

Torture and Inhuman or Degrading Treatment or Punishment in Selected OSCE Participating States

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INTRODUCTION AND SUMMARY

Torture is a gross violation of international human rights norms. It is morally abhorrent and harmful to the social fabric. It should be unconditionally abolished through effective investigation, punishment and prevention.

There is broad international consensus that torture is a severe violation on the inherent dignity of a human being. Consequently, the practice of torture is prohibited under all major international human rights instruments such as the Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights (ICCPR), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) and the European Convention for the Prevention of Torture (CPT) provide for detailed provisions for the investigation and prosecution of acts of torture.

All participating states of the Organization for Security and Co-operation in Europe (OSCE) have committed themselves to taking efficient measures to eradicate torture and cruel, inhuman or degrading treatment or punishment in their territories by becoming parties to CAT¹ and other international treaties that prohibit torture. They have also reiterated their commitment to this end in numerous OSCE concluding documents. They have pledged, among other things, to bring their national legislation up to par with international standards; to make publicly clear that torture and ill-treatment will not be tolerated; to investigate all reported cases of torture or ill-treatment; to punish public officials who have resorted to torture; and to provide compensation to victims of torture and ill-treatment.

Despite these promises, national legislation in many OSCE countries still falls short of international standards. Laws fail to expressly prohibit torture, or they define torture inadequately or not at all. In others countries, the law does not provide a solid basis for accountability and redress.

Police and prison practices present even worse failures. Torture remains systematic in several OSCE countries (for example in Turkey and Uzbekistan) and in most OSCE countries police brutality is a serious problem. Moreover, police misconduct has a racial dimension: members of national or ethnic minorities (particularly Roma), asylum seekers and immigrants are disproportionately represented among the victims.

Torture and ill-treatment are mainly used to extract confessions and to intimidate people. In many countries police officers are promoted or otherwise rewarded for high crime detection rates, a fact that facilitates unacceptable interrogation methods to gain confessions and to extract false evidence.

In most cases torture occurs in the first days following apprehension, during interrogation at police stations or detention facilities. Holding individuals *incommunicado*, without access to a lawyer, doctor, and relatives, and other violations of due process standards clearly facilitate torture.

Most cases of torture and ill-treatment by public officials go unpunished due to inadequate control mechanisms and the reluctance of courts to deal with such cases: all too many judicial proceedings are terminated due to “lack of evidence.” If perpetrators are brought to court and sentenced, they usually receive lenient sentences (e.g. small pecuniary fines) or suspended prison sentences. Abusive police officers often stay in police duty, sometimes following a short period of suspension.

A variety of techniques of torture are used. The psychological methods include intimidation, death threats or threats against family members, sleep deprivation and mock executions. Most commonly reported methods of physical torture or ill-treatment are beating with various objects (such as truncheon, batons, metal rods, gun butts, and baseball bats), punches and kicks on various parts of the body, and beating the soles of the feet (*falaka*). Other common methods are asphyxiation using a plastic bag or gas mask, and hosing with cold water (and, frequently, leaving the victim in an unheated

¹ Andorra and San Marino have only signed the CAT.

room after that), sexual abuse (including squeezing of the testicles and rape of both women and men), and suspending by the arms or wrists bound behind the victim's back (causing respiratory failure if the position is held for a long time).

Reports from Kyrgyzstan and Uzbekistan have indicated torture practices such as pulling the tongue and nails of the victim with pliers or forcing pins under the nails. In Uzbekistan, at least one recent victim died after sixty to seventy percent of his body had suffered burns, apparently from immersion in boiling water. The IHF is in the possession of photographs attesting to the injuries. Electric shocks are used, for example, in Georgia, Turkey and Uzbekistan to gain confessions and in the United States as a method of constraint in prisons.

Both mental and physical methods of torture often result in permanent injuries or death.

While, as a rule, most cases of torture have been reported from police stations or pre-trial detention facilities, ill-treatment by corrections officers in prisons or labor colonies is commonplace in many countries. However, even in penitentiaries where direct torture or ill-treatment seldom take place, extremely poor prison conditions can amount to cruel, inhuman or degrading treatment. For example, prison conditions in most former Soviet republics are inhuman. In Kyrgyzstan, official figures indicate that 7-10 prisoners die every month -- unofficial figures are much higher. The situation is dramatic enough to have forced many men on death row to appeal to the president to cancel the moratorium on the death penalty because they prefer execution to living in Kyrgyz prisons. Also in Russia, numerous deaths in penitentiaries are reported. Many are a result of unbearable prison conditions and a lack of adequate medical assistance. In other cases, inmates die in suspicious circumstances and their bodies bear signs of physical injury. In addition, brutality by fellow inmates, including rape and other forms or sexual abuse, are frequent problems (e.g. in the United States) and happen due to negligence on the part of prison officers or even with their participation or at their instigation.

Moreover, conditions in psychiatric hospitals or social care homes for people with mental disabilities, where people are often held in virtual detention, are in many cases inhuman and degrading to the extent that they can be regarded as clear violations of the CAT. In a disturbing development, in Russia and in Uzbekistan, human rights activists have been forcibly confined to psychiatric hospitals, a relic of old Soviet practices.

This report describes problems related to torture and other cruel, inhuman or degrading treatment or punishment in ten OSCE participating states: **Azerbaijan, Bulgaria, Georgia, Greece, Kyrgyzstan, Macedonia, Russia, Turkey, United States, and Uzbekistan**. These countries are only a selection of many in which torture and ill-treatment are serious problems.²

Officials in **Azerbaijan** make wide use of the procedure of short-term detention as a preventive measure. Police detain individuals for up to 15 days for "resisting the police," and during this time they gather evidence that otherwise would not be available to prove that a crime has been committed. This can be achieved through torture and ill-treatment to extract confessions. In addition, most recently, in the lead-up to, during and in the aftermath of the presidential elections of 15 October 2003, the police used excessive force against the political opposition and detained hundreds of people, many of whom were tortured or ill-treated.

In **Bulgaria**, the use of physical force by the police during apprehension and detention of criminal suspects appear to be the rule rather than exception. Roma risk abuse almost three times as often as ethnic Bulgarians. In addition, conditions in psychiatric institutions for compulsory treatment as well as homes for children and adults with mental disabilities and the treatment of people placed in them amount to grave violations of basic human rights and are inhuman and degrading treatment.

² For more information on torture and police misconduct in the OSCE participating states, see *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2003, (Events of 2002)*, at http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=1322

Despite some formal legislative improvements, reports of torture and police ill-treatment continue from **Georgia**, including of the use of electric shocks. In November 2002 the Ministry of Justice confirmed that at least four cases of police use of electric shock torture took place in 2002. According to one source, in the first three months of 2003, some 137 detainees with bodily injuries were taken from the Ministry of Interior's temporary detention isolator to the penitentiary department.

In **Greece**, unlawful shootings, beatings and ill-treatment, even torture, by police happen frequently and may be defined as widespread practice. The majority of the victims are Roma, immigrants (often Albanians) and asylum seekers, including children. It also appears that Greek border guards have fired at Albanian border-crossers to intimidate, deter or to punish them. As in most countries where torture and ill-treatment is a problem, police officers enjoy almost total impunity.

As regards **Kyrgyzstan**, of particular concern is the fact that the March 2002 shootings in the Aksy region have gone unpunished. In total, five people died (plus one later as a result of torture while in detention) and some 200 people were injured during the Aksy incidents and an additional 200 were arrested. In addition, torture and ill-treatment are commonplace in Kyrgyz police stations and prisons.

In **Kyrgyzstan** and **Uzbekistan**, persons with real or alleged affiliation with the outlawed Islamic organization Hizb-ut-Tahrir have been particularly targeted: they have been arbitrarily arrested, tortured and ill-treated and sentenced to long prison terms on a vague legal basis.

In **Macedonia**, the number of cases of torture and ill-treatment by the police has decreased since the period of armed conflict, but the problem remains widespread. However, many people have been ill-treated during unofficial "informative talks" which actually have been abolished and therefore should no longer be police practice.

Also in **Russia**, torture and ill-treatment are commonly employed in order to get a confession to a crime during the so-called "operative-investigative activity" (ORD), which takes place before the official interrogation. ORD methods are not published and they are practically outside of the court control. Most abusive officers escape punishment: the procedures to establish accountability for abuse are totally inadequate -- to the extent that in many cases allegations of police brutality are investigated by fellow officers and, in the worst cases, even by the abusive officers themselves.

In July 2003, the European Committee for the Prevention of Torture made a public statement on **Chechnya** stating that the Russian authorities have failed to effectively tackle major problems related to torture and ill-treatment. A considerable number of persons interviewed by the European Committee alleged that they had been severely ill-treated whilst detained by law enforcement agencies. The allegations were detailed and consistent. In addition, the problem of disappearances continues unabated. Moreover, it seems clear that practices of violence, outrage, lawlessness, and impunity are spread to other Russian regions by law enforcement officers who have served in Chechnya. The ongoing conflict in Chechnya also powerfully fosters ethnically motivated police brutality: Chechens and Caucasians generally prevail among the victims of unlawful police actions.

While serious human rights violations continue in Chechnya, the crisis has spilled over into its neighboring republic, particularly in **Ingushetia**. Abuses against internally displaced persons (IDPs) have been reported throughout the existence of the refugee camps in Ingushetia, but they escalated dramatically in June 2003 during the so-called "mop-up" carried out by masked Russian forces, who subjected Chechen IDPs to forced disappearance, torture and ill-treatment and looted their property.

The "harmonization packages" to bring **Turkish** legislation in line with European standards are welcome, but in practice, torture and ill-treatment continue. In addition, the climate of impunity remains. Prosecutors are reluctant to file charges against alleged torturers, and many torturers who "have not been found" are able to continue their police careers. The burden of proof lies on the victims, and the slow pace of judicial proceedings easily ends up in unresolved cases due to the statute of limitations

In the **United States**, the main human rights problems include police ill-treatment of civilians; ill-treatment in prisons; sexual assault by law enforcement officers, prison personnel and fellow inmates; the use of electro-shock devices and restraint chairs as methods of constraint; the excessively harsh regime of the “super-maximum” prisons; the use of “chain gangs”; and the holding of minors with adults in the regular prison population. Moreover, the US is now the only country in the world that openly continues to carry out executions of juvenile offenders, i.e. persons who were under 18 at the time they committed a crime. In addition, the “war against terrorism” has raised serious suspicions about practices that may amount to torture or cruel, inhuman or degrading treatment under the CAT. Holding terrorist suspects *incommunicado* for indefinite periods gives rise to serious concern. Also, according to recent reports, the US military is failing to conduct proper investigations into civilian deaths resulting from the excessive or indiscriminate use of force by its members in Baghdad.

Torture is widely used in detention facilities in **Uzbekistan** and courts frequently hand down harsh sentences, including capital punishment, based solely on coerced confessions. At least ten torture-related deaths in custody were recorded between late 2001 and mid-2003. One significant factor that facilitates police misconduct is that authorities demand 100 percent detection rate from law enforcement officials. As a result, officers resort to torture to extract false confessions, frame individuals for crimes and fabricate evidence, pressure witnesses to give false statements, and, finally, convict innocent people.

INTERNATIONAL STANDARDS

Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) defines torture as

“... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

There is broad international consensus that torture is a severe violation on the inherent dignity of a human being. Consequently, the practice of torture is prohibited under all major international human rights instruments. Article 5 of the Universal Declaration of Human Rights states that *“No one shall be subjected to torture or to cruel, inhuman or degrading treatment.”* In a similar vein, Article 7 of the International Covenant on Civil and Political Rights (ICCPR) reads: *“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”*

In the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), detailed provisions are elaborated for the investigation and prosecution of acts of torture. For example, according to Article 2.1, the state parties must take effective legislative, administrative, judicial or other measures to prevent acts of torture. Acts of torture must be offences under national law (Article 4.1) and they must be punishable by appropriate penalties (4.2). Furthermore, training of law enforcement officials must involve information on the prohibition of torture and interrogation methods and practices must be reviewed systematically in order to prevent torture. On the basis of Articles 12 and 13, all reported cases of torture must be investigated promptly and impartially. Article 15 states that confessions extracted under torture must be declared inadmissible as evidence in court. The CAT also established the Committee against Torture which considers the reports submitted by governments under the CAT.

Most importantly, Article 2.2 of the CAT states that *“No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”*

In order to supplement the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3 of which prohibits torture or inhuman or degrading treatment or punishment, the Council of Europe adopted the European Convention for the Prevention of Torture (CPT) in 1987. In addition to providing largely the same safeguards against torture as the CAT, the CPT also prescribed the establishment of the European Committee for the Prevention of Torture, whose task is to visit *“any place within [each Party’s] jurisdiction where persons are deprived of their liberty by a public authority.”*

International humanitarian law provides for protection to civilians, other non-combatants and soldiers who are captured, and those who have laid down their arms or rendered *hors de combat* for any reason: their torture or ill-treatment is absolutely forbidden. Article 3 of the Geneva Convention relative to the Treatment of Prisoners of War, for example, bans the *“violence of life and person, in particular murder of all kinds, mutilation, cruel treatment and torture”* (3.1.a) as well as *“outrages upon personal dignity, in particular humiliating and degrading treatment”* (3.1.c).

The CSCE/OSCE has on numerous occasions expressed the importance of the need for participating states to recognize and abide by international norms against torture. It has also adopted a series of formal standards aimed at abolishing torture.

In the Concluding Document of Vienna (1989), member states declared that they will “*prohibit torture and other cruel, inhuman or degrading treatment or punishment and take effective legislative, administrative, judicial and other measures to prevent and punish such practices*” (par. 23). In the same document member states pledge to observe the United Nations Standard Minimum Rules for the Treatment of Prisoners, as well as the United Nations Code of Conduct for Law Enforcement Officials (23.3).

In the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990) the participating states reaffirmed the Vienna document commitments and stated that they will “*take up with priority for consideration and for appropriate action ... any cases of torture and other inhuman or degrading treatment or punishment made known to them through official channels or coming from any other reliable source of information*” (16.6).

When approving the Concluding Document of the OSCE Moscow Meeting (1991), the participating States additionally recognized the importance of rules governing the administration of justice and the right of detainees as part of the prevention of torture. The Moscow Document states that “*the participating States will treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person and will respect the internationally recognized standards that relate to the administration of justice and the human rights of detainees*” (Par. 23). The document provides, among other things, for protection against arbitrary arrest and detention and other basic rights to detainees, including prompt access to a lawyer and a court of law and *habeas corpus*.

The commitments to combat torture and inhuman or degrading treatment were reiterated in the 1994 Concluding Document of Budapest 1994 and the 1999 Istanbul Document.

Other international standards related to the eradication of torture and inhuman or degrading treatment include: the Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982); the Council of Europe Prison Rules (1987); the UN Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment (1988); the UN Basic Principles on the Role of Lawyers (1990); the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990); the UN Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions (1990); the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990); and the UN Declaration on the Protection of All Persons from Forced Disappearance (1991).

International standards for the conditions and treatment of people with mental illness or disabilities have been laid down, for example, in the UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, adopted by the General Assembly Resolution number 46/119 of 18 February 1992; Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the UN General Assembly in 1993 (A/RES/48/96); and the Eighth Annual Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its elaborated standards for conditions and treatment in psychiatric institutions published on 31 August 1998.

IHF RECOMMENDATIONS FOR THE PREVENTION OF TORTURE ³

The IHF considers torture to be a gross violation of the acceptable norms of human behaviour; it is morally abhorrent and harmful to the very social fabric. It should be unconditionally abolished through effective investigation, punishment and prevention.

I. States should recognize a **public interest in the definition, investigation, and punishment of torture, as well as in the explicit condemnation of torture** in all its forms whenever it occurs. The IHF demands that governments and international bodies ensure the following:

1. Penal legislation should clearly *formulate torture as a specific crime*, in conformity with the definition in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and other international treaties, and provide for penalties that are commensurate to the gravity of the crime;
2. Penal legislation should consider *rape and sexual* harassment by public officials or third parties with the consent or acquiescence of public officials to be an act of torture;
3. *Life imprisonment* without a possibility of subsequent release and long-term isolation upon arrest and in detention should be considered as cruel, inhuman and degrading punishment;
4. *Solitary confinement of minors* while in detention should be considered as cruel, inhuman and degrading punishment;
5. When a person is taken into custody and subsequently bears signs of torture or ill-treatment, the *state has a duty to prove* that the injuries were caused by something other than the treatment of the alleged victim while in custody;
6. The legislation should *prohibit the use of statements and other evidence obtained through torture* and ill-treatment in any proceedings. Such statements, however, can be used as evidence of the fact that torture has taken place in order to bring perpetrators to justice;
7. The legislation should prescribe that torture and ill-treatment, as well as complaints of inhuman and degrading treatment or punishment by public officials, are *investigated promptly and impartially* and that reports of such investigations are made public. Victims and organizations supporting victims, including human rights NGOs, should be allowed to take part in the investigation. A possibility for private prosecution, where the legal systems allow, should also be introduced without prejudice to any official action;
8. An *effective independent mechanism* should be established to monitor the actions of public officials so that complaints of torture and other cruel, inhuman and degrading treatment or punishment can be properly investigated and appropriate remedies implemented. Systems of effective consultation and coordination with relevant NGOs, including community groups and victim support groups, should be established. Monitoring bodies should maintain and publish uniform, comprehensive and professionally prepared statistics on complaints of torture and ill-treatment by law enforcement personnel.

II. States should **outlaw methods of medical treatment that cause severe pain to patients**, such as the unmodified ECT, as well as any other forcible interventions, physical restraint or involuntary seclusion that go beyond the purpose of treatment. States should also periodically review their codes and practices in that regard. Psychosurgery and other major medical procedures should be

³ Made in consultation with the Helsinki committees and the IHF Rule of Law Council.

carried out on patients only if they have given informed consent and only if they have been authorized after independent review.

III. Effective prevention of torture, inhuman or degrading treatment or punishment depends on **the safeguards that states envisage in both their legislation and law enforcement practices during detention and imprisonment**. The IHF considers the following to be imperative:

1. That states establish a *comprehensive system of frequent periodic visits* in places of detention by independent bodies with effective monitoring powers. These bodies should be allowed to visit all facilities at any time and without preliminary notice and be able to speak with detainees confidentially. Human rights NGOs should be allowed to visit detention facilities on the same conditions, but this should not serve to relieve states from their responsibility to establish effective monitoring mechanisms;
2. That international monitoring bodies, as well as national governmental and non-governmental monitors, recognize as places of detention and visit, in addition to the places recognized so far, also such *institutions of involuntary confinement* as: schools or other educational institutions for delinquent children; places for the temporary confinement of alcoholics and other places of involuntary medical treatment; and places of detention as a way of disciplinary punishment in the army;
3. That the *registers in places of detention* are regularly maintained and contain at a minimum information about the time and reason for detention, as well as for the release; the time at which the detainee was informed about his/her rights; the detainee's state of health immediately upon arrest and periodically afterwards; the time of contact with the relatives and lawyer; the time of interrogation sessions and a list of confiscated personal belongings;
4. That the legislation provides for *effective access to a lawyer* from the moment of whatever form of detention. In all cases where a detainee may risk any kind of imprisonment he/she should be offered a lawyer, recompensed for his/her work by the state, in the event that they are unable to pay for a lawyer;
5. That the legislation provides for the possibility to *inform detainee's relatives* or other third parties about his/her whereabouts and conditions of detention immediately upon arrest;
6. That the legislation provides access for all people in whatever form of detention to independent *medical expertise*, including by a medical professional of the detainee's choice. The examination should take place under conditions of confidentiality and the expert report should be immediately placed at the disposal of the detainee and his/her lawyer;
7. Classification in places of detention should take into consideration the needs for *protection of vulnerable prisoners*;
8. As the arbitrary exercise of disciplinary power can result in inhuman or degrading punishment, disciplinary proceedings in places of detention should be based on the *principles of due process of law*;
9. The *treatment of children* who come into contact with the law must be in line with international standards on the administration of juvenile justice. Children in custody must be separated from adults, except where this would not be in the best interests of the child.

IV. To ensure that **torture and ill-treatment do not take place in the process of investigating a crime**, states should regulate by law:

1. The *time and place of the interrogation*, the *identity* of all people present and the *position* of the arrested person during the interrogation;
2. The *permissible length of the interrogation* and the periods of rest between the sessions;
3. *Methods of conducting of interrogation* with a special emphasis on the interrogation of minors and people under the influence of alcohol and drugs;
4. *Female security personnel* should be present during the interrogation of women detainees, and should be solely responsible for conducting body searches.

V. States should ensure that the **material conditions of detention** at all levels of the criminal procedure and with regard to all forms of detention meet the UN Standard Minimum Rules for the Treatment of Prisoners, the European Prison Rules and the standards of the European Committee for the Prevention of Torture (CPT). For each aspect of detention the highest available standards should apply.

VI. Effective **punishment and prevention of torture** has not only a national, but also an international dimension. In this regard, the IHF recommends that:

1. States should ensure that their legislation permits *courts to exercise universal jurisdiction*, so that suspected torturers in their territory can be brought to justice in their own courts, or extradited to a state able and willing to do so, in a fair trial and without the possibility of facing the death penalty. Alleged torturers should be brought to justice wherever they may be, whatever their nationality or position, regardless of where the crime was committed and the nationality of the victim, and regardless of how much time has elapsed since the crime was committed.
2. States should *not allow for pardoning or clemency* of torturers before the truth is revealed and perpetrators are sentenced in a prompt and fair trial;
3. States should ensure that *no one is forcibly returned* to another country where he or she risks being tortured or treated in a cruel, inhuman or degrading way, including where the state fails to protect against torture by non-state actors. The limitation of liberty of asylum seekers should be avoided. When detention is lawful, the authorities should ensure that asylum seekers are not subjected to cruel, inhuman or degrading treatment.
4. States should ratify *the Rome Statue of the International Criminal Court* and enact the necessary national legislation to implement it effectively.

Azerbaijan has been party to the CAT since 1992, and to the CPT since March 2002.

While the Constitution prohibits torture, this prohibition has not been implemented in criminal law. In addition, the definition of torture is insufficient. In September 2000, Azerbaijani law for the first time defined “torture” in the new Criminal Code. Article 113 speaks about “the infliction of physical pain or mental suffering on persons held in custody or subjected to other forms of deprivation of liberty.” Article 133 refers to the “causing of physical or mental suffering through systematic beating or any other use of violence.” However, the Criminal Code does not punish torture committed “with the knowledge or tacit approval of an official,” in violation of Article 1 of the CAT. Further, no punishment is expressly provided for inflicting torture as a means of retribution for acts committed by a third party or as means of intimidating a third party.⁴

The Council of Europe’s Committee for the Prevention of Torture carried out its first visit to Azerbaijan in November/December 2002. It looked into the treatment of individuals in police custody, the situation of remand prisoners, the care provided to inmates suffering from TB, and conditions in military detention. The delegation also visited a center for forensic psychiatric assessment and two border guard establishments.⁵ The report of the visit had not yet been published at the time of this writing.

The UN Committee against Torture in April/May 2003 expressed concern about ongoing allegations of torture and ill-treatment in police facilities and temporary detention facilities, as well as in remand centers and in prisons. It also noted that the definition of torture in the new Azerbaijani Criminal Code does not fully comply with Article 1 of the CAT. The UN Committee further criticized Azerbaijan for handing over people to countries where they face a real risk of torture. It criticized the substantial gap between the legislative framework and its practical implementation and the apparent lack of independence of the judiciary, and expressed concern about overlong detention periods in police custody. Among other concerns were the lack of prompt and adequate access of detainees and remand prisoners to a lawyer and a doctor; the particularly strict regime applied to prisoners serving life sentences; the difficulties faced by prisoners wishing to file a complaint of torture or ill-treatment; and the failure of judges to deal with visible evidence of torture and ill-treatment of detainees.⁶

The most notorious recent individual case of police misconduct was related to incidents in the Nardaran settlement near Baku in June 2002, when the government moved to suppress protests by the residents. Police shot at unarmed civilians, killing one and wounding dozens. The incident was never properly investigated and no police officer was punished. However, 15 residents of Nardaran were arrested and the events were unjustifiably described as an attempt to establish Islamic Sharia’h rule. However, in the official indictment of 11 December 2002, the residents were only charged with having resisted the police and organized mass disorder.

- In the aftermath of the Nardaran unrest, Nadir Alizade was held in detention for ten days in September 2002 for “insulting policemen.” After his release, Alizade claimed that he had been beaten by officials of the Division of the Struggle against Organized Crime (MCQBI) in order to make him deliver televised testimony against those persons holding protests in Nardaran and blaming the unrest on the village elders. In addition, he said he was forced to sign a

⁴ Human Rights Centre of Azerbaijan (HRCA), International League for Human Rights (ILHR) and the World Organization against Torture (OMCT), *Compliance of the Republic of Azerbaijan with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment – An Alternative NGO Report to the UN Committee against Torture (30th Session, 28 April – 16 May 2003)*, 2003.

⁵ European Committee for the Prevention of Torture, News Flash, at <http://www.cpt.coe.int/documents/aze/2002-12-10-eng.htm>

⁶ UN Committee against Torture, Conclusions and recommendations of the Committee against Torture, 14 May 2003, at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/7ebf7332c7525e3bc1256d5900306e8d?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/7ebf7332c7525e3bc1256d5900306e8d?Opendocument)

testimony denying his previous claims that the police had put a gun against the head of his five-year-old son during the arrest of the child's grandfather earlier in September, also in connection with the Nardaran unrest. Moreover, Nadir Alizade was reportedly coerced to sign an obligation to become a police informant. An independent expert diagnosed injuries that had resulted from torture after Alizade's release on 28 September 2002.⁷

According to Articles 148(4) and 157(3) of the Criminal Procedure Code, a person can be detained for up to 48 hours before being brought before a judge who can decide to prolong the detention and possibly transfer the person to an investigation isolator (SIZO) within 24 hours. In practice, however, the police usually hold suspects in a temporary detention isolator (IVS) for as long as 10 days for investigation -- and frequently even longer. Only rarely are defendants released pending trial.⁸

Azerbaijani officials also make wide use of the procedure of short-term detention as a preventive measure. Under Article 311 of the Code of Administrative Offences, police can detain individuals for up to 15 days for "resisting the police." This provision has been frequently used in cases where the police have insufficient evidence that a crime has been committed. The police frequently use torture and ill-treatment to extract confessions during this form of detention.⁹

Deaths in police custody under suspicious circumstances have been reported.

- On 18 April 2002, Beylar Quliyev was summoned to the police to be questioned in a murder investigation. However, he was taken into custody on charges of resisting police officers. In that night he was taken to hospital with serious injuries that the police claimed he had sustained from falling out of a third floor office window. He died from his injuries on 20 April. A prosecutor initiated an investigation into the death, but closed the case in June.¹⁰
- On 24 November 2002, 42-year old Umuretdin Alimov was taken to the 19th police station of the Nasimi district in Baku, suspected of theft. Three hours later, he allegedly committed suicide by hanging himself in his cell.¹¹
- On 7 January 2003, Veten Radjabov fell from the 3rd floor of the Baku Chief Police Office after five days of interrogation. Officially, he had committed suicide. His wife and under-age sons had also been questioned, the sons in the absence of an adult. One of the sons, Ramin, was reportedly beaten and put under pressure to witness against his father at a press conference, but he refused to do so.¹²

No law enforcement officer was known to have been charged with torture in 2002. In cases where torture was assumed and the officers were brought before court they were charged with driving detainees to suicide or negligence. In 2002, at least two such cases were closed and the perpetrators were acquitted.

The extradition of persons to countries that practice torture is common, as the procedure for extradition does not take into account the risk of torture when assessing the reasons for fleeing a country. The situation has worsened with the worldwide campaign against terrorism. Persons

⁷ OMCT, "Azerbaijan: Release and Allegations of Torture of Nardaran Detainees," 9 October 2002, at <http://www.omct.org/displaydocument.asp?DocType=Appeal&Index=2488&Language=EN>

⁸ Information from the HRCA to the IHF, January 2003.

⁹ HRCA to the IHF, September 2003.

¹⁰ OMCT, "Azerbaijan: Arbitrary Arrest of Mr. Beylar Quliyev," 24 April 2002, at <http://www.omct.org/displaydocument.asp?DocType=Appeal&Index=1733&Language=EN>; and HRCA to the IHF, September 2003.

¹¹ HRCA to the IHF, September 2003.

¹² *Echo* newspaper, 8 January 2003.

suspected of terrorism have been handed over to countries known to practice torture, lack due judicial process and sentence people to death.¹³

- At least eight suspected terrorists have been extradited to Egypt, which retains the death penalty and has been accused of practicing torture. The arrests and extraditions of these people were made in secret, and without judicial procedures to verify the charges.¹⁴

The censorship of all prisoners' correspondence is the main obstacle in submitting a complaint of torture or ill-treatment. For this reason, detainees use other informal channels, such as sending anonymous letters to independent media, complaining to human rights bodies or organizing group or individual protests (hunger strikes, suicide attempts, etc.). The submission of complaints through unofficial channels, however, sometimes results in the invalidation of the complaint, as the applicant's signature has not been certified with a prison stamp.

- In November 2002, several detainees in the Gobustan prison filed complaints to a court, claiming to have been convicted to life imprisonment on an unfair basis. Because they were unable to submit their complaints through the prison authorities in the usual manner, their complaints were declared invalid.¹⁵

In the lead-up to and during the presidential elections on 15 October 2003, the police used excessive force against the political opposition that protested in the streets of the capital Baku. On the evening of 15 October and the following day, clashes between the police (and the military) and protesters grew into a massively violent confrontation as the opposition protested the flawed elections. The police and the military surrounded the Azadliq (Liberty) Square using tear gas, rubber bullets, police dogs and truncheons on protestors. They brutally beat protestors, even after they had fallen to the ground, injuring scores of people, as well as members of the press. Many police officers were also injured. At the time of this writing the number of casualties was not yet clear: depending on sources, two to four deaths were reported, along with dozens of injuries, including a five-year old child. Azerbaijani authorities maintained that the mass unrest was instigated by the opposition leaders in order to destabilize Azerbaijan, but according to numerous accounts, the police actions were unprovoked.

According to official information, some 400 people were arrested in the aftermath of the elections. Many of them were held *incommunicado* for some days and police refused to give information about their whereabouts. NGO representatives said that they continued to receive information that detainees have been subjected to torture. Allegedly, beating the soles of detainees' feet with a stick (*falaka*) was the most common method. In addition, detainees have also been subjected to psychological torture, with police threatening to retaliate against their next of kin. This has happened, for example, with opposition election officials and observers who refused to sign vote tallies they thought were fraudulent.¹⁶

- On 23 October 2003, two lawyers -- Suleiman Qasimov and Vulgar Hasiyev -- were for the first time allowed to see Mr. Jalaloglu, secretary general of the Azerbaijan's Democratic Party (ADP), who was arrested on 18 October. His legs were covered in bruises and he could not move without help. Lawyer Hasiyev said that another of his clients, the head of ADP campaign staff Natig Cabiyeu, was also injured.¹⁷

¹³ See also IHF, *Anti-Terrorism Measures, Security and Human Rights, Developments in Europe, Central Asia and North America in the Aftermath of September 11*, April 2003, at http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=390

¹⁴ HRCA, ILHR and OMCT, op.cit.

¹⁵ Ibid.

¹⁶ RFE/RL, "Azerbaijan: Rights Groups Say Post-Election Detainees Tortured," 24 October 2003, at <http://www.rferl.org/nca/features/2003/10/24102003165107.asp>

¹⁷ Ibid.

- Another suspected case of physical abuse involved Umid Party leader Mr. Agazade. Agazade had supported Isa Qambar, the Musavat opposition party candidate, during the election campaign. Agazade was deprived of his parliamentary immunity and put under arrest for allegedly inciting the street protests. On 20 October, Agazade appeared on Azerbaijan's ANS pro-government television channel and publicly blamed the Musavat leadership for the unrest. However, local monitors believed that Agazade was beaten and tortured to give such a statement.¹⁸
- Hamidaga Zahidov's body was viewed by a Human Rights Watch representative after the protests. His body was completely bruised, and his head was smashed and bloody. Zahidov had gone to Azadliq Square from the city of Saatli to "protect his rights," according to his brother. Another of Zahidov's brothers was also badly beaten, but a clinic refused to treat him.¹⁹
- The lawyers of the prominent political activists and a member of the Musavat Party, Ibrahim Ibrahimli, and the Chairman of the Azerbaijan People's Party (XAP), Panah Huseynov, alleged that they had been tortured while being held *incommunicado* in the detention facility of the MCQBI on 17-22 October.²⁰

BULGARIA²¹

Bulgaria ratified the CAT in June 1987 and has been party to the CPT since May 1994.

The Bulgarian Criminal Code does not define torture nor does it expressly provide for a prohibition of torture. The UN Committee against Torture criticized this in its comments to the Bulgarian government in 2000 but no effective measures have been taken to remedy the legal gap. In addition, the government continues to resist the introduction of universal jurisdiction on torture. As the government report submits, "such measures have not been adopted" as "for the time being, the idea of a special and differentiated procedure approach to criminal torture requiring special normative standards has not crystallized, both in theoretical and legislative terms, and is not supported."²² The failure to adopt adequate legislation hinders effective investigation and punishment of acts of torture.

On the basis of an order from March 2002 and Instruction No. I-167 from 13 of September 2003, the Ministry of Interior has obliged local police headquarters to inform all arrestees about their right to have a lawyer, be examined by a medical doctor of their own choice and inform relatives or third parties about the place and circumstances of their arrest. All arrestees are asked to sign a declaration that they have been informed about these rights. In addition, positive developments that have taken place the past few years include NGO access to prisons and detention facilities; some improvements in access to legal aid; imposition of a judicial control over some disciplinary measures and administrative

¹⁸ Ibid.

¹⁹ The International League for Human Rights, "League Expresses Concern about Conduct of Azerbaijan's Presidential Election, Human Rights Watch," press release, 17 October 2003, Human Rights Watch, "Azerbaijan: Post-Election Clashes Turn Deadly Security Forces Use Excessive Force on Protesters," press release, 17 October 2003.

²⁰ Human Rights Centre of Azerbaijan to the IHF, October 2003.

²¹ Unless otherwise noted, based on the Bulgarian Helsinki Committee (BHC), *Human Rights in Bulgaria in 2002*; BHC, *Alternative Report to the Bulgarian Government's Third and Fourth Consolidated Reports to the Committee against Torture*, October 2003; and updates from the BHC to the IHF, October 2003.

²² *The Third and the Fourth Consolidated Reports of the Republic of Bulgaria to the Committee Against Torture*, 2003, p. 45.

isolations in the prisons; and improvements in the material conditions of the places of detention. These improvements, however, have been insufficient to combat the problem of torture.

On 13 June 2002, the European Court of Human Rights pronounced its judgment on the case of *Anguelova v. Bulgaria*, where it established a violation of Article 2 of the European Convention on Human Rights (ECHR). The case concerned the death in police custody of the applicant's son, Angel Zabchikov. The court also found violations of Article 3 (lack of reasonable explanation for the bruises by the authorities), Article 5 (unlawful detention), and Article 13 (lack of effective means to identify and bring the perpetrators to justice) of the ECHR. Despite this judgment, impunity towards officials who committed torture or otherwise abused people is still widespread and continues to hamper effective prevention and punishment of torture and other cruel, inhuman or degrading treatment and punishment.

Bulgarian police officers frequently resort to illegal conduct: the use of physical force during apprehension and detention of criminal suspects appear to be the rule rather than exception. In violation of international human rights standards,²³ the Interior Ministry Act still allows the use of firearms during the apprehension of an individual carrying out or about to carry out a criminal offence, or to prevent a suspected criminal escaping. For the period 1998-2003, the Bulgarian Helsinki Committee (BHC) has documented at least 18 cases of shootings by law enforcement officers (police, prison guards and forest guards) in which people lost their lives.

At a national conference of military tribunals held in October 2002, Justice Col. Vesselin Pengezov reported a rise in the number of cases before military courts. "Police brutality" offences occupied the largest share. Among the reasons for this rise, Col. Pengezov cited a sense of impunity among law enforcement officials.

Press reports in February 2003 presented an even gloomier picture: according to them, a military prosecutor's report contained information that at least 11 people had been killed by police or military officers in the line of duty in 2001. The BHC's request for information about these cases was turned down by the Military Prosecutor's Office because it "concerns the interests of third parties and does not have their written consent."

In 2001, the BHC documented in detail eight cases of people who had lost their lives in circumstances suggesting excessive use of force and firearms by either police, military officers or private security guards.²⁴ Only four of these cases reached court. Most cases were closed because of "lack of proof" of committed crimes. For example, the two police officers charged with the murder of Mehmed Mjumun, who died in January 2001, were acquitted. This decision was appealed before a higher court and is still pending at the time of writing.

- One case investigated in detail by the BHG was that of Seval Sebahtin. He died in custody in a military border post near Svilengrad on 18 February 2002. Sebahtin was one of a group of 20 illegal immigrants detained by border police. The investigation established that, apart from permitted means, such as truncheons and handcuffs, the border police had also used punches, kicks, and strikes with rifle butts. Seven people were charged with the murder.

Several people have been killed by armed private security guards in the past year. For example:

- On 21 August 2002, security guards shot Pavel Y., a 21-year-old Rom, during an attempted theft in Sofia. The victim later died in hospital.

Nine people detained in investigation detention centers or held as inmates in prisons committed suicide during 2002. Two cases raised suspicions that the staff had failed to act adequately to prevent the suicides or that staff actions had contributed to these acts.

²³ Article 9 of the *UN Principles on the Use of Force and Firearms by Law Enforcement Officials*.

²⁴ See BHC, *Human Rights in Bulgaria in 2001*, and BHC, *Obektiv*, March 2002.

- Mesut Karadavud (29) was found hanged in the Sofia prison hospital in March 2002. A month earlier he had asked to be moved from detention to house arrest on the basis of his psychiatric assessment, which had noted an “unadaptive situation” and the need for “higher psychological support” to control his depression. His relatives alleged that inmates from the prison had been paid to kill him.

During 2002 there were numerous reports of illegal use of force by law enforcement officials. For example:

- In November 2002, Marin Atanasov from the Roma Iztok neighbourhood in Kotel reported that a uniformed police officer had beaten him in the street.
- On 20 July 2002, in a case of mass use of force by law enforcement officials, participants in a protest march near Sliven were beaten when they tried to enter the city boundaries, because the mayor had not permitted the rally.
- R.T.P was arrested on 27 May 2002 for the failure to attend a court session. Police officers took him to the Investigation Detention Facility in Harmanli. He was beaten by several police officers both at the time of arrest and later during interrogation. R.T.P. claimed that after the first beating he received medical care in a medical center in Harmanli but no medical certificate was given to him. After being released, R.T.P. filed several complains about police brutality but the prosecutor’s office concluded that there was no evidence of ill-treatment by police officers and refused to take disciplinary measures against the abusive police officers.

A survey carried out by the BHC in August and September 2002 among remand prisoners in four Bulgarian prisons revealed that 43 % of inmates had been tortured and ill-treated either after arrest, inside the police station or investigation detention center. The survey revealed significant discrepancies between different ethnic groups as victims: the share of Roma inmates who reported use of physical force by the police was almost three times as high as that of Bulgarians (77 % and 27 % respectively).

BHC prison monitoring in 2002²⁵ established that punishments and isolation orders were sometimes carried out in violation of legal requirements, while the very nature of serving the punishment in a cell and prolonged isolation in some of the cases constituted inhuman and degrading treatment. Conditions in “high security” zones in several prisons were significantly worse than those in other cells.

Legislative amendments adopted in 2002 introduced the possibility for court appeal of placement in an isolation cell, but this does not apply to all types of isolation regime. A negative impact of the amendments was restricting access to all remand prisoners, a measure that may create serious problems for NGOs monitoring places of detention.

A total of 819 inmates were detained in the country’s 74 investigation detention centers as of 31 December 2002. A number of such centers have been closed down, predominantly those housed underground, and a new, modern center was opened in Sofia in March.

BHC prison monitoring revealed that, in general, conditions in investigation detention centers remained much worse than in prisons. Many lacked facilities for outdoor activities, visiting rooms, possibilities for listening to radio or watching television, and had very bad living conditions. Detention centers in Slivnitsa, Svilengrad and Petrich were overcrowded, had poor ventilation and no access to natural light. In several cases, detention conditions resulted in deterioration of detainees’ health. In some detention centers bottles and buckets were still used instead of toilets.

²⁵ See also the BHC, *Human Rights in Bulgarian Prisons* (only in Bulgarian), 2002.

Within the campaign to improve social care services, the BHC, together with Amnesty International (AI) and Mental Disability Rights International (MDRI), have visited numerous social care institutions since 2001 and uncovered grave violations of basic human rights of people who are placed in psychiatric institutions for compulsory treatment as well as the basic human rights of children and adults with mental disabilities who are placed in social care homes.²⁶ With few exceptions, material conditions in psychiatric hospitals and social care institutions are inhuman and degrading. Similarly, the reported ill-treatment of patients in hospitals and of residents in social care homes, the observed methods of restraint and enforcement of seclusion, and the lack of adequate rehabilitation or adequate medical care found in social care homes also amount to grave violations of international standards which prohibit torture and inhuman or degrading treatment or punishment. Moreover, Bulgarian legislation falls seriously short of international standards.²⁷

Nutrition in almost every institution visited by the BHC was totally insufficient. Residents were put at risk by neglect and many were subjected to beatings by personnel, to illegal restraint and seclusion, frequently with the use of inhumane methods (e.g. chained to fixed objects). People with developmental disabilities were not separated from people with mental illnesses who needed specialized medical care. Institutions were usually located in faraway and inaccessible locations, thus making residents' adequate care and socialization problematic.

The material conditions in some institutions were horrifying. In several institutions the BHC monitors found bedridden residents to be entirely neglected and residents who were aggressive or in an acute state locked in cells and isolation units. In some institutions, residents were forced to share beds.

People continue to die in social care institutions as a result of bad living conditions and neglect. The BHC visits to several such institutions revealed a very high mortality rate, with a peak in cold winter months. Death certificates were frequently found to be untrue, and were given to BHC monitors with reluctance, if at all. The prosecutor's offices have not charged a single person with negligence so far in spite of numerous requests from the BHC.

- The BHC found that the institution in Dragash Voyvoda had one of the highest mortality rates in the social care system. Twenty-two residents had died there in 15 months in 2001/2002.²⁸ In September 2002, seventy residents were transferred to five other institutions. When AI and BHC visited these institutions in April 2003 they could establish that the living conditions of the men had improved only marginally and that the steps taken to address the needs of current and former Dragash Voyvoda residents were inadequate. In November 2002, the Office of the Chief Prosecutor informed AI that Pleven County Prosecutor opened a preliminary inquiry into the deaths of 27 residents of Dragash Voyvoda. However, no progress had been reported about the proceedings by June 2003.²⁹

²⁶ Unless otherwise noted, based on Amnesty International (AI), *Bulgaria: Far from the eyes of society, Systematic discrimination against people with mental disabilities*, 10 October 2002. It reports the finding of the 2001-2002 visits by the Bulgarian Helsinki Committee, Amnesty International and Mental Disability Rights International to psychiatric institutions and social care homes in Bulgaria. The report is posted at <http://web.amnesty.org/library/Index/engEUR150052002?OpenDocument&of=COUNTRIES%5CBULGARIA%22>. For updates, see BHC, <http://www.bghelsinki.org/socialhomes/en/campaign.htm>

²⁷ International standards for the conditions and treatment of people with mental illness or disabilities have been laid down, for example, in the UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, adopted by the General Assembly Resolution number 46/119 of 18 February 1992; Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the UN General Assembly in 1993 (A/RES/48/96); and the Eighth Annual Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its elaborated standards for conditions and treatment in psychiatric institutions published on 31 August 1998.

²⁸ BHC, "Social care institutions in Bulgaria," at <http://www.bghelsinki.org/socialhomes/en/campaign.htm>

²⁹ AI, "Bulgaria: Where are the men of Dragash Voyvoda?" 1 June 2003, at <http://web.amnesty.org/library/Index/ENGEUR150052003?open&of=ENG-BGR>

There are also numerous cases of arbitrary detention of mentally ill people in social care institutions across the country in violation even of the Bulgarian procedure. In effect, this usually amounts to lifelong deprivation of liberty without any judicial control but with an agreement between the local social assistance department and the resident's guardians.

On 1 August 2003, the European Court of Human Rights Court released the judgement in the case of *Kepenerov v. Bulgaria*.³⁰ The court ruled that Bulgaria was in violation of Article 5(1) of the European Convention on Human Rights when confining Ivan Raykov Kepenerov to a psychiatric clinic in 1996 on the basis of a prosecutor's order. Moreover, there had been no possibility of obtaining an independent review of the lawfulness of the confinement. The court ruling also noted that Bulgarian law did not provide the requisite safeguards against arbitrariness.³¹ This was the second judgment of the European Court of Human Rights against Bulgaria in a similar matter³² but no legal changes have been undertaken to bring domestic legislation on compulsory treatment in line with European standards. Placement in a psychiatric facility to establish the need for compulsory treatment can still be carried out with a prosecutor's order for a period of up to one month (or up to three months in exceptional circumstances) without a psychiatric examination prior to this order being made. The draft Public Healthcare Act provides a satisfactory resolution these problems, but it is still pending in parliament. Moreover, patients are frequently held in psychiatric facilities for periods exceeding the legally determined period for expert assessment.

The BHC registered several cases of the use of unmodified electro-convulsive therapy until April 2002, when its administration was banned by a Ministry of Healthcare act. The lack of clear rules regulating restraint and the use of restraint and seclusion of mentally ill individuals are still to be adequately dealt with.

In May 2003, Deputy Minister of Labour and Social Policy Christina Christova announced that 29 social institutions are to be closed down by the end of the year. The reasons are the extremely poor material conditions in these institutions.³³

GEORGIA

Georgia acceded the CAT in 1994 and ratified the CPT in 2000. Torture is a punishable offence under Article 126 of the Criminal Code.

As a result of pressure by the Council of Europe prior to Georgia's accession to the Council of Europe, a new Criminal Code was adopted in May 1999. It was largely in line with international human rights standards. However, just a few weeks after the country's accession, the parliament again modified nearly half of its provisions. This move resulted in a new erosion of the rights of persons under investigation, narrowing access to courts of general jurisdiction during criminal investigations. These amendments particularly hampered the possibility to file complaints with a court for abuse during the investigation period. The repeal of the improvements was alarming given the frequent reports of serious abuse of detainees and other procedural irregularities during criminal investigation and widespread corruption in the judicial system.

³⁰ No. 39269/98

³¹ BHC, "Four Chamber judgments concerning Bulgaria," 1 August 2003, <http://www.bghelsinki.org/socialhomes/en/campaign.htm>

³² See *Varbanov v. Bulgaria*, Application No. 00031365/96, judgment of 5 October 2000.

³³ BHC, "29 social institutions to be closed down by the end of the year," 30 May 2003, at <http://www.bghelsinki.org/socialhomes/en/campaign.htm>

Both the UN Committee against Torture and the Council of Europe's Committee to Prevent Torture in 2002 issued highly critical reports about the use of torture and ill-treatment in Georgia and demanded that the government take decisive measures to put an end to them.

The UN Human Rights Committee in March 2002 stated that it "remains concerned at the widespread and continuing subjection of prisoners to torture and cruel, inhuman or degrading treatment or punishment by law enforcement officials and prison officers." It also expressed its concern at the still very large number of deaths of detainees in police stations and prisons, including suicides and deaths from tuberculosis and the spread of tuberculosis in prisons. It emphasized that the government should ensure that every case of death in detention is promptly investigated by an independent agency.³⁴

The European Committee stated in its report published in April 2002 that it "has been led to conclude that criminal suspects deprived of their liberty in Georgia run a significant risk of being ill-treated at the time of their apprehension and/or while in police custody (in particular when being interrogated) [...]"³⁵

The European Committee had received numerous allegations of physical torture and ill-treatment by the police of persons suspected of criminal offences, the forms of which included mainly slaps, punches, kicks and blows struck with truncheons, gun butts and other hard objects. The most serious cases involved the infliction of electric shocks, asphyxiation by using a gas mask, blows struck on the soles of the feet, and prolonged suspension of the body held upside down. Torture and ill-treatment were facilitated by the fact that detainees were not always brought personally before a judge when deciding on detention, family members were not always notified of the detention, and access to lawyers and doctor was restricted. The European Committee reported that torture was often accompanied by other procedural violations that appeared to be specifically intended to cover up physical abuse and avoid judicial proceedings against the perpetrators. Beatings were commonplace and relatives were frequently faced with financial or other demands in exchange for a detainee's release. Threats that family members would be tortured or murdered were also used against detainees. The denial of access to a defense lawyer facilitated such abuse.³⁶

Despite severe international criticism, the Interior Minister Koba Narchemashvili in November 2002 demanded regressive new amendments to the already seriously flawed Criminal Procedure Code. Narchemashvili complained that the code tied his ministry's hands in the struggle against criminality. He demanded an extension of the 12 hours the code allowed the police to detain suspects *incommunicado* and that witnesses be deprived of the right to legal representation.³⁷ Moreover, he suggested that his ministry should take back some operational control of pre-trial detention facilities from the Ministry of Justice.³⁸

The Constitutional Court of Georgia, however, has recently taken some positive formal steps. On 29 January 2003 it declared unconstitutional some provisions of the Criminal Procedure Code, which had served as a legal basis for abusive police practices. The court declared unconstitutional the provision that had denied detainees the right to contact a lawyer, relatives or request medical expertise within the first 12 hours of detention. In a similar vein, it abolished the article that had limited detainees' contact with a lawyer to one hour per day, as well as infringed upon the right of a

³⁴ UN Human Rights Committee, *Concluding observations on the second periodic report of Georgia: Georgia*, 19/04/2002, CCPR/CO/74/GEO, April 19, 2002, at

[www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/1d38b588eb1eb9dce1256c940030cc27?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/1d38b588eb1eb9dce1256c940030cc27?Opendocument)

³⁵ European Committee for the Prevention of Torture, *Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT from 6 to 18 May 2001)*, November 2002, at www.cpt.coe.int/en/reports/inf2002-14en.pdf

³⁶ Ibid.

