

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Téléfax: (41-22)-917 90 06
Télégrammes: UNATIONS, GENEVE
Téléc: 41 29 62
Téléphone: (41-22)-917 9359
Internet www.ohchr.org
E-mail: urgent-action@ohchr.org

Address:
Palais des Nations
CH-1211 GENEVE 10

REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (53-24)
GEO 1/2012

2 August 2012

Dear Mr. Tsiskarashvili,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 16/4, 15/21, 16/5, and 16/23.

In this connection, we would like to draw the attention of your Government to information we have received regarding the detention and torture of Mr. **Irakli Beraia** at the Police Temporary Detention Isolator (TDI) in the Kvareli District of Georgia. On 20 June 2011, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the rights to freedom of peaceful assembly and association, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a joint urgent appeal regarding allegations of excessive use of force by the police against peaceful protesters on 26 May 2011. The communication was followed by a country visit in February 2012 by the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

According to the information received:

We have received allegations of detention and torture of Georgian university student Mr. Irakli Beraia following his arrest during a peaceful protest outside of the Georgian Parliament building in Tbilisi on 28 May 2012. Mr. Beraia is allegedly a member of the Youth Movement "November 7" which has participated in several peaceful protests and has been dispersed, sometimes violently, on several occasions by the Georgian authorities. According to the allegations, Mr. Irakli was detained and convicted of violations of Articles 166 and 173 of the Georgian Code of Administrative Offences for "petit hooliganism

and disobedience of the demands or lawful orders of law enforcement officers.” Accordingly, Mr. Beraia was allegedly sentenced to 30 days imprisonment on 29 May 2012, yet despite the fact that his trial took place in Tbilisi, he was transported to the Kvareli District for detention in the Temporary Detention Isolator (TDI). There was allegedly no explanation in either the executive reports or the judicial decision for why Mr. Beraia was moved over 140 kilometers from the location of his trial.

It is further alleged that for the first three days of his detention, before being given access to his lawyer, the officials of the TDI were abusing Mr. Beraia by beating him all over the body. In addition he was denied adequate food, clean water, or sanitation; and had swarms of locusts placed in his cell by prison guards. After three days of the initial beating Mr. Irakli Beraia had a strange fluid coming out of his right ear and asked for an emergency doctor. The doctor visited Irakli four times during 30 days; medical reports were made. All four emergency doctors gave him pain killers, and did not ask anything about the reason of pain. The officials of the Kvareli TDI had stopped beating him as soon as the defence lawyer started visiting him. However, the other ways of abusing him did not stop. The officials of the TDI forced him to curse the well-known members of the political opposition in Georgia.

Upon being released from detention, Mr. Beraia allegedly required medical treatment for exhaustion, chest pains, malnourishment, kidney and liver problems, and inflammation of his stomach and intestines caused by unsanitary drinking water. It is further alleged that Mr. Beraia developed several psychological disorders caused by his mistreatment within TDI. It is also alleged that communications with his family were denied and provisions they sent Mr. Beraia to the TDI were seized by prison guards.

It is reported that the main reason for the arrest and torture of Mr. Irakli Beraia is related to his human rights activities and his participation in the protest rallies against human rights abuses in Georgia.

Finally, it is noted in the allegations that the prosecutor’s office failed to exercise its duty to investigate these charges once they became public in a press conference held on 29 June 2012 and further public radio statements the following day.

Without in any way implying any conclusions as to the facts of the case, we should like to appeal to your Government to seek clarification of the circumstances regarding the conditions of detention of Mr. Beraia at the TDI in the Kvareli District. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This is set forth inter alia in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In this context, we would like to draw the attention of your Government to paragraph 1 of Human Rights Council Resolution 16/23, which “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

We would further like to draw the attention of your Government to the Standard Minimum Rules of Treatment of Prisoners (adopted by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). We would also like to draw your attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988). The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

We would also like to draw the attention of your Government to Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 which states that, “A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world [. . .]”. We would also like to draw your attention to rule 37 of the Standard Minimum Rules for the Treatment of Prisoners adopted on 30 August 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which provides that “Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.”

We would further like to draw the attention of your Government to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture. We would also like to draw your Government’s attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States “(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updates set of principles for the protection

of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture.”

In this connection, we would like to refer your Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.
- article 12 paragraphs 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

With regards to youth defenders taking part in demonstrations, we would like to refer to the 2007 report to the General Assembly of the Special Representative of the Secretary-General on the situation on human rights defenders in which she recommends to “take steps to create a conducive environment that allows children and young adults to associate and express views on matters affecting them as well as on broader human rights issues. Student protests have a high educational value as they are among the first experiences of public participation and human rights defense of students. Ensuring a conducive environment for student protests is a social investment in addition to a legal obligation” (A/62/225, paragraph 101 b)

We would also like to appeal to your Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” In this connection, we wish also to draw the attention of your Government to the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with article 19, paragraph 3 of the ICCPR, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

Similarly, we would like to recall article 21 of the ICCPR, which provides that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that “[c]alls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

Furthermore, we would like to further refer to the mission report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on Georgia (A/HRC/20/27/Add.2), subsequent to his visit to the country from 6 to 13 February 2012, in which he recommended that the Government of Georgia “[c]ontinue efforts to avoid the use of force to disperse lawful and peaceful assemblies; in the case of peaceful but unlawful assemblies, ensure that force is only employed as a last resort; and that alternative measures are consistently sought to disperse assemblies, in compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials” (para. 91(d)); “[e]nsure full implementation of the recommendations made by the Working Group on Arbitrary Detention in its report,³⁷ in particular those contained in paragraph 98, subparagraphs (b) to (e) and (h) to (q)” (para. 91(f); and “[e]nsure full implementation of article 2.1 of the

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment” (para. 91(h)).

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Government to safeguard the rights of the above-mentioned person in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged?
3. Please provide the results, of any investigation or judicial inquiries which would be relevant to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide information concerning the legal grounds for the arrest and detention of Mr. Irakli Beraia and how these measures are compatible with relevant international norms and standards as stated, inter alia, in the UDHR and the ICCPR.
5. What measures are being taken by your Government to ensure that conditions of detention in the Temporary Detention Isolator in the Kvareli District of Georgia as well as other detention facilities comport to relevant international standards?

We undertake to ensure that your Government’s response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned person are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Government adopt effective measures to prevent the recurrence of these acts.

Please accept, dear Mr. Tsiskarashvili, the assurances of our highest consideration.

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of
association

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment