

# **The Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of Chechens Living in Georgia**

## **Introduction**

Chechen refugees have been living in Georgia since the troubles between Russia and Chechnya began. The first groups of Chechen refugees came to Georgia in 2000 and took residence in the Pankisi Gorge, where several thousands of Kistin Chechens have been living since the end of the 19th century. The number of Chechen refugees in Georgia reached 6,000-7,000 by 2002, and started to decline afterwards. Currently, there are over 2,000, according to the statistics of Georgian Ministry for Refugees and placement. The overwhelming majority of them live in the Pankisi Gorge. The discrepancy results from the different definition of Chechen residents of the Pankisi Gorge that moved to Chechnya in the 1980s-1990s, and started to come back in 2000.<sup>1</sup>

The refugees in the Pankisi Gorge face poor living conditions and suffer a lack of proper food, housing, medical care and education, as well as frequent abuse and harassment. The refugees are forced to remain in Pankisi in a virtual state of limbo; unable to return to home, not able to obtain work permits or citizenship in Georgia and not permitted to migrate to other countries<sup>2</sup>. This type of existence may properly be classed as ‘cruel, inhuman or degrading treatment.’

Another problem long faced by the refugees is ‘extradition’ (although at times ‘kidnapping’ would be a more appropriate term) back to Russia, where they face possible violations of their rights.

Non-refoulement has been a fundamental principle of international law, since it was written into the Geneva Conventions in 1951. This principle demands that refugees are protected from being returned to places where their lives or freedoms could be threatened.

The Human Rights Information and Documentation Center (HRIDC) expresses its concern about the frequent violation of the rights of Chechen refugees living in Georgia. Contrary to their obligation to protect refugees under international law, the Georgian authorities often actively violate the rights of those who come to Georgia seeking refuge.

## **The Law**

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<sup>1</sup> [http://www.ocha.ru/public.php?\\_act=new&\\_op=view&\\_ti=9951](http://www.ocha.ru/public.php?_act=new&_op=view&_ti=9951)

<sup>2</sup> See for example: Human Rights Information and Documentation Centre, Annual Report 2005, ‘Next Stop Belarus?’ (2006), ‘Rights of Refugees are Not Protected in Georgia’, p67, website: <http://www.humanrights.ge/eng/files/HR-REPORT-2006.pdf>

Both article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter ‘the Convention Against Torture’) is the most detailed treaty regarding torture, although complaints could also be made through a variety of other channels, such as the European Convention on Human Rights (ECHR).

The Convention Against Torture defines torture as:

[A]ny 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, 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.<sup>3</sup>

However, it is important to note that article 1(2) of the Convention Against Torture, states that this definition does not prevent other, more stringent, regional or national definitions and laws regarding torture being adopted.

Under Article 4 of the Convention, a ‘State Party shall ensure that all acts of torture are offences under its criminal law’ and that offenders are severely punished.<sup>4</sup>

The Convention Against Torture goes further than this though and most importantly for the discussion here, a state must not ‘expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.’<sup>5</sup>

To determine whether the extradited person would be in danger of torture, the ‘competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.’<sup>6</sup>

## **Georgia’s Treaty Obligations**

Georgia acceded to the Convention Against Torture on 26<sup>th</sup> October 1994 and the Convention came into force in the country on 25<sup>th</sup> November 1994.

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<sup>3</sup> UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1(1), website: <http://www.hrweb.org/legal/cat.html>

<sup>4</sup> UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 4, website: <http://www.hrweb.org/legal/cat.html>

<sup>5</sup> UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3(1), website: <http://www.hrweb.org/legal/cat.html>

<sup>6</sup> UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3(2), website: <http://www.hrweb.org/legal/cat.html>

In August 1999 Georgia acceded to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees.

Georgia signed the Optional Protocol on the Convention Against Torture on 9<sup>th</sup> Aug 2005. This will allow the creation of a sub-committee and in-country inspections of places of detention, to be undertaken in collaboration with national institutions.

Georgia has also made a declaration under article 22 of the Convention Against Torture. This declaration recognizes the competence of the Committee Against Torture to receive and consider communications from, or on behalf of, individuals within its jurisdiction who claim to have suffered a violation under the Convention.

In an attempt to fulfill its obligations under the Conventions, Georgia adopted a Plan of Action against Torture in Georgia for the period 2003-2005. Whilst containing some good measures, the plan has failed to fully address the problem of extradition to countries that have a poor record of human rights or prevent the abuse of refugees within Georgia.

### **Extradition of Chechens from Georgia to Russia**

Russia has frequently been accused of 'gross, flagrant or mass violations of human rights', particularly in relation to the Chechen conflict. Therefore, to ensure Georgian obligations under the Convention Against Torture are fulfilled, the Georgian authorities must ensure Chechens or others on its territory who face violations of their rights in Russia, are not deported, extradited, refouled or kidnapped back to that country.

When Georgia refused to cooperate with Russian demands in September 2002, it was accused of 'harbouring Chechen militants in the Pankisi Gorge' and threatened by Russian President Putin with 'military action' if Georgia failed to 'deal with them'.<sup>7</sup>

Bowing to Russian pressure, in October 2002, the then Georgian leader (Eduard Shevardnadze) promised to work with Moscow to carry out Antiterrorist Operations in the area. This promise resulted in 'several suspected guerrillas killed, dozens of Chechens detained and several extradited to Russia.'<sup>8</sup>

This cooperation between the two countries has continued to the present day, although now perhaps less openly. The 2003 Amnesty International Report pointed out;

A number of detainees faced extradition to destinations where they might be in danger of human rights abuses.

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<sup>7</sup> BBC News article, 'Timeline: Georgia - A chronology of key events', 28 March 2006, website: [http://news.bbc.co.uk/2/hi/europe/country\\_profiles/1102575.stm](http://news.bbc.co.uk/2/hi/europe/country_profiles/1102575.stm)

<sup>8</sup> BBC News article, 'Timeline: Georgia - A chronology of key events', 28 March 2006, website: [http://news.bbc.co.uk/2/hi/europe/country\\_profiles/1102575.stm](http://news.bbc.co.uk/2/hi/europe/country_profiles/1102575.stm)

In October [2003], a number of Russian citizens of Chechen origin had their extraditions to Russia delayed until the European Court of Human Rights had examined the case. In November [2003], the Court lifted the stay on these extraditions in the light of guarantees given by the Russian Federation authorities that the rights of those extradited, such as access to appropriate medical treatment and legal advice, would be observed, despite the widespread violations of such rights within the Russian Federation.<sup>9</sup>

Human Rights Watch also reported similar violations of the international conventions relating to extradition:

In March 2005, two Chechens reportedly went to the Ministry of Refugees and Housing in Tbilisi, seeking asylum. Officers from the Ministry of Interior arrested them and took them to the border with Azerbaijan, where Azerbaijani authorities reportedly refused them entry unless they agreed to return to Russia. They spent several weeks in the neutral zone between the Georgian and Azerbaijani borders before returning to Georgia. On May 28, 2005, Russian authorities organized the repatriation of eighteen Chechen refugees from Georgia. Although no force was used, the United Nations High Commissioner for Refugees did not consider the repatriation voluntary due to the lack of access to objective and accurate information about conditions in the country of origin.

Although Georgia passed amendments to its refugee law in April 2005 and has ratified the 1951 Convention relating to the Status of Refugees, its laws and practice in refugee determination and protection do not comply with international standards. For example, pre-screening mechanisms prevent registration of asylum claims, and there are insufficient protections against refoulement for refugees and for those who may have been excluded from refugee status, but who would risk torture or ill-treatment if returned.<sup>10</sup>

Another example of, at best, a lack of adequate protection for refugees or at worst outright collusion with the Russian authorities is the case of *Bekhan Mulkoev* and *Husein Alkhanov*. These two Russian citizens of Chechen origin were amongst 13 Chechens arrested by Georgian border guards in late summer 2002. Five of the 13 were forcibly extradited to Russia; however *Mulkoev* and *Alkhanov* avoided extradition due to successful 7 month appeal to the Georgian Supreme Court.

The two men still faced charges under Georgian law for violating border regulations and entering Georgia illegally. After one and a half years of detention in Georgia, *Mulkoev* and *Alkhanov* were acquitted of these crimes by a Tbilisi district court on 6<sup>th</sup> February 2004. Their troubles however were far from over.

Ten days after *Mulkoev* and *Alkhanov* were acquitted and released they disappeared. It later transpired that the Russian Security Services had detained both of them at the Russian-Georgian border. The Chechen community in Georgia expressed fears that the two men had been abducted and secretly extradited to Russia by the Georgian authorities.

The Georgian President Mikheil Saakashvili responded to the public outcry, stating on the BBC's Hardtalk program: "These are just allegations. We don't need secret extraditions. I was worrying about this information [the disappearance of the Chechens]."

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<sup>9</sup> Amnesty International 2003 Report, Georgia, website: <http://web.amnesty.org/report2003/geo-summary-eng>

<sup>10</sup> Human Rights Watch, 'Human Rights Overview – Georgia', website: <http://www.hrw.org/english/docs/2006/01/18/georgi12229.htm>

The Russians say that they [the Chechens] were captured at the Russian border, which really seems to me realistic.”

Despite the Tbilisi court decision acquitting the two Chechens, the Georgian President went on to say “they definitely are the combatants, according to my information.”<sup>11</sup>

In connection with the above extraditions, on 16<sup>th</sup> September 2003, a complaint was lodged with the European Court of Human Rights on behalf of all 13 Chechens, referring to article 3 (Prohibition of torture) of the ECHR.

On 12<sup>th</sup> April 2005, the European Court of Human Rights gave a final decision regarding the case - *Shamaev and 12 others v. Georgia and Russia*<sup>12</sup>. The European Court partially satisfied the Chechens’ demands; deeming their detention and extradition to Russia illegal and also considering the actions of the Georgian authorities to have violated Articles 3, 5 (paragraph 2 and 4), 13 and 34 of the ECHR.

The Russian Government was found guilty of violating Articles 38 (paragraph 1.a) and 34. According to the decision of the Court, the Georgian Government had to pay 80,500 EUR to the Chechen prisoners and also reimburse their legal expenses to the amount of 4000 EUR. The Russian Government was ordered to pay 42,000 EUR to the prisoners and 12,000 EUR for legal expenses.<sup>13</sup>

### **Cruel, Inhuman or Degrading Treatment or Punishment of Chechens in Georgia**

Under the Convention Against Torture, State Parties ‘shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.’<sup>14</sup>

The Georgian government itself admits that ‘the penitentiary system and in places where persons are held in police custody still fall far below international standards in this area.’<sup>15</sup> The government blames this on budgetary constraints, although many of the abuses stem from cruel, inhuman or degrading treatment by prison officials and the security services, as opposed to the physical condition of the prisons.

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<sup>11</sup> Source: Human Rights Information and Documentation Centre, Annual Report 2004, ‘One Step Forward, Two Steps Back - Human Rights in Georgia after the ‘Rose Revolution’’ (2005), p18, website: <http://66.116.100.86/humanrights.ge/eng/files/REPORT.pdf>

<sup>12</sup> The full text of this case can be found in French at: <http://cmiskp.echr.coe.int>, an English summary can be found on the ‘Article 42 of the Constitution’ website: [http://www.article42.ge/archive\\_cases.htm](http://www.article42.ge/archive_cases.htm)

<sup>13</sup> Source: Human Rights Information and Documentation Centre, Annual Report 2005, ‘Next Stop Belarus?’ (2006), p64, website: <http://www.humanrights.ge/eng/files/HR-REPORT-2006.pdf>

<sup>14</sup> UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 16(1), website: <http://www.hrweb.org/legal/cat.html>

<sup>15</sup> Government of Georgia, Third Periodic Report in 2003 (27 November 2003), submitted to the Committee Against Torture, CAT/C/73/Add.1, 4 July 2005

Punishment beatings<sup>16</sup>, cruel interrogation techniques and arbitrary detention are common features of the Georgian penal system. The situation is only made worse by a lack of accountability of those officials responsible for such acts.

The problems regarding the penal system are not only specific to Chechens, although Chechens, due to their vulnerable status within society, are at particular risk. Below are some recent examples of treatment of Chechens within Georgia; treatment which falls far below international standards.

#### *Visami Tutuyev Chased by Georgian Security Forces*

On October 9<sup>th</sup> 2004, Security Ministry officers of Counter-Terrorist Department arrested Visami Tutuyev, a refugee from Chechnya and Director of the Kavkaz-Center Chechen News Agency, near Tbilisi City Municipality building:

Tutuyev was detained by officers after being tricked into thinking he was meeting a journalist. He was detained for five hours. During his interrogation he was not allowed to contact his lawyer and his cell phone was confiscated.

The next day, on October 11<sup>th</sup>, unidentified people attacked the journalist's son in Baku whose injuries were so serious that he spent the next 5 days unconscious in a Baku hospital. Tutuyev believes that the attack on his son was instigated to intimidate him. He also claimed that after his release, the security services exerted psychological pressure on him by tapping his phone calls and not concealing the fact that they were watching him.

Tutuyev's arrest took place the day after his location was broadcast on Russian Television. Two days after the broadcast, Chechen families were searched in Tbilisi on the orders of the Interior Ministry. On the same day police and security officers raided the house of Geno Djokhidze, Vice President of the Association of Journalists.

The Kavkaz-Centre News Agency, whose website was hosted by a Lithuanian company, then temporarily stopped operating. The Russian Exterior Minister demanded the agency be shut down. The News Agency was later banned from operating on the basis that it provoked conflict and supported terrorism.

Contrary to this decision, a Lithuanian Court made a decision in favor of the News Agency and on October 20<sup>th</sup> 2004, a Lithuanian Committee, set up on the courts request, ascertained that the News Agency did not provoke ethnic or religious conflicts, nor did it find any information that it supported terrorism.<sup>17</sup>

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<sup>16</sup> See Human Rights Information and Documentation Centre, website [www.humanrights.ge](http://www.humanrights.ge) for examples, such as: 'Prisoners Brutally Beaten for Testifying to the Opposition', website: <http://www.humanrights.ge/eng/stat243.shtml>

<sup>17</sup> Source: Human Rights Information and Documentation Centre, Annual Report 2004, 'One Step Forward, Two Steps Back - Human Rights in Georgia after the 'Rose Revolution'' (2005), p20, website: <http://66.116.100.86/humanrights.ge/eng/files/REPORT.pdf>

### *State Security Treats Chechens Cruelly*

On August 4<sup>th</sup> 2004, HRIDC received information from the Georgian Centre for Psychological and Medical Rehabilitation of Torture Victims (GCRT), that the Special Operations team of the Georgian state security services conducted operations against Chechen refugees in Pankisi. The operations took place specifically in the villages Duisi, Djokola and Khalatsani.

During these 'special operations' the officers of the state security services treated Chechen women in a particularly cruel manner. They severely beat 14 Chechen women; 12 of whom were taken to the Akhmeta Hospital, 4 of whom turned out to have brain concussion. It should also be noted that one of the women was pregnant.

According to the information received, the officers forced the women to fall to their knees and then beat them with Kalashnikov rifle butts.<sup>18</sup>

### *Last 'Hope' of Chechen Refugees Imprisoned*

On December 30<sup>th</sup> 2005, the founder of the only humanitarian organization in the Pankisi gorge area, Muhamed Mahaev, was sentenced to three months of pretrial detention following a decision of the City Court. His organization is accused of cooperation with the terrorist organization Al Qaeda.

He was accused of falsifying documents, abuse of his position and embezzling 24,000GEL. The humanitarian organization 'Imedi' ('Hope'), was founded by Mahaev in 2003 and assisted the Chechen Refugees in the Pankisi gorge with food and other useful supplies. According to the investigators, the donor organizations that financed Imedi have links with Al Qaeda.

The Human Rights Information and Documentation Centre's Executive Director, Ucha Nanuashvili, stated: "The accusation is absurd; one of the donor organizations, 'Muslim Hands', is partner of The Red Cross. Factually, the investigation also accuses these organizations of being tied to Al Qaeda."

Lawyer Davit Managadze also stated at the time: "the investigation is biased, they do not take all existing evidence into consideration. There is no reason for Mahaev's imprisonment; the statement by the investigation that Mahaev may leave the country is unreasonable, seeing as his passport was taken away."

The General Prosecutor's Office investigated the case from July 2005 onwards. During this period Mahaev did not hide from investigators. The Chechen Refugees Rights Protection Coordinating Council agreed to stand as a guarantor for Mahaev. They

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<sup>18</sup> Source: Human Rights Information and Documentation Centre, Annual Report 2004, 'One Step Forward, Two Steps Back - Human Rights in Georgia after the 'Rose Revolution'' (2005), p21, website: <http://66.116.100.86/humanrights.ge/eng/files/REPORT.pdf>

were sure that Mahaev would not miss his trial, stating: “We are petrified because of this trial. This shows they can accuse every Chechen of terrorism. They have been investigating this organization’s activities for months and could not find anything; their arguments are not reasonable”.

All humanitarian activities carried out by Imedi in the Pankisi gorge were stopped.<sup>19</sup>

## **Conclusion**

The Georgian authorities are not taking adequate steps to protect the rights of the Chechens, particularly in the Pankisi Gorge area. Only the intervention of the European Court of Human Rights seems to have had any real impact on the practices of the Georgian and Russian governments, practices which continue today<sup>20</sup>.

The Human Rights Information and Documentation Centre calls on the Georgian government to fulfill its obligations under the Convention Against Torture and refrain from violating, or allowing others to violate, the rights of those who seek refuge and protection within Georgia.

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<sup>19</sup> Source: Human Rights Information and Documentation Centre, Annual Report 2005, ‘Next Stop Belarus?’ (2006), p71, website: <http://www.humanrights.ge/eng/files/HR-REPORT-2006.pdf>

<sup>20</sup> See Human Rights Information and Documentation Centre, website [www.humanrights.ge](http://www.humanrights.ge) for examples, such as: ‘Chechen Refugees Await the Next Attack - Pankisi Inhabitants Ask the International Organization for Help’, website: <http://www.humanrights.ge/eng/stat192.shtml>