

Silence Kills: Abuse of Chechen Refugees in Georgia

This report was prepared by the Human Rights Information and Documentation Center (HRIDC), a Tbilisi based NGO dedicated to the protection and promotion of human rights in Georgia.



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Introduction

This report gives an overview of the situation of the Chechen refugees residing in Georgia and covers the period of 1999 to 2006. The report focuses on whether the Georgian government is meeting international standards codified in human rights law with regards to the refugees, as well as highlights examples of abuse of Chechen refugees in Georgia. The report gives the recommendations to the specific bodies of Georgian government in order to ensure the defense of the rights of Chechen refugees in Georgia.

Executive Summary

Approximately 8,000 refugees from the Russian Federation have sought refuge in Georgia since the resumption of the Chechen conflict in 1999.¹ It is still unsafe for the refugees to return to their homeland, where they face harassment, extortion and the possibility of being “disappeared”.

Of these refugees, Chechens and Kists make up the majority. Most of the Chechens and Kists who fled southern Russia settled in Pankisi Gorge, a valley northeast of Georgia’s capital, Tbilisi, in the region of Kakheti. The remainder took up residence in Tbilisi. The refugees chose to settle in Pankisi Gorge because there were ethnic Kists already residing there, some of whom were family relations. In addition, a condition of remaining in Georgia was that the refugees live in sites approved by the Georgian Ministry of Refugees and Accommodation. The Ministry selected Pankisi Gorge as the principal site for the settlement of refugees from Chechnya.

Kists and Chechens both speak Chechen. However, unlike the Chechens, the Kists have a long history in Georgia, including in Pankisi Gorge. Many of the Kist refugees were born in Georgia before the breakup of the Soviet Union.² Because of their enduring connection to Georgia, Kists often speak Georgian and identify with Georgian culture. In contrast, Chechen refugees generally do not know Georgian and would consider themselves politically and culturally distinct from Georgians.³

Because of these cultural differences, the United Nations Association of Georgia, upon conducting a random survey of refugees in Pankisi Gorge (110 respondents were Kist and 91 Chechen), discovered that 36 percent of Kist respondents preferred to remain in Georgia and to integrate locally, whereas only 8 percent of Chechen respondents preferred to integrate. In contrast, 73 percent of Chechen respondents preferred to be located to a third country, while only 51 percent of the Kist respondents preferred this option.

According to the March 2005 figures compiled by the Georgian Ministry of Refugees and Placement, there were 2,548 registered refugees from the Russian Federation living in Georgia, of whom 2,515 were in Pankisi Gorge and another 33 in Tbilisi. Around the same time, the Coordination Council of Chechen Refugees released a count of ethnic Chechen refugees living in Tbilisi and Pankisi Gorge. According to this organization, there were 142 Chechen refugees in Tbilisi and another 344 Chechen refugees in Pankisi

¹ Statistic approximated from change in refugee population from Russia between 1998 and 2001 from 2004 UNHCR statistical yearbook for Georgia (www.unhcr.org).

² From United Nations Association of Georgia random survey of Pankisi Gorge refugees conducted in 2005-06, of which 54 percent of respondents reported being born in Georgia before moving to the Russian Federation.

³ See United Nations Association of Georgia data on cultural integration of Kists and Chechens.

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Gorge. Although conflicting, these data would suggest that less than a fifth of all refugees currently residing in Pankisi are ethnic Chechens. The rest are Kist.

The distinction between Chechen and Kist is important because each ethnic group has competing preferences about what should happen with its refugee status. Given that the United Nations High Commissioner for Refugees (UNHCR) relocated only 173 refugees from Chechnya to third countries between 2003 and 2004, resettlement to third countries is an unrealistic option for the majority of refugees who remain in Georgia.⁴ This is especially true now that many third countries are hesitant to accept ethnic Chechens who may or may not have fought in the Chechen-Russian conflict. According to the UNHCR, third countries, such as Sweden and Canada, that were previously receiving Chechen refugees, are now more reluctant to, in part, because of the War on Terror.⁵

Since 1999, refugees from Chechnya have struggled to survive in Georgia without the full rights of citizenship. The ones that remain have little chance of repatriation to the Russian Federation anytime soon, yet still have not been made citizens of Georgia. The process for obtaining Georgian citizenship can take up to a decade and is complex.⁶ In the meantime, the refugees live in Pankisi in a state of limbo; they are unable to return home, third countries refuse to accept them, and they have difficulty finding work or obtaining citizenship in Georgia. Many of the refugees have been traumatized by the conflict they fled and live in constant fear that one day they may have to return to Chechnya. Their fears are exacerbated by the fact that prominent Chechens, working in the media and humanitarian sectors, have been targeted by the Georgian criminal justice system. Above all, the refugees see themselves as pawns in a political game between Georgia and Russia with no hope for a future that they can control.

