

TOGETHER AGAINST TORTURE

6th Declaration

June 26, 2010, Tbilisi

Appeal

To the President of Georgia, to the Prime Minister and Parliament of Georgia to make changes in the laws and normative acts of Georgia relevant to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as to other anti-torture international standards.

To the Intergovernmental and International Organizations: Regarding necessity of Implementation of International Standards and Regulations on Prevention of Torture and ill – treatment on whole territory of Georgia, including the occupied territories.

Drafted by:

EMPATHY Torture Victims Rehabilitation Center

Presented:

To the President of Georgia Mr. Mikhail Saakashvili, Prime Minister Mr. Nika Gilauri, Chair of the Parliament Mr. David Bakradze.

To the Intergovernmental Organizations: UN, EU, CoE, as well as to the Diplomatic Missions accredited in Georgia

26 June 2010, Tbilisi

Preamble

Torture leaves an indelible trace on human life. Although but not always, the physical consequences of torture may be eliminated but the spiritual pain constantly haunts the victim of torture.

The insight into the horrors of World War II, namely the studies conducted among the victims of torture in concentration camps and deportees has shown that torture and other cruel, inhuman or degrading treatment or punishment serves only the suppression

and destruction of an individual and in most cases leads to a complete failure of human life (V. E. Frankl, “Psychotherapist in the Concentration Camp”).

Proceeding from all that has been mentioned above, the civilized world has arrived at the conclusion that every individual has the right to be absolutely protected from torture and other cruel, inhuman or degrading treatment or punishment. As proclaimed in the Universal Declaration of Human Rights and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (namely Article 2.2 - 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) this provision includes no limitations to any exceptional circumstance of torture.

Under the said Convention, “torture” is defined in the following way:

Article 1

1. For the purposes of this Convention, the term "torture" means 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.

Georgia acceded to this Convention on 22 September 1994 but, unfortunately, the relevant changes have not fully been made in the national legislation, bearing heavily on the efforts to fight torture. We believe the issue calls for significant joint action, involving both governmental and non-governmental structures, professional associations (particularly associations of doctors and lawyers), international organizations, the media and the whole society.

Whereas joining on 26 June (UN International Day in Support of Victims of Torture) the anti-torture movement around the globe under the slogan “The World without Torture”.

Whereas invoking the Universal Declaration of Human Rights, Article 5 (adopted and recognized by the General UN Assembly Resolution 217 (III), 10 December 1984);

Whereas recognizing the European Convention on Human Rights and Fundamental Freedoms – Article 3: Prohibition of Torture (Rome, 4 November 1950);

Whereas recognizing the European Convention on Prevention of Torture and Inhumane, Degrading Treatment or Punishment (Turin, 18.10.1961);

Whereas recognizing the provisions of the Optional Protocol to the UN Convention and deeming its implementation in Georgia as an important step to fight against torture (entered into force on 22 of June 2006);

Whereas recognizing the principles of the Istanbul Protocol as guidelines for medical and legal documentation of torture;

Whereas invoking the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987);

Whereas invoking Principles of International Humanitarian Law

Whereas invoking Article 17 (Chapter 2) of the Constitution of Georgia on human rights;

Whereas welcoming the incorporation of articles 144 ‘, 144 ‘, and 144’”, and the definition of torture in the Criminal Code of Georgia;

Whereas welcoming the planning of updating the Anti – Torture Actions’ Plan of Georgia

Whereas welcoming Implementation of UN OPCAT in Georgia since December 2009;

Whereas recognizing the need to address the situation in torture practice and prevention in Georgia, especially toward to Occupied Territories;

Whereas recognizing the critical and deplorable situation in the torture documentation and investigation in Georgia;

Taking in Consideration the consequences of the Russian Brutal Military Intervention in Georgia;

We declare and appeal to the Government of Georgia to take urgent measures to take effective steps to prevent the practice of torture and inhumane, degrading treatment in Georgia: To made immediate measures for protection of rights of civilian population living at the occupied territories of Georgia; As well as to take adequate measures for legal recognition of victims of ethnic cleansing and victims of violations of international humanitarian law and for their legal redress and medical and psycho – social rehabilitation.

We declare and appeal to the Intergovernmental Agencies and Governments of partner Countries to elaborate the effective measures for protection of rights of civilian population living at the occupied territories of Georgia. as

well as to elaborate the effective plan of activities for implementation of international investigation, recognition of victims of ethnic cleansing and restoration of their rights.