³⁷ The 1999 amendments also stripped witnesses of the right to legal representation, but a June 2001 amendment restored this right. Human Rights Watch (HRW), "Pro-Torture' Legislation Looms in Georgia," 26 November 2002, at <http://www.hrw.org/press/2002/11/georgia1126.htm>

³⁸ Ibid.

defender to get acquainted with the case materials. Further, while the code stated that the period of preliminary detention could be more than nine months, the court stated that the maximum nine months included the period of the first court hearing. Although not all of the proposals submitted to the court by the Public Defender Nana Devdariani and some citizens were accepted, the public defender called the court's rulings "revolutionary."³⁹

On 12 February 2003, the Constitutional Court declared unconstitutional Article 142 of the Criminal Procedure Code, which had permitted detention based on suspicion that a person committed a crime, if the person had no permanent residence, or if his/her identity was not determined. The article was extensively used by law enforcement agencies in illegal detentions, followed by various violations of human rights, including physical and psychological pressure and torture.⁴⁰

In September 2003, top government officials agreed on the Plan of Action against Torture in Georgia, due to be implemented in 2003-2005. The plan, which was drawn up in cooperation with the OSCE, includes, among other things, bringing Georgian legislation up to par with OSCE and other international commitments regarding torture, better investigation of allegations of torture, enhancement of control of police and prison facilities, training of officials, and establishment of control bodies.⁴¹ As a key element of this action plan, a website was launched by the Human Rights Department of Georgia's National Security Council with the support of the OSCE Mission to Georgia.⁴²

Despite formal improvements, however, reports of police ill-treatment have continued throughout the year, including allegations of the use of electric shocks. In November 2002, the Ministry of Justice forensic bureau confirmed to Human Rights Watch that at least four cases of police use of electric shock torture took place in 2002 and there were instances of forged signatures on detainees' statements to police.⁴³

According to the Human Rights Information and Documentation Center (HRIDIC), in the first three months of 2003, some 137 detainees with bodily injuries were taken from the Ministry of Interior's temporary detention isolator to the penitentiary department.⁴⁴

- Kartlos Nakhalov was reportedly tortured with electric shocks in the Didube-Chgureti police department in early 2003. A medical doctor certified traces typical of electric shocks behind his ears.⁴⁵
- In another case, the head of the Expert Center of the Justice Ministry, Maia Nikoleishvili, applied on 5 March 2003 for the involvement of an expert to look into the case of a citizen beaten by the police, who preferred not to give his identity out of fear of retribution after being threatened with death if he filed a complaint about police brutality.⁴⁶
- The attorney of Gocha Bregadze and Revaz Purtskhvanidze, both arrested on 28 February 2003, claimed that his clients were tortured with electric shocks at the police station of Kutasi. The local police denied the allegations.⁴⁷

³⁹ The Citizens Advocate Program (CAP), "The Constitutional Court for more Humane Criminal Code," at <http://www.advocacy.ge/magazine/TheConstitutionalCourtformoreHumaneCriminalCode.shtml>

⁴⁰ Inside IRIS Georgia, Newsletter, 16 May 2003.

⁴¹ See the website of Human Rights Department of Georgia's National Security Council, at <http://www.dhr-nsc.gov.ge>

⁴² OSCE, "OSCE Mission helps Georgia become an area free of torture," 28 May 2003.

⁴³ HRW, op.cit.

⁴⁴ Human Rights Information and Documentation Center (HRIDIC), *Human Rights in Georgia*, No. 3-4, March-April 2003, at <http://ishrg.tripod.com/newsletters/3-4-49-50.doc>

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

- On 16 June 2003, 38-year-old Merab Chukhasvili was allegedly tortured by police officers in the building of the Interior Ministry in Tbilisi in order to confess to a kidnapping. Chukhasvili fainted during the trial and doctors said he required an urgent operation because electric shocks had damaged his internal organs.⁴⁸

The Prosecutor General Nugzar Gabrichize said that detainees frequently fall victim to police ill-treatment when transported from police detention to prisons. He said that the Justice Ministry has started to keep a record of such cases, but law enforcement agencies have failed to take any disciplinary measures. He also noted that there were 108 cases of illegal detention of individuals in 2002, officially on suspicion of drug consumption. Further investigations revealed that none of the detainees were under the influence of drugs.⁴⁹ According to Maia Nikoleishvili, head of the Expert Center of the Justice Ministry, “most policemen consider that crimes can be revealed only by means of violations, beatings, and electric methods of torture.”⁵⁰

The assistant public defender Ramaz Ninua noted that victims of police brutality often file complaints of police abuse but later withdraw their statements, apparently after being threatened or offered bribes to remain silent.⁵¹

GREECE⁵²

Greece has been party to CAT since 1988 and it ratified the CAT in 1991.

Article 7(2) of the Greek Constitution specifically prohibits the use of torture and ill-treatment. Since 1984 torture and ill-treatment have also been explicitly proscribed in the Greek Criminal Code. The addition of Article 137A-137D deals with "torture and other offences against human dignity" under Law 1500/1984.

Article 137A(1) outlines punishments for public officials who resort to acts of torture with the aim of extorting a confession, testimony or other forms of statements, of punishing, or of intimidating a person or third persons. The prescribed penalty for someone found guilty of torture is from three years' to life imprisonment. The most serious cases (such as, for example, beating the soles of the feet or electro-shock equipment) are punishable by a minimum of 10 years' imprisonment -- or life imprisonment if the victim dies (Article 137B). Under Article 137A (3) “less serious cases” are punishable by three to five years' imprisonment, and offences against “human dignity” (e.g., prolonged isolation and any serious offence against sexual dignity) are punishable by five years' imprisonment.

Additionally, by law, persons convicted of torture are automatically deprived of their political rights and dismissed from their jobs. The victim has the right to claim material compensation from the state for damages done to him or her and pecuniary satisfaction for psychological and moral damage. It is further provided that a state of emergency or a superior's order do not justify any acts of torture.

Under Article 177(2) of the Code of Criminal Procedure evidence obtained by illegal means (for example, torture or ill-treatment) is not admissible in court.

⁴⁸ HRIDC, *Human Rights in Georgia*, No. 6, June 2002.

⁴⁹ HRIDC, *Human Rights in Georgia*, No.2, February 2003.

⁵⁰ HRIDC, *Human Rights in Georgia*, No. 3-4, March-April 2003.

⁵¹ HRIDC, *Human Rights in Georgia*, No. 2, February 2003.

⁵² Unless otherwise noted, based on Amnesty International and International Helsinki Federation, *Greece: Torture and ill treatment and unlawful use of fire-arms*, September 2003, at <http://web.amnesty.org/library/print/ENGEUR250132002>

However, in practice, official statistics relating to complaints of torture and ill-treatment confirm almost total impunity for police officers in cases of abuse. All the available information confirms that prosecutions under Article 137A have been very rare, and that police and other law enforcement officials who ill-treat detainees -- if they are to be prosecuted at all -- are more likely to be charged under Article 239 or with offences such as "bodily injury" (under Articles 308 to 310 of the Criminal Code), "threat" (Article 333) or "insult" (Article 361). It is perhaps also significant that the only two cases known to AI/IHF (in the period 1998 to the end of June 2002) in which police officers have been indicted and tried under Article 137A have conformed to the restrictive interpretation of this article; they concerned police officers accused of having tortured detainees (three of them children) in order to force confessions or other information from them. In both cases the accused police officers were acquitted.

Numerous incidents that have occurred recently in Greece point to an increasing lethal and reckless use of firearms by the Greek police and other forms of misconduct. Unlawful shootings, beatings and ill-treatment, even torture, by police happen frequently and may be defined as widespread practice. One year after the publication of an AI/IHF report on police misconduct in Greece, no one has been punished for the 80 cases mentioned in the report. What is more, most of those cases have not even been effectively investigated despite the evidence available in the report as well as the police and court files.

The majority of the victims are Roma, immigrants -- often Albanians -- and asylum seekers, including children. A significant number have suffered severe injuries resulting from physical ill-treatment that required medical treatment or even hospitalization. Detainees have alleged ill-treatment during arrest and in police custody. Slaps, punches and kicks are the most frequent complaints. However, in some cases prisoners claim that they have been beaten with truncheons or pistol and rifle butts -- allegations often supported by convincing medical evidence. Furthermore, verbal, sometimes racist, abuse and in some cases sexual threats have been reported.

- On 24 October 2001, an unarmed Rom, Marinos Christopoulos (21), died in Zefyri, Attica, after being shot in the head by a police officer when he failed to stop at a police checkpoint. The police officer reported that the young Rom had attempted to run him down and that while trying to avoid the vehicle he had stumbled, causing his gun to discharge accidentally. According to an autopsy report Christopoulos was killed by a bullet which entered the back of his head. The officer was charged with "reckless homicide" and released on bail. He was suspended from duty pending investigation. However, an internal police inquiry in March 2002 concluded that the officer had fired a shot at the car to halt it, while being aware of, and accepting, the possibility that this action might cause the death of the driver, and recommended his dismissal from service. Nevertheless the officer remained in the service through July 2003 because the second level Disciplinary Council of EL.AS. (Disciplinary Council of Hellenic Police) had not found until then the time to investigate the appeal. The accused police officer had been disciplined by the EL.AS twice before. In the first case, in 1995, when violating the red light and causing an accident. The second time, in 1999, he got involved in a fray (while not in service). The second punishment was imposed just 100 days before the killing of Marinos Christopoulos.⁵³

According to the Greek Helsinki Monitor, a trial date has been set for 12 May 2004.

This example is only one of numerous similar cases.

Violent incidents on the Greek-Albanian border remains another matter of concern. A huge number of people cross this border illegally each year, the majority of them being poor and desperate people who seek work on Greek farms and building sites. In some instances Greek law enforcement officials may

⁵³ Greek Helsinki Monitor, 7 June 2003, at http://www.greekhelsinki.gr/bhr/english/special_issues/ai-ihf-torture-background/Marinos%20Christopoulos.doc

have used firearms in legitimate self-defense, however in others it appears that they may have fired shots simply to intimidate, deter or to punish border-crossers.

- Since 1991, Ferhat Ceka (67) has supplemented his meager pension and supported his family in Tirana by spending several months almost every year in Greece working during the harvest season on farms, or more recently as a shepherd. In March 2002 he crossed clandestinely into Greece, unarmed and alone, and was apprehended by three soldiers. Ceka was badly beaten and maltreated by the soldiers and has suffered serious health problems, including anxiety and depression, since this incident. The medical report issued by the hospital where Ferhat Ceka was taken states that he was admitted with bullet wound affecting his kidney. According to the report, he underwent an operation in which his right kidney was removed as well as part of the right lobe of the liver.

The military's administrative inquiry concluded that the soldiers' had acted in violation of regulations and received a ten-day prison sentence as a disciplinary sanction while no criminal prosecution was recommended. However, a prosecutor of the Military Court of Thessaloniki investigated the case. He pointed to many irregularities and even criminal responsibilities of the officers involved and the administrative investigation that had been carried out, and asked for a disciplinary and criminal investigation of the case. A court martial date was set for 3 April 2003, but was postponed as the Greek authorities failed to send the summons to Ferhat Ceka in Albania. Following Greek Helsinki Monitor intervention, Ceka came to Greece and testified before the military court prosecutor on 11 June 2003. The prosecutor has, as a result, widened the investigation to include possible charges of ill-treatment. This has been the only case of assault on border-crossers that has reach court in Greece.⁵⁴

- On 15 September 2003, Albanian citizens Ligor Halimi (41), Mili Halimi (43) and Rahman Pashollari (62), were stopped near the Albanian border and severely abused by Greek policemen when trying to return to Albania. The officers searched them, took their money, and reportedly began to punch, kick and hit them with wooden batons. The three men were taken to a detention facility in Pili (Florina), where their identity data were recorded. The policemen then took them to the Kapshtica (Kristalopigi) border crossing point. Of the three men, Ligor Halimi sustained the most severe injuries: he was diagnosed with injuries to the abdomen and a ruptured spleen, accompanied by internal hemorrhages. He later underwent surgery to have his spleen removed. Mili Halimi and Rahman Pashollari suffered only light bruises on their knees and arms.
- On 23 September 2003, an 18-year old Albanian, Vullnet Bytyçi, was shot in the back of the head and killed by members of the Greek police near the Kristalopigi checkpoint while he was attempting to escape arrest. Four other Albanians with whom he was traveling to Greece in order to find work, Alfred Ramadan Metaliaj, Emri Saetr Metaliaj, Beqir Osman Metaliaj and Bilbil Selman Metaliaj, were arrested and were later released and returned to Albania. A sixth person, Luan Metaliaj, reportedly escaped arrest and hid for 24 hours before returning to Albania. A bullet reportedly went through his jacket without injuring him during his escape. The Greek police reported that one police border guard shot in the air to prevent their escape as well as their threatening behavior towards one of his fellow guards. However, there were reports that at the time of his shooting, Bytyçi had stopped running away and did not present any danger. The authorities have reported that the police border guard responsible for the shooting would be tried according to Greek law. He has been prosecuted for reckless homicide and the decision of the Misdemeanour Council is pending as to whether or not he will be referred to trial.

There have been several other similar cases of police shooting at or ill-treating Albanian border-crossers alone in September and October 2003.

⁵⁴ World Organization against Torture (OMCT), 16 October 2003.

In June 2003, the Mixed Jury Criminal Court of Patras set a dangerous precedent by acquitting a police officer of the alleged rape of a 19-year-old Ukrainian woman in February 1998. The case came to trial five years after the initial claim of rape was made by the young woman who was a victim of trafficking for the purpose of sexual exploitation and thus was forcibly held in a bar. The court decided that the woman had consented to sexual intercourse with the accused police officer and thus he was given only a suspended sentence for breach of duty. The four co-defendants in the case were simply ordered to pay small pecuniary fines (up to EUR 4, 800) for their involvement in the trafficking offences. Neither the young woman nor any other witnesses were summoned to testify in court. No physical or other evidence was submitted on her behalf. Furthermore, the bailiffs in charge declared themselves unable to deliver the summons to the complainant due to an “unknown” address, despite the fact that she was known to the police and had obtained a special permit (suspending a deportation order) to remain in Greece to give evidence at the trial. A partial motion of cassation is pending before the Supreme Court. This case only came to trial five years after the initial claim was made.⁵⁵

KYRGYZSTAN⁵⁶

Kyrgyzstan acceded the CAT in 1997, and in 1999 the UN Commission against Torture discussed the government’s initial report under the convention and gave a list of recommendation to combat the use of torture. In a similar manner, the UN Commission on Human Rights in 2000 recommended that the government take serious measures towards abolishing torture.

Torture has not been defined in the Kyrgyz Criminal Code and, as a result, the law does not explicitly provide for punishment for inflicting torture. However, Article 325 of the Criminal Code prohibits the use of violence or force in obtaining testimony from persons under investigation.

Misconduct on behalf of law enforcement officials, including beatings, other forms of ill-treatment and direct torture to extract “confessions” and pressure for bribes, continue unabated in police stations and detention facilities. In addition, *incommunicado* detention is common practice, something that is known to increase the risk for torture. Several people have died in prison as a result of the use of excessive force or by committing suicide.

Turar Musaev, a resident of the village Ak-Olon was arrested on suspicion of stealing cattle in April 2002. A police officer beat him in the head with a truncheon and a stone and pulled his tongue and nails with pliers. As a result of the torture, Musaev confessed to stealing cattle even though he was innocent.

- In April 2002, a male Uzbek citizen died in custody at the Department of Internal Affairs in the Osh *oblast*. According to the forensic examination, he had hanged himself. His relatives, however, claimed that he had been tortured during the three days following his arrest, and was subsequently killed by the police. His body, which was transported to Uzbekistan from Kyrgyzstan, showed injuries compatible with marks of torture on his head, back, chest and legs.
- On 14 April 2002, a 29-year old man was arrested in the Chui *oblast* and accused of stealing cattle. He committed suicide in custody after having been subjected to torture. The regional prosecutor refused to launch an investigation due to the “absence of *corpus delicti*.”

⁵⁵ IHF and Greek Helsinki Monitor, “Greek Court Allows Rape to Go Unpunished, Sets Dangerous Precedent,” 14 July 2003, at www.ihf-hr.org/viewbinary/viewhtml.php?do#c_id=460

⁵⁶ Unless otherwise noted, this section is based on information from the Kyrgyz Committee for Human Rights (KCHR) to the IHF, January and October 2003.

Law enforcement officials have been held responsible for misconduct amounting to torture according to international standards in very few cases.

Persons with real or alleged affiliation with the outlawed Islamic organisation Hizb-ut-Tahrir have been arbitrarily arrested, tortured and ill-treated and sentenced to prison terms on a vague legal basis.

- Thirteen Hizb-ut-Tahrir members were arrested in April 2003 as they were distributing leaflets opposing the war in Iraq, and were held in *incommunicado* detention. Their families were not informed of their whereabouts.⁵⁷ According to the Kyrgyz Committee for Human Rights (KCHR), they were all subjected to torture and ill-treatment.
- On 23 May 2003, members of the Department of the Interior arrested 45-year-old Hasanbaev Salijan. He was carrying twenty leaflets related to the Hizb-ut-Tahrir party. The Ministry of the Interior reportedly attempted to keep Salijan's whereabouts secret and to conceal his name since his arrest, leading to fears for his personal safety. Salijan did not have access to legal counsel and his relatives were unaware of his condition.⁵⁸ According to the KCHR, Hasanbaev Salijan was beaten while in custody.

During the referendum on the new Constitution on 2 February 2003 and its aftermath opposition party monitors were targeted.

- Some 20 members of the Bishkek City public referendum monitoring staff, including members of at least three opposition parties, were arbitrarily arrested and detained while investigating alleged violations of the electoral process. The deputy head of the staff was beaten, threatened and held *incommunicado*.⁵⁹

On the morning of 3 February 2003, a number of assailants attacked and beat the representative of the Coalition for Democracy and Civil Society in Kyrgyzstan, Januzak Abdrasulov, as he was returning from monitoring the referendum. The attackers took with them 17 monitoring reports of shortcomings in the electoral procedure.⁶⁰ Local human rights monitors believed that the attack was politically motivated and orchestrated by the authorities.

Of particular concern is the fact that the March 2002 shootings in the Aksy region have gone unpunished. In total, five people died and some 200 people were injured during the Aksy incidents and an additional 200 were arrested. One person died later as a result of torture in the District Department of the Interior. Many were sentenced to serve an administrative punishment. Most of the detainees were held in police stations where they were tortured or ill-treated in order to extract "confessions" for crimes they had not committed, and where they were forced to sign documents without knowing what they signed.

On 28 December 2002, the Osh Military Court convicted and sentenced four of the seven authorities charged with responsibility for the March Aksy killings. Former Jalal-Abad Regional Prosecutor, Zootbek Kudaibergenov, and former Police Chief, Kubanychbek Tokobaev, were sentenced to three years imprisonment each for overstepping their authority, while the former Aksy District Prosecutor General, Abdykalyk Kaldarov, and the former Jalal-Abad Deputy Police Chief, Abdimal Kalbaev,

⁵⁷ World Organisation Against Torture (OMCT), "Kyrgyzstan: Arrest, incommunicado detention and risk of torture faced by 13 members of the Hizb-ut-Tahrir," 10 April 2003, at

<http://www.omct.org/displaydocument.asp?DocType=Appeal&Index=3079&Language=EN>; and OMCT,

"Kyrgyzstan: repression of members of the Hizb-ut-Tahrir party," 24 June 2003, at

<http://www.omct.org/displaydocument.asp?DocType=Appeal&Index=3335&Language=EN>

⁵⁸ OMCT, "Kyrgyzstan: Risk of Torture of Mr. Hasanbaev Salijan," 3 June 2003, at

<http://www.omct.org/displaydocument.asp?DocType=Appeal&Index=3257&Language=EN>

⁵⁹ OMCT, "Kyrgyzstan: Arbitrary Arrests and Detention of Members of the Bishkek City Public Referendum Monitoring Staff," 6 February 2003, at

<http://www.omct.org/displaydocument.asp?DocType=Appeal&Index=2881&Language=EN>

⁶⁰ Ibid.

were both found guilty of interfering with a public protest and received two-year sentences. However, all of them were acquitted on appeal. Three other officials initially charged with the crimes were acquitted in the first instance due to a lack of evidence. No police officer who opened fire at a crowd of demonstrators in the Aksy region has been punished.

Many also believe that the order to disperse the protests and even to shoot at demonstrators came directly from the presidential administration. More distressingly, some of the officials closely involved in the incidents were promoted. Amanbek Karypkulov, head of the presidential administration, was appointed ambassador to Turkey, while Teminbek Akmataliev, the former minister of the interior, was appointed deputy head of the presidential administration.

The conditions in Kyrgyz prisons and jails are excruciatingly bad. Healthy prisoners are kept in overcrowded cells together with prisoners suffering from infectious diseases such as tuberculosis and AIDS. Prisoners' nutrition is seriously substandard and scarce and prison administrations largely rely on relatives bringing food to prisoners. No special diets are available for those who would need them because of the diseases they have. The facilities for personal hygiene are totally inadequate. For example, in the Djalal Abad jail, prisoners have to use a bucket instead of lavatories in cells where 12 people are detained.

On 24 October 2003, Deputy Director of the National Security Services, Mr. Poluektov told the parliament that 7-10 inmates die every month in Kyrgyz prisons as a result of appalling conditions. Most victims are men in death row. Many of them have appealed to the president to cancel the moratorium on the death penalty saying that they prefer execution to living in Kyrgyz prisons.

During the same parliamentary session it was reported that law enforcement agencies had failed to investigate the death of ten prisoners under suspicious circumstances. Many parliamentarians suspected that many of several of them had been tortured to death. Kyrgyz parliament is now looking into the cases but local monitors fear that the truth will never be revealed as the parliament's investigations are dependent on the executive branch which is notorious for lack of cooperation in cases involving alleged abuses.

Human rights activists believe that in reality hundreds of inmates die annually of tuberculosis and other diseases. However, only in rare cases are the prisoners' relatives informed of the fate of their loved ones, and very few of the deceased undergo a post mortem examination. As a result, deaths that can be attributed to torture run the risk of never being discovered and the perpetrators never brought to justice.

MACEDONIA

Macedonia acceded the CAT in December 1994 by succession and ratified the CPT in June 1997.

Articles 11 and 54 of the Macedonian Constitution prohibit torture and inhuman or humiliating treatment or punishment under any circumstances. Sections 142 and 143 of the Criminal Code stipulate that acts of torture and ill-treatment by law enforcement officials are prosecuted *ex officio*. In addition, according to sections 10 and 15(2) of the Criminal Procedure Code, evidence in criminal cases obtained in an unlawful manner, such as through ill-treatment or coercion, may not be used in court.

The Macedonian government, however, has failed to address cases of torture in an adequate manner.

The European Committee for the Prevention of Torture visited Macedonia twice in 2002 and published its findings in January 2003. It concluded that the physical ill-treatment of detainees at the

hands of law enforcement agencies was a serious problem, affecting ordinary criminal suspects as well as those suspected of crimes against the state. According to the European Committee, in a number of cases, the ill-treatment was so severe that it amounted to torture. Ill-treatment has allegedly been inflicted by the security forces under the Ministry of the Interior, including regular police, criminal police, personnel from the Directorate for Security and Counterintelligence (UBK); special police units ("Lions" and "Tigers"); and, in some cases, police reserves. Apart from allegations of punches and kicks on various parts of the body, there were many reports of beatings with batons, metal rods, wooden sticks and baseball bats, which involved -- in a number of cases -- the infliction of repeated blows on the buttocks, the soles of the feet and/or the palms of the hands. Other types of alleged ill-treatment included sleep deprivation and mock executions.⁶¹

According to information gathered by the European Committee, there was no guarantee that an effective investigation would be carried out when it came to the attention of judges and prosecutors that a person may have sustained injuries while in police custody.⁶² The Helsinki Committee of Macedonia has noted that the co-called Professional Standards Unit of the Ministry of Interior, which is responsible for internal police control, has been unable to act objectively and efficiently to examine alleged cases of police abuse.⁶³

According to the Helsinki Committee, the number of cases of torture and ill-treatment by the police has decreased since the period of armed conflict, but the problem remains widespread. Several cases have been reported to the Committee in the year 2003.

- Senad Rustemovski and Ejvas Sherifovski from Prilep and Jashar Ramadan from Bitola were arrested and taken to the Prilep police station on 8 February 2003 because they failed to produce an ID during an identity check. All three were held for about four hours, during which time they were allegedly verbally insulted, beaten and ill-treated in other ways by approximately fifteen police officers. They were forced to sign a statement that they had no complaints about the police's conduct. The police claimed that the men had only been held at the station for an hour of "informative talk." The investigation carried out by the Interior Ministry concluded that there was not enough evidence to prove ill-treatment, but eventually - under public pressure -- cut the salaries of the involved police officers by 15 percent.
- Ministry of Interior officers used excessive force to prevent TV "Tera" cameraman Toni Toshevski from filming the liberation of hostages in an incident in the Bair area of Bitola on 8 February 2003. The police had not isolated the area, nor had they warned him from entering it. Police officers verbally insulted Toshevski, confiscated his tape and took him to a police station. The tape was later returned, but the parts depicting police conduct toward Toshevski had been deleted. According to the Helsinki Committee of Macedonia, the police violated Toshevski's physical and moral integrity, breached his right of access to information, failed to inform him about the reasons for his arrest and of his rights, and treated him in an inhuman and degrading manner.⁶⁴
- Mitko Zatkovski, a cameramen of "Telma" TV station was arrested by police officers in his home in Gorce Petrov on 28 May 2003. The arresting officer told Zatkovski that they had an order to bring him to a court to testify in a case of beating but they failed to produce a warrant. As Zatkovski told the officers that he had agreed with the judge to appear before court on another day, one of the officers suddenly grabbed his hand, twisting it to the back causing injuries to the hand and shoulder. Zatkovski was taken to the Gorce Petrov police station, but instead of being transferred to the Vinica Court, he was released. Zatkovski asked for the

⁶¹ European Committee for the Prevention of Torture, "Council of Europe Anti-Torture Committee publishes reports on 'the former Yugoslav Republic of Macedonia'", January 16, 2003, at www.cpt.coe.int/en/states/mkd.htm

⁶² Ibid.

⁶³ Helsinki Committee for Human Rights of Macedonia, *Monthly Report for March 2003*.

⁶⁴ Helsinki Committee for Human Rights of Macedonia, *Monthly Report for February 2003*.

names of the abusive officers but they refused to identify themselves, a violation of Article 28(1) of the Law on Internal Affairs.⁶⁵

- On 19 June 2003, Josko and Dalibor Vjacoski were allegedly beaten by police officers in Krusevo. Dalibor Vjacoski sustained serious injury to his right eye and was hospitalised for nine days. Josko Vjacoski had three fractured ribs. They were later indicted for allegedly attacking police officers who were performing their duties under Article 383(2) of the Penal Code. Proceedings in the case began in June and, at the time of writing, the prosecution is awaiting the results of the ministry's investigation to proceed.

Several cases of police abuse have been reported in Kumanovo.

- On 7 February 2003, Skender Sadikovic and Memed Dalipovski from the Kumanovo neighborhood Bedinje were taken to the Kumanovo police station under suspicion of theft. The police searched their homes without a court warrant. Skender Sadikovic claimed that he was beaten in his courtyard in front of his under-age children and a number of neighbours and later in the police station in order to extract a confession. The officers allegedly hit him with an axe handle in the spine and the kidney area. The injuries were certified by a doctor.
- According to ARKA Roma Rights Forum in Kumanovo, two Roma were beaten by the police on 2 April 2003 near the Ossuary Monument in Kumanovo. The officers had been called to the spot by the guard at the monument who had failed to chase the Roma, who were playing basketball, away from the area. Upon their arrival, the officers immediately began beating the Roma. One of the victims sustained visible injuries on the back, legs and arms and required medical care. The other Rom sustained less serious injuries. ARKA filed a request that the case be investigated and the police officers punished. Instead, it received a reply from the head of the Kumanovo Interior Department stating that the Roma had hurt themselves when trying to escape as the police wanted to check their identity and have an "informative talk" with them. The Roma were charged with disturbing the public peace and order.⁶⁶
- In some cases, police ill-treatment and other misconduct was reported during house raids. For example, on 26 May 2003 in Sopot, Kumanovo, the police conducted house searches apparently without a warrant and allegedly ill-treated persons, arresting one of them and taking money and valuables (some of which were later returned).⁶⁷

The Helsinki Committee of Macedonia noted that the practice of "informative talks" was abolished by the Constitutional Court in 1996 and the Criminal Procedure Code adopted the year after no longer included "informative talks." Thus, they should no longer be practiced. The Committee has filed requests for investigations to be carried out into many of the above cases of abuse, but as of the time of writing, none of the alleged perpetrators have yet been punished.

⁶⁵ Helsinki Committee for Human Rights of Macedonia, *Monthly Report for June 2003*.

⁶⁶ Helsinki Committee for Human Rights of Macedonia, *Monthly Report for April 2003*.

⁶⁷ Helsinki Committee for Human Rights of Macedonia, *Monthly Report for May 2003*.

The Russian Federation has been party to the CAT since June 1987. It ratified the CPT in May 1998.

On 19 March 2003, the Russian State Duma passed in the first reading draft legislation amending the Criminal Procedure Code of the Russian Federation, thereby making torture a criminal offence under Article 117. If the amendment is adopted in the fall session of the Duma and enforced, it will provide for better safeguards to prevent torture.⁶⁹

Another draft law of importance for the prevention of torture is the bill on public control over detention facilities. A draft passed the first reading in September 2003, but it is uncertain whether it will be adopted in fall 2003. Local monitors fear that the changes to the draft bill proposed by the president's representative in the parliament might seriously narrow the competence of public inspections. Moreover, the Ministry of Interior continues to oppose the adoption of the bill.⁷⁰

Torture and cruel and degrading treatment continue to be among the most serious human rights violations in the Russian Federation. One of the reasons for the spread of this practice is said to be the insufficient professional training of law enforcement officials. As a result of poor professional skills, they easily resort to torture and ill-treatment in order to get "results." The situation is made worse because it is clear that law enforcement agents are not held fully accountable for such abuses, either in theory or in practice.

Torture, ill-treatment and inhuman and degrading treatment are commonly employed in order to get a confession to a crime. Most frequently, such methods are used before the official interrogations begin within the framework of the so-called "operative-investigative activity" (ORD). ORD basically entails collecting information about the criminal and the crime. By law, its outcome may not serve as evidence, but can only help law enforcement agencies to identify and obtain evidence. However, in the course of ORD, law enforcement officials frequently subject an individual to torture or ill-treatment in order to obtain information about accomplices and possible traces of the crime, location of property appropriated in an unlawful fashion, etc. ORD is always conducted secretly: the methods used are not published and they are practically outside of the court control. In addition, the criminal procedure law does not apply to ORD, meaning that the subject of ORD does not have the right to be represented by an attorney and does not enjoy any other rights provided by the Criminal Procedure Code to suspects and defendants. After having received the necessary information through ORD, law enforcement officers usually conduct official investigative actions such as searches, interrogations, etc. which are formally in compliance with the requirements of the procedural law.

- On 26 February 2003, officers of the Derbyshki police station in the city of Kazan illegally detained D. Petrov and ?.Nuriyev (both minors). Police officers kept the two suspects at a police station for nearly two days, during which time they were subjected to torture and beatings as the police tried to force them to provide information about a car stereo theft.⁷¹

The head of the Security Department of the Ministry of Internal Affairs of the Tatarstan Republic, S. Chepushtanov, told a correspondent of the newspaper *Vechernyaya Kazan* that his department

⁶⁸ Unless otherwise noted, this section is based on *The Alternative NGO Report on Observance of ICCRP by the Russian Federation*, prepared by the Moscow Helsinki Group, Memorial Human Rights Center, Center for Assistance for International Protection, Nizhnii Novgorod Committee against Torture, Information Center SOVA, Center for the Development of Democracy and Human Rights, the Glasnost Defense Foundation, the Independent Council of legal Expertise, Interregional Group "Human Rights Network," and the Movement of Human Rights and the Center of Social Labour Rights, May 2003, at <http://www.mhg.ru/english/1F24FB3>

⁶⁹ Moscow Helsinki Group to the IHF, October 2003.

⁷⁰ Ibid.

⁷¹ Kazan Human Rights Center for the *Alternative Report*.

had received complaints about cases such as the one above from 12 individuals during the first three months of 2003 alone.⁷²

According to Article 75(1) of the Criminal Procedure Code, testimony cannot be considered admissible in judicial proceedings if it has been provided by a suspect or defendant in the absence of an attorney in the course of preliminary investigation or interrogation but has not been confirmed in the court of law. However, this legal norm is clearly insufficient to prevent torture within the framework of criminal procedures.

- When Azieyvs and Bakalayev were charged with suspected terrorism (as well as a number of other crimes), the testimony of Bangashev was used as core evidence despite the fact that he insisted before the court that the testimony had been extracted under torture. Bangashev petitioned to the Supreme Court that had reviewed a similar complaint filed by Azieyvs against the decision of the Stavropol territorial court, but in Banhashev's case the court did not take his petition into consideration.⁷³
- In early 2003, the Nizhnii Novgorod Regional Court found N. Zakharov guilty of murder, basing its ruling on his own confession and the testimony of three witnesses. In court, all three witnesses declared that they had been tortured into testifying against Zakharov. Nevertheless, the court stated that the witnesses' declarations were false, and rejecting them he found Zakharov guilty.⁷⁴

Under Russian law, it is for the court to decide whether or not to look into an allegation by defendants or witnesses that they were subjected to torture in order to give a statement. However, the courts usually reject such statements and only very rarely suspend proceedings in order to examine such allegations.⁷⁵ Until the law changes, the practice of using torture as means of "disclosing" crimes will continue.

When allegations of torture are investigated, the responsible agency is usually the prosecutor's office operating in the same district as the police officers against whom the complaint was filed. In practice, however, the staff of the prosecutor's office cooperate very closely with the district police when investigating criminal offences, as a result of which close personal ties are often established between the two agencies. Thus, it is often impossible for the prosecutor's office to conduct impartial investigations into alleged police misconduct. In addition, district level prosecutor's offices do not usually have the necessary technical and human resources to conduct investigative activities required to disclose torture and ill-treatment by police officers. Ironically, they often must delegate the conducting of investigations to the district police -- meaning that allegations of police brutality are often investigated by fellow officers and, in the worst cases, even by the abusive officers themselves.

- Mr. Mikheyev was tortured by police officers with electric shocks in order to confess a kidnapping, rape, and murder, none of which in fact really took place. As a result of the abuse, he jumped out the window of the police station. He filed a complaint of torture and demanded that another person who had seen Mikheyev in the hospital bearing signs of torture be ordered to give a statement. The investigating officer gave the task of finding the witness to the very police department where Mikheyev had been tortured and to a police officer who was one of the torturers. Not surprisingly, the officer "was unable to locate the witness," despite the fact that the witness was confined to a wheelchair and unable to leave his apartment without assistance.⁷⁶

⁷² Ibid.

⁷³ Nizhny Novgorod Committee against Torture for the *Alternative Report*.

⁷⁴ Ibid.

⁷⁵ Articles 17 and 88 of the Criminal Procedure Code.

⁷⁶ Nizhny Novgorod Committee against Torture for the *Alternative Report*.

Accordingly, the district level prosecution authorities cannot be considered sufficiently independent to investigate complaints about torture and cruel and degrading treatment: the task must be vested with the regional or federal authorities.

In addition to the above, the new Criminal Procedure Code does not provide for adequate measures to protect persons who file complaints about torture or ill-treatment, nor does it adequately protect witnesses from persecution by the perpetrators. In practice, torture victims and witnesses are subjected to pressure and, in a number of cases, to direct violence. Prisoners who complain about torture and cruel treatment find themselves in an especially difficult situation, as during the investigations they must remain in the very facility where they have been abused. As a result of insufficient protection, victims and witnesses often end up withdrawing their complaints, a fact which only adds to an atmosphere of impunity.

In 1994, the UN Special Rapporteur on Torture, Nigel S. Rodley, described the condition of prisoners in Russian pre-trial facilities as “shocking,” “particularly inhumane,” “cruel, degrading,” and “torturous.”⁷⁷ Since that time, and particularly after the Chief Department for Penalty Execution was placed under the jurisdiction of the Federal Ministry of Justice, the situation has improved somewhat. However, harsh prison conditions, coupled with the indiscriminate use of pre-trial detention, occasionally for long periods of time, are still utilized with the aim of “breaking the will” of the prisoners “with the intention of eliciting confessions and information.”⁷⁸

In fact, numerous deaths in penitentiaries are reported in the Russian Federation. Many are a result of unbearable prison conditions and a lack of adequate medical assistance. In other cases, the inmates die in suspicious circumstances and their bodies bear signs of physical injury. In such cases, the prison administration -- not an independent body -- is responsible for carrying out an investigation into the cause of death, a fact which renders most investigations ineffective.

On 10 July 2003, the European Committee for the Prevention of Torture made a public statement⁷⁹ concerning the situation in Chechnya. It stated that the Russian authorities have failed to effectively tackle major problems related to torture and ill-treatment. According to the European Committee, there is continued resort to torture and other forms of ill-treatment by members of the law enforcement agencies and federal forces operating in the Chechen Republic. Further, the action taken to bring to justice those responsible has been slow and ineffective.

The European Committee stated that in the course of its visits to the Chechen Republic in 2002 and 2003, it has gathered a considerable amount of information pointing to human rights violations during special operations and other targeted activities conducted by federal power structures, involving ill-treatment of detained persons and forced disappearances. A considerable number of persons interviewed independently at different places alleged that they had been severely ill-treated whilst detained by law enforcement agencies. The allegations were detailed and consistent, and concerned methods such as very severe beating, the infliction of electric shocks, and asphyxiation using a plastic bag or gas mask. In many cases, these allegations were supported by medical evidence.

The allegations of ill-treatment received by the European Committee concerned law enforcement establishments (Departments of Internal Affairs and certain Federal Security Service facilities) throughout the territory of the Chechen Republic and related to both official and unofficial places of detention. As regards the latter, the Military Base at Khankala was referred to repeatedly. In addition, one establishment stood out in terms of the frequency and gravity of the alleged ill-treatment, namely

⁷⁷ *Report by the Special Rapporteur, Nigel S. Rodley, submitted pursuant to Commission on Human Rights Resolution 1994/37, E/CN.4/195/31. Add. 1, 16 November 1994.*

⁷⁸ *Ibid.*

⁷⁹ European Committee for the Prevention of Torture, “Public statement concerning the Chechen Republic of the Russian Federation (made on 10 July 2003),” at <http://www.cpt.coe.int/documents/rus/2003-33-inf-eng.pdf>. Unless otherwise noted, information on Chechnya in this section is based on this CPT statement.

ORB-2⁸⁰ in Grozny, a facility that never appeared on any official list of detention facilities provided to the European Committee.

In relation to forced disappearances, the prosecutor of the Chechen Republic has assessed that from among the 565 criminal cases concerning abductions opened in 2002, there exists evidence in approximately 300 of the involvement of members of the federal forces. As regards 2003, senior members of the Chechen administration indicated to the European Committee that the problem of disappearances continues unabated -- the figure of 233 was mentioned for the first four months of the year -- and that there is evidence of the involvement of members of federal forces in a significant proportion of those cases.

While the European Committee condemned the acts of Chechen combatants, which have led to the loss of life and suffering, it emphasized that the “response must never degenerate into acts of torture or other forms of ill-treatment; a State must avoid the trap of abandoning civilised values.”

As far as the use of torture and other prohibited methods by law enforcement officials are concerned, the Chechen Republic represents a kind of experimental site through which the units of the Ministry of Interior pass by rotation, sharing in the practices of violence, outrage, lawlessness, and impunity. After returning from Chechnya, law enforcement officers use this experience in their own regions. In addition, the ongoing conflict in Chechnya powerfully fosters ethnically motivated police brutality: Chechens and Caucasians generally prevail among the victims of unlawful police actions.⁸¹

Moreover, while serious human rights violations continue in Chechnya, the crisis has spilled over into its neighboring republic. While abuses against internally displaced persons (IDPs) have been reported throughout the existence of the refugee camps in Ingushetia, they escalated dramatically in June 2003 during the so-called “mop-up” carried out by masked Russian forces, who subjected Chechen IDPs to forced disappearance, torture and ill-treatment and looted their property. According to reports, these raids were carried out by pro-Moscow Chechen police under the control of Chechnya Administrator Akhmad Kadyrov. The raids demonstrated a widening of the near four-year-long Chechnya conflict, and violated international protection standards for IDPs. At least four persons disappeared during the sweeps.⁸²

TURKEY

Turkey has been party to CAT since 1 September 1988 and it ratified the CPT on 26 February 1988.

In the past two years, Turkish authorities have been engaged in a major reform in order to bring national legislation up to par with the standards of the European Union. This reform has brought about a number of positive formal changes in the field of human rights, including issues related to the prevention of torture and ill-treatment. The challenge remains, however, to effectively implement these changes in practice. Pending this, torture and ill-treatment in Turkish detention facilities remains a serious problem.

⁸⁰ The Operative and Search Bureau of the North Caucasus Operations Department of the Chief Directorate of the Russian Ministry of Internal Affairs in the Southern Federal District.

⁸¹ *The Alternative NGO Report on Observance of ICCRP by the Russian Federation.*

⁸² IHF, “Disappearances Spread to Ingushetia: Torture, Ill-Treatment and Looting During Mop-up Operations in IDP Camps - Continued Impunity Demonstrates Need for ad hoc Tribunal,” press release, 18 June 2003, at http://www.ihf-hr.org/viewbinary/viewhtml.php?doc_id=3912.

See also, Human Rights Watch, “Russia: Displaced Chechens in Ingushetia Face Abuses,” press release, 22 September 2003, at <http://www.hrw.org/press/2003/09/russia092203.htm>. The full report, *Spreading Despair: Russian Abuses in Ingushetia*, is posted at <http://www.hrw.org/reports/2003/russia0903/>

The first and the second “harmonization packages” of February and March 2002 reduced legitimate detention periods. However, for suspects under State Security Court jurisdiction, charged with crimes of a collective, political, or conspiratorial nature, the maximum initial detention period still remained four days at the prosecutor’s discretion.⁸³ Moreover, it took Turkish legislators until June 2003 to abolish a Criminal Procedure Code provision that denied detainees, held for offences under the jurisdiction of State Security Courts, the right to legal counsel for the first forty-eight hours of their detention.⁸⁴ While this was welcomed progress, the time frame of 48 hours is still too long to protect detainees from torture.

In April 2003, the Human Rights Association of Turkey (HRA) stated in its report covering the first three months of the year that it had observed no progress in the prevention of torture. In this period, 183 cases of torture during detention had been reported, and another 33 cases in prisons. The total number of cases of torture or ill-treatment by the police or gendarmerie reported to the HRA (including abuses during house searches, in the streets, etc.) reached 392.⁸⁵

The most commonly used torture techniques in Turkey are beatings, *falaka* (beating the soles of the feet), electric shocks, hosing with cold water, sexual abuse (including squeezing of the testicles and rape), suspending by the arms or wrists bound behind the victim's back (i.e., the “Palestinian hanger” which causes respiratory failure if the position is held for a long time), and death threats. While reports of torture are rarely received from prisons, it remains a common practice in police and gendarmerie stations.

- On 7 February 2003 the police detained two members of the youth section of the banned People’s Democracy Party (HADEP) in the Bahcelievler district. According to the testimony of one of the young men, a 17-year old, they were taken to a police station and interrogated about who had been spreading propaganda for the PRO-Kurdish KADEK organization. The police fooled the young man to testify against his friend by promising him that they both would be acquitted for lack of evidence if they testified against each other. Afterwards, he was released because he was under age. His friend was remanded and tortured while in detention, according to his lawyer. The police tried to force him to become an informer, and as he refused, he was stripped naked, subjected to a “Palestinian hanger”, hosed with pressurised water, and sexually assaulted.⁸⁶
- Zeynel Abidin Usar was arrested on 22 April 2003 in the Karsiyaka district of the city of Izmir and tortured while in police custody. After having asked for ventilation in the interrogation room because he suffers from asthma, two officers started beating him. After that his underwear was torn off, his shirt was wrapped around his head and his hands were cuffed behind his back. Pouring water over his body, police officers resumed beating him with truncheons and wooden sticks and they stepped on his face. Afterwards, he was brought to a hospital where a doctor examined him in the presence of the police officers. On 23 April, he was brought before the Karsiyaka prosecutor and was charged with carrying a knife. He reported to the prosecutor that he had been tortured, was brought to a forensic medical examination and subsequently released. When interviewing a police officer about the case, a journalist was told that Usar had been arrested on suspicion of theft. The officer added: “When

⁸³ Amnesty International (AI), *Turkey, Torture and prolonged detention in the Region under State of Emergency*, February 2002.

⁸⁴ Human Rights Watch (HRW), “Turkey Abolishes Controversial Law Denying Detainees' Access to Lawyer,” *Human Rights Watch Monthly Email Update, May/June 200*, at <http://www.hrw.org/update/2003/05.html#6>

⁸⁵ Human Rights Association of Turkey (HRA), 23 April 2003, at <http://www.ihd.org.tr/eindex.html> and “The Evaluation Report of the Months January-March 2003,” 23 April 2003, at <http://www.ihd.org.tr/press/press20030423.html>

⁸⁶ HRFT, *Human Rights Report of Turkey – January-March 2003*, April 2003, at http://www.tihv.org.tr/report/2003_01_03/janmar2003.html

a detainee creates difficulties for the police, his head or arms may be broken. These are normal things.”⁸⁷

Women held in custody -- especially if they are of Kurdish origin -- are frequently subjected to rape and other sexual abuse. As Turkish law does not define penetration with objects other than a penis as rape, such practices are carried out with impunity. Another common practice is to strip a victim naked during interrogation, or to subject a woman to sexual violence in the presence of her husband or other family members in order to force the family member to confess.⁸⁸

- One victim reported of being detained in the Istanbul police headquarters for four days of interrogation in March 2002 without access to legal counsel, during which time she was stripped naked, blindfolded and sprayed with cold water through a water hose forced into her vagina and forced to sit in excrement.⁸⁹
- Another woman reported of being detained and interrogated in the same month, accused of having links to an illegal organisation. During the detention, she was allegedly stripped naked, hosed with cold water and a policeman forced a truncheon into her anus, allegations that were later supported by medical records.⁹⁰
- On the morning of 14 June 2003, an executive for DEHAP Women’s Wing in Istanbul Province, Gülbahar Gündüz, was abducted by four persons who identified themselves as police officers. She was forced into a car and taken to an unidentified place where she was brought into a small room where the perpetrators intimidated her, hit her with a hard object, forced their penises into her mouth and extinguished cigarettes in her face. She was released later on the same day. A medical report from Haseki Hospital confirmed wounds on her back, both calves and the left side of her neck and stated that she should be examined by forensic medical specialists to verify the rape.⁹¹ On 20 October, the Human Rights Foundation of Turkey reported that the Istanbul Security Directorate had terminated the investigations into the case on the grounds that “no police officer had been found to take the position of a defendant.”⁹²

The January 2003 “harmonization package” included provisions preventing Turkish courts from suspending the prison sentences of those convicted of inflicting torture. The parliament also approved measures stipulating that these prison sentences could no longer be commuted to fines.⁹³ The amendments incorporated measures obliging the judiciary to hear the statements of defendants and detainees before they reach a verdict on the case before them, as well as provisions detailing that, upon entering and leaving prison, defendants and detainees should be subject to medical examinations about which reports must then be written.⁹⁴

Despite the formal measures taken to prevent torture and ill-treatment, the climate of impunity remains. Prosecutors are reluctant to file charges against alleged torturers, and many torturers who “have not been found” are able to continue their police careers. The burden of proof lies on the victims, and the slow pace of judicial proceedings easily ends up in unresolved cases due to the statute of limitations.

⁸⁷ Human Rights Foundation of Turkey (HRFT), *Human Rights Report of Turkey – April 200, May 2003*, at http://www.tihv.org.tr/report/2003_04/apr2003.html

⁸⁸ AI, *Turkey – End Sexual Violence Against Women in Custody!* 26 February 2003, at <http://web.amnesty.org/library/Index/ENGEUR440062003?open&of=ENG-TUR>

⁸⁹ HRW, *World Report 2003 – Events of 2002*, at <http://www.hrw.org/wr2k3/europe13.html>

⁹⁰ Ibid.

⁹¹ HRFT, *Human Rights Report of Turkey – May-June 2003*, June 2003, at http://www.tihv.org.tr/report/2003_05_06/may_june2003.html

⁹² HRFT to the IHF, 20 October 2003.

⁹³ Turkish Governmental Website, www.byeqm.gov.tr/on-sayfa/uyum/uyum-ingilizce-58hukumet.htm; and *Boston Com*, Suzan Fraser, January 2, 2003.

⁹⁴ Turkish Governmental Website, www.byeqm.gov.tr/on-sayfa/uyum/uyum-ingilizce-58hukumet.htm

- A case against ten police officers accused of torturing 16 juveniles in detention in Manisa started in 1996, but due to the non-appearance of defendants at the trials, and because the lawyers of some of the defendants withdrew from the trial, the progress was very slow. Only in April 2003, three months before the statute of limitation would have expired the proceedings, the Court of Cassation confirmed the prison sentences given to the police officers. The prison terms ranged from five years to ten year and ten months.⁹⁵

As regards the F-type prisons, where concerns have been raised about possible small group isolation, the Istanbul Branch of the human rights organization Mazlum-Der reported that in May-June 2003 there had been problems with communication with the relatives “due to security problems.” In addition, prisoners were only allowed to exercise sports in groups of no less than ten persons while, according to the rules, this should have been possible in groups of six persons. Further, visits were limited to one hour and 15 minutes per week and they were recorded by cameras. Telephone calls were restricted to ten minutes once a week and only with one person. Hot water was available only three days a week.⁹⁶

UNITED STATES

The United States (US) has been party to CAT since November 1994, but on ratifying it the USA lodged a reservation agreeing to be bound by the prohibition on cruel, inhuman or degrading treatment only to the extent that this term matches the constitutional ban on “cruel and unusual” punishments. In effect, the reservation can severely limit US obligations under the CAT. In 2000, as the UN Committee against Torture considered the US’ first report submitted under CAT, it said that the reservation should be withdrawn, but the US has failed to do so.⁹⁷

The Eighth Amendment to the US Constitution prohibits “cruel and unusual punishments,” but there is no federal law criminalizing torture *per se*. While US officials insist that torture is nevertheless clearly illegal and can be prosecuted everywhere in the country under other criminal acts,⁹⁸ the UN Committee against Torture and human rights NGOs consider this to be insufficient.⁹⁹

In 2000, the US submitted its first report under CAT, with four years’ delay. The Committee expressed its concern, among other things, about the number of cases of police ill-treatment of civilians and of ill-treatment in prisons (including instances of inter-prisoner violence), much of which appears to be based on discrimination; alleged cases of sexual assault upon female detainees and prisoners by law enforcement officers and prison personnel; the use of electro-shock devices and restraint chairs as methods of constraint; the excessively harsh regime of the “super-maximum” prisons; the use of “chain gangs”; the restricted legal possibilities for redress; and the holding of

⁹⁵ HRFT, “Manisa Trial,” 9 April, at <http://www.tihv.org.tr/eindex.html>

⁹⁶ HRFT, *May-June 2003 Report*, at <http://www.tihv.org.tr/eindex.html>

⁹⁷ Amnesty International (AI), “‘We don’t Torture People in America’,” 20 October 2003, at <http://web.amnesty.org/library/Index/ENGAMR511282003?open&of=ENG-USA>

⁹⁸ *U.S. Department of State Initial Report of the United States of America to the UN Committee Against Torture, Submitted by the United States of America to the Committee Against Torture, October 15, 1999*, at http://www.state.gov/www/global/human_rights/torture_geninfo.html

⁹⁹ UN Committee against Torture, *Conclusions and Recommendations of the Committee against Torture : United States of America. 15/05/2000, A/55/44, paras.175-180. (Concluding Observations/Comments), 1-19 May 2000*, at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/59a7a114139ef798802568e3004e289e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/59a7a114139ef798802568e3004e289e?Opendocument)

minors with adults in the regular prison population.¹⁰⁰ Human Rights Watch (HRW) judged the initial report by the US government to be incomplete and misleading in several important aspects.¹⁰¹

The main human rights problem related to torture, ill-treatment or cruel, inhuman or degrading treatment or punishment in the US have remained largely the same as noted by the UN Committee against Torture in 2000. In addition, the “war against terrorism” has raised serious concerns about the treatment of terrorist suspects.

There were thousands of allegations of police abuse during 2002, including unjustified shootings, beatings, chokings, and rough treatment. However, most officers responsible for human rights violations escaped punishment. Victims seeking redress faced obstacles ranging from overt intimidation to the reluctance of local and federal prosecutors to take on police brutality cases.

- In July 2002, police in Inglewood, California (in the Los Angeles metropolitan area) were caught on videotape brutally beating a black 16-year-old who was not armed. The police department dismissed the abusive police officer in October, and he was charged with assault charges. The US Justice Department announced that it was reviewing the case as well. Two weeks before the videotaped encounter, the same officer had administered a chokehold and hit a man with his baton, leading to the man's hospitalisation for three days.¹⁰² In the summer of 2003, the jury in the trial of the case was unable to reach a verdict.¹⁰³
- At least 21 people were injured during an anti-war demonstration at Port of Oakland, California, on 7 April 2003, after police reportedly fired non-lethal weapons, including beanbags, wooden bullets and sting ball grenades at demonstrators. Twelve of the victims were protesters, and nine were bystanders who were not involved in the demonstration. Those injured were reportedly hit in the back, arms, necks and faces.¹⁰⁴

Most US prisons are over-crowded, impoverished facilities. Many are rife with inmate-on-inmate violence, including rape. In some cases, inmates suffer physical and sexual abuse by correctional staff.¹⁰⁵ One in five male inmates has faced forced or pressured sexual contact in custody, and one in 10 has been raped. One in four female inmates has experienced sexual assault; the perpetrators are often male correctional officers. Frequent sexual abuse is able to continue because of the negligence of the correctional authorities.

- Fifteen female inmates in New York prisons have filed a lawsuit against the state, claiming that male guards routinely sexually abused them and that their complaints have been ignored. The alleged abuses range from demeaning sexual comments and voyeurism to rape. Women prisoners were deterred from reporting such sexual misconduct by intimidation.¹⁰⁶

A positive move against this form of abuse was the adoption of the Prison Rape Elimination Act in July 2003. The act was signed into law on 4 September by President Bush. It authorizes federal grants for programs to prevent and punish prison rape, and cuts federal prison funding for states that do not control the sexual assault of prisoners.¹⁰⁷

¹⁰⁰ Ibid.

¹⁰¹ *Human Rights Watch World Report 2000*.

¹⁰² Ibid.

¹⁰³ *Los Angeles Times*, “Police Abuse Case Will Be Retried,” in latimes.com, 31 July 2003, at <http://www.latimes.com/news/local/la-me-inglewood31jul31000428,1,7327375.story>

¹⁰⁴ AI, “USA: Call for Inquiry into possible excessive force against anti-war protesters,” 15 April 2003, at <http://web.amnesty.org/library/Index/ENGAMR510562003?open&of=ENG-USA>

¹⁰⁵ *Human Rights Watch World Report 2003*.

¹⁰⁶ *Ginger Adams Otis*, “Female Prisoners Sue State for Guards' Sex Abuse,” 17 March 2003, at <http://www.womensenews.org/article.cfm/dyn/aid/1257>

¹⁰⁷ HRW, “Prison Rape: Groundbreaking New U.S. Law,” July 2003, at <http://www.hrw.org/update/2003/07/1>

Mentally ill offenders face mistreatment and neglect in many US prisons. One in six prisoners is mentally ill, many of them suffering from serious illnesses such as schizophrenia, bipolar disorder, and major depression. There are three times as many men and women with mental illness in US prisons as in mental health hospitals. Other prisoners victimize mentally ill inmates and exploit them. Prison staff often punish them for the symptoms of their illness. Mentally ill prisoners are more likely than others to end up housed in especially harsh conditions, such as isolation, which can push them over the edge into acute psychosis. Totally inadequate treatment -- or the lack of any treatment -- can be attributed to a shortage of qualified staff, lack of facilities, and prison rules that interfere with treatment.¹⁰⁸

Medical care for physical illness is also often inadequate.

- In an extreme case of neglect, health conditions for HIV-positive prisoners at Limestone Correctional Facility, Alabama, have led to their death from malnutrition and preventable infectious diseases. Alabama has had ample notice of the dire conditions in Limestone, many of which were identified in the state's own report released in February.¹⁰⁹

In the so-called super-maximum security ("supermax") prisons inmates spend twenty-three to twenty-four hours a day isolated in their cells with scant opportunity to relieve the isolation, tedium, and harsh security restrictions -- conditions that can constitute cruel, inhuman or degrading treatment. In 2002, there were two important and successful court challenges -- one from the state's "supermax" prison in Boscobel, Wisconsin and another from Ohio's "supermax prison" -- to these conditions. The problems included isolation, constant illumination of cells, insufficient natural light, inadequate possibilities for exercise and access to outdoor exercise facilities, insufficient phone contact with the outside world, inadequate care of mentally ill prisoners, and the very procedure of placement to "supermax" prisons. The lawsuits filed by human rights organizations led to improvements in these two prisons.¹¹⁰

In addition, the US is the leading state to execute juvenile offenders, i.e. persons who were under 18 at the time they committed a crime -- in violation of international law. Of the 19 executions of child offenders registered between 1994 and 2002, twelve occurred in the US. The only four executions of child offenders in the past year and a half took place in the US. The US is now the only country that openly continues to carry out such executions within the framework of its regular criminal justice system.¹¹¹

Since the US government launched a war against terrorism, increasing reports of misconduct by US officials towards detainees in US custody in Guantánamo, Bagram and other places around the world have raised suspicions of practices that amount to torture or cruel, inhuman or degrading treatment under the CAT. Moreover, keeping detainees *incommunicado* for indefinite periods -- without access to a lawyer, relatives or a court of law -- facilitates torture and other forms of unacceptable conduct by interrogators and is in violation of due process standards. Detainees cannot challenge the circumstances of their arrest, the conditions of their detention or their treatment during interrogation.¹¹²

US authorities have categorically denied allegations that suspects in US custody have been tortured or ill-treated. On 18 October 2003, the day President Bush reiterated this denial, it was revealed that eight

¹⁰⁸ HRW, "Ill-Equipped: U.S. Prisons and Offenders with Mental Illness," October 2003, at <http://www.hrw.org/reports/2003/usa1003/>

¹⁰⁹ "HRW Letter Urging the State of Alabama (U.S.) to Address Preventable Deaths of Prisoners," 22 September 2003, at <http://www.hrw.org/press/2003/09/us092203-ltr.htm>. The report of Stephen Tabet, published on 26 August 2003, is posted at http://www.schr.org/prisonsjails/press%20releases/limestone_report.8-26-03_web.doc

¹¹⁰ *Human Rights Watch World Report 2003*; Amnesty International, *Annual Report 2003*.

¹¹¹ AI, "United States: Shameful isolation -- US leads worldwide execution of child offenders," 18 July 2003, at <http://web.amnesty.org/library/Index/ENGAMR511022003?open&of=ENG-USA>.

¹¹² For details on US anti-terrorism measures which compromised human rights, see IHF, Anti-terrorism Measures, Security and Human Rights, Developments in Europe, Central Asia and North America in the Aftermath of September 11, April 2003, at http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=390

US soldiers had been charged with acts of brutality against prisoners of war in Iraq. One of the prisoners had died.¹¹³

The US government continues to challenge every attempt to seek justice in the courts for the detainees. The one US national who has had access to the courts and alleged ill-treatment by US agents during his capture in and transfer from Afghanistan later withdrew those allegations as part of a settlement made with the government.

- John Walker Lindh alleged that he was subjected to the cruel use of shackling, blindfolding, and that he was bound naked to a stretcher in a shipping container without light or heat for two or three days. He alleged that he was threatened with death and torture. Just before a court was to hold a hearing on the claims, the two sides agreed to a plea bargain by which the defendant "put to rest his claims of mistreatment by the United States military, and withdrew all claims of mistreatment."¹¹⁴

Even the International Committee of the Red Cross (ICRC), the only non-governmental organization to have had access to the detainees in Guantánamo, said in August that it had "observed a worrying deterioration in the psychological health of a large number of [the detainees]." This, and other similar statements related to detainees in Guantánamo, have been unusual as the ICRC's findings are generally confidential. As of October 2003, there have been over 30 suicide attempts among the detainees.¹¹⁵

According to media reports, detainees in Bagram Air Base have been subjected to "stress and duress" interrogation techniques amounting to torture and cruel, inhuman or degrading treatment. These techniques reportedly include restraining detainees in very painful positions, hooding, threats, and prolonged sleep deprivation and, in some cases, beatings.

- Two Afghan men, Dilawar and Mullah Habibullah, died in US custody in Bagram Air Base in December 2002. The autopsy reports gave the cause of death as "homicide" and "blunt force injuries" were found in both cases. The responsible colonel played the incident down as a "mishap" in the war on terrorism. By October 2003, the US authorities had not published results of the investigation into the deaths.¹¹⁶

According to a new HRW report, the US military is failing to conduct proper investigations into civilian deaths resulting from the excessive or indiscriminate use of force by its members in Baghdad, Iraq. HRW confirmed 20 deaths in the Iraqi capital alone between 1 May and 30 September 2003. In total, HRW collected credible reports of 94 civilian deaths in Baghdad, involving questionable legal circumstances that warrant investigation. This number does not include civilians wounded by US troops. The precise number of Iraqi civilians killed by US soldiers since the end of major military operations is unknown, and, astonishingly, the US military says that it keeps no statistics on civilian deaths. By late October, the military had concluded only five investigations above the division level into alleged unlawful deaths. Of these, soldiers were found to have operated "within the rules of engagement" in four cases, in the fifth case a helicopter pilot and his commander face disciplinary action. However, according to HRW investigation, in two of these five cases, evidence suggested that soldiers had used excessive force. In some cases, US forces faced a real threat, which gave them the right to respond with force. But that response was sometimes disproportionate or indiscriminate, harming civilians or putting them at risk. In the meantime, the lack of timely and high-level investigations into many questionable incidents has created an atmosphere of impunity.¹¹⁷

¹¹³ AI, "We don't Torture People in America'," 20 October 2003, at <http://web.amnesty.org/library/Index/ENGAMR511282003?open&of=ENG-USA>

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ HRW, *Hearts and Minds: Post-War Civilian Casualties in Baghdad by U.S. Forces*, 21 October 2003, at <http://www.hrw.org/reports/2003/iraq1003/>

In addition to allegations of excessive or indiscriminate use of force by the US military in Iraq, there have been reports about other inadequate conduct towards detainees.

- On 25 April 2003, the Norwegian newspaper *Dagbladet* published photos that showed American soldiers escorting naked Iraqi men through a park in Baghdad. The pictures revealed that someone had written the words “Ali Baba - Haram(i)” -- which means Ali Baba – thief -- in Arabic on the prisoners' chests. The article quoted a US military officer as saying that this treatment is an effective method of deterring thieves from entering the park and is a method which will be used again; another US military officer was quoted as saying that US soldiers are not allowed to treat prisoners inhumanely.¹¹⁸

UZBEKISTAN

Uzbekistan has been party of the CAT since October 1995. Although Article 26 of the 1992 Uzbek Constitution states that “*no one may be subjected to torture, violence or any other cruel or humiliating treatment,*” the Criminal Code of 1994 does not contain a specific definition of torture. In addition, it only provides for the deprivation of liberty for up to five years for the crime of “*premeditated grievous bodily harm*” (Article 104). According to Article 235 of the Criminal Code, if such bodily harm has been inflicted with the purpose of forcing a confession, the maximum punishment is eight years’ deprivation of liberty. Article 17 of the Criminal Procedure Code stipulates that “*judges, prosecutors and persons carrying out initial inquiries or pre-trial investigations are obligated to respect the honour and dignity of persons involved in a case. No one shall be subjected to torture (“pytki”), violence or other cruel, humiliating or degrading treatment. It is prohibited to perform acts or hand down judgements which humiliate or demean a person, ... or will cause unjustified physical or mental suffering.*”¹¹⁹

Article 48 of Criminal Procedure Code provides for the right to legal counsel from the time the detainee is informed that he/she is suspected of a crime or from the moment he/she is “*detained.*” However, it appears that authorities are not clear about what the word “detained” means, with some authorities referring to apprehension and others to the moment charges are brought. On the basis of different interpretations, individuals are understood to have access to a lawyer either within 24 hours or after three to ten days of apprehension. What makes the practice even worse is that, by law, the investigator of a case has complete discretionary powers to decide if meetings with a lawyer or family members are allowed.¹²⁰

Torture is widely used in detention facilities in Uzbekistan and courts frequently hand down harsh sentences, including capital punishment, based solely on coerced confessions. Human Rights Watch (HRW) documented ten torture-related deaths in custody between late 2001 and mid-2003.¹²¹

One significant factor that facilitates police misconduct is that authorities demand 100 percent detection rate from law enforcement officials. As a result, officers resort to torture to extract false confessions, frame individuals for crimes and fabricate evidence (including planting illegal literature

¹¹⁸ AI, “Iraq: Stripped naked and humiliated by US soldiers,” 25 April 2003, at <http://web.amnesty.org/library/Index/ENGMDE140972003?open&of=ENG-USA>

¹¹⁹ UN Commission on Human Rights, *Civil And Political Rights, including the Questions of Torture and Detention Torture And Other Cruel, Inhuman Or Degrading Treatment; Report of The Special Rapporteur On The Question Of Torture, Theo Van Boven, Submitted In Accordance With Commission Resolution 2002/38 (E/Cn.4/2003/68/Add.2)*, 3 February 2003, at <http://www.undp.uz/sections/files/51/03107661.doc>

¹²⁰ Ibid.