HRIDC calls upon the Georgian government and the international community to offer a long-term solution for the refugees from Chechnya who remain stranded in Georgia. HRIDC also demands that the Georgian government cease abusing the rights of refugees. HRIDC believes third-country resettlement of the remaining ethnic Chechen refugees is the optimal solution if it can be achieved. In regard to the ethnic Kist refugees residing in Pankisi, HRIDC urges the Georgian government to take steps to integrate them into Georgian society as soon as possible.

⁴ See UNHCR Georgia's press release on resettlement activities in Georgia.

⁵ See UNHCR Georgia's press release on resettlement activities in Georgia

⁶ Georgian Law on Citizenship: article 26, chapter 2; (Interview with Irakli Kokaia – Head of the Refugees, Migrations and Repatriation Unit, Ministry of Refugees and Accommodation, Bi-monthly Newsletter of UN Association of Georgia on Refugees. 3rd issue, 2006).

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Georgia's Treaty Obligations

Georgia is a party to several international treaties that govern the treatment of refugees. These treaties constitute the highest order of Georgia's laws just behind its constitution.⁷ Of these, the two most important treaties concerning refugees are:

- The 1951 Convention relating to the Status of Refugees and the 1967 protocol, which amended the 1951 definition of "refugee" to include those made refugees after 1951. The original Convention defines both "refugee" and the obligations of a party in treating refugees.
- The Convention against Torture, which defines "torture" and the obligations parties have in preventing "torture" and "acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture".

Georgia has also enacted a domestic law on refugees. Although this law incorporates the same definition of "refugee" as the Convention relating to the Status of Refugees, this law directly conflicts with the Convention in that it requires refugees to apply for "refugee status" before they will be considered refugees by the Georgian government.⁸

Because treaties trump domestic laws in Georgia's legal system, it is possible for a person to be a refugee without having been granted refugee status by the Ministry of Refugees and Accommodation. The fundamental problem is that the Georgian government continues to misinterpret its own order of laws. This report attempts to clarify the rights of Chechen and Kist refugees for the Georgian government, and to identify instances where the Georgian government has not protected these rights as it was obligated to do by its own laws.

⁷ Law on legal norms, article 19

⁸ See Article 2 of Georgia's Law on Refugees

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Granting Asylum

Article 1 of the Convention relating to the Status of Refugees defines a refugee in part as:

Any person who... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Article 31 of the Convention further demands that:

The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

Finally, Article 3 of the Convention requires that:

The State Party shall apply the provisions of this Convention to refugees without discrimination as to race, religion, or country of origin.

The Case of Said-Salakh Kadiev

Said-Salakh Kadiev, a Russian Federation citizen of Chechen ethnicity, crossed from Azerbaijan into Georgia in September 2003 and remained in Georgia. In May 2005, agents from the Ministry of Internal Affairs arrested Kadiev for not possessing a valid Georgian visa. Kadiev was eventually sentenced to six months in prison.⁹

With legal assistance from HRIDC, Kadiev was able to block a state attempt to increase his prison sentence. The HRIDC then helped him petition the Georgian Ministry of Refugees and Accommodation for refugee status. On November 29, 2005, after serving his sentence, the Georgian government released Kadiev.

Although Kadiev failed to present himself “without delay to authorities” after having illegally crossed into Georgia, HRIDC believes that Kadiev’s punishment offended the principles of Article 31 of the Convention relating to the Status of Refugees. HRIDC asks that the Georgian government give refugees adequate legal recourse to claim refugee status before punishing refugees for illegally immigrating.

⁹ Information from legal aid centre of HRIDC

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The Case of the Tsitiashvili Brothers¹⁰

After the Tsitiashvili brothers had entered Georgia illegally in the previous year, they petitioned the Georgian Ministry of Refugees and Accommodation for refugee status on March 7, 2005. Within three days of applying for this status, the Ministry of Internal Affairs detained the brothers and subsequently placed them in the neutral zone of the Azerbaijani-Georgian border. In effect, the agents had deported the Tsitiashvili brothers to Azerbaijan.

The actions of the Ministry of Internal Affairs were permitted because Section 2.2 of Article 2 of Georgia's Law on Refugees gives the Ministry for Refugees and Resettlement three days to decide on the registration of an application. Once registered, an applicant receives a permit for temporary residence according to Section 3.1 of Article 3 of the same law. However, because the Tsitiashvili Brothers had not been registered yet, they were not entitled to a temporary residence permit.

HRIDC urges the Georgian Parliament to close this loophole in Georgia's current law by requiring the Ministry of Refugees and Accommodation to issue a temporary residence permit at the time a potential refugee applies to the Ministry for refugee status. At the very least, the Georgian government must respect the Convention relating to the Status of Refugees by recognizing the principle that an illegal immigrant could qualify as a refugee under the Convention without having petitioned for or received refugee status from the Ministry of Refugees and Accommodation.

The Case of Magamed Gazimiev

In November 2005, Magamed Gazimiev, an ethnic Chechen of Russian nationality, was forced to return to Russia at the Tbilisi Airport when he tried to enter Georgia to attend a wedding. Because all of his documents were valid, he believes the only reason he was denied admission was his Chechen ethnicity.¹¹

In addition, HRIDC has learned through various sources that there is a standing verbal decree by the Minister of the Interior that prohibits border agents from admitting into Georgia people of Chechen and Arab ethnicity if this ethnicity can be ascertained at the point of contact with the border agent.

Article 3 of the Convention relating to the Status of Refugees clearly states that refugee status should not be limited because of "race, religion, or country of origin". Turning away at checkpoints people who wish to claim refugee status under the Convention on the sole basis of their ethnicity falls within this prohibition.

Although Gazimiev was not an intending refugee, his case evidences an unwritten policy of the Georgian government to turn away all people of Chechen and Arab ethnicity at checkpoints. If any one of these people qualifies as a refugee under the Convention, then the Minister of the Interior would be offending his own government's laws, of which the Convention is an important element. HRIDC demands that the Georgian government not discriminate against people of Chechen and Kist ethnicity attempting to seek refuge in Georgia.

¹⁰ http://www.humanrights.ge/eng/_articles.php?tbl=articles&id=80

¹¹ Unless otherwise provided, all information is based on data gathered by the HRIDC and can be found in its on-line magazine on: <http://www.humanrights.ge>

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The Case of Assorted Families

In March, 2005 approximately 80 refugee families living in Pankisi Gorge have accused the Ministry of Refugees and Accommodation of annulling their refugee status summarily. The Georgian Public Defender's Office in Kakheti has begun an investigation. The cases of 35 of the 80 families have not been considered due to the lack of documentation. Another 12 families were registered in the Akhmeta region. Representatives of the Public Defender's office explained that according to Article 10, Section 2 of the Law on Refugees, these families don't have the right to claim refugee status because they "deliberately presented false information and fake documents that served as the basis for granting... refugee status". The Public Defender's Office has sent these refugees official letters denying their request based upon this interpretation of Georgian law.¹²

HRIDC would like to remind the Ministry of Refugees and Accommodation and the Georgian Public Defender's Office that the Convention relating to the Status of Refugees, not Georgia's Law on Refugees, is the controlling law in Georgia, and that a refugee under that Convention remains a refugee regardless of whether the Georgian government decides to grant refugee status or not. The granting of refugee status is purely an administrative function that has no bearing on whether a refugee is truly a refugee under Article 1 of the Convention. If the Georgian government does not wish to follow the Convention relating to the Status of Refugees and prefers instead to follow its own Law on Refugees, then the Georgian government should withdraw as a party to the Convention and not pretend to follow international laws that it chooses to disregard when the international community is no longer watching.

Nonrefoulement

Chechen refugees living in Georgia continue to live in fear of extradition to Russia, where they could be subjected to torture or other forms of cruel, inhuman or degrading treatment or punishment. Some even risk summary execution if they return.

The principle of "nonrefoulement" is a fundamental part of the Convention relating to the Status of Refugees. Article 33 states in part:

No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Article 3 of the Convention against Torture also requires that:

No State Party shall 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.

For the purpose of determining whether there are such grounds, 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.

12 Alternative Report for the Committee on the Elimination of Racial Discrimination (by FIDH and HRIDC)
http://www.humanrights.ge/eng_/angarishebi.php

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Russian Federation and Chechnya

The Russian Federation has frequently been accused of “gross, flagrant or mass violations of human rights” in its handling of the Chechen conflict. In 2005, Human Rights Watch wrote:

Russian and pro-Russian Chechen forces continued to be responsible for numerous arbitrary detentions during raids, looting, physical abuse of villagers, and extrajudicial executions. Those detained face beatings and other forms of torture aimed at coercing confessions or information about Chechen rebel forces. The forces routinely extort money from detainees’ relatives as a condition for release.¹³

Amnesty International confirmed this view:

The conflict in Chechnya has been characterized by widespread and credible reports that Russian forces have been responsible for violations of international human rights and humanitarian law, including ‘disappearances’, extrajudicial executions and torture, including rape.¹⁴

Such acts are not isolated incidents but routine and systematic. Human Rights Watch estimates that in the last six-and-a-half years, 3,000 to 5,000 people have disappeared in Chechnya.¹⁵ The refugees HRIDC interviewed in Pankisi Gorge felt that they, too, would be held for ransom or murdered if they return to Chechnya.

Extradition of Refugees to the Russian Federation

Because the Russian Federation has not adequately guaranteed the safety of Chechen and Kist refugees if they return, both Article 33 of the Convention relating to the Status of Refugees and Article 3 of the Convention against Torture prohibit Georgia from extraditing refugees to the Russian Federation. As a party to these conventions, the Georgian government has not always obeyed its own laws.

When Georgia refused to meet Russian demands to return Chechen refugees in September 2002, Russian Federation President, Vladimir Putin, accused Georgia of harboring ordinary, non-political criminals. Non-political criminals do not qualify as refugees under Article 1 of the Convention relating to the Status of Refugees and are not entitled to the rights guaranteed by the Convention. Bowing to this political pressure, the former President of Georgia, Eduard Shevardnadze, promised to work with the Russian Federation to apprehend various criminal suspects in Pankisi Gorge so that they could be extradited to the Russian Federation and tried for their crimes.

This cooperation between the two countries has continued to the present day, though less open as a consequence of Georgia’s Rose Revolution in 2003. Human Rights Watch recounted repatriations of eighteen Chechens from Georgia in 2005, which were organized by the Russian Federation:

¹³“Russian Federation/Chechnya: Human Rights Concerns for the 61st Session of the U.N. Commission on Human Rights”, Human Rights Watch, March 2005, <http://hrw.org/english/docs/2005/03/10/russia10298.htm>

¹⁴“Chechnya – human rights under attack”, Amnesty International, <http://www.amnesty.org/russia/chechnya.html>

¹⁵“Human Rights News - Russia Condemned for 'Disappearance' of Chechen”, Human Rights Watch, July 27, 2006, <http://hrw.org/english/docs/2006/07/27/russia13864.htm>

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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.¹⁶

Human Rights Watch concluded that:

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.¹⁷

The following case illustrates what Human Rights Watch meant by Georgia having “insufficient protections against refoulement”.

The Cases of Kashiev and Baimurzayev

Islam Kashiev (aka Bekkhan Mulkojev) and Timur Baimurzayev (aka Khusein Alkhanov) were among 13 ethnic Chechens from the Russian Federation who were arrested by Georgian border agents in 2002. The Georgian government extradited Abdul-Vakhob Shamayev and four others to Russia within two months of their illegal entry, where they were all sentenced to prison terms over a year in duration. Before they were extradited, 11 of the 13 learned from a television at the prison that some of them would be immediately extradited to the Russian Federation. When they were asked to leave their cell so it could be cleaned, the 11 refused and a violent clash with prison staff ensued.

Kashiev and Baimurzayev successfully avoided their extraditions by obtaining a stay from the Georgian Supreme Court. The two men still faced charges for entering Georgia illegally. On February 6 2004, after one-and-a-half years of detention, Kashiev and Baimurzayev were acquitted of all charges. The other six refugees were also eventually acquitted.

Two days after Kashiev and Baimurzayev were released from prison, they disappeared. It was later learned that Russian Federation border guards had detained the two at the Larsi border crossing near Chechnya. Because this information was not publicly known in Georgia, the refugee community there feared that the two men had been abducted following their release and secretly whisked to the Russian Federation by Georgian agents. Because it seems unlikely that two individuals wanted by the Russian Federation would attempt to cross the Russian border legally, the HRIDC supports the view of the refugee community.

The President of Georgia, Mikheil Saakashvili, responding to the refugee community’s accusations, stated: “These are just allegations. We don’t need secret extraditions. I was worrying about this information [the alleged extradition]. The Russians say that they [Kashiev and Baimurzayev] 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 combatants, according to my information.”¹⁸

¹⁶ <http://hrw.org/english/docs/2006/01/18/georgi12229.htm>

¹⁷ “Human Rights Overview – Georgia”, Human Rights Watch, <http://www.hrw.org/english/docs/2006/01/18/georgi12229.htm>

¹⁸ “Mikhail Saakashvili -HARDtalk Interview”, BBC, March 8, 2004, <http://news.bbc.co.uk/2/hi/programmes/hardtack/3543733.stm>

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A complaint was eventually filed with the European Court of Human Rights (ECHR) on behalf of the thirteen refugees. On April 12, 2005, the ECHR handed down a final decision in the case of *Shamayev and Twelve Others v. Georgia and Russia*. The ECHR satisfied the refugee's demands in part, finding that their treatment while in Georgian custody violated the European Convention on Human Rights.