DECLARATION

1. To prevent torture in Georgia, under Articles 1, 2 and 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it is necessary to adequately modify and streamline special articles of the Criminal Code of Georgia so as to fully contain the definition of torture, particularly the following section of the definition: **“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”**.
2. According to the Articles 12 and 13 of the mentioned Convention, concerning to the state obligations for the fast and impartial inquest of the facts of torture, i.e. to carry out an effective inquest, implying the guidelines of “Istanbul Protocol” for documentation of tortures and ill treatment and their effective inquest, seems to be of great importance. It is necessary to incorporate and implement the Istanbul protocol Guidelines and form a legislative framework to document the facts of torture. We consider that implementation of Istanbul Protocol principles and creating legislative basis should be obligatory. Implementation of Istanbul Protocol principles is included in anti-torture plan, but real steps for its practical using in Forensic Expertise field aren't made.
3. It is necessary to include in the Criminal Procedural Code of Georgia special article for obligatory complex forensic medical and mental/psychological examination according to the Istanbul Protocol Guidelines.
4. Based on mentioned international standards it is necessary to include in the Criminal Procedural Code of Georgia time limitation for conducting the Complex Forensic Medical and Mental/Psychological Evaluation, as soon as possible after the torture or ill treatment event.
5. To prevent the facts of torture and ill treatment, under Article 10 of the mentioned Convention it is necessary to incorporate torture prevention standards in curricula (for the law-enforcement personnel, state or military, medical personnel, government officials or other persons dealing with imprisonment and interrogations as well as for students in educational institutions) and develop special programs. It is also necessary to include the prohibition in special instructions regarding the duties of the aforesaid persons. Consequently, it is necessary to include the principles of “Istanbul protocol” in Curricula, mainly and exclusively for lawyers, legal experts and representatives of medical sphere, taking into consideration the Article 16 of the Convention.

6. Under Article 14 of the mentioned Convention, the State is obliged to provide and assure compensation and full rehabilitation for the torture victims. For this purpose, it is necessary to set up a torture victims' compensation and rehabilitation fund or Programme.
7. It is necessary to recognize the standards on international medical ethics and to introduce completely the Code on medical ethics on the territory of Georgia; In accordance with the Articles 11 and 16 of the said Convention it is necessary to carry out medical service reform in the places of imprisonment of Georgia covering – the council recommendations, mainly, the appeal of the committee of the Ministry to the participating countries regarding to the organizational and ethical aspects of medical care systems in prisons, the recommendations # R (98) 7; by the third general report (1992) of CPT; It should be emphasized as well that the new code project on imprisonment, which had been submitted to the Parliament of Georgia for approval doesn't correspond to the international standards existed in medical care system of prisons in Georgia and consequently, it should not be accepted under such condition.
8. According to the Articles 55 and 56 of the Georgian Law on "Health Care", every medical establishment needs medical the license, proved and issued by the Ministry of Health Care of Georgia. At the same time monitoring of medical units should be provided as well. It should be underlined that despite of some recommendations issued by us the law on health and mental care (2006) still has not been implemented in any place of imprisonment. Due to the Law on mental care (Chapter 1, article 4, item d), Psychiatric Department is the institution possessing an appropriate license on which the opponents, mainly, the structures of Ministries of Justice and Health Care have the following answers – due to the Georgian Law on Licensing (article 1, item 2), licensing process in not compulsory for medical units at prisons. To our opinion this is a discriminating statement contradicting the Constitution of Georgia. Existence of different standards of Health care for different categories of population is unacceptable for us. Consequently, we appeal to take some steps to eradicate such discrimination without delay.
9. On the road to torture prevention, we think it important to reform the law on Forensic Medical and Psychiatry Expertise, to elaborate special Order regarding Forensic Evaluation of Victims of Torture and III – Treatment according to the Istanbul Protocol with necessity of using the Istanbul Protocol Guidelines according to the Annex 4, Annex 3 of IP.
10. Under the Hamburg Declaration of the World Medical Association, it is necessary to develop instruments to ensure the protection of the rights of doctors working in "risk zones" (prisons, medical experts, etc). Especially, the Georgian Law on "Doctors Activities", Article 6 (professional independent of doctoral activities states that" it is forbidden if the person demands from the physician to act against the principles and ethical norms of doctors activities indicated in this Law, despite of his/her post, nationality, ethnical and social belongings and religion", though how this action should be executed is not determined by the Criminal Law of Georgia; as a result it is

necessary to include special article in the Criminal Law related to putting pressure on medical personnel).

11. It is necessary to recognize by the Parliament of Georgia the Victims of Ethnic Cleansing as special categories needed redress and compensation similar to the victims of torture according to the International regulations.
12. To collect facts of torture, ethnic cleansing and discrimination since 1992 implemented toward to population living in the Occupied Territories of Georgia and to prepare the Appeal to the International Criminal Court of Justice.
13. It is necessary to develop a special concept and strategic plan on both international and local levels in order to implement the principles of the UN Convention against Torture and principles of International Humanitarian Law across the whole territory of Georgia, including the Occupied Territories (National Anti-torture Plan, including the Occupied Territories and Strategy paper on Victims of Ethnic Cleansing and Discrimination recognized by international professional organizations), as well as international strategy for human rights' protection and guarantees for security in these territories.
14. It's necessary to develop special working group which will elaborate working plans for recognizing Russian federation as a party of conflict and, therefore, will elaborate project of resolution regarding necessity of entering International Military Police Forces in Occupied Territories of Georgia.

Signatures:

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