¹²¹ Human Rights Watch (HRW), “Uzbekistan: Torture Death in Prison,” press release, 3 June 2003, at <http://www.hrw.org/press/2003/06/uzbek060303.htm>

or drugs in their possessions), pressure witnesses to give false statements, and, finally, convict innocent people. Officers who fail to meet the state's objectives are viewed as "unsatisfactory" and risk losing their jobs. Moreover, officers are offered inducements such as extra leave, bonus payments and promotion in return for arrests.

- Zakirjon Akhmadaliev, from the Andijan region, was arrested in December 2000. He was tortured for 47 days to force a confession for murder. He alleged that he had been beaten unconscious; had a gas mask placed over his face and the oxygen cut off; electric current applied to his wrists; and had icy water poured over him before being left in an unheated room. When other people were later found and charged with the crime, Akhmadaliev was accused of theft and sentenced to five years in prison.¹²²

The UN Special Rapporteur against Torture found during his 2003 visit to Uzbekistan that complaints against torture and ill-treatment are only rarely investigated. The rapporteur also found that courts investigating such complaints disregard evidence, such as medical reports or registry records, judging generally in favour of the officers allegedly responsible for the abuses.¹²³

- At least four out of twelve persons¹²⁴ standing trial in August 2003 for alleged association with Hizb-ut-Tahrir have reportedly been tortured and ill-treated. On 28 and 30 July 2003, two of the defendants, Bakhtiar Iakubov and Abdurasul Abdurakhmanov, testified to having been beaten in detention until they signed self-incriminating statements. The judge reportedly ignored the allegations of torture put forth during trial.¹²⁵
- In another case, Chingiz Suleimanov, who was arrested on 8 May 2003 for participating in a fight in January, told the judge that an officer had beaten him and banged his head against a wall in the police station. The judge's response to the allegations was that "the police do not beat." On 25 June Suleimanov was sentenced to five years in prison. After the verdict, he was taken to the Akhangaran District police station, where he was beaten again, as punishment for telling the court that he had been tortured.¹²⁶

During 2002, there were two cases where law enforcement officials were found guilty of torture. In January, four police officers were sentenced to 20 years imprisonment for abusing two brothers arrested on suspicion of membership in Hizb-ut-Tahrir in October 2001, killing one of them and disabling the other.¹²⁷ Five months later, on 6 June, three National Security Service (NSS) officers were sentenced five to fifteen years in prison for inflicting fatal injuries on Alimukhammad Mamadaliev. Mamadaliev, who also was arrested on suspicions of involvement in Hizb-ut-Tahrir, was beaten and kicked for several hours in the Margilan NSS department in November 2001.¹²⁸

¹²² Institute for War and Peace Reporting (IWPR), "Uzbek Police "Frame" Suspects," 6 January 2003, at http://www.iwpr.net/index.pl?archive/rca/rca_ir_20030106_eng.txt

¹²³ UN Commission on Human Rights, op.cit.

¹²⁴ Kasimov, Rustam Palpievich (born 1983); Abidov, Anvar Azizovich (1970); Aripov, Ulugbek Turgunovich (1974); Zakirov, Nodirzhan Nasirovich (1976); Ashrapov, Kamoliddin Salokhiddinovich (1976); Iakubzhanov, Akmal Anvarovich (1969); Rashidov, Mukhammad Abdukarimovich (1985); Musakhanov, Abdukhalil Jalilovich (1964); Abdurakhmanov, Abdurasul Abdusattorovich (1982); Iakubov, Bakhtier Khaojiakbarovich (1982); Zakirov, Shukhrat Shakirovich (1969) and Abdullaev, Shoaziz Mansurovich (1972).

¹²⁵ World Organisation Against Torture (OMCT), "Uzbekistan: Torture of Persons Accused of Membership With the Hizb-ut-Tahrir," 8 August 2003, at

<http://www.omct.org/displaydocument.asp?DocType=Appeal&Language=EN&Index=3481>

¹²⁶ OMCT, "Uzbekistan: torture and unfair trial of a minor, Chingiz Suleimanov," 8 August 2003, at <http://www.omct.org/displaydocument.asp?DocType=Appeal&Language=EN&Index=3480>

¹²⁷ For more information see the IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2003, (Events of 2002)*, at

http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=1322

¹²⁸ RFE/RL Newsline, 7 June 2002; and Institute for War and Peace Reporting, Galima Bukharbaeva, "Officers Jailed over Torture Death," *Reporting Central Asia*, No. 125, 21 June 2002.

Local monitors are not aware of any convictions of abusive officers in 2003 except the one won in a civil suit by the legal aid lawyer Ildar Shayfiev. He had been beaten by a police officer in May 2002. However, the case was won by “reconciliation” and no damages were paid.”¹²⁹ Independent observers think that the conviction was only window-dressing in order to divert international attention away from continuing abuses.¹³⁰

While the guilty sentences in these cases are welcome, numerous other cases of suspicious deaths in custody and countless cases of torture were neither investigated nor punished, and torture continues. Human Rights Watch has reported the following recent cases of torture:

- In April and May 2003, seven prisoners at Jaslyk were allegedly put into punishment cells, where they were beaten, deprived of food, and threatened with death;
- At this time, another prisoner was continuously raped by cell mates with the guards’ tacit approval. He was later forced to sign that the rapes had not occurred and he was moved to the Tashkent prison hospital;
- Three men were detained by Tashkent police on charges of homosexual acts. One was held for ten days and beaten.¹³¹

In a very recent case, human rights activist Ruslan Sharipov says he has been tortured and put under severe psychological pressure while in custody.

- Ruslan Sharipov stood trial on 13 August 2003 and was sentenced to five and a half years imprisonment on charges of homosexuality and sexual relations with a minor, among other things. The charges are believed to be fabricated. The trial did not meet due process standards, and he allegedly confessed to the charges under duress. Since his arrest on 29 May, Sharipov has been at risk of torture and ill-treatment. During the first days of his detention in May, arresting officers threatened Sharipov with physical violence, including rape with a bottle. In a letter smuggled out of prison on 5 September, Sharipov said that police officers placed a gas mask over his head, sprayed an unknown substance into his throat and injected an unknown substance into his veins. Sharipov also stated that agents threatened to inject him with the HIV/AIDS virus, and forced him to write his own suicide note. He further stated that other officials threatened physical harassment of his lawyers if he did not dismiss them, and demanded that he ask pardon of the government for spreading “disinformation” about it. On 25 September, an appeal court upheld the charges of homosexuality and sex with a minor but dropped the charge of involving minors in “antisocial behavior.” It also reduced Sharipov’s prison sentence to four years. Sharipov arrived at the courthouse with a swollen eye, and injury above his eye, and with his glasses broken, raising fears that he was tortured in custody. In a letter smuggled out of prison earlier in September Sharipov said that police officers had tortured him and had threatened to physically harass his lawyers if he did not dismiss them.¹³²
- In a related case, Surat Ikramov, of the Independent Group for Human Rights Defenders who works in the legal defense of Ruslan Sharipov, was abducted and assaulted on 28 August 2003 after meeting with a judge regarding the appeal on Sharipov’s conviction. A plastic bag was

¹²⁹ HRW, “Progress on Paper Only: Analysis of the U.S. State Department’s Certification of Uzbekistan, 23 June 2003, at <http://www.hrw.org/backgrounder/eca/uzbek060303-bck.htm>

¹³⁰ Human Rights Society of Uzbekistan (HRSU), 26 October 2003.

¹³¹ HRW, “Progress on Paper Only: Analysis of the U.S. State Department’s Certification of Uzbekistan, 23 June 2003.

¹³² Amnesty International (AI), “Further Information on UA 180/03 (EUR 62/005/2003, 20 June 2003) Fear for safety/Fear of torture and ill-treatment new concern: Unfair trial,” 10 August 2003, at <http://web.amnesty.org/library/Index/ENGEUR620102003?open&of=ENG-UZB>; HRW, Uzbekistan: Human Rights Defender Loses Appeal,” 26 September 2003. See also Ruslan Sharipov’s letter to the HRW, posted at <http://www.hrw.org/press/2003/09/uzbek091703-ltr3.htm>

pulled over his head, his hands and legs were tied and he was pulled into a car that took him to the outskirts of Tashkent where he was beaten unconscious. Subsequent medical examinations confirmed a concussion and two broken ribs. Ikramov had been receiving anonymous telephone threats every few days prior to the attack.¹³³

Uzbekistan's penitentiaries are grossly overcrowded, and sometimes accommodate up to five times the number of inmates they were built for. Inmates are regularly deprived of basic care, including sufficient food and medical attention. As a consequence, undernourishment and diseases such as tuberculosis and hepatitis are widespread, and frequently result in deaths of prisoners. For example, an average of ten people reportedly die in the Tashkent hospital colony Uja 64/18 every day.¹³⁴

- Habibullo Qurbonov died on 2 April 2003 of tuberculosis after having been amnestied. He had been sentenced to 12 years in prison for membership in Hizb-ut-Tahrir. He first served in Zarafshan colony, CEP 64/48, later in CEP 64/36. After falling ill he was hospitalized in Tashkent's Sangorod (CEP 64/18).¹³⁵

Prison inmates are often subjected to torture or ill-treatment. In particular, people imprisoned for their religious activities suffer this fate: prison guards routinely abuse Muslim prisoners in order to force them to disavow their religious convictions and to swear loyalty to the government. There have been numerous cases where inmates have died under circumstances that raise suspicions that they have been tortured to death. The authorities have failed to undertake any proper investigations into such cases.¹³⁶

- Zokirjon Akramov (born 1974) reportedly died on 8 February 2003. He was serving a 12-year prison sentence. On 18 January he had been taken to Tashkent's Sangorod prisoners' hospital for the third time during his time in prison. The day before his death, Akramov had told his brother that he had been seriously beaten in custody and suffered from severe pains.¹³⁷
- Otamaza Gafarov died apparently from torture on 3 May 2003. He was due to be released in September from Chirchik prison after having spent seven years in prison. While in prison, he was frequently sent to punishment cells for objecting to prison authorities' mistreatment of fellow prisoners and demands for bribes from prisoners' family members. Prison authorities claimed that Otamaza Gafarov had died of a heart attack, although one guard told the family that Gafarov's death "happened differently."¹³⁸
- Orif Eshanov was arrested by the National Security Service in Karshi on suspicion of belonging to Hizb-ut-Tahrir. He died in custody on 15 May 2003. Witnesses who saw the body told HRW that it had heavy bruising to the arms, shoulders, upper chest, legs and soles of the feet. There were open wounds to one arm and his back. Several ribs were broken. Witnesses also reported that there were indications that objects such as needles had been forced under the fingernails.¹³⁹

¹³³ HRW, "Uzbekistan: Uzbek Rights Activist Kidnapped and Beaten – Repressive Grip Tightens Prior to Independence Day," *Human Rights News*, 30 August 2003; at <http://www.hrw.org/press/2003/08/uzbek083003.htm>

¹³⁴ Information from HRSU to the IHF, 26 October 2003.

¹³⁵ Muslim Uzbekistan, "Amnestied Muslim Died in Yizzakh," 8 April 2003, at http://www.muslimuzbekistan.com/eng/ennews/2003/04/ennews08042003_g.html

¹³⁶ HRW, *Religious Persecution of Independent Muslims in Uzbekistan from September to July 2002*, 20 August 2002, at <http://hrw.org/backgrounder/eca/uzbek-aug/uzbek-brief0820.pdf>.

¹³⁷ See www.birlik.net; and ??? ???? ?????????? ???? ?????? ?????????? ?????????? ??????," 4 March 2003, at www.muslimuzbekistan.com.

¹³⁸ HRW, "Fact Sheet: EBRD Annual Meeting—Tashkent and After, Incidents of government harassment and intimidation of human rights defenders in connection with the annual meeting," June 2003, at <http://www.hrw.org/press/2003/07/ebd-factsheet.htm>

¹³⁹ Ibid.

The most notorious of all Uzbek prisons is that of Jaslyk, situated in the Karakalpakstan desert far away from urban centers. Despite secrecy surrounding the facility, also called “the place of no return,” reports have been received about extremely harsh conditions, the spread of various diseases, severe torture and ill-treatment inflicted on inmates, and several cases of death. Muslim prisoners are usually held in this facility and put under pressure to sign letters of repentance.

- On 8 August 2002, the bodies of Husnidin Alimov (34) and Muzafar Avazov (35) were returned to their relatives for burial. Both men had been imprisoned for their religious activities in the Jaslyk prison camp. Sixty to seventy percent of Avazov’s body bore clear signs of burns, apparently from immersion in boiling water. According to his relatives the back of his head also had a gaping wound and his hands had no fingernails. The IHF is in the possession of photographs attesting to the gravity of the injuries. The prosecutor also warned the family of Avazov against giving information about the case to the media and others. Moreover, the authorities reportedly restricted the viewing of Alimov’s body, with the police accompanying the corpse and being present during the funeral. The IHF criticized the inadequate investigations into the circumstances of these two deaths, and expressed disappointment with claims by Uzbek officials that the two men had sustained their deadly injuries as a result of fighting.¹⁴⁰

After this incident, Uzbek authorities have tried to improve the reputation of the Jaslyk prison by, for example, inviting journalists to visit the facility. During one such visit, inmates told the journalists that although ill-treatment had become somewhat less frequent after the international outcry following the death of Husnidin Alimov and Muzafar Avazov, it was still commonplace.¹⁴¹

In addition to incarcerating political opponents, pious Muslims and human rights defenders, Uzbekistan has resumed the former Soviet practice of confining activists in psychiatric institutions for forced treatment.

- Elena Urlaeva, a human rights activist with the Human Rights Society of Uzbekistan (HRSU, IHF cooperating committee), was arrested by the police on 6 April 2001 while on her way to a demonstration. She was placed in “psychiatric treatment” until the end of June. The IHF mission that visited her in the psychiatric institute found inexplicable why Urlaeva was held in psychiatric treatment. Urlaeva insisted that she had met many other people like her, considered opponents to the regime, neutralized through mental confinement. It should be noted that when the IHF mission met with Mr. Saidov, head of the Human Rights Committee, and raised their concerns regarding the Stalinist-style methods that had been applied to Elena Urlaeva, he recognized that a mistake had been made in this case and that there were hopes that an end would be put to this situation very soon. Still, he raised concerns about “what Ms. Urlaeva had said in Warsaw,” on the occasion of the OSCE Human Dimension Implementation Meeting in the fall of 2000, about discrimination of the Russian population in Uzbekistan. In July 2001 the Tashkent City Court held that no irregularity had been committed in her case, and that the forced detention in the psychiatric institute was therefore legal.¹⁴²

On 27 August 2002, Elena Urlaeva was arrested again in connection with a demonstration in front of the Ministry of Justice in Tashkent. Police beat the protesters and took Elena Urlaeva and Larisa Vdovina, also an HRSU member, to a psychiatric hospital for compulsory treatment.¹⁴³ Elena Urlaeva was released on 30 December 2002, and Larisa Vdovina on 28 January 2003.¹⁴⁴

¹⁴⁰ See IHF, “Death by torture in Uzbekistan,” 23 September 2002; and *IHF Statements to the OSCE Human Dimension Implementation Meeting in Warsaw 9-19 September 2002*, at www.ihf-hr.org/reports/osce02/IHF%20InterventionsOSCEWar02%20.pdf

¹⁴¹ IWPR, Galima Bukharbaeva “Uzbek Prison Brutality,” 3 May 2003, at <http://www.muslimuzbekistan.com/eng/ennews/2003/05/ennews03052003.html>

¹⁴² IHF, *International Helsinki Federation Mission to Central Asia (Kazakhstan, Kyrgyzstan and Uzbekistan)*, 7-16 June 2001, at http://www.ihf-hr.org/viewbinary/viewdocument.php?doc_id=1344

¹⁴³ Information from the HRSU to the IHF; and RFE/RL, “Protestors rally in Tashkent,” *RFE/RL Central Asia Report*, Vol. 2, No. 22, 29 August 2002.

¹⁴⁴ Information from the HRSU to the IHF.