The ECHR wrote in its final decision:

“...it appeared that the applicants had been informed only that the extradition of some of them was imminent, without being told which ones, that this information had not been given to them until 3 October 2002 in the middle of the night, and that a few hours later prison officers ordered them to leave their cell giving fictitious reasons. Such conduct on the part of the authorities amounted to attempted deception. In the Court's view the attitude of the Georgian authorities and the way in which they had managed the extradition enforcement procedure had incited the applicants to resist, so that the recourse to physical force had not been justified by the prisoners' conduct.”¹⁹

The HRIDC believes the facts of *Shamayev and Twelve Others* evidence that the Georgian government has an unwritten policy of refolement in regard to refugees from the Russian Federation. If such a policy exists, this policy would contravene Article 33 of the Convention relating to the Status of Refugees and should be explicitly repudiated by the Georgian government through both its words and actions.

The Cases of Hussein Yusupov and Adam Talalov

On September 20, 2002, 25-year-old Hussein Yusupov was taken from a checkpoint in Pankisi Gorge to the Anti-Terrorist Center of the Ministry of Internal Affairs. He was detained there, without a court order, for five days. Georgian authorities claim that they released him on September 25, 2002, but he has not been seen since.

On February 12, 2003, Chechen refugee in Georgia, Adam Talalov, disappeared. He supervised humanitarian aid for refugees in Pankisi Gorge. The 41-year-old Chechen refugee left his home on February 12 and has not been seen since.

Although there is not sufficient evidence to draw any hard conclusions, HRIDC feels that the circumstances surrounding these cases indicate a high likelihood that, through force or coercion by agents of the Georgian government, these individuals have ended up in the Russian Federation in the hands of authorities.

HRIDC is also aware that the Georgian government has facilitated visits in December 2004 by representatives of the Russian Ministry of Extraordinary Affairs to Pankisi Gorge. The purpose of these visits was to persuade refugees to return to the Russian Federation under the false pretense that it is now safe to do so.

HRIDC would like to reiterate to the Georgian government that any repatriation of refugees to the Russian Federation under both the Convention relating to the Status of Refugees and Convention against Torture must be voluntary, as opposed to forced, coerced, or deceptive.

¹⁹ Summary of case: http://www.article42.ge/archive_cases.htm

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Cruel, Inhuman, or Degrading Treatment or Punishment

Article 16 of the Convention against Torture states:

Each State Party 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...

As the following cases illustrate, when refugees become the targets of Georgia's criminal justice system, they are often subjected to excessive force that offend the principles on which Article 16 was written. Government agents have been known to use excessive force against even the weakest refugees.

Georgian Law Enforcement and Female Refugees

On August 4, 2004, Georgian law enforcement conducted criminal sweeps in the villages of Duisi, Jokola, and Khalatsani in Pankisi Gorge. During these sweeps, agents treated female refugees 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 concussions. One of these women was pregnant. According to information shared with HRIDC, agents forced the women to fall to their knees and then beat them with their rifle butts.²⁰

The Case of Rustam Anzorov

On August 24, 2004, Georgian law enforcement detained three ethnic Chechens, Rustam Anzorov, Adam Baisuev, and Islam Donaev, in Tbilisi based on an anonymous tip that the suspects were in possession of concealed weapons. During the search, police forcibly pulled Anzorov from his vehicle and hit him with a service revolver several times. Due to Anzorov's Chechen background, he neither understood Georgian nor could he speak Russian. Thus, he was unable to communicate with police. These language deficits resulted in considerable confusion, and police failed to adequately explain the reasons for his detention. Later, during his interrogation at a Tbilisi police precinct, Anzorov claimed that police continued to beat him. An independent medical report following his release confirmed that Anzorov had been beaten with a blunt object.

Although all governments of the world have difficulty controlling their law enforcement from time to time, HRIDC is concerned that the Georgian government is showing indifference to a pattern of abuse that is emerging in regard to how its law enforcement treats refugees from Chechnya. Under the Convention against Torture, even "acquiescence" is sufficient to tie a government to acts of "cruel, inhuman, or degrading" treatment by its agents. HRIDC demands the Georgian government to take a harder stance against mistreatment of refugees by its agents.

²⁰ 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>

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Access to Courts

Article 16 of the Convention relating to the Status of Refugees states:

A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance...

The Case of Visami Tutuyev

On October 9, 2004, agents from the Ministry of Internal Affairs arrested Visami Tutuyev, a Chechen refugee and Director of the Kavkaz Center News Agency, in Tbilisi. Agents entrapped Tutuyev after they made him believe he was meeting with a journalist. They then questioned him for five hours. During his questioning, he was not permitted to contact his attorney.

Section 1 of Article 80 of Georgia's Criminal Law requires that, if an accused requests, the state provide an attorney during any investigative or trial process at its expense, or the accused may seek the advice of a personal attorney at his or her expense. Because Tutuyev was a refugee entitled to the "same treatment as a national in matters pertaining to access to the courts," Georgia breached the Convention by ignoring Tutuyev's procedural rights during his questioning.

The Case of Khizri Aldamov and Others

On December 7, 2002, agents from the Ministry of Internal Affairs detained Chechen refugees and Georgian citizens with Chechen identities in Tbilisi for the purpose of fingerprinting and photographing them. Upon greeting these individuals, agents failed to show their orders or identification cards. Moreover, agents did not permit detainees to contact their attorneys before or during their detention. Among the detainees was the chairman of the organization of Chechen Diaspora, Khizri Aldamov, who is the citizen of Georgia. In addition, agents searched the headquarters of the organization, Caucasian House. The total number of detainees was approximately 80, including 70 Chechens, 7 Africans and several Pakistanis. All the detainees were released the same day.

HRIDC fails to see what justifiable purpose the Ministry of Internal Affairs had in carrying out this mass detention. However, regardless of the purpose, this purpose did not warrant the overriding of the right of these detainees to contact their attorneys as required by the Convention and Article 80 of Georgia's Criminal Law.

The Case of Vakhid Borchashvili

On September 9, 2006, at approximately 6 a.m., officers from the Duisi Patrol Police took Chechen refugee, Vakhid Borchashvili, to a regional military commissariat for compulsory military service. According to Georgia's Law on the Rights of Foreigners, a foreigner is not required to serve in the Georgian military forces. Although Borchashvili attempted to show the Duisi Police his refugee card, they ignored this crucial piece of information, and carted him off in the pre-dawn hours to barracks where he was not allowed access to an attorney for almost a month. Only after Borchashvili's father sought the help of HRIDC and HRIDC held a press conference to advocate for the release of Borchashvili did the Georgian government relinquish. The Centre and the elder Borchashvili appealed to General Prosecutor and General Inspection of the Defense Ministry pleading the case in detail and enclosing supporting documents. The appeal resulted in a

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preliminary investigation and the release of the detained Borchashvili. At the very least, the Georgian government should have afforded Borchashvili the right to contact a private attorney upon taking him into custody. In addition, the commissariat should have given Borchashvili reasonable notice.

The Case of Muhamed Mahaev

On December 30, 2005, an ethnic Chechen, Muhamed Mahaev, was arrested. In 2003, Mahaev had founded an organization, Imedi, to provide assistance to Chechen Refugees in Pankisi Gorge. Imedi received most of its funds from various humanitarian organizations. The Georgian government opened an investigation into the source of these funds. The government tried to link Imedi with organizations that had possible connections to the Taliban and Al-Qaida. Investigators initially believed that two of Imedi's sponsoring organizations, Muslim Helfen E.V. and Muslim Hands, were connected with money-laundering organizations that were responsible for financing terrorist activities. Investigators never bothered to contact representatives of any of these third-party donors, which they were required to do under Georgian law. Neither beneficiary nor the people who were aided by them were interrogated during the investigation.²¹ During the investigation, all financial records and computer equipment were removed from Imedi's office, which made it impossible for the organization to continue operating during the investigation.

Upon the completion of its investigation, the Prosecutor's Office charged Mahaev with the lesser crimes of forging documents and embezzling 137,325 GEL in collaboration with Imedi's accountant. During Mahaev's trial, he was neither provided court documents in Chechen, nor was his final verdict read in Chechen.

Section 3 of Article 17 of Georgia's Criminal Law requires that all investigative and trial documents be translated into the defendant's native language. In addition, the final verdict must be read in the defendant's native language. Because Mahaev was a refugee entitled to the "same treatment as a national in matters pertaining to access to the courts," Georgia breached the Convention by ignoring Mahaev's procedural right to translations during his trial.

HRIDC asks the Georgian Judiciary to respect both its own laws and the Convention relating to the Status of Refugees by barring evidence when investigators restrict a detainee's access to an attorney illegally. In addition, the Judiciary must do a better job of improving non-Georgian speakers' access to courts by providing translations of all documents and final verdicts in either Russian or the speaker's native language.

Access to Employment

Article 17 of the Convention relating to the Status of Refugees reads in part:

The Contracting States shall accord to refugees lawfully staying in their territory the most favorable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment...

Article 26 of the Convention relating to the Status of Refugees also says:

²¹Criminal Proceeding Code: articles 18, 58, 131

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Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens in the same circumstances.

Pankisi Gorge Turned Refugee Ghetto

The refugees in Pankisi live in an economically depressed area of a country, which still suffers from many inefficiencies left over from Soviet times. After the collapse of the Soviet Union, the factory and collective farm jobs in Pankisi disappeared overnight, leaving the local population facing massive unemployment. A lack of basic services and jobs means that living standards are low for everyone in Pankisi, refugees and nationals alike. The living conditions of the refugees are unpleasant. The UNHCR food rations, distributed every two months to refugees, are meager and basic. The sanitary conditions are also minimal, especially in the community shelters run by various international aid organizations throughout Pankisi.²² For the few in Pankisi who are fortunate enough to own land, they supplement what little income they earn elsewhere by growing low-yield crops. However, because most of the refugees do not own land, they must find other ways to survive.

Many refugees would like to work in the manufacturing or service sector, but because Georgia suffers from endemic nepotism, the few paying jobs that exist in Pankisi usually go to the friends or family of nationals. The Chechens themselves say they have felt discriminated against in looking for work. This may be the result of nepotism or may be due to underlying ethnic tensions that still persist between local Georgians and Chechens.

The fact that refugees have difficulty finding work in Pankisi raises the question, why do refugees continue to remain in an economically depressed area of Georgia when they would have a better chance of finding work in a large city like Tbilisi or Batumi. The answer is that the Ministry of Refugees and Accommodation requires that refugees remain in Pankisi Gorge if they are not registered with citizens of Georgia, and few are. This rule is codified in Article 5, Section 1 of Georgia's Law on Refugees, which empowers the Ministry to select the sites where refugees may live and work. Although the Ministry of Refugees and Accommodation appears to enforce this law only rarely, the law on refugees as it currently stands offends both Article 17 and Article 26 of the Convention Relating to the Status of Refugees since foreign nationals who are not refugees are permitted to live and work anywhere in the country.

HRIDC asks the Georgian Parliament to amend its Law on Refugees, such that the law will not conflict with the Convention and will enable refugees to live wherever other foreign nationals may live. In doing so, the hope is that refugees will have more of an incentive to care about their employment and living situation than they currently do being in the ghetto known as Pankisi.

Case of Ziaud Idigoev

On July 11, 2006, HRIDC petitioned the Constitutional Court of Georgia on behalf of Chechen refugee, Ziaud Idigoev, to order the Georgian government to issue Idigoev a travel documents so that he could legally travel to other country.

²² Annex 1: monthly food ration and basic sanitary items given to Chechen refugees.

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The Constitutional Court of Georgia did not discuss the case in its entirety but concluded that the Georgian Parliament should amend its Law on Refugees to require the Ministry of Refugees of Accommodation to work out the procedures to issue travel document. This, in turn, would make it easier for refugees to find work in neighboring countries.

Future Prospects

There are only three possibilities for refugees from Chechnya in the long-term:

- Voluntary Repatriation. The refugees voluntarily return to the Russian Federation
- Naturalization. The refugees become citizens of Georgia.
- Resettlement to a Third Country. Refugees, with the assistance from UNHCR and the host government, move permanently to a third country.

Voluntary Repatriation

It is still unsafe for Chechens to return to the Russian Federation, and it would not be advised that they do so. The UNHCR itself does not advocate that refugees return to the Russian Federation. Moreover, it is highly unlikely that the situation in Chechnya will improve much in the near future. Therefore, voluntary repatriation is not currently a viable solution for the remaining refugees in Georgia.

Naturalization

Naturalization would be an acceptable long-term solution for those refugees of Kist ethnicity who have close ties to Georgia. Some Kist refugees were actually born in Georgia and now live with family members in Pankisi who are Georgian citizens.

Unfortunately, naturalization is lengthy process in Georgia with many requirements. It can last upwards to ten years. Because of the red tape involved, many refugees we interviewed had lost already interest in becoming Georgian citizens. They told us that when they first arrived, naturalization seemed to be an acceptable solution. However, after years of waiting and poor treatment by officials, they have little hope that Georgian citizenship will come to them someday.

Article 34 of the Convention relating to the Status of Refugees says:

The Contracting States shall as far as possibly facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

To meet its obligation under Article 34 of the Convention and to enable refugees to become citizens of Georgia sometime in the near future, the Georgian Parliament must re-examine its current laws in place for granting citizenship to refugees.

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Resettlement to Third Countries

Resettlement to a third country is generally done on a case-by-case basis with the decision ultimately resting with the host government and not with Georgia or the UNHCR. Between 2003 and 2005, nearly 300 refugees were resettled with the help of UNHCR to third countries – mainly to Sweden, which took over 70 percent, but also to Canada and elsewhere.

However, since the War on Terror began, there have been few countries eager to accept refugees from Chechnya. In addition to this shift in demand for Chechen refugees, changes in UNHCR policy have placed a greater burden on UNHCR's field offices in identifying countries willing to accept refugees and in facilitating asylum processes with countries that often do not host embassies in such countries as Georgia.

The reluctance of third countries to accept refugees from Chechnya, combined with changes in UNHCR policy on resettlement, suggest that only a small number of refugees will eventually be resettled. Of these, the HRIDC believes the remaining Chechens in Georgia should receive priority, since this group is the least willing to become participating members of Georgian society.

Recommendations:

Recommendations for the Georgian Parliament

- The Georgian Parliament should clarify its Law on Refugees so that it does not conflict with the Convention relating to the Status of Refugees. At the very least, the Georgian Parliament should insert a prefatory article into the law stating that a person crossing into Georgia may qualify as a refugee under the Convention with all the rights guaranteed by the Convention, even before that person has received refugee status from the Georgian government.
- The Georgian Parliament should close the loophole in Georgia's current Law on Refugees by requiring the Ministry for Refugees and Resettlement to issue a temporary residence permit at the time a potential refugee applies for refugee status.
- The Georgian Parliament should amend its Law on Refugees to allow refugees to live and work anywhere where foreign nationals are permitted to live and work in Georgia.
- The Georgian Parliament should draft legislation that establishes a simplified process for converting refugee status into citizenship.

Recommendations for the Georgian Executive and Judiciary

- The Georgian executive and judiciary should give refugees adequate legal recourse to claim refugee status before punishing refugees for illegally immigrating.

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- The Georgian executive and judiciary should not discriminate against refugees of Chechen and Kist ethnicity who are attempting to seek refuge in Georgia.
- The Georgian executive and judiciary should explicitly repudiate any policy of refoulement of refugees from the Russian Federation through its words and actions.
- The Georgian executive and judiciary should refrain from the use of excessive force against refugees who are under investigation for criminal wrongdoing.
- The Georgian executive and judiciary should grant refugees the same procedural rights given to Georgian citizens during investigative and judicial proceedings.
- The Georgian Judiciary should enforce an exclusionary rule that bars all evidence involving a defendant or witness who had his/her procedural rights violated, including but not limited to, being denied access to an attorney.
- The Georgian executive and judiciary should take all necessary steps to ensure that every allegation regarding a violation of the rights of refugees is properly investigated and punished.

Recommendations for UNHCR

- The UNHCR should attempt to provide greater level of assistance to refugees outside of the Pankisi area. One means this could be done is by switching from in-kind aid to something similar to a cash-based food program. Although a cash-based food program would be more prone to fraud, it would also permit refugees to choose where they live and work without having to forgo UNHCR's assistance.
- The UNHCR should improve its communication with refugees so that they have a realistic view of what their chance of resettlement is. The current expectations of the remaining refugees are not in line with the reality, and these expectations are distorting the ability of refugees to plan for their futures. UNHCR should attempt to convince, especially Kist refugees, that they have future in Georgia if they so choose to remain and to start afresh in this country.
- The UNHCR should make its activities more transparent and open for NGOs as well as for the refugees. The UNHCR should improve its communication with civil society in Georgia and be more willing to cooperate with its members on issues relating to refugees.

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Annex 1²³

Monthly Food ration given to Chechen refugees

#	Commodity/person	Unit	Quantity	Distribution	Remarks	
1	Wheat flour	kg	13.5	1 in 2 months	27 kg per distribution	W F P
2	Sugar	kg	0.6	1 in 2 months	1.2 kg per distribution	
3	Beans	kg	2.7	1 in 2 months	5.4 kg per distribution	
4	Oil	lit.	0.75	1 in 2 months	1.5 lit. per distribution	
5	Condensed milk	can	0.5	1 in 2 months	1 can per distribution	U N H C R
6	Canned fish	can	0.5	1 in 2 months	1 can per distribution	
7	Dry Soup	cube	6.5	1 in 2 months	13 cubes per distribution	
8	Black Tea	gr.	200	1 in 2 months	400 gr. per distribution	
9	Iodized salt	gr.	500	1 in 2 months	1 kg per distribution/family	

Monthly Ration of Basic Sanitary Items given to Chechen refugees

#	Commodity/person	Unit	Quantity	Distribution	Remarks
1	Toilet soap	bar	1.5	1 in 2 months	3 bars per distribution
2	Washing Powder	pack	0.5	1 in 2 months	1 pack per distribution
3	Tooth paste	tube	0.5	1 in 2 months	1 tube per distribution
4	Tooth brush	piece	1	1 in 4 month	1 brush per distribution
5	Sanitary Napkins	pack	1.5	1 in 2 months	3 packs per distribution (Females of age12-60)

²³ Information provided by UNHCR Georgia

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Photos from Pankisi Gorge



Refugees receiving UNHCR assistance



Chechen children



Refugees receiving free medical care at area hospital

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Norwegian Refugee Council classroom



Girl making felt for sale at Norwegian Refugee Council



Chechen refugee in Djokolo

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Cooking



Chechen women



Communal center in Duisi

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Bedroom



Refugees in Djokolo



Chechens giving press conference at HRIDC