank account that must be under the total control of US Embassy. NGO delivered aid could be very valuable in Georgia:

- substantial amount of aid funds could be saved in low overhead administrative costs
- small private organizations are more dynamic and creative
- their financial activity in a recipient country is under the control of the US Embassy.

The funds to broaden assistance programs through private NGO's might be obtained from the shrinking of the Government - to - Government type of aid.

4. Provide support to independent NGO's in Georgia, specialized human rights monitoring groups, and independent media in Georgia

It is axiomatic that the best antidote for all kinds of shadowy activities is the existence of free and independent mass media. Therefore it is of paramount importance to strengthen existing private media entities and to encourage the creation of new ones.

5. Intensify the US Foreign Broadcast Services

It is hard to understand that such a well developed and sufficient mechanism of civic education such as VOA and Radio Liberty, which has been so effective during the Communist era, now, when there is great need to transfer Western knowledge and expertise to the states of former Soviet Union, is losing its identity and becoming less effective. We consider that RL and VOA must utilize the Western expertise on the subjects and intensify their broadcasts to deliver to Georgian listeners the quality educational programs on human rights, the rule law, and free markets

6. The US should pursue innovative ways to improve the program design, efficiency, and delivery of aid to Georgia.

In order to be effective, the aid must take advantage of the best experts, personnel, and technical resources available in both the US and Georgia.

March 27, 1995
Washington, DC

PREPARED STATEMENT OF HUMAN RIGHTS WATCH/HELSINKI TORTURE AND GROSS VIOLATIONS OF DUE PROCESS IN GEORGIA

INTRODUCTION

Between May and October 1992, nineteen men were arrested in Georgia on a variety of criminal charges; by September, their cases were united into one — Case No. 7493810 — along with the case against former President of Georgia Zviad Gamsakhurdia for abuse of power and related political crimes.¹ Today, almost two years later, President Gamsakhurdia is dead, but the legacy of the political resentment against him lives on at the trial in the form of massive violations of due process, including the torture of the defendants. Prosecuted under the government of Eduard Shevardnadze, who came to power several months after Gamsakhurdia's ouster on January 6, 1992, the defendants face charges ranging from illegal arms possession to murder, and sentences from three years of imprisonment to, in the case of sixteen of the defendants, death.

On the basis of extensive interviews in Tbilisi, the Georgian capital, in June, including with several of the defendants, Human Rights Watch/Helsinki believes that the trial has been riddled with gross violations of due process from the moment of these arrests, including torture to extract confessions. We are also concerned that at least some of the charges have been brought to punish and silence opposition to Head of State and Chairman of the Presidium Eduard Shevardnadze, in violation of the right to free speech.

Human Rights Watch is a non-governmental, non-partisan organization — the largest based in the United States and an observer at the United Nations. It is beyond our competence to evaluate the guilt or innocence of any defendant, and the organization takes no position on this issue. Our only interest is in insuring that the legal standards by which they are tried conform with internationally accepted standards of due process. Human Rights Watch/Helsinki also opposes the death penalty in all cases as cruel and inhuman. We draw attention to this case in particular not only because of the scope and seriousness of violations of due process already witnessed in this case, but as a microcosm of abuses we believe to be practiced in law enforcement and prosecutorial circles in Georgia as a whole. We will be issuing a comprehensive report on these violations in the near future.

In this case, in particular, we are concerned that the critical legal principle of the presumed innocence of defendants in all trials has been severely compromised because of the public pressure to convict.² There are several reasons for this. The first is the widespread public abhorrence of the terrorist act with which several of the defendants are charged: on June 13, 1992, a car bomb detonated on a street in Tbilisi, reportedly moments after the automobile belonging to public figure Jaba Ioseliani had passed by, leaving five by-passers dead, including a child. The second source of pressure to convict comes from the frequent public statements by such high-level government officials as Eduard

¹ Case No. 7493810 consists of charges brought in connection with seven different incidents.

1) Case No. 7492801 was brought in January 1992 against Zviad Gamsakhurdia for, among other things, abuse of power and plundering state property.

2) Case No. 265 was brought in connection with a car bomb explosion on June 15, 1992, on Chikovan Street in Tbilisi (the so-called "Chikovan Street Bombing Case"), and brings charges against Irakli Dokvadze, Gedevan Gelbakhiani and Petre Gelbakhiani.

3) Case No. 7792809 — the so-called "Khvareli" case in which individuals were arrested in the town and forest surrounding Khvareli, allegedly for attempting to launch violent acts against the Georgian government. Some 19 individuals also implicated in this case have already been convicted and are currently serving their sentences in or near Tbilisi.

4) Case No. 792815 was brought in connection with the seizure of the television and radio stations in Tbilisi on June 24, 1992, against Sergo Khakhiaashvili, Gocha Makhviladze, and Gela Mchedlishvili.

5) The case, brought in connection with an alleged attempt to hamper the elections of October 11, 1992, brings charges against Kalmakhelidze, Kapanadze and Kochlamazashvili.

6) The case of alleged theft of French perfume from the "Agregat" factory was brought against Ramazi Chargogdishvili, Ivane Lashkarashvili and Gela Mchedlishvili.

7) A case was brought in connection with a reported attempt on the life of Acting Procurator General Razmadze against Zurab Bardzimashvili, Zurab Gogichashvili, Teimuraz Kapanadze and Tamaz Tsiklauri.

² Article 14 (2) of the International Covenant on Civil and Political Rights states that "everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."

Shevardnadze, who have already labeled the defendants in this case "terrorists," Mr. Shevardnadze has also publicly called for a death sentence to be carried out in the case, although the trial is still under way.³

On August 3, 1992, an amnesty was passed releasing from criminal liability "representatives of the previous [Gamsakhurdia] administration accused of committing serious crimes" and "individuals who participated in the adventurous attempt at government overthrow of June 24, 1994, regardless of the serious crimes committed by them before the country and the people."⁴ Several of the defendants in this case seem to fall under the terms of this amnesty, but have not been released.

The trial began on October 5, 1993, at least one year after the initial arrests. It has been recessed on numerous occasions, in part because of natural delays caused by illness or prior commitments of lawyers, and in part because the court suspended hearings in response to the defendants' protests—these included standing with their backs to the courtroom and holding hunger strikes.

A pattern of abuse emerged from interviews with several of the men on trial in this case. Their accounts of their treatment almost invariably repeat the same sequence. The accused was arrested in his home by armed men in civilian clothing who did not present an arrest warrant. He was beaten on the spot, on the way to the militia station, and upon arrival. During questioning, he was beaten and threatened, questioned about his views on and relationship with former President Gamsakhurdia, and then intimidated and tortured into signing a deposition. Contact with family members and lawyers came typically only after a minimum of several days after the arrest, in some cases only after several months.

In the testimonies compiled here defendants describe having been hung upside down, burned, doused with boiling water, and subjected to systematic beatings that broke bones and cut and bruised most of their bodies. Lasting physical injuries reported included broken teeth, broken noses, impaired hearing and damaged vision. Threats to torture or murder members of their families left other scars on the defendants, one defendant tells how his children were brought to the detention center where he had been tortured and he was threatened that the children would be killed if he did not confess.

Doctors attached to the interrogation centers were described as having been accomplices to torture, assessing suspects' fitness to continue being questioned under torture. One detainee said he was hospitalized when a police doctor told interrogators the alternative was that he would die, but interrogation under torture soon continued in the hospital; another defendant described having been tortured in his hospital bed after a failed suicide attempt and an emergency operation.

Human Rights Watch/Helsinki draws attention to this case in particular not only because of the scope and seriousness of violations of due process already observed, but as a microcosm of abuses we believe to be practiced in law enforcement and prosecutorial circles in Georgia as a whole. We will be issuing a comprehensive report on these violations in the near future.

Human Rights Watch/Helsinki (formerly Helsinki Watch) has monitored and urged compliance with the human rights provisions of the 1975 Helsinki Accords in signatory countries since the organization was created in 1978. The Republic of Georgia, as a member of the commonwealth of Independent States, is obliged to uphold these provisions.

Human Rights Watch/Helsinki calls on the government of the Republic of Georgia and all those acting in an official capacity for it to take all steps necessary to prevent acts of torture and gross mistreatment of individuals in custody on Georgian territory. We call on the government to conduct a prompt and impartial investigation into allegations of torture and mistreatment made by the defendants in this case, to ensure that those who are found guilty of such acts are punished, and that the victims are guaranteed an adequate remedy for their suffering. In particular, Human Rights

³ See, for example, *Sakartvelos Respublika*, November 30, 1993.

⁴ *Gushagi*, No. 28, 1992, p. 61.

Watch/Helsinki calls on the judge in this case to exclude from the record of the trial any statement by the defendant that is to be used against him and that is shown to have been obtained through torture or other coercive means

VIOLATIONS OF DUE PROCESS

Torture During Arrest and Investigation

Article 14 (3) (g) of the International Covenant on Civil and Political Rights (hereinafter ICCPR) guarantees that a defendant not be "compelled to testify against himself or to confess guilt." Article 7 of the ICCPR states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Documented cases of torture and gross mistreatment during detention are unquestionably the most shocking and heinous of the violations witnessed in this case to date, and represent the biggest impediment to the defendants receiving a fair trial. All of the defendants in the case claim to have been beaten during the period of arrest and interrogation, in violation of the categorical prohibition against torture in international law. Many of the defendants also report that they were tortured to force them to confess to crimes they now deny having committed. These allegations of torture have been raised by the defendants' lawyers during the course of the trial. However, except for the case of Zaza Tsiklauri, whom authorities generally acknowledge to have been tortured, no investigations are known to be underway into these allegations, and despite substantial evidence of torture, the statements of the defendants continue to be used as evidence in the case.

Tamara Bardzimashvili, the daughter of defendant Zurab Bardzimashvili, reportedly has visited him in the pre-trial detention center five or six times since his arrest, and told HRW/Helsinki representatives:

When they came to arrest him, they surrounded the house and he tried to kill himself by stabbing himself in the chest. They took him to the hospital and operated on him immediately. On the third day after the arrest, they came to him at the hospital and began interrogating him. [He said] Inspector Baluashvili personally kicked him in the chest, where his wound was. . . . They have tortured him during the investigation they put needles in his leg, kicked him in his stomach, put him in a death row cell. It is indescribable. There are scars on the left side of his neck, and round scars like bracelets mid-calf on both legs. Now they don't let me in to see him anymore.⁵

Viktor Domukhovskii

Viktor Domukhovskii, one of the men facing the death penalty, recounted to a HRW/Helsinki representative who visited him in the pre-trial detention center where he was being held:

Petre Gelbakhiani [another defendant] and I were kidnapped from a friend's house in Baky [the capital of neighboring Azerbaijan] on April 6, 1992. About thirty men in civilian clothing handcuffed us, bound our eyes and put us in a car. They beat us in the car, and in the airplane which took us to Tbilisi. In the car I was sitting in the middle, and was hit from both sides with fists and automatic weapons. Petre got it worse because he was lying on the floor of the van and they hit and kicked him. They broke my nose, broke my teeth, and I had bruises all over.

They took us to the KGB building in Tbilisi. They taped us and made us speak on television. . . . They told us that we had apparently blown something up on the orders of Gamsakhurdia. We didn't admit to anything. Petre and I were the only ones who said "no." Then they took us to the police lock-up and began working us over psychologically.⁶

⁵ HRW/Helsinki interview, Tbilisi, June 1994.

⁶ HRW/Helsinki interview, Tbilisi, June 1994.

Petre Gelbakhiani

Petre Gelbakhiani, a doctor in his thirties, painted a similar picture of abuse and coercion:

About twenty or thirty men came to arrest us in civilian clothes. We were handcuffed and our eyes were bound. They did not show any arrest warrant. They beat us without stopping. It continued in the airplane. I had bruises and a bloody face. I still have scars on my face.⁷

They demanded that I confess that I was involved in a car bomb against Ioseliani and that I had done it on Gamsakhurdia's orders. They made us speak on television. Kviraia [the current Minister of Internal Affairs] was present during all of this.⁸

Irakli Dokvadze

Irakli Dokvadze, a young man with piercing black eyes, a former member of the Communist Party and an Afghanistan veteran, told a HRW/Helsinki representative:

[When I was arrested on September 4, 1992,] they started taking physical measures and threatened my children. Two guys came into the police lock-up where I was. They started threatening me. They hit me with rubber clubs. Another method is that you sit on the floor with your knees up, they put handcuffs on your hands under your legs, and they hit you on the soles of your feet. I lost consciousness. They broke my nose. Then they came to make a video film of me to air on television. They actually put make-up on my face to cover the broken nose.

They would come to interrogate me regularly at two or three in the morning. They came many times, about ten or fifteen times over the course of about a month and twenty days or two months. They beat me so many times I can't count. At one point, they kept me for two weeks in one room. They put on funeral music. It was indescribable. There was fecal matter on the floor so you couldn't walk. It stank.

They brought in my children. Baluashvili, the head of the Division for the Fight against Terrorism and Sabotage, said "If you want them to live, sign." They said, "You live on the first floor. We will throw in a grenade and then we'll say it was done by one of the people who had lost someone [in the car bomb attack on Chikovani Street that killed several people.] They threatened that the father of the seven-year-old kid who died in the blast would kill me. I don't understand how people could be so low that they would manipulate the father of a dead child. My mother was already arrested at that point.⁹ I already knew that if I didn't admit guilt they would annihilate my whole family.¹⁰

Zaza Tsiklauri

Zaza Tsiklauri is a tall man, bearded and thin when a HRW/Helsinki representative met with him in the Hospital for Inmates which adjoins the pre-trial detention cell. At the time of the interview, he had been recuperating from the ill effects of the hunger strike he and his co-defendants had embarked on in January and February 1994. He had previously been treated in the prison hospital for tuberculosis he may have contracted during confinement, and the effects of torture.

I was relaxing with my family in the village, and came back to Tbilisi for food, on family business. When I got back, by coincidence I went to my mother's house, where she lives with my brother, a deputy. Some men came in military uniform and said they wanted to clarify one or two things. They took me to

⁷ A Human Rights Watch/Helsinki representative confirmed the existence of these scars.

⁸ HRW/Helsinki interview, Tbilisi, June 1994.

⁹ See "Arrest and Harassment of Relatives"

¹⁰ HRW/Helsinki interview, Tbilisi, June 1994.

the KGB building, and began asking about my attitude toward the president, toward my brother, when was the last time I was in Grozny.¹¹ There were very high-ranking officials present.

That same night they started beating and torturing me. They didn't say what they wanted from me. They hit me with their fists, with clubs, kicked me, held me upside down, beat the soles of my feet, my head. It lasted all night. You hang there, people come in and out. I lost consciousness several times, but they would burn me or throw water on me to wake me up. I was covered in blood. I kept going in and out of consciousness. They kept moving me around. . . . The next day I was all blue, from head to toe. My left leg and left arm were broken, and I had cuts all over. My right leg was cut, and my right arm.¹²

They tried too hard — I couldn't stay conscious. The doctor said, "If you don't take him to the hospital, he'll die." They took me to the hospital. . . . I couldn't move, I could only sit or lie flat. The interrogations continued, different people doing the interrogations. They would dictate my testimony. The charges against me changed, after all.¹³ They began pouring boiling water on the right side of my neck, my back.¹⁴ They made me put on a shirt when they took me to the official. They made me wear a heavy jacket, which you can imagine on burned skin. . . . I said, "Tell me what you want and I'll sign." I had said this before. First they said I should write that I was involved in a terrorist act against [Jaba] Ioseliani. They brought in electric shock cords. I was already dreaming of dying. I wanted them to apply the shock cords. It's easy to say now, but then I was hoping they would kill me. But the chief officer said I was already ready to sign and they did not need [the cords].

I was held in solitary confinement for a month after that so that no one would see the results of the torture.¹⁵

The allegations of the torture of Zaza Tsiklauri have been officially confirmed, and were the basis for a criminal investigation (case no. 7492832), according to his wife, Nino. She reported that the case was later dropped because Mr. Tsiklauri refused to give testimony, fearing for the safety of his family if he disclosed details.¹⁶ Indeed, the charges of torture caused the chairman of the Informational Intelligence bureau of Georgia (the successor of the K.G.B.) Batiashvili to announce his resignation on August 17, 1992, ten days after Mr. Tsiklauri's arrest. Mr. Batiashvili did not, however, resign. Procurator General Razmadze ordered one charge against Mr. Tsiklauri remanded to the review of the Procuracy, citing the "fascist methods used against defendant Z. Tsiklauri, as a result of which he received numerous physical injuries."

In June 1994, a HRW/Helsinki representative received permission from pre-trial detention and hospital authorities to visit Zaza Tsiklauri, who, according to the defendant and to hospital records, was at the time recuperating from the

¹¹ When he was ousted, Zviad Gamsakhurdia, parliamentarians and a group of his supporters fled to Grozny, in the southern Russian republic of Chechnia, which borders Georgia, and headquartered there until Gamsakhurdia returned to Georgia in the fall of 1993.

¹² A doctor with the British Helsinki Group who visited Mr. Tsiklauri soon after this incident confirmed the existence of physical traumas consistent with what Mr. Tsiklauri describes.

¹³ Mr. Tsiklauri reports that he was originally charged with violations of part 1 of Article 238 of the Criminal Code ("illegal possession of firearms or explosive devices"), carrying a maximum sentence of three years of imprisonment). Later three, more serious charges were brought: violations of Parts 2, 3 and 4 of that same Article ("illegal transmission, transportation, making or selling of firearms or explosive devices" or all of the above violations, respectively, carrying a maximum sentence of ten years of imprisonment with confiscation of property).

¹⁴ A Human Rights Watch/Helsinki representative confirmed the existence of these scars.

¹⁵ HRW/Helsinki interview, Tbilisi, June 1994.

¹⁶ HRW/Helsinki telephone interview, August 1994.

compounded effects of torture, tuberculosis, which he had contracted in detention, and weakening and severe malnourishment caused by a lengthy hunger strike. According to relatives, the following day, an angry call from the judge ordered that Mr Tsiklauri be put under "strict isolation," the following day he was forcibly removed from the hospital and put back in the pre-trial detention cell, where conditions are even worse than in the hospital, and where he does not have constant access to medical care. The order was clearly punitive, and displayed gross neglect of the defendant's physical condition, as well as disregard for human rights monitoring

Gedevan Gelbakhiani

When a HRW/Helsinki representative met with Gedevan Gelbakhiani, a doctor and medical professor in his sixties currently facing the death penalty, he had been held for four months in the small hospital attached to the Tbilisi pre-trial detention facility. He told HRW/Helsinki the following

The first beating took place when I was arrested. I was taken to the municipal police precinct. . . without any arrest warrant. I was taken to Ivanov, the Deputy Minister of Internal Affairs, and several "Mkhedrioni," who were wildly on drugs.¹⁷ They were absolutely weaving. They started beating me right away, hitting me with something hard from behind. I lost two front teeth on the left side. Then they took me downstairs, where I spent a month.¹⁸

Between October [1992] and February [1993] I would be woken in the middle of the night, taken out and beaten. It was like that for six months. I would lie on the floor, and end up in one horrible room after another. . . I said, "I will change my testimony every time you beat me."¹⁹

He continued in a written statement, whose contents he confirmed in person having written.

When they finished to beat me (sic), they made me to write a statement (sic), then if my memory serves me right I was dragged to isolation cell. . . . There I spent two days under continuous loud sounds of run (sic) water and ventilation system which is the continuation of torture to be used after beating. The noise produced by strong flow of water combined with loud noise produced by the ventilation amplifies the volume of the noise. This is one of the methods of torture since it exerts unfavorable and continuous (sic) impact on the nervous system. . . . Finally I was able to stick my hanky into the pipe and that stemmed it a bit. Otherwise I thought I would have gone crazy.²⁰

The second beating took place the fourth, fifth or sixth of February. I haven't seen anything like it even in the movies. They beat me terribly. About seven men, "plants" beat my right side. I was sitting down and they held me from both sides so I couldn't move. One kicked me right in the face. . . . The beating went on for two or three hours. Then they threw me into a damp cell, then into a cold room. The right side of my face was completely black on the second day. *Nekros* had set in — which is a sign of death — not bruises. I was afraid I'd lost my eye. Now I see poorly with my right eye. I have lost almost all of the hearing in my right ear. They wanted to finish with the investigation.

Recently things have been calmer. But every day there is something horrible. The hospital is as bad as the cell, maybe worse. If you saw the toilet you'd lose your mind.

¹⁷ The "Mkhedrioni" (in English, "the Horsemen") is a paramilitary group which currently serves in a *de facto* capacity as part of the law enforcement structure, often working together with the Ministry of Internal Affairs. Their leader is Jaba Ioseliani, who is generally believed to have been the target of the bomb explosion for which some of the defendants in this case are charged.

¹⁸ The maximum length of such detention allowed under Georgian law is ten days.

¹⁹ HRW/Helsinki interview, Tbilisi, June 1994.

²⁰ Statement, no date, "Tbilisi jail."

The doctors here [in the pre-trial detention facility] are security agents. They give permission for interrogations even when I am clearly not in any condition. I am a doctor, so I know what I'm talking about. The doctors assist in investigations.²¹

Mamuka Aptsiauri

Mr. Aptsiauri has written in sworn testimony that "From the first day of arrest, the supporters of Shevardnadze, the "Mkhedrioni", and the "Guards" used violent methods of investigation, beat [me] until I lost consciousness and demanded that I give false testimony against our group and President Zviad Gamsakhurdia. . . . During the investigation, the investigatory team used forbidden methods against me. During the physical pressure [nazhimi], they broke my nose."²²

Zurab Gogichashvili

In a signed statement, Mr. Gogichashvili has reported "In the process of preliminary investigation I was subjected to physical and psychological processing which resulted in aggravation of my health. My repeated demands for medical examination were not satisfied. My health is progressively worsening (sic). I developed decreased bearing, and have problems with my lungs."²³

In a statement prepared during the HRW/Helsinki visit to Tbilisi in June 1994, he reported that "On September 24, 1992, I was detained by the militia of the Gldan region of Tbilisi and, after nine days of torture I was brought up on charges of apparent illegal possession of firearms and a hand grenade. . . . I denied these charges, after which I was subjected to torture and beatings. . . . I have gone on hunger strike three times."²⁴

Givi Kalmakhelidze

In a signed statement, Mr. Kalmakhelidze wrote that "After [my arrest, I] was taken to the municipal police station of the Ministry of Internal Affairs of the City of Tbilisi, where they began mistreatment [izdevatel'stvo], moral degradation and beating as a supporter of the lawful president Zviad Gamsakhurdia. I spent twenty days in the municipal police station, then they took me to Investigation Cell No. 1 of the City of Tbilisi, where they again began mistreatment, moral humiliation and beatings, where I remain to this day [June 18, 1994]."²⁵

Teimuraz Kapanadze

In a statement written during HRW/Helsinki's stay in Tbilisi, Mr. Kapanadze reported: "During my arrest, in front of the senior head of the law enforcement body, I was savagely beaten. After I lost consciousness they threw me into the lock-up of the municipal militia. [From October 5] until October 16 [1992] they took their revenge every day with physical force, and beat me cruelly. After they created their charges (October 16) they removed me to the investigation cell, where my torture continues to this day."²⁶

Omari Kochlamazashvili

In a statement presented to HRW/Helsinki representatives, Mr. Kochlamazashvili wrote: "Despite my frequent demands, the investigation was conducted without a lawyer, and under unbearable physical and psychological pressure."²⁷

²¹ HRW/Helsinki interview, Tbilisi, June 1994.

²² Written statement submitted to HRW/Helsinki. No date.

²³ Statement, no date.

²⁴ Statement, dated June 19, 1994.

²⁵ Statement, dated June 1994.

²⁶ Statement, dated June 16, 1994.

²⁷ Statement, no date.

Tamaz Tsiklauri

Tamaz Tsiklauri's wife, Meri Zurabishvili, told HRW/Helsinki representatives her impressions after she saw her husband, four months after his arrest

His right hand was missing fingernails. He had broken teeth. He was covered in bruises - there were no white spots left on him.²⁸

Gross Mistreatment During Trial

Not only was torture used during the investigation process to extract confessions, but serious mistreatment of the defendants has continued during the pre-trial and trial period

Zurab Bardzimashvili

Defendant Zurab Bardzimashvili is an elderly invalid who before his arrest wore braces on his right arm and leg and suffered from epilepsy, and had been tortured and hospitalized during arrest and investigation. According to his daughter Tamara, he had attempted suicide on several occasions beginning the day of his arrest when he realized he was surrounded. He reportedly suffered a serious relapse in health during a trial recess on July 7, 1994. Despite his poor physical condition, it was reported that he was forcibly brought into the courtroom again when the trial reconvened on July 29. He reportedly did not withstand the stress, and had to be removed to the prison hospital.

Gela Mchedlishvili

In a statement handed to a HRW/Helsinki representative in prison in July 1994, Gela Mchedlishvili reported that "They torture and beat me and use all forms of violence, which are impossible to even imagine. This continues to this day."²⁹

Illegal Arrests

Article 9 (2) of the ICCPR states that "anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him." Subsection (3) goes on to state that: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power."

Gedevan Gelbakhiani, Zaza Tsiklauri, Tamaz Tsiklauri and Ramazi Charigogdishvili all claim that they were arrested without having been presented with an arrest warrant; this is believed to have been the case with others charged in case Meri Zurabishvili, Tamaz Tsiklauri's wife, was present during her husband's arrest:

It was evening. Armed men started shooting through our door, and another three came through the balcony. They took my husband barefoot from the shower. They stole money, rings, gold. They took me too, and held me overnight.³⁰

Failure to Inform of Charges in a Timely Manner

Most of the detainees were not informed of the charges against them at the time of their arrest. Gedevan Gelbakhiani, for example, reports that "I was informed of the charges on the third or fourth day [after my arrest]. . . . The first time I saw a lawyer was on the seventh or eighth day. They interrogated me several times without my lawyer present. He never protested the second beating."³¹

²⁸ HRW/Helsinki interview, Tbilisi, June 1994.

²⁹ Statement, dated June 27, 1994.

³⁰ HRW/Helsinki interview, Tbilisi, June 1994.

³¹ HRW/Helsinki interview, Tbilisi, June 1994.

His son, Petre Gelbakhiani, also reported being informed of charges against him only four or five days after his arrest, and after he had been beaten, intimidated, and forced to make a statement on television.

Denial of the Right to Timely Access to Legal Counsel of One's Choosing

Article 14 (3) (b) of the ICCPR guarantees a defendant the right to "adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing."

Defendant Zaza Tsiklauri bemoaned the lack of legal guarantees in the case in a conversation with a HRW/Helsinki representative: "How can the lawyers work when they themselves are under threat?" To a question about whether legal counsel had been present during questioning, he said, "There could be no discussion of such a luxury as a lawyer." This sentiment was echoed in conversations with almost everyone HRW/Helsinki representatives interviewed during their two-week stay in Tbilisi, including many who were associated with cases unconnected with the one in question.

For several months, defendant Zurab Bardzimashvili was not represented at all during the proceedings, although reportedly he had submitted an appeal to the court in January 1994. In April, Ms. Bekauri was assigned to him against his wishes. Zurab Bardzimashvili's request for a change in defense counsel was also denied at that time, leaving him effectively without defense of his choosing, as is his right.

Defendant Viktor Domukhovskii told a HRW/Helsinki representative that the first time he saw a lawyer was not until April 12, 1993, six days after his arrest. He stated that he was interrogated some five times without the presence of a lawyer. In addition, he stated that the court had denied him access to his lawyer on five occasions, the first time in October 1993, when the trial began. Petre Gelbakhiani reported that he did not see a lawyer until one week after his arrest.

Omari Kochlamazashvili and Gocha Makhviladze have stated independently that the investigation of their cases was conducted without the assistance of counsel, although they already had lawyers who had assumed their defense.

Denial of the Right to Familiarize Oneself with Information Pertinent to the Case

In this transitional period when the Georgian legislature is overhauling entire bodies of law, and when amnesties are passed in an unpredictable but often sweeping manner, lawyers and lawmakers themselves were often hard pressed to tell HRW/Helsinki representatives which laws applied in certain cases. In addition, current Georgian jurisprudence suffers from chronic and systemically poor and spotty access to legal texts. This impedes the work of judges and lawyers, and causes anxiety among defendants. As defendant Zaza Tsiklauri lamented to HRW/Helsinki, "I am being tried according to laws I don't know."

Exacerbating this already unsatisfactory situation is the judge's illegal refusal to give defendants, and in at least one case, defense counsel, full access to the materials connected with their cases, as is their right under Article 14 (3) (b) of the ICCPR and Articles 202 and 236 of the Criminal Procedure Code of the Georgian Republic. In at least one case, the judge denied the repeated requests of defense attorneys for Zaza Tsiklauri and Gedevan Gelbakhiani to allow their clients full access to the documents in the case. The entire set of pertinent documents reportedly consists officially of thirty-six volumes.

The court proceedings and the vast majority of documents pertaining to the case are in the Georgian language. According to his wife, defendant Viktor Domukhovskii speaks Georgian as a second language and requested that the 560-page written evidence against him be translated into his native language, Russian. According to his lawyer, this request was denied. The denial violates Article 15 of the Criminal Procedure Code of the Republic of Georgia.

Gedevan Gelbakhiani, a defendant who has reportedly lost significant hearing as a result of beatings during interrogation, requested that an amplifier be provided so that he could better follow the proceedings. This request was also denied, without explanation.

Zurab Gogichashvili reportedly informed the court on at least two occasions that because of hearing loss suffered during beatings and torture during investigation, he was unable to adequately hear the proceedings, and requested an

amplifier. As he was making his statement to this effect at the January 10, 1993, court session, the judge reportedly ordered him removed from the courtroom for continuing to speak when the judge spoke. An individual close to the case maintains that Mr. Gogichashvili continued to speak because, being hard of hearing, he was unaware that the judge was speaking.

Ketevan Bekauni, the defense lawyer ultimately assigned to Zurab Bardzimashvili, requested at least fourteen days to familiarize herself with the pertinent materials. The court allowed her only five days and reportedly gave only partial access to documents.

OTHER VIOLATIONS

Harassment and Arbitrary Arrests of Relatives and Denial of Family Visits

Gedevan Gelbakhiani

Gedevan Gelbakhiani, now facing the death sentence, told a HRW/Helsinki representative: "I was not an active [political] figure. I was arrested simply because of my son [Petre, also a defendant in the case]. It was to get back at him, to put pressure on him. When they beat me the second time, they shouted this out. . . . They have kind of achieved their goal."³²

Tamara Bardzimashvili and Mari Gugeshashvili

Tamara, a young teacher and the daughter of Zurab Bardzimashvili, told HRW/Helsinki representatives the following:

On October 7, 1992, two days after the arrest of my father, they arrested me, too. Without any warrant, four armed men took me from my home. They stated that they were officers of the Information-Intelligence Directorate and showed some kind of identification. I don't remember what kind because I was so frightened - I had been home alone. . . . They demanded that I appear on television and condemn Gamsakhurdia and his supporters, including my father. When I refused, they started to beat me.³³

They hit me three times in the chest and stomach. I started bleeding. I was put in solitary confinement until the next morning. I have had gastritis for the last eight months, since they beat me.³⁴

The next morning, beaten and bloody, they let me go and warned me not to speak about this fact to anyone or [there would be] physical retribution.³⁵

The day the trial started [October 5, 1993], . . ., they arrested my mother, Mari Gugeshashvili, a teacher and member of the Helsinki Union of Georgia since 1989. Militia officers from the Gldan region of Tbilisi arrested her at home with no reason or display of the pertinent warrant. They held her for two days, and also forced her to publicly condemn Z. Gamsakhurdia and the whole national movement. After she was released, representatives of the *kommendatura* and press secretary L. Chkhenkeli personally appeared at School 174, where my mother works to this day, and openly demanded that the

³² HRW Helsinki interview, June 1994, Tbilisi.

³³ Statement, dated June 20, 1994.

³⁴ HRW Helsinki interview, Tbilisi, June 1994.

³⁵ Statement by Tamara Bardzimashvili, dated June 20, 1994. Contents confirmed in person, HRW/Helsinki interview, June 1994, Tbilisi.

director fire her from work since she is a "Zviadist." But the teachers group, directorate and the students defended their teacher.³⁶

Leila and Nodari Dokvadze

The mother of defendant Irakli Dokvadze told HRW/Helsinki representatives:

"I was arrested and held for one month after Irakli was arrested. When they finally released me, they said that, officially, I had been detained for violation of the curfew in Tbilisi. They still have my passport to this day, and I can't get it back."³⁷

Her husband, Nodari, reported that on June 24, 1992, "We were sitting at home, the house that we shared with Irakli, his wife and children, when the militia came. There was no search warrant, but they took things. They basically just robbed us. . . . On October 8 of that year, right before the elections, I was brought in to the militia station from my place of work. The lock-up cell was overflowing with "Zviadists."³⁸ They kept me for four days and let me go without charges."³⁹

Giorgi Kikaleishvili

Mr. Kikaleishvili is the brother of the wife of defendant Viktor Domukhovskii. He reports having been detained and his house searched by armed men seven times since February 1992, when his sister and the Domukhovskii children came to live with him after the arrest. They reportedly found nothing on any of these occasions, nor did they bring charges against him. He told a HRW/Helsinki representative about the pattern of harassment of the family, which he claims to be gratuitous. He reported that armed men repeatedly come to his house and search it, without showing a search warrant, and he is taken to the police precinct for questioning, detained for one or two hours and released without charges. The men, he reports, claim they are looking for illegal weapons.

Mr. Kikaleishvili reports that on one occasion, on May 24, 1993, the men "threw everything on the floor." On another occasion, he reported, they detained his wife and young children. He told HRW/Helsinki, "They never find anything. But they take my fingerprints and make me feel like a criminal. . . . I don't know the reason for it, but of course it's connected with politics." When he was again taken in on July 1, 1994, Mr. Kikaleishvili reported that one of the men conducting the search told him "We have been making the rounds since 4:00 a.m., according to a list."⁴⁰

Mamuka Aptsiauri has stated that "Not only I but my family experienced the pressure of investigation. KGB agents, without any warrant and on the pretext of a search, have broken into my house several times and searched the apartment. They frightened my parents: 'If you or your son don't say where the arms are kept, we will shoot your son,' and used other psychological and moral methods of pressure."⁴¹

Zaza Tsiklauri and Viktor Domukhovskii also reported to HRW/Helsinki that their family members had been denied visiting rights. Mr. Domukhovskii stated that he was not allowed to see a family member for two and a half months after his arrest.

³⁶ Statement by Tamara Bardzimashvili, dated June 20, 1994. Contents confirmed in person, HRW/Helsinki interview, June 1994, Tbilisi.

³⁷ HRW/Helsinki interview, Tbilisi, June 1994.

³⁸ A perjorative term for supporters of former President Zviad Gamsakhurdia.

³⁹ HRW/Helsinki interview, Tbilisi, June 1994.

⁴⁰ HRW/Helsinki interview, July 1994, Tbilisi.

⁴¹ Statement, dated June 1994.

As one person close to the case stated, "Permission depends entirely on the judge's mood. If he is in a good mood, he will grant it, otherwise he won't."

Gedevan Gelbakhiani, the doctor now facing the death penalty, also told HRW/Helsinki: "I didn't see Petre [his son, facing identical charges] for two and a half years. I was getting used to the idea of not seeing him again. It was very difficult."⁴²

Harassment and Discriminatory Dismissals of Defense Attorneys

For reasons that are not immediately apparent, the judge or the Supreme Court or the Bar Association or a combination of these authorities have ordered that defense lawyers must assume or continue to provide a defense even against the wishes of the defendant during the course of this trial. The right for a defendant to communicate with legal counsel of his own choosing is enshrined in Article 43-1 of the Criminal Procedure Code of the Republic of Georgia and Article 14 (3) (b) of the ICCPR. At the same time, at least one independent lawyer appears to have been arbitrarily stripped of his credentials, losing the right to represent defendants before the courts. There is concern that these measures are intended to permit the accused in political trials to be defended only by court-appointed lawyers they can not dismiss.

In the first case, independent lawyer Tengiz Nijaradze, defense lawyer for Zaza Tsiklauri and Viktor Domukhovskii, was released from his contract by Zaza Tsiklauri and therefore could not legally continue his defense. The court initially rejected this change, in violation of Article 45 of the Criminal Procedure Code and Article 10 of the Ordinance of the Plenum of the Supreme Court of April 29, 1992, which allows a defendant to change defense counsel at any point. Indeed, chairman of the Collegium Vladimir Baratashvili reportedly called and visited Mr. Nijaradze with a personal appeal that he resume the defense. Soon after, however, the Collegium of Lawyers, the equivalent of the Bar Association or Lawyers Union in other countries, expelled him from the Collegium, effectively stripping him of his right to work as a lawyer in Georgia. According to Chairman Baratashvili, Mr. Nijaradze had been expelled because he had arrived late for trial on several occasions, and on one occasion had failed to appear altogether. Mr. Nijaradze denies these allegations, asserting that it was instead a veiled effort to replace his outspoken defense with the defense of a government-appointed lawyer who would be more compliant to the wishes of the judge. As a result of this decision, Mr. Nijaradze is now unemployed, and his two clients are being represented against their will by court-appointed attorneys.

In the second such instance, the court has denied Mr. Tsiklauri's request that his wife assume his defense, as is permitted under Georgian law. The judge reportedly issued the rejection on the grounds that Mr. Tsiklauri was artificially trying to drag out the proceedings. His wife told HRW/Helsinki representatives that this could not have been the case, however, since her appointment would not have required any delays, because she was already intimately familiar with the case.

In the third instance, Ketevan Bekauri, a young, court-appointed lawyer who was already defending Zurab Bardzimashvili, was ordered on June 15, 1994 to assume the defense of Zaza Tsiklauri as well. Although she is state-appointed, she told a HRW/Helsinki representative that, "[the authorities know] I won't be silent," and sees this move as a way to legitimize removing her from the trial process. She could not, however, assume the defense of someone who had rejected her services. She reports already having been threatened with exclusion from the Collegium, as Mr. Nijaradze had been, if she refused the order.⁴³ Her exclusion would leave another two defendants in the case without independent defense attorneys. It was reportedly announced on August 5 that Ms. Bekauri was relieved of the duty; yet another state lawyer, Givi Kapanadze, was appointed in her stead, again against the explicit wishes of Mr. Tsiklauri.⁴⁴

In a signed statement to our organization, defendant Zurab Gogichashvili writes, "The situation of terror and violence forces me to decline the services of [my] lawyer, Konstantin Gogichaishvili, who is my close relative, since he [illegible] is threatened with danger. . . . Since I am concerned for the life of my lawyer and the fact that he could be

⁴² HRW/Helsinki interview, Tbilisi, June 1994.

⁴³ HRW/Helsinki interview, Tbilisi, June 1994.

⁴⁴ HRW/Helsinki telephone interview with Nino Tsiklauri, August 5, 1994.

deprived of means of subsistence (expel him as well from the Collegium of Lawyers i.e. dismiss him from work) I decline the services of a lawyer and will defend myself personally."⁴⁵

RECOMMENDATIONS

It is the responsibility of the government of the Republic of Georgia and of those acting in an official capacity for the government to take all steps necessary to prevent acts of torture and mistreatment on its territory and to provide redress to those who have suffered such treatment. The defendants in this case require such redress. Furthermore, the government and its agents must ensure that defendants are given a fair and impartial forum in which to have the evidence against them evaluated. HRW/Helsinki makes the following recommendations:

To Judge Mirza Dolidze:

- Exclude from the record of the trial any statement by a defendant that is intended to be used against him and that is shown to have been obtained through torture or other coercive means. Such statements are admissible only to prove the allegation of torture or coercion. Similarly, exclude from the evidence for the prosecution any physical or documentary evidence that was obtained as a result of torture or coercion;
- If, during the course of the proceedings, evidence reveals that the defendants were not informed of the charges against them in a timely manner, prosecute those responsible and provide defendants with damages;
- Guarantee defendants access to the legal counsel of their choosing and ensure that defendants are given sufficient time to consult with their defense counsel to prepare their defense;
- Guarantee to defendants and their defense counsel equal access to all relevant evidence in the case, sufficient time to familiarize themselves with such evidence, as well as the chance to present their own evidence and to petition for the production of evidence for the defense;
- Guarantee to those defendants who do not speak or understand Georgian the free assistance of an interpreter;
- Allow defendants access to proper medical evaluations and release into the care of medical professionals those defendants who are determined to be in poor health.

To the General Procuracy of the Republic of Georgia

- Initiate prompt and impartial investigations into allegations of torture and mistreatment of individuals under investigation and, where such allegations are substantiated, ensure that the victims are able to obtain an adequate remedy as provided for in international law;
- Ensure that any statements that are shown to have been the result of torture or coercion, as well as any other evidence so obtained, are not offered as evidence in any proceeding against the defendants;
- Initiate prompt and impartial investigations into the alleged torture of detainees by police officers in this case, and if there is evidence of torture, bring criminal charges against all who committed acts of torture, as well as against any public officials who consented to or acquiesced in the torture;
- Review the legality of the defendants' detention and prosecute anyone responsible for an illegal arrest. Any evidence for the prosecution obtained through the illegal arrest of the defendant should be excluded from his case.

⁴⁵ Statement, dated June 26, 1994.

If the arrest is deemed illegal and the decision to prosecute is not otherwise based on legally obtained evidence, then the defendant should be released

To the Government of the Republic of Georgia

- Review interrogation rules and procedures for the custody and treatment of those in custody in an effort to prevent future acts of torture,
- Educate all law enforcement officials and public officials about the absolute prohibition against torture and make clear that any official proved to have committed an act of torture or to have consented to or acquiesced in acts of torture will be charged with a criminal offense and prosecuted to the full extent of the law,
- Provide an effective means of redress for the victim of torture and the right to fair and adequate compensation,
- Ensure that victims of torture have the opportunity to file a complaint against those responsible for their torture and guarantee both the victim and his or her supporting witnesses safety from ill-treatment or intimidation as a consequence of the complaint

**APPENDIX A:
List of Defendants and Charges Against Them
(in alphabetical order)**

The following information was taken from the indictment statement as it stood when the investigation was concluded in August 1993. Many of the charges are said to have been changed prior to that moment

1. **Mamuka Aptsiauri**: born 1971. Arrested September 2, 1992, Khvareli. Charged with violating Articles 17-67 (attempted terrorism) and 17-69 (attempted subversive act) of the Criminal Code of the Republic of Georgia (hereinafter the Criminal Code.)
2. **Zurab Bardzimashvili**: born 1949, geologist. Arrested on October 5, 1992, Tbilisi. Charged with violating Articles 17-67 (terrorism), 78 (banditry), 17-69 (subversive act) of the Criminal Code
3. **Bessarion Bochoridze**: born 1961; profession unknown. Arrested August 11, 1992. Charged with violating Articles 90-1 (failure to report a state criminal act) and 205 (concealment of a criminal act) of the Criminal Code.
4. **Ramazi Charigogdishvili**: born 1960, driver. Arrested July 10 or 11, 1992, Tbilisi. Charged with violating Article 78 (banditry) of the Criminal Code
5. **Mamuka Danelia**: born 1959, student. Arrested August 13, 1992, Tbilisi. Charged with violating Articles 90 (failure to report a state criminal act) and 206 (concealment of a criminal act) of the Criminal Code
6. **Viktor Domukhovskii**: born 1948, physicist, former Deputy of the Supreme Council of Georgia, former chairman of the Judicial Commission. Arrested on April 6, 1993, in Baky, Republic of Azerbaijan. Charged with violating Articles 17-67 (attempted terrorism), 17-69 (attempted subversive act) and 78 (banditry) of the Criminal Code.
7. **Irakli Dokvadze**: born 1961; television and radio engineer, electrician. Arrested September 4, 1992, Khvareli. Charged with violation of Articles 17-67 (attempted terrorism), 17-69 (attempted subversive act), 78 (banditry), 104, parts 4 and 6 (premeditated murder of two or more people) and 104, parts 4 and 6 (murder) of the Criminal Code.
8. **Gedevan Gelbakhiani**: born 1937, doctor, professor, therapist. Arrested on September 13, 1992, Tbilisi. Charged with violation of Articles 17-67 (terrorism), 17-69 (subversive act), 78 (banditry), 17-104, parts 4 and 6 (premeditated murder of two or more people) and 104, parts 4 and 6 of the Criminal Code.
9. **Petre Gelbakhiani**: born 1962, doctor, candidate of medical sciences. Arrested April 6, 1993, Baky, Republic of Azerbaijan. Charged with violation of Articles 17-67 (attempted terrorism), 17-69 (attempted subversive act), 78 (banditry), 17-104, parts 4 (premeditated murder of two or more people) and 104, parts 4 and 6, of the Criminal Code.
10. **Zurab Gogichashvili**: born 1956; farmer, technician. Arrested September 24 or 30, 1992. Charged with violating Articles 17-67 (attempted terrorism), 17-69 (attempted subversive act) and 78 (banditry) of the Criminal Code.
11. **Givi Kalmakhelidze**: born 1952; military. Arrested September 29 or October 7, 1992. Charged with violating Articles 17-67 (attempted terrorism) and 78 (banditry) of the Criminal Code.
12. **Teimuraz Kapanadze**: born 1950, construction worker, chief of the Republican Committee of Material Resources. Arrested October 5 or 6, 1992. Charged with violating Articles 17-67 (attempted terrorism), 17-69 (attempted subversive act) and 78 (banditry) of the Criminal Code.
13. **Sergo Khakhviashvili**: born 1966; carpenter. Arrested June 24, 1992, Tbilisi. Charged with violating Articles 17-67 (attempted terrorism) and 78 (banditry) of the Criminal Code.

14. Omari Kochlamazashvili: born 1943, driver, farmer Arrested October 4 or 7, 1992 Charges unconfirmed, but are likely to include violations of Articles 17-67 (attempted terrorism), 17-69 (attempted subversive act), and 78 (banditry) of the Criminal Code

15. Ivane Lashkarashvili: born 1960, driver Arrested on July 11, 1992 Charged with violating Article 78 (banditry) of the Criminal Code

16. Gocha Makhviladze: born 1958, economist Arrested June 24, 1992, Tbilisi Charged with violating Articles 17-67 (attempted terrorism) and 78 (banditry) of the Criminal Code.

17. Gela Mchedlishvili: born 1968, policeman, teacher at technical college Arrested June 24, 1992, Tbilisi Charged with violating Articles 17-67 (attempted terrorism) and 78 (banditry) of the Criminal Code.

18. Tamaz Tsiklauri: born 1954, economist Arrested October 5, 1992, Tbilisi Charged with violating Articles 17-67 (attempted terrorism), 17-69 (attempted subversive act) and 78 (banditry) of the Criminal Code.

19. Zaza Tsiklauri: born 1961, physicist Arrested on August 7, 1992, Tso, Republic of Georgia Charged with violating Article 238, parts 1, 2, 3 and 4 (illegal possession, holding, transport, buying, production and selling of a weapon or explosive device) of the Criminal Code

**APPENDIX B:
Human Rights Watch/Helsinki Letter**

HUMAN RIGHTS WATCH/Helsinki

Formerly Helsinki Watch

□ 485 Fifth Avenue, New York, NY 10017 6104 TEL (212) 972-8400 FAX (212) 972-0905 E-mail: hrwatchnyc@igc.apc.org
 □ 1522 K Street, NW, #910, Washington, DC 20005 1202 TEL (202) 371-6592 FAX (202) 371-0124 E-mail: hrwatchdc@igc.apc.org
 □ 33 Islington High Street, London, UK, N1 9LH TEL (4471) 713 1995 FAX (4471) 713-1800 E-mail: hrwatchuk@igc.apc.org
 □ 15 rue Van Campenhout, 1040 Brussels, Belgium TEL (32) 732 2009 FAX (32) 732 0471
 ■ Moscow, Russian Federation TEL and FAX (7095) 265-4448 E-mail: hrmoscow@glas.apc.org

JERI LABER
 Executive Director
HOLLY CARTNER
JULIE MERTUS
 Counsel
ERIKA DAILEY
RACHEL DENBER
IVANA NIZICH
CHRISTOPHER PANICO
 Research Associates

July 20, 1994

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 George Soros
 Susan Weber Soros
 Michael Sovern
 Fritz Stern
 Svetlana Stone
 Rose Svirson
 Lin Ullman
 Craig W. Wallace
 Richard W. Whitehead
 Jerome R. Wiesner
 William D. Zabel

Gngon Shalambendze
 GU'IN, Orthachala Prison
 ul Gorgasali, 89a
 Tbilisi 380014
 Republic of Georgia
 By telegram

Dear Mr. Shalambendze,

As you know, Human Rights Watch/Helsinki (formerly Helsinki Watch) is a non-governmental, non-partisan organization, the largest based in the United States and an observer at the United Nations. On behalf of Human Rights Watch/Helsinki representatives Erika Dailey and Alexander Petrov, with whom you met last month in Tbilisi, I take this opportunity to thank you for your consideration and your assistance in the conduct of our work in Georgia.

We are greatly disturbed that on July 2 a defendant who was undergoing medical treatment and observation at the Republican Hospital for Inmates was transferred back to the pre-trial detention center (SIzo), at great risk to his health. The defendant, Zaza Tsiklaun, is currently on trial on charges of violating Article 238, parts 1, 2, 3 and 4 of the Criminal Code of the Georgian Republic (illegal possession, acquisition and transfer of firearms and explosive devices).

Since his arrest on August 7, 1992, he reportedly has been removed to the SIzo hospital for treatment from the pre-trial detention center in Tbilisi on three occasions. The first time, he told our representatives, he was recovering from severe torture, including brutal beatings and scaldings with boiling water, inflicted by law enforcement officials in Tbilisi. He reported that the torture took place initially in order to extract a confession. His most recent stay in the hospital was to allow him to recover from a hunger strike he held to protest the violations of due process that reportedly led to his arrest and mistreatment in detention. Within two days of meeting with one of our representatives, Mr. Tsiklaun was abruptly returned to the SIzo, we believe prematurely and punitively, to prevent Mr. Tsiklaun from further contact with observers.

**HUMAN
RIGHTS
WATCH**

KENNETH ROTH, Executive Director CYNTHIA BROWN, Program Director HOLLY J. BURKHALTER, Advocacy Director
 CARA LAMARCHE, Associate Director JUAN E. MÉNDEZ, General Counsel SUSAN OSNOS, Communications Director
 ROBERT L. BERNSTEIN, Chair ADRIAN W. DEWIND, Vice Chair

Human Rights Watch is a not-for-profit corporation monitoring and promoting human rights in Africa, the Americas, Asia, the Middle East, and among the signatories of the Helsinki accords.

We fear that lack of constant medical supervision will exacerbate his already poor physical condition, seriously endangering his health. We respectfully urge you to use your good offices to insure that Mr. Tsiklauri be returned immediately to the supervision of medical personnel, and be allowed all assistance required to maintain him in a satisfactory health condition.

Thank you in advance for your attention to this urgent situation. We look forward to continued cooperation.

Respectfully,

Jen Haber

Jen Haber
Executive Director

cc: Procurator General Damlet Papulashvili
U.S. Ambassador Kent Brown
International Committee of the Red Cross
media

**PREPARED STATEMENT OF HUMAN RIGHTS WATCH/HELSINKI
URGENT UPDATE: TRIAL IN GEORGIA DRAWS TO A CLOSE**

SUMMARY

This report is an urgent update on serious human rights violations in a criminal trial in Tbilisi, the capital of the Georgian Republic, as the trial draws to a close after sixteen months in court. In a detailed report released in August 1994, Human Rights Watch/Helsinki compiled the evidence that some, and likely all, of the nineteen defendants in Case No. 7493810 — men charged with crimes ranging from murder and terrorism to theft of perfume from a factory — confessed guilt under torture and intimidation and were subsequently denied basic due process rights. Sixteen of the nineteen men are charged with crimes that carry a maximum penalty of death; executions are practiced in Georgia. Since that report was issued, one defendant continues to suffer torture in jail and twelve of the defendants have, without legal justification, been prevented from attending their own trial. Of those absent from the courtroom, only four are being represented by lawyers of their choosing; most are denied the right to counsel altogether. The court is likely to hand down a ruling in early February 1995.

Human Rights Watch/Helsinki's is not in a position to affirm or deny the defendants' involvement in the crimes of which they are accused. However, since the arrest, investigation, detention and trial of these men were conducted with blatant disregard for the right to a fair trial of the defendants and for the rights of their family members, Human Rights Watch believes there is a high likelihood of a gross miscarriage of justice should the court convict on the basis of the proceedings of the current trial.

Human Rights Watch/Helsinki calls on the Georgian government, Supreme Court, General Procuracy, Ministry of Internal Affairs, Bar Association (Lawyers Collegium), governmental human rights committees, and on presiding judge Mirza Dolidze to honor Georgia's obligations concerning due process and prohibition of torture enshrined in the International Covenant on Civil and Political Rights (ICCPR) and in other instruments. Ironically, Georgia acceded to the ICCPR in the fall of 1994, even as the rights protected in the covenant continued to be flagrantly violated in this case. In addition, the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Forms demands that confessions and other evidence obtained under torture or cruel treatment be ruled inadmissible.¹

BACKGROUND

Between May and October 1992, nineteen men were arrested in Tbilisi and Baky, the capital of neighboring Azerbaijan, in connection with seven separate criminal investigations. Prominent among the charges is conspiracy to commit a terrorist bombing on June 15, 1992, which apparently targeted and ultimately missed leading government figure Jaba Ioseliani, but took the lives of five passersby. Other charges include: alleged abuse of power and plunder of state property by ousted, now deceased, Georgian President Zviad Gamsakhurdia, current Head of State Eduard Shevardnadze's predecessor as head of state; attempted terrorist acts in the Khvareli forest in eastern Georgia in 1991 and 1992; alleged armed resistance during the violent coup d'etat in Tbilisi in 1992; alleged attempts to hamper the elections of October 11, 1992, which confirmed Mr. Shevardnadze in his position as Head of State; attempted assassination of Acting Procurator General of Georgia Vakhtang Razmadze; and alleged theft of perfume from a factory. Some defendants were implicated in more than one incident.

Human Rights Watch/Helsinki has previously documented many due process violations in this case: torture of the defendants, illegal arrests and searches of individuals, including family members of defendants, who were never charged with any misconduct; interrogation under torture; denial of access to medical care; illegal seizure of property;

¹ As of this writing, Georgia is not a signatory to the Convention on Torture. However, Human Rights Watch/Helsinki believes that all countries should apply this exclusionary rule as the most appropriate to discourage the use of torture.

denial of timely access to legal counsel of one's choosing; denial of the right to familiarize oneself with information pertinent to one's case; and harassment of family members and of defense attorneys.²

The physical abuse of suspects, intimidation and mistreatment during interrogation, and violations of due process committed in this case, are not uncommon in Georgia. Moreover, the flagrantly illegal behavior of the judge and Bar Association and the failure of the government to respond adequately to reports of abuse in this case reflect a high-level susceptibility to both popular and political pressure for a quick trial and a harsh sentence. Rampant, violent crime plagues the country, and the 1992 street bombing provoked popular outrage. The Georgian government, besieged by political and economic chaos, has directed extraordinary attention to prosecuting the attacks by its opponents in case no. 7493810, such as the attempted assassinations of Jaba Ioseliani and Vakhtang Razmadze, alleged misdeeds of Zviad Gamsakhurdia, violent seizure of the media stations in 1992, and alleged attempts to hamper the 1992 elections. Mr. Shevardnadze has himself publicly and repeatedly referred to the defendants as "terrorists" and thereby assumed their guilt, contributing to a public atmosphere that makes a fair trial all but impossible. It is important to punish these crimes, some of which are indeed ghastly, and to bring justice to those who perpetrated them. But it is just as important that the charged political atmosphere surrounding the case and violations perpetrated against these defendants not cause a miscarriage of justice.

VIOLATIONS

Since our August 1994 report was issued, violations have continued unabated:

Torture

On August 13 and December 11, 1994, defendant Viktor Domukhovsky, who faces the death sentence if convicted, was savagely beaten in his cell. The presiding judge denied him the right to submit a protest at his trial, denied him medical care following the beatings, and subsequently barred him and his chosen legal representatives from the court proceedings without due cause (see below, "Violations: Denial of the Right to Confront Evidence").

According to a statement by Mr. Domukhovsky, on August 13, 1994, the same day that Human Rights Watch/Helsinki, the independent Moscow human rights group "Memorial" and the Georgian governmental Committee for Human Rights and Interethnic Relations held a joint press conference in Tbilisi on the subject of violations in the trial, several local law enforcement officials entered his cell and demanded that he yield notes he had been taking on the hearings. When he refused, they reportedly beat him, leaving him with numerous head and body injuries.

On December 11, 1994, seven drunken fellow inmates were reportedly given the keys to the cells of several of the defendants in the trial who are facing the most serious charges, including Petre Gelbakhiani, Gedevan Gelbakhiani, Irakli Dokvadze and Viktor Domukhovsky. They reportedly visited all four, but beat only Mr. Domukhovsky. Mr. Domukhovsky was already weak, since he was on the nineteenth day of a hunger strike launched in part to protest the fact that he and other defendants' were being barred from the proceedings. A senior official at the Ministry of Internal Affairs, Mr. Chvarelashvili, reportedly met with Mr. Domukhovsky following the attack and initiated a criminal investigation into the matter; as of this writing, the findings of the investigation are unknown. The judge reportedly did not allow Mr. Domukhovsky's protest of the beating to be submitted into the legal record. Because of injuries suffered in the attack, Mr. Domukhovsky was forced to end his hunger strike. He and his chosen legal counsel remain barred from the proceedings; his court-appointed lawyer was expelled from the Bar Association and thereby stripped of his legal accreditation (see below).

² See Human Rights Watch/Helsinki, "Georgia: Torture and Gross Violations of Due Process in Georgia," *A Human Rights Watch Short Report*, vol. 6, no. 11, August 1994.

Violations of Due Process

Denial of the Right to Confront Evidence

A trial cannot be entirely fair if it is carried out without the presence of the defendant, who must be able to know the accusations against him, to confront the evidence presented against him, and to present evidence of his innocence.³ Yet in the fall of 1994, Judge Dolidze began barring defendants and their legal counsel from the proceedings. The judge has barred defendants for reasons as arbitrary and legally unacceptable as "smirking" (in the case of Zaza Tsiklauri). Since they are unable to participate in the proceedings, the trial has sped up dramatically. The judge removed one defendant, Omari Kochlamazashvili, from the case entirely, following a break in the trial due to the defendant's illness, and has failed to explain the current status of Mr. Kochlamazashvili's case. As a result, it is unclear how progress can be made in resolving the charges against him.

As of this writing, twelve of the nineteen defendants are barred from their own trial. All but one are being tried on charges that can carry the death penalty. Those barred are (in alphabetical order):

Mamuka Aptsiauri
Zurab Bardzimashvili
Irakli Dokvadze
Viktor Domukhovsky
Gedevan Gelbakhiani
Petre Gelbakhiani
Zurab Gogichashvili
Teimuraz Kapanadze
Omari Kochlamazashvili
Gocha Makhviladze
Tamaz Tsiklauri
Zaza Tsiklauri

Denial of the Attorney's Right of Access to the Court

The Georgian Lawyers Collegium, roughly the equivalent of a Lawyers' Union or Bar Association in many countries, has removed several defense lawyers from Case No. 7493810, stripping them of their right to practice law in Georgia and denying the defendants legal counsel of choice, in violation of international law. The Bar Association expelled Tengiz Nijeradze, counsel for Zaza Tsiklauri and Viktor Domukhovsky, on June 6, 1994. On October 10, 1994, it also removed Iuza Jhamadze, a court-appointed replacement counsel for Viktor Domukhovsky, reportedly citing his failure to obey the court order for him to represent Mr. Domukhovsky, who rejected Jhamadze as his attorney.

Judge Dolidze ordered Mr. Domukhovsky's chosen legal defenders — his wife, Rusudan Kikaleishvili, and public defender Giorgi Khoshtaria — stripped of their legal right to defend Mr. Domukhovsky on September 12 and October 19, respectively. On January 3, 1995, after a Human Rights Watch/Helsinki representative who had been attending the trial left the courthouse, the judge reportedly ordered both of them out of the courtroom arbitrarily, forbidding them from attending the trial even as observers in the public seating area.

³ In exceptional circumstances, a court may legitimately remove persons — including the defendant — from the proceedings if that is the only way to ensure that the proceedings can continue. In such a case, if the court seeks to remove a defendant, it must demonstrate that there has been a serious disruption, that there is no other way to rectify the problem, and that the measure is temporary and partial.

RESPONSE OF THE GEORGIAN GOVERNMENT

In June and August of 1994 and January of 1995, Human Rights Watch/Helsinki representatives travelled to Tbilisi to gather information about the human rights situation in Georgia as part of our ongoing work in the country. The government granted us meetings with almost all of the numerous agencies we requested, except with representatives of the Procuracy and of the Ministry of Internal Affairs, who failed to meet with us despite our written requests for meetings and subsequent phone calls.

On the basis of specific inquiries, Human Rights Watch/Helsinki has received written responses concerning allegations of abuse in this case from the Office of the General Procuracy of Georgia (*see* Appendix C) and from the Committee on Human Rights and Interethnic Relations. Both confirmed that the government had initiated two criminal investigations into allegations of torture, but that the investigations had not resulted in any charges; since the victims allegedly were unwilling to give testimony or to press charges, the investigation could not be completed. Human Rights Watch/Helsinki believes it is unreasonable to expect victims who are still held in the same facility and are under the control of the same penal and investigatory administration under which they allege the torture took place to give incriminating testimony necessary to complete such investigations (*see* below, under "Recommendations").

Neither the Procuracy nor the Committee explained why reports of abuse made by the other seventeen defendants have not been formally investigated, or why the government has not sought independent medical experts to examine all defendants and submit their findings to the court.

Neither letter addressed any of the concerns raised about other due process violations.

Human Rights Watch/Helsinki wrote to the Procuracy for a clarification of the reasons seven separate and seemingly unrelated criminal cases were united into one. The letter from the Procuracy merely listed the suspects arrested in five of the seven cases; it neglected to respond regarding two cases. It did not explain how all seven of the cases were interrelated. Its criticism of Human Rights Watch for failing to consult with them ignores the fact that the Procuracy itself failed to respond to the organization's formal request for meetings.

A representative of the governmental Committee on Human Rights and Interethnic Relations has reportedly attended the trial regularly and reported back to the committee. The chairman of the committee, Aleksandre Kavsadze, and his colleagues have met with the defendants in detention. The Committee facilitated one visit between a representative of Human Rights Watch/Helsinki and of the Moscow-based human rights group "Memorial" with a seriously ill defendant, Zurab Bardzimashvili. Mr. Kavsadze also reports that he has issued protests of due process violations to the responsible court. He meets regularly with representatives of our organization, and participated in a joint press conference on the trial and human rights violations in Tbilisi in August 1994 with representatives of our organization and of Memorial.

Despite these actions, the committee has had little noticeable effect in mitigating or correcting the abuses in the trial. Moreover, Mr. Kavsadze has resisted investigating many credible reports of abuse. For example, he commented during a January 3, 1995, meeting with a Human Rights Watch/Helsinki representative that he was aware that twelve of the nineteen defendants were being tried in their absence, but that he felt it was "pointless" to investigate or protest this at this point. Indeed, he defended their expulsion by stating they were "impeding" the trial. He claimed that criticism of reported abuse was "interference" that should be avoided since Georgia was a struggling new democracy.

RECOMMENDATIONS

To The Supreme Court of the Republic of Georgia and Judge Mirza Dolidze:

- Implement immediately the pertinent recommendations submitted by our organization in our August report (see Appendix B).

In addition:

- Exclude all evidence shown to have been obtained through torture or to be in violation of due process;
- Order that all defendants be returned to the courtroom immediately;
- Order that all defense lawyers be allowed to be present at the trial and submit all legal materials without impediment, in accordance with the law;
- Allow all defendants to be defended by the legal counsel of their choice;
- Allow independent medical experts immediate access to the defendants;
- Ensure that independent medical examinations be conducted to the full satisfaction of the defendants and examining medical professional(s);
- Allow the conclusions of the examinations to be submitted as legal evidence in the case for the consideration of the presiding court;
- Resolve the legal status of Omari Kochlamazashvili's case;
- Annul proceedings that have taken place without the defendants' presence, or without allowing the defense to participate in a significant way. Those parts of the proceedings should be repeated, if possible, with the defendants in attendance and with full respect for the defense's right to cross-examine, object, and appeal.

To the General Procurator of the Republic of Georgia:

- Investigate and prosecute rigorously in full conformity with international legal standards individuals suspected of committing, ordering or failing to report torture;
- Guarantee the safety of all individuals bringing allegations of torture, and ensure that personnel accused of torture are removed from positions of authority over those alleging abuse.

To the International Community:

- Raise concern immediately with Georgian counterparts about the violations documented in this trial;
- The OSCE mission in Georgia should send independent observers to monitor the trial, as should the embassies of the United States, France, and Germany in particular, if they have not done so already;
- Monitor closely and publicize other investigations and trials in which due process violations are reported.

...

Human Rights Watch Helsinki (formerly Helsinki Watch)

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director; Juan E. Méndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Helsinki division was established in 1978 to monitor and promote domestic and international compliance with the human rights provisions of the 1975 Helsinki Accords. It is affiliated with the International Helsinki Federation for Human Rights, which is based in Vienna, Austria. Jeri Laber is the executive director; Holly Cartner, deputy director; Erika Dailey, Rachel Denber, Ivana Nizich and Christopher Panico are research associates; Anne Kuper, Ivan Lupis and Alexander Petrov are associates; Željka Markić and Vlatka Mihelić are consultants. Jonathan Fanton is the chair of the advisory committee and Alice Henkin is vice chair.

APPENDIX A: LIST OF DEFENDANTS AND CHARGES AGAINST THEM

(in alphabetical order)

The following information was taken from the indictment statement as it stood when the investigation was concluded in August 1993. Many of the charges are said to have been changed in the course of the investigation.

1. Mamuka Aptsiauri: born 1971. Arrested September 2, 1992, Khvareli. Charged with violating Articles 17-67 (attempted terrorism) and 17-69 (attempted subversive act) of the Criminal Code of the Republic of Georgia.
2. Zurab Bardzimashvili: born 1949; geologist. Arrested on October 5, 1992, Tbilisi. Charged with violating Articles 17-67 (terrorism), 78 (banditry), 17-69 (subversive act) of the Criminal Code.
3. Bessarion Bochoridze: born 1961; profession unknown. Arrested August 11, 1992. Charged with violating Articles 90-1 (failure to report a state criminal act) and 205 (concealment of a criminal act) of the Criminal Code.
4. Ramazi Charigogdishvili: born 1960; driver. Arrested July 10 or 11, 1992, Tbilisi. Charged with violating Article 78 (banditry) of the Criminal Code.
5. Mamuka Danelia: born 1959; student. Arrested August 13, 1992, Tbilisi. Charged with violating Articles 90 (failure to report a state criminal act) and 206 (concealment of a criminal act) of the Criminal Code.
6. Viktor Domukhovskii: born 1948; physicist, former Deputy of the Supreme Council of Georgia, former chairman of the Judicial Commission. Arrested on April 6, 1993, in Baky, Republic of Azerbaijan. Charged with violating Articles 17-67 (attempted terrorism), 17-69 (attempted subversive act) and 78 (banditry) of the Criminal Code.
7. Irakli Dokvadze: born 1961; television and radio engineer, electrician. Arrested September 4, 1992, Khvareli. Charged with violation of Articles 17-67 (attempted terrorism), 17-69 (attempted subversive act), 78 (banditry), 104, parts 4 and 6 (premeditated murder of two or more people) and 104, parts 4 and 6 (murder) of the Criminal Code.
8. Gedevan Gelbakhiani: born 1937; doctor, professor; therapist. Arrested on September 13, 1992, Tbilisi. Charged with violation of Articles 17-67 (terrorism), 17-69 (subversive act), 78 (banditry), 17-104, parts 4 and 6 (premeditated murder of two or more people) and 104, parts 4 and 6 of the Criminal Code.
9. Petre Gelbakhiani: born 1962; doctor, candidate of medical sciences. Arrested April 6, 1993, Baky, Republic of Azerbaijan. Charged with violation of Articles 17-67 (attempted terrorism), 17-69 (attempted subversive act), 78 (banditry), 17-104, parts 4 (premeditated murder of two or more people) and 104, parts 4 and 6, of the Criminal Code.
10. Zurab Gogichashvili: born 1956; farmer, technician. Arrested September 24 or 30, 1992. Charged with violating Articles 17-67 (attempted terrorism), 17-69 (attempted subversive act) and 78 (banditry) of the Criminal Code.
11. Givi Kalmakhelidze: born 1952; military. Arrested September 29 or October 7, 1992. Charged with violating Articles 17-67 (attempted terrorism) and 78 (banditry) of the Criminal Code.
12. Teimuraz Kapanadze: born 1950; construction worker, chief of the Republican Committee of Material Resources. Arrested October 5 or 6, 1992. Charged with violating Articles 17-67 (attempted terrorism), 17-69 (attempted subversive act) and 78 (banditry) of the Criminal Code.
13. Sergo Khakhviashvili: born 1966; carpenter. Arrested June 24, 1992, Tbilisi. Charged with violating Articles 17-67 (attempted terrorism) and 78 (banditry) of the Criminal Code.

14 Oman Kochlamazashvili: born 1943, driver, farmer. Arrested October 4 or 7, 1992. Charges unconfirmed, but are likely to include violations of Articles 17-67 (attempted terrorism), 17-69 (attempted subversive act), and 78 (banditry) of the Criminal Code.

15 Ivane Lashkarashvili: born 1960; driver. Arrested on July 11, 1992. Charged with violating Article 78 (banditry) of the Criminal Code of the Republic of Georgia.

16 Gocha Makhviladze: born 1958; economist. Arrested June 24, 1992, Tbilisi. Charged with violating Articles 17-67 (attempted terrorism) and 78 (banditry) of the Criminal Code.

17 Gela Mchedlishvili: born 1968, policeman, teacher at technical college. Arrested June 24, 1992, Tbilisi. Charged with violating Articles 17-67 (attempted terrorism) and 78 (banditry) of the Criminal Code.

18 Tamaz Tsiklauri: born 1954, economist. Arrested October 5, 1992, Tbilisi. Charged with violating Articles 17-67 (attempted terrorism), 17-69 (attempted subversive act) and 78 (banditry) of the Criminal Code.

19 Zaza Tsiklauri: born 1961, physicist. Arrested on August 7, 1992, Tsdo, Republic of Georgia. Charged with violating Article 238, parts 1, 2, 3 and 4 of the Criminal Code (illegal possession, holding, transport, buying, production and selling of a weapon or explosive device).

APPENDIX B: HUMAN RIGHTS WATCH/HELSINKI RECOMMENDATIONS FROM AUGUST 1994

It is the responsibility of the government of the Republic of Georgia and of those acting in an official capacity for the government to take all steps necessary to prevent acts of torture and mistreatment on its territory and to provide redress to those who have suffered such treatment. The defendants in this case require such redress. Furthermore, the government and its agents must ensure that defendants are given a fair and impartial forum in which to have the evidence against them evaluated. Human Rights Watch/Helsinki makes the following recommendations:

To Judge Mirza Dolidze:

- Exclude from the record of the trial any statement by a defendant that is intended to be used against him and that is shown to have been obtained through torture or other coercive means. Such statements are admissible only to prove the allegation of torture or coercion. Similarly, exclude from the evidence for the prosecution any physical or documentary evidence that was obtained as a result of torture or coercion;
- If, during the course of the proceedings, evidence reveals that the defendants were not informed of the charges against them in a timely manner, prosecute those responsible and provide defendants with damages;
- Guarantee defendants access to the legal counsel of their choosing and ensure that defendants are given sufficient time to consult with their defense counsel to prepare their defense;
- Guarantee to defendants and their defense counsel equal access to all relevant evidence in the case, sufficient time to familiarize themselves with such evidence, as well as the chance to present their own evidence and to petition for the production of evidence for the defense;
- Guarantee to those defendants who do not speak or understand Georgian the free assistance of an interpreter.
- Allow defendants access to proper medical evaluations and release into the care of medical professionals those defendants who are determined to be in poor health.

To the General Procuracy of the Republic of Georgia:

- Initiate prompt and impartial investigations into allegations of torture and mistreatment of individuals under investigation and, where such allegations are substantiated, ensure that the victims are able to obtain an adequate remedy as provided for in international law;
- Ensure that any statements that are shown to have been the result of torture or coercion, as well as any other evidence so obtained, are not offered as evidence in any proceeding against the defendants;
- Initiate prompt and impartial investigations into the alleged torture of detainees by police officers in this case, and if there is evidence of torture, bring criminal charges against all who committed acts of torture, as well as against any public officials who consented to or acquiesced in the torture.
- Review the legality of the defendants' detention and prosecute anyone responsible for an illegal arrest. Any evidence for the prosecution obtained through the illegal arrest of the defendant should be excluded from his case. If the arrest is deemed illegal and the decision to prosecute is not otherwise based on legally obtained evidence, then the defendant should be released.

To the Government of the Republic of Georgia:

- Review interrogation rules and procedures for the custody and treatment of those in custody in an effort to prevent future acts of torture;
- Educate all law enforcement officials and public officials about the absolute prohibition against torture and make clear that any official proved to have committed an act of torture or to have consented to or acquiesced in acts of torture will be charged with a criminal offense and prosecuted to the full extent of the law;
- Provide an effective means of redress for the victim of torture and the right to fair and adequate compensation;
- Ensure that victims of torture have the opportunity to file a complaint against those responsible for their torture and guarantee both the victim and his or her supporting witnesses safety from ill-treatment or intimidation as a consequence of the complaint.

APPENDIX C: LETTER TO HUMAN RIGHTS WATCH/HELSINKI FROM GENERAL PROCURACY

Unofficial Translation from Russian

380033 Tbilisi
Gorgasali kucha 24
Procuracy of the Republic of Georgia

No. 810

September 28, 1994

Dear Mr. Jeri Laber,

We have carefully familiarized ourselves with your letter of September 19 concerning Criminal Case No. 7493810, which is being followed by the Procuracy of the Republic of Georgia, regarding charges against P. Gelbakhiani, I. Dokvadze and others [and] inform [you] that the given case has been investigated in accordance with the criminal-procedural legislature of the Republic of Georgia.

The conclusions drawn by your organization in the report about violations of procedural norms during the course of the investigation rely only on the information of interested parties.

The assertions that, reportedly, illegal methods were used against the defendants — beating and torture with the aim of extracting testimonies of guilt necessary to the investigation, to confirm which information is cited concerning the physical injuries to Gedevan Gelbakhiani and Zaza Tsiklauri — do not originate from objective materials of the case.

It has been documented that on February 8, 1993, prisoner G. Chogovadze inflicted on G. Gelbakhiani physical injuries in investigative isolation cell No. 1 of the City of Tbilisi as the result of a fight which arose among them (*na bytovoi pochve*).

On the basis of this incident, a criminal case was initiated on that same day.

Investigation of the aforementioned confirmed, and also proved, that this incident had no relation to the criminal case concerning G. Gelbakhiani.

G. Gelbakhiani himself confirmed the fact of the fight with G. Chogovadze and also showed that in the course of the investigation he was neither influenced by nor forced to give testimony of one sort or another to the investigation.

G. Chogovadze was not brought up for criminal accountability for injuring G. Gelbakhiani and a sentence was brought against him (*sic*).

Concerning Zaza Tsiklauri it is necessary to note the following:

On August 18, 1992, a criminal case was initiated in the Procuracy of the Republic of Georgia on the basis of the infliction of bodily harm on Zaza Tsiklauri.

It has been documented that in June 1992, Zaza Tsiklauri and other members of the criminal group [including] Mchedlishvili, Makhviladze and others brought from the city of Grozny explosive substances, fire arms and ammunition, for which he was brought to criminal accountability and he was arrested. Since Zaza Tsiklauri hid from the investigation, a search was initiated. On August 7, 1992, he was detained at his house. When he was being transferred to the Saburtalo

ROVD in a Volga car, in order to avoid the expected punishment, Zaza Tsiklauri attempted to flee, jumped out of the car, however he fell on the asphalt, and as a result received less serious physical injuries and was detained. The aforementioned has been documented both by the testimonies of Tsiklauri himself and by other eyewitness testimonies and materials contained in the case.

It is necessary to note that on August 21, 1992, representatives of the government and of society of Georgia Z. Kiknadze, T. Berdzenishvili, V. Rtskhuladze, Ch. Amiredzhibi, Z. Zhvania and others met with prisoner Z. Tsiklauri in investigative cell No. 1 in Tbilisi. He has also met with representatives of international organizations, where he announced that he received the physical injuries as a result of attempting to flee, when he threw himself on the way from the automobile. He categorically denied that any physical harm was done to him.

It is necessary to note that the guilt of the suspects in the perpetration of the crimes for which they are incriminated is documented not only by their own confessions but by the testimony of numerous witnesses, physical evidence and other materials contained in the case.

You were unclear on the reasons for unifying into one case several criminal cases which, in your opinion, are dissimilar in nature.

We clarify that in accordance with Article 23 of the Criminal Code of the Republic of Georgia, criminal cases are united into one case in instances when there are charges against several individuals in joint involvement in the perpetration of one or more crimes.

In the given case, criminal cases have been united into one case against individuals who perpetrated several crimes and who are facing charges [connected with] various episodes. This, in connection with the incident of the bomb explosion on Chikovani Street Dokvadze, Gelbakhiani, Kalmakhedidze, Makhviladze, Kochlamazashvili, Khakhviashvili and T. Tsiklauri were brought up on criminal charges.

For committing banditry in the Khvareli region, from among 19 individuals Irakli Dokvadze, and Petre and Gedevan Gelbakhiani were brought up on criminal charges.

For seizure of social property in particularly large sizes from the organization "Lavri" G. Mchedlishvili, G. Makhviladze, G. Charigodishvili (sic) and I. Lashkarashvili were brought up on criminal charges.

In connection with the assassination attempt on Procurator General V. Razmadze Z. Bardzimashvili, [illegible]. Gogichashvili, T. Kapanadze and T. Tsiklauri were brought up on criminal charges.

For organizing explosions and for terrorist acts G. Kalmakhelidze, T. Kapanadze and O. [illegible] were brought up on criminal charges.

Thus it is clear that they and other individuals committed several crimes, for which the given criminal [illegible].

Concerning the releases of arrested individuals Georgi Khakhviashvili, Gocha Makhviladze and Gela Mchedlishvili, in accordance with the manifesto of August 3, 1992, we inform [you] that the aforementioned individuals were freed from criminal accountability for bandit-attack on the Teleradio Center in Tbilisi in accordance with the manifesto.

Concerning the bandit-attack on the organization "Lavri," as a result of which state and social property of particularly large size was seized, and also concerning the incidents of terrorism, the investigation has continued since the manifesto does not cover these crimes.

All of the defendants were provided with defense by attorneys of their choosing during the course of the investigation and all investigative actions were conducted with the participation of the attorneys.

The impression is left that an organization as respected by us as yours, which is dedicated to assisting a newly independent state in matters of human rights protection and the creation of a legal government, is, in reality, not having any arguments and evidence, discrediting republican law-enforcement organs.

Unfortunately, it must be noted that representatives of your organization did not meet with any of the investigators or procurators covering the given case. As a result of this, incorrect information was presented to the public, and with this the civil rights of the investigative workers were violated.

Currently, the trial of this case continues, and, in accordance with recognized legal principles, interference in the trial is prohibited prior to the taking of an objective decision.

Respectfully,

Deputy of the General Procurator of the Republic of Georgia
State Advisor for Justice

A. Baluashvili